

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 6 April 2005

The Council met at Eleven 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 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

MEMBER ABSENT:

THE HONOURABLE LAU CHIN-SHEK, J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
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Dangerous Drugs Ordinance (Replacement of Fourth Schedule) Order 2005	36/2005
Eastern Harbour Crossing Ordinance (Amendment of Schedule) Notice 2005	37/2005
Swimming Pools (Amendment) Regulation 2005	39/2005
Designation of Libraries Order 2005	40/2005
Air Navigation (Flight Prohibition) Order (Commencement) Notice 2005	41/2005
Landlord and Tenant (Consolidation) (Amendment) Ordinance 2002 (Commencement) Notice 2005...	42/2005
Shipping and Port Control (Amendment) (No. 3) Regulation 2000 (Commencement) Notice 2005 ...	43/2005
Tax Reserve Certificates (Rate of Interest) (No. 2) Notice 2005	44/2005

Other Papers

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| No. 76 | — | Audited Statement of Accounts of the Quality Education Fund together with the Director of Audit's Report for the year ended 31 August 2004 |
| No. 77 | — | Hong Kong Tourism Board
2003/2004 Annual Report |

No. 78 — Audited Financial Statements and Report on Activities of the Hong Kong Examinations and Assessment Authority for the year ending 31 August 2004

No. 79 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 2004-05 (Public Finance Ordinance : Section 8)

No. 80 — Summary and Revenue Analysis by Head, General Revenue Account, Estimates for the year ending 31 March 2006

Report of the Bills Committee on Vocational Training Council (Amendment) Bill 2004

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Clerk, a quorum is not present now. Please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): A quorum is now present, the Council meeting starts.

Questions. Members can ask only one question in putting supplementaries. And Members should be as concise as possible and should not make statements in asking supplementaries.

First question.

Spouses of Expatriate Workers Seeking Employment in Hong Kong

1. **DR DAVID LI:** *Madam President, in response to my question at the Council meeting on 19 November 2003, the Secretary for Security stated that*

under the revised policy introduced on 1 July 2003, dependants of persons granted entry into Hong Kong had to apply for permission from the Director of Immigration before they could themselves take up employment in Hong Kong. The Secretary also pointed out that this policy was in line with practices adopted in many developed economies, including Canada, New Zealand, Singapore and the United States, whereby dependants in similar circumstances required permission for taking up employment. However, it has been reported recently that Australia, Britain, Canada, New Zealand and Sweden give spouses of expatriate workers the automatic right to seek employment, while the United States grants work permits to spouses of certain categories of people, notably managers or executives of multinational firms. It has also been reported that the results of a survey show that restrictions on a spouse's right to work are now the principal reason for employees to refuse an overseas posting. In this connection, will the Government inform this Council:

- (a) of the number of arrivals in 2004 who are the spouses of persons granted entry into Hong Kong to take up employment and, among them, the number of those who have been given permission to take up paid employment in Hong Kong, broken down by gender;*
- (b) whether Invest Hong Kong (InvestHK) has evaluated the impact of the above government policy on the ability of firms in Hong Kong to attract and retain talents from abroad and, if so, of the evaluation results; and*
- (c) whether the Administration will consider revising the relevant policy in order to bring it into line with the existing practices adopted in Canada, New Zealand and the United States?*

SECRETARY FOR SECURITY: Madam President,

- (a) The current policy governing the employment of dependants of persons with permission to work in Hong Kong (the policy) was introduced on 1 July 2003. With effect from that day, dependants have to apply for permission from the Director of Immigration before they themselves can take up employment in Hong Kong. The policy does not affect persons who had been admitted into Hong Kong as dependants, or whose applications for admission as

dependants had reached the Director of Immigration before the commencement date of the policy. I should stress that the policy does not seek to impose a wholesale prohibition. The dependants concerned may still work provided that they meet the eligibility criteria under the general employment policy (GEP) which applies to all overseas persons who seek to enter Hong Kong for employment. A key requirement is that the employment concerned is one which cannot be readily taken up by the local workforce. If indeed it can be demonstrated to the Director of Immigration that the job sought by a dependant cannot be readily taken up by the local workforce, this will be a strong factor arguing for favourable consideration by the Director, provided of course that the other criteria under the GEP are also met.

In 2004, 3 693 dependants to whom the policy applied were granted permission to join their spouses in Hong Kong. Whilst a detailed breakdown is not available, it is believed that the majority of them were dependants joining spouses who had been granted entry into Hong Kong to take up employment. In 2004, 267 dependants applied for permission to take up employment in Hong Kong under the policy and 238, or 89% of all applicants, were granted approval. Of the remaining 29 cases, one was refused, 23 were withdrawn, and five were being processed at the end of the year.

- (b) InvestHK has not conducted a formal evaluation on the impact of the policy on the ability of local firms to attract and retain talented individuals from abroad. However, upon the inception of the policy, InvestHK has indeed received representations from its contacts that the cancellation of spouses' automatic right to work represents the loss of a competitive advantage which Hong Kong previously enjoyed. To address such concerns, the Government has been proactively explaining to the business community that the policy is required to provide reasonable protection for local employment, and is generally in line with practices adopted in many developed economies. Furthermore, the application procedures for dependants who wish to take up employment are not onerous, and the approval rate, as seen from the above figures, is in fact rather high. There has so far not been any sign that the ability of local firms to recruit from overseas has been seriously affected by

the policy. In 2004, the Immigration Department received a total of 21 098 entry applications under the GEP, representing an increase of 19% over 2003.

- (c) We understand that our policy is in line with practices adopted in many developed economies, including Canada, New Zealand, Singapore and the United States, whereby dependants in similar circumstances require permission for taking up employment. We will continue to keep our policy under review to ensure that it meets the changing needs of society.

DR DAVID LI: *Madam President, according to a visa provision signed into law in the United States in January 2002 for family transfer to the United States by multinational companies, I quote, "the Attorney General shall authorize the alien spouse to engage in an employment in the United States and provide the spouse with an employment-authorized endorsement or other appropriate work permit." Would the Secretary for Security please explain how our system, which requires both sponsorship and permission before a spouse may take up employment, is in line with the above policy in the United States, which provides the unrestricted right to work for spouses of those transferred by their companies?*

SECRETARY FOR SECURITY: Madam President, the United States has issued many different kinds of visas to family members of H-type, L-type, E-type, O-type and P-type visa holders. These dependants may accept employment if they have been granted employment authorization, that is to say, they have no automatic right to employment. The authorization is not for dependant children of E and L categories. The categories mentioned by Dr the Honourable David LI is related to holders of the L-type visa, that is, intra-company transferees who are employees of a multinational company providing services to its subsidiary or affiliate in the United States in a managerial, executive or specialized category. As for the other categories, such as the H-type, temporary workers, foreign nationals providing temporary services, employment or labour, the H classification has several sub-categories as well, including one for trainees. So, there are many kinds of visas issued by the American Government. The visa type mentioned by Dr David LI is only related to one type of visa, that is, the intra-company transferees. In general, for the other types, the right to employment of dependants is not automatic.

MR BERNARD CHAN (in Cantonese): *Madam President, many expatriate employees at management level of the finance sector have lodged complaints with us on the employment opportunity of their spouse in Hong Kong. I note in part (b) of the main reply, that the Secretary mentioned that the Government has been proactively explaining the policy to the business community. May I know through what channels these proactive explanations as mentioned by the Secretary were carried out? It seems that many sectors, such as the Insurance Functional Constituency, do not know the government policy in this respect, in particular through what channel the persons concerned can make an application. How can they learn about such information? As there may be little chances for expatriates to learn about this information, what channels has the Government provided to them?*

SECRETARY FOR SECURITY (in Cantonese): *Madam President, when we first introduced the policy, we knew the business community had doubts over whether the policy would affect their overseas recruitments if the employee's spouse could not seek employment in Hong Kong. In the very beginning, the Immigration Department (ImmD) informed major business associations and met with their members to explain the policy. We also assured them there would be flexibility in implementing the policy. Mr Bernard CHAN just asked whether the ImmD had explained the policy to every sector. To this question, I can tell Members that we cannot explain it to every sector (such as the surveying or engineering sector). In the beginning, other than explaining the policy to representatives from the business community, as far as I know, the Director of ImmD and its senior officials also frequently made appropriate explanations on the policy at meetings with the business sector.*

MR JASPER TSANG: *Madam President, the policy to abolish the automatic right to work for spouses is, according to the Secretary, for the purpose of protecting local employment. The policy was introduced in 2003 for good reasons obviously since we were having very high unemployment rates then. Now that the economic situation is improving, is it the intention of the Government that when the employment rate reaches a certain level, the policy can be relaxed so that the automatic working right for spouses could be restored?*

SECRETARY FOR SECURITY: Madam President, I think the current unemployment rate is still standing at 6%, and I do not know whether it is high or low. Many years ago, our unemployment rate was at about 1.5% or 2%, and that was what I called low. I can assure the Honourable Jasper TSANG that we will continue to review our policy from time to time. But at this point of time, there is no plan to change the current policy.

MS EMILY LAU: *Madam President, this is a follow-up to Mr TSANG's question. Can the Secretary tell us the number of those spouses who had taken up jobs when the policy was introduced in 2003? Is it an established fact that the policy was introduced because they had taken away lots of jobs from local people? Can you give us some figures to show how serious the situation was? I also agree with Mr TSANG and my other colleagues that the situation has now changed, and if we want to be an international business centre and financial centre, we want to attract people to come here*

PRESIDENT (in Cantonese): Ms Emily LAU, you are making statements, and not asking a supplementary question.

MS EMILY LAU: *No. I want to ask him whether the policy can be reconsidered.*

SECRETARY FOR SECURITY: Madam President, I am sorry I do not have the figures at hand now of the number of dependants who had taken up employment before the change of policy. I would check and provide them in written form. (Appendix I)

Madam President, I told the Honourable Jasper TSANG that we will review our policy from time to time, but one very important fact is that the current policy, as we see it, does not hinder foreign firms from recruiting talented people from overseas. This is borne out by facts and can be witnessed by the figures I just quoted: The number of foreign talents admitted into Hong Kong in 2004 rose by as much as 11%, as compared with 2003. As we see it, the current policy does serve Hong Kong well, and it also serves the business

community well. That is why I also said before that at this moment, we have no plan to change the current policy.

DR LUI MING-WAH (in Cantonese): *Madam President, the Secretary mentioned just now that this policy had been explained to the major business associations. Does the Government has any documents for our reference?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, when the departments concerned hold meetings with the major business associations, they will make their own records of the meetings. Dr LUI now asked me if I can produce those records, I think the business associations concerned would also have their records of the meetings. In other words, when they had meetings with the ImmD or the Security Bureau, they would make records of the meetings. I cannot answer Dr LUI Ming-wah now whether or not I can produce those records for Members' reference, but we indeed have had meetings with the major business associations including both lunch meetings and regular meetings.

DR LUI MING-WAH (in Cantonese): *The Government has not answered my supplementary question, that is: As the Government had explained the policy to the business community, whether or not the Government itself has documents that can be produced for our reference?*

SECRETARY FOR SECURITY (in Cantonese): We do have provided some documents to the business associations which, I believe, can be provided for Members' reference.

MR LAU KONG-WAH (in Cantonese): *Madam President, the policy as mentioned by the Secretary basically serves the purpose of protecting local workers, which is the usual policy all along. However, as seen from part (a) of the main reply, 89% of the applicants were granted approval, which can be regarded as a rather high rate. Although the Secretary can neither categorize the applications, nor provide detailed information, can he give us some examples? As the success rate is so high, which professions in Hong Kong are depending on these people to fill their vacancies?*

SECRETARY FOR SECURITY (in Cantonese): I have at hand a little piece of analysis, which shows that we have received more than 300 applications. Maybe I can elaborate on the categories of the applications: of the 364 applications in total, 132 applications were applying for executive postings, 90 for the education sector, 11 for the finance sector, eight for the legal sector, six for the medical sector, five for the information technology sector, five for the design sector, another five for postings in consulates in Hong Kong, and 102 applications belong to other categories. This is the information we have received, but as to how many of them were approved, I do not have the statistics with me for the moment.

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

DR DAVID LI: *Madam President, according to the figures presented by the Secretary for Security, only 6.4% of those who arrived as dependants last year have been granted permission to work. This is a very low rate. Is the Secretary for Security aware of how many of the other 93.6% are keen to take up employment but have been prevented from doing so because of the difficulties in appointing a sponsor?*

SECRETARY FOR SECURITY: Madam President, although the number of dependants entering Hong Kong in 2004 stood at 3 693, only 267 of these dependants applied for permission to work in Hong Kong. That reflects the number of dependants who wish to take up employment in Hong Kong, but that does not mean our policy is debarring the rest to work in Hong Kong. This is a point I wish to make clear. Of these 267, 238 were granted permission to work in Hong Kong, and that means 89% of the applicants were granted approval to work in Hong Kong. Madam President, I must say that this is a very high percentage.

PRESIDENT (in Cantonese): Second question.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, point of order. Up to this moment, I still have not received the draft of the main reply to this oral question. I do not know if I should defer asking this question because I do not have the draft of the main reply at hand and this would affect my follow-up question. This seems not so good no matter how quick my wits are. I hope the President will consider deferring this question until we have the draft of the main reply.*

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, the Rules of Procedure does not require that a government official must submit the draft of the main reply to us, and his reply is accurate as delivered at the Council meeting. The draft of the main reply serves no more than as an aid to our memory of what he says in the main reply. Thus, I think you can ask the oral question. However, you and me are facing the same difficulty as I also do not have the draft of the main reply. Hence, I will apply more leniency than usual in handling Members' supplementary questions since there is no way for me to remember whether or not a particular point is mentioned in the main reply.

Mr LEE Cheuk-yan, please ask your main question.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, I have just received the main reply.*

Implementation of International Covenant on Economic, Social and Cultural Rights

2. **MR LEE CHEUK-YAN** (in Cantonese): *Madam President, regarding the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) through the laws of the Hong Kong Special Administrative Region (SAR), will the Government inform this Council:*

- (a) *given that, in response to the issues presented by the United Nations Committee on Economic, Social and Cultural Rights (the UN Committee) in May last year, the SAR Government stated in*

September last year that almost all Covenant provisions had been provided for in Hong Kong statutory law, of the Covenant provisions which have not yet been provided for in the laws of Hong Kong and the reasons for that; whether legislation will be enacted to provide for such provisions; and

- (b) *as the UN Committee recommended in May 2001 that the SAR Government should legislate to implement certain provisions of the Covenant, whether the Administration will give effect to such a recommendation?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, both the ICESCR and the International Covenant of Civil and Political Rights (ICCPR) are entrenched at the constitutional level by virtue of Article 39 of the Basic Law. Article 39 provides that:

"The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region....."

The measures undertaken to include the provisions of the ICESCR into the domestic law of the SAR are listed in the Annex to this reply.

As we stated in paragraph 2.3 of our second report under the ICESCR (which forms part of China's initial report), it is true that there is no single law — corresponding to the Hong Kong Bill of Rights Ordinance in relation to the ICCPR that incorporates the ICESCR into Hong Kong's domestic law. However, the ICESCR provisions are incorporated into our domestic law through several Articles of the Basic Law (for example, Articles 27, 36, 37, 137, 144 and 149), and through provisions in over 50 Ordinances. Those laws were listed in Annex 3 to our initial report, and we updated that list at Annex 2A of the second report, which we have reproduced at the Annex to this reply. We consider that specific measures of this kind more effectively protect rights in the ICESCR than would the mere reiteration in domestic law of the ICESCR provisions themselves.

Thus, turning to the second part of the question, neither the ICESCR itself, nor the General Comments of the UN Committee, require the comprehensive incorporation of the ICESCR into domestic law. Article 2 of the ICESCR requires the Government to take steps with a view to achieving progressive full realization of the rights recognized in it by all appropriate means. According to General Comment No. 3 of the UN Committee, each State Party must decide for itself which means are most appropriate under the circumstances with respect to each of the rights, to achieve progressively the full realization of those rights. This process is an ongoing one, and the possibility of enacting further legislative provisions for this purpose is always kept in mind, recent examples being the enactment to raise the age of criminal responsibility and the current exercise to legislate against race discrimination.

In the second part of his question, Mr LEE asks whether we will act on the legislative proposals that the UN Committee recommended in its concluding observations of May 2001. The position is that the UN Committee recommended that the SAR should consider legislation or review its policies in the following six areas:

- (a) *race discrimination in the private sector* (in paragraph 30) of the proposal of the UN Committee: we announced our intention to do so in June 2003. We recently completed public consultations on our legislative proposals and the law drafting process is underway;
- (b) *discrimination on the grounds of sexual orientation and age* (in paragraph 31): as we have explained to the UN Committee, both in our report and — in the case of age discrimination — our reply to its list of issues, our position is as follows:
 - (i) *in regard to discrimination on the ground of sexual orientation*: as we stated in paragraph 2.8 of our report, this is a sensitive issue that impinges on deeply ingrained values and notions of morality. Our considered view is that, at this stage, self-regulation and education, rather than legislation, are the most appropriate means of addressing discrimination in this area. For this reason, we have sought to address discriminatory attitudes through public education and administrative means, with a view to fostering in the

community a culture of greater objectivity, tolerance and mutual respect. Inevitably, these measures will need time to take effect as we cannot expect public attitudes to change overnight.

However, we are putting more resources into this area and recently, as a first step, established a Sexual Minorities Forum. In 2005-06, we will establish a Gender Identity and Sexual Orientation Unit on a two-year pilot basis. The Unit will promote equal opportunities for persons of different sexual orientation and transgender persons, and will maintain a hotline for enquiries and complaints. We are in the process of recruiting the Unit's staff. An additional initiative — that we will implement in 2005-06 — is to conduct a survey on public attitudes towards these issues; and

- (ii) *in regard to age discrimination*: legislation against age discrimination in employment would have potentially far-reaching implications for the local economy. Given the diversity of jobs that may genuinely require workers of specific attributes that are related to age (for example, number of years of experience), such legislation could impose rigidities on recruitment. To avoid being held liable for breaching the law, businesses would have to maintain comprehensive records of all recruitment exercises. This could increase business costs, especially for small and medium enterprises, which constitute some 98% of all enterprises in Hong Kong. Moreover, as the sensitive issue of mandatory retirement age has yet to be fully deliberated in the community, let alone consensus reached, legislation at this juncture would be difficult.

On this basis, after careful deliberation, we consider legislation against age discrimination is not the best option for landing the issue. Indeed, there is no consensus in the local community and the Legislative Council as to the effectiveness of, or need for, such legislation. We believe that the most effective way of addressing age discrimination is to nurture a

culture of respect and equality. To this end, we will continue to promote equal employment opportunities through education and publicity;

- (c) *unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates* (in paragraph 15(e)): for the most part, our position is as stated in paragraph 7.6 of our report. That is, our Employment Ordinance confers on employees a comprehensive set of employment rights and benefits in wage protection, rest days, holidays with pay, annual leave with pay, sickness allowance, maternity protection, severance payment, long service payment, termination of employment contract, protection against anti-union discrimination, and employment protection including unreasonable dismissal. Remedies for unreasonable dismissal include orders for reinstatement or re-engagement subject to the mutual consent of the parties, or awards of terminal payment. Terms and conditions of employment such as wage levels, hours of work, and rates of overtime pay are not governed by statute. They are matters for negotiation between employers and employees. Nevertheless, the Labour Department actively promotes the adoption of good people management practices. Employers are encouraged to adhere to these principles when they set their employees' terms and conditions of employment.

Recently, trade unions and some Members of the Legislative Council have called for a statutory minimum wage and standard working hours, including compulsory overtime pay. The community's views on the issues are divided. Given the far-reaching implications of the proposal on the economy and the labour market, the Government has put the matter to the Labour Advisory Board (LAB) for discussion;

- (d) *enact legislation on equal pay for work of equal value* (paragraph 35): first, and with every respect to the UN Committee, I must point out that, the concept of equal pay for work of equal value is, in fact, addressed in the Sex

Discrimination Ordinance. There is therefore no need to enact separate or further legislation for that purpose.

That said, and as we advised the UN Committee in our response to question 11 of its list of issues, an Equal Opportunities Commission (EOC) Task Force has examined the findings of Phase I of the consultancy study entitled "Equal Pay for Work of Equal Value", which concerned public sector jobs and public education programmes. Those findings will shortly be made public and the EOC is considering the launch of consultations. It is also formulating a strategy for taking this complex subject forward;

- (e) *amend the Public Order Ordinance (POO) to ensure freedom of trade union activities as provided for under article 8(c) of the ICESCR (paragraph 37):* as we advised the UN Committee in paragraph 8.7 of our report, the POO provides adequate safeguards against arbitrary interference with the rights guaranteed in Article 27 of the Basic Law and in the ICCPR. Its provisions reflect a proper balance between the individual's right to freedom of expression and peaceful assembly, and the broader interests of the community. For example, the Commissioner of Police may only impose conditions on — or disallow the holding of — public meetings and processions on grounds of national security, public safety, public order and protection of the rights and freedoms of others, if he reasonably considers it necessary. Organizers who are aggrieved by a police decision have recourse to an independent appeal board. The board is chaired by a retired judge and its members are not public officers. There is no evidence to suggest that the POO has impeded lawful trade union activities. As such, we do not consider that the POO requires amending; and
- (f) *raise the age of criminal responsibility (paragraph 43):* as we advised the UN Committee in paragraph 10.39 of our report, the Law Reform Commission (LRC) published its Report on

"The Age of Criminal Responsibility in Hong Kong" in May 2000. The LRC recommended, *inter alia*, that we raise the minimum age of criminal responsibility from seven years to 10, and as Members know, the Juvenile Offenders (Amendment) Ordinance 2003 raised the age to 10 with effect from 1 July 2003.

To summarize, therefore, we do not envisage a need for a law that would do for the ICESCR what the BORO does for the ICCPR. The provisions of the ICESCR are given legal effect through various articles of the Basic Law, through specific statutes, and through the evolving body of case law developed in the Courts. They are also put into practical effect through a host of administrative regulations and programmes. I have no doubt that our statutory mechanisms will continue to develop in both scope and sophistication as ICESCR-related jurisprudence — both domestic and international — increasingly refines the global consensus on the implications of the ICESCR and the measure that are necessary for ensuring its full and universal enjoyment.

Annex

Constitutional guarantee and legislative measures implementing
the International Covenant on Economic, Social and Cultural Rights in the SAR

ARTICLE 2

Constitutional guarantee - Article 39 of the Basic Law

Legislative measures

- Crimes Ordinance (Cap. 200)
- Criminal Procedure Ordinance (Cap. 221)
- Disability Discrimination Ordinance (Cap. 487)
- Employment Ordinance (Cap. 57)
- Family Status Discrimination Ordinance (Cap. 527)
- Mental Health Ordinance (Cap. 136)
- Sex Discrimination Ordinance (Cap. 480)
- Rules of the High Court (Cap. 4, subleg A)

ARTICLE 3

Constitutional guarantee - Article 25 of the Basic Law

Legislative measures - Sex Discrimination Ordinance (Cap. 480)

ARTICLE 6

Constitutional guarantee - Articles 33 and 147 of the Basic Law

Legislative measures - Employment of Children Regulations (Cap. 57 subleg B) under the Employment Ordinance
- Immigration Ordinance (Cap. 115)
- Sex Discrimination Ordinance (Cap. 480)
- Disability Discrimination Ordinance (Cap. 487)
- Family Status Discrimination Ordinance (Cap. 527)
- Employees' Retraining Ordinance (Cap. 423)

ARTICLE 7

Legislative measures - Boilers and Pressure Vessels Ordinance (Cap. 56)
- Builders' Lifts and Tower Working Platforms (Safety) Ordinance (Cap. 470)
- Dangerous Goods Ordinance (Cap. 295)
- Disability Discrimination Ordinance (Cap. 487)
- Employees' Compensation Ordinance (Cap. 282)
- Employment Ordinance (Cap. 57)
- Protection of Wages on Insolvency Ordinance (Cap. 380)
- Occupational Safety and Health Ordinance and a set of subsidiary legislation (Cap. 509)
- Factories and Industrial Undertakings Ordinance and 28 sets of subsidiary legislation (Cap. 59)
- Family Status Discrimination Ordinance (Cap. 527)
- Labour Tribunal Ordinance (Cap. 25)
- Mining Ordinance (Cap. 285)
- Minor Employment Claims Adjudication Board Ordinance (Cap. 453)
- Radiation Ordinance (Cap. 303)
- Sex Discrimination Ordinance (Cap. 480)

- Women and Young Persons (Industry) Regulations (Cap. 57 subleg C) under Employment Ordinance (Cap. 57)

ARTICLE 8

Constitutional guarantee - Article 27 of the Basic Law

Legislative measures - Hong Kong Bill of Rights Ordinance (Cap. 383), Article 18
- Employment Ordinance (Cap. 57)
- Labour Relations Ordinance (Cap. 55)
- Trade Unions Ordinance (Cap. 332)

ARTICLE 9

Constitutional guarantee - Articles 36 and 145 of the Basic Law

Legislative measures - Employees' Compensation Ordinance (Cap. 282)
- Employees' Compensation Assistance Ordinance (Cap. 365)
- Occupational Deafness (Compensation) Ordinance (Cap. 469)
- Employment Ordinance (Cap. 57)
- Mandatory Provident Fund Schemes Ordinance (Cap. 485)
- Occupational Retirement Schemes Ordinance (Cap. 426)
- Pneumoconiosis (Compensation) Ordinance (Cap. 360)

ARTICLE 10

Constitutional guarantee - Article 37 of the Basic Law

Protection of Family

Legislative measures - Adoption Ordinance (Cap. 290)
- Domestic Violence Ordinance (Cap. 189)
- Family Status Discrimination Ordinance (Cap. 527)
- Hong Kong Bill of Rights Ordinance (Cap. 383), Article 19
- Employment Ordinance (Cap. 57)

Right in Respect of Marriage

- Legislative measures
- Age of Majority (Related Provisions) Ordinance (Cap. 410)
 - Hong Kong Bill of Rights Ordinance (Cap. 383), Articles 19(2) and 19(3)
 - Marriage Ordinance (Cap. 181)
 - Marriage Reform Ordinance (Cap. 178)

Maternity Protection

- Legislative measures
- Sex Discrimination Ordinance (Cap. 480)
 - Employment Ordinance (Cap. 57 Part III)

Protection of Children and Young Persons

- Legislative measures
- Age of Majority (Related Provisions) Ordinance (Cap. 410)
 - Apprenticeship Ordinance (Cap. 47)
 - Child Abduction and Custody Ordinance (Cap. 512)
 - Child Care Services Ordinance (Cap. 243)
 - Dutiable Commodities (Liquor) Regulations (Cap. 109 subleg B) under Dutiable Commodities Ordinance (Cap. 109)
 - Employment of Children Regulations (Cap. 57 subleg B) under Employment Ordinance (Cap. 57)
 - Employment of Young Persons and Children at Sea Ordinance (Cap. 58)
 - Guardianship of Minors Ordinance (Cap. 13)
 - Hong Kong Bill of Rights Ordinance (Cap. 383), Article 20
 - Matrimonial Causes Ordinance (Cap. 179)
 - Matrimonial Proceedings and Property Ordinance (Cap. 192)
 - Protection of Children and Juveniles Ordinance (Cap. 213)
 - Separation and Maintenance Orders Ordinance (Cap. 16)
 - Women and Young Persons (Industry) Regulations (Cap. 57 subleg C) under Employment Ordinance (Cap. 57)

*ARTICLE 11**Right to Adequate Food*

- Legislative measures
- Public Health and Municipal Services Ordinance (Cap. 132)
 - Reserved Commodities Ordinance (Cap. 296)

Right to Adequate Housing

- Legislative measures
- Bedspace Apartments Ordinance (Cap. 447)
 - Lands Resumption Ordinance (Cap. 124)
 - Estate Agents Ordinance (Cap. 511)
 - Housing Ordinance (Cap. 283)
 - Land Development Corporation Ordinance (Cap. 15)
 - Landlord and Tenant (Consolidation) Ordinance (Cap. 7)
 - New Territories Land (Exemption) Ordinance (Cap. 452)
 - New Territories Ordinance (Cap. 97)
 - Stamp Duty Ordinance (Cap. 117)
 - Town Planning Ordinance (Cap. 131)

Right to Continuous Improvement of Living Condition

- Legislative measures
- Public Health and Municipal Services Ordinance (Cap. 132)
 - Residential Care Homes (Elderly Persons) Ordinance (Cap. 459)

*ARTICLE 12**Right to Health*

- Constitutional guarantee
- Article 138 of the Basic Law
- Legislative measures
- Mental Health Ordinance (Cap. 136)
 - Occupational Safety and Health Ordinance (Cap. 509)
 - Smoking (Public Health) Ordinance (Cap. 371)

Environmental Hygiene

- Legislative measures
- Air Pollution Control Ordinance (Cap. 311)
 - Air Pollution Control (Fuel Restriction) Regulations (Cap. 311 subleg I) under Air Pollution Control Ordinance (Cap. 311)

- Air Pollution Control (Vehicle Design Standards) (Emission) Regulations (Cap. 311 subleg J) under Air Pollution Control Ordinance (Cap. 311)
- Air Pollution Control (Motor Vehicle Fuel) Regulations (Cap. 311 subleg L) under Air Pollution Control Ordinance (Cap. 311)
- Dumping at Sea Ordinance (Cap. 466)
- Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)
- Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414)
- Noise Control Ordinance (Cap. 400)
- Noise Control (Air Compressors) Regulations (Cap. 400 subleg C) under Noise Control Ordinance (Cap. 400)
- Noise Control (Hand Held Percussive Breakers) Regulations (Cap. 400 subleg D) under Noise Control Ordinance (Cap. 400)
- Ozone Layer Protection Ordinance (Cap. 403)
- Public Health and Municipal Services Ordinance (Cap. 132)
- Road Traffic Ordinance (Cap. 374)
- Sewage Services Ordinance (Cap. 463), Sewage Services (Sewage Charge) Regulation (Cap. 463 subleg A) and Sewage Services (Trade Effluent Surcharge) Regulation (Cap. 463 subleg B)
- Smoking (Public Health) Ordinance (Cap. 371)
- Town Planning Ordinance (Cap. 131)
- Water Pollution Control Ordinance (Cap. 358)
- Waste Disposal Ordinance (Cap. 354)
- Waste Disposal (Livestock Waste) Regulations (Cap. 354 subleg A) under Waste Disposal Ordinance (Cap. 354)
- Environmental Impact Assessment Ordinance (Cap. 499)

Industrial Hygiene and Prevention of Occupational Diseases

- Legislative measures
- Factories and Industrial Undertakings (Notification of Occupational Diseases) Regulations (Cap. 59 subleg E) under Factories and Industrial Undertakings Ordinance (Cap. 59)

Control of Epidemics

- Legislative measures - Quarantine and Prevention of Disease Ordinance (Cap. 141)

Medical Service and Attention to All

- Legislative measures - Dentists Registration Ordinance (Cap. 156)
- Hospital Authority Ordinance (Cap. 113)
- Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165)
- Medical Clinics Ordinance (Cap. 343)
- Medical Registration Ordinance (Cap. 161)
- Midwives Registration Ordinance (Cap. 162)
- Nurses Registration Ordinance (Cap. 164)
- Supplementary Medical Professions Ordinance (Cap. 359)
- Chinese Medicine Ordinance (Cap. 549)

ARTICLE 13 and 14

- Constitutional guarantee - Articles 136, 137 and 144 of the Basic Law

Right to Education

- Legislative measures - Education Ordinance (Cap. 279)
- Hong Kong Bill of Rights Ordinance (Cap. 383), Article 15(4)

ARTICLE 15

- Constitutional guarantee - Articles 27, 34, 140 and 144 of the Basic Law

Right to Take Part in Cultural Life

- Legislative measures - Hong Kong Arts Development Council Ordinance (Cap. 472)
- Hong Kong Bill of Rights Ordinance (Cap. 383), Article 16
- The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135)
- Hong Kong Arts Centre Ordinance (Cap. 304)
- Antiquities and Monuments Ordinance (Cap. 53)

- Lord Wilson Heritage Trust Ordinance (Cap. 425)
- review and amendment of legislation which may threaten freedom of expression

Right to Enjoy Benefits of Scientific Progress and its Application

Constitutional guarantee - Article 139 of the Basic Law

- Legislative measures
- Crimes (Torture) Ordinance (Cap. 427)
 - Hong Kong Bill of Rights Ordinance (Cap. 383), Articles 3 and 16
 - Personal Data (Privacy) Ordinance (Cap. 486)

Protection of Interests of Authors

Constitutional guarantee - Article 140 of the Basic Law

- Legislative measures
- Prevention of Copyright Piracy Ordinance (Cap. 544)
 - Layout-design (Topography) of Integrated Circuits Ordinance (Cap. 445)
 - Patents Ordinance (Cap. 514)
 - Trade Marks Ordinance (Cap. 43)
 - Copyright Ordinance (Cap. 528)
 - Registered Designs Ordinance (Cap. 522)
 - licences required by Customs for the import and export of optical disc manufacturing equipment (Import and Export Ordinance, Cap. 60)

PRESIDENT (in Cantonese): Honourable Members, the Secretary for Home Affairs has provided a very detailed reply that took more than 15 minutes. To give Members opportunities ask supplementary question, I will exercise my discretion to extend the time allowed for this question.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the Secretary has spent 15 minutes to give his reply, regrettably, despite his 15-minute long reply,*

part (a) of the main question, the part I am eager to follow up indeed, remains unanswered. Part (a) of my main question is very simple. As the Secretary has told the UN Committee that most ICESCR provisions have been incorporated into Hong Kong's domestic law, may I ask the Secretary what remaining ICESCR provisions have not been incorporated into the laws of Hong Kong? This part of the question remains unanswered despite the Secretary's 15-minute long reply. The Secretary mentioned certain areas in his reply to part (b) of the main question, that is, items (a) to (f) in the second part of the reply, which cover age discrimination, maximum hours of work, minimum wages, holidays with pay, rest time, and so on, these are areas for which no legislation has been enacted. But may I ask the Secretary, generally, which provisions under the entire ICESCR are yet to be incorporated into the laws of Hong Kong? Madam President, I have to express deep regret that he has not answered any part of it, and I therefore have to ask part (a) of my question again.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I said in the main reply earlier, the UN Committee considered that the SAR Government should pay more attention to the six areas mentioned by me earlier, which are also the six areas mentioned by Mr LEE Cheuk-yan. I have explained these areas in detail just now, such as race discrimination, age discrimination, discrimination against sexual orientation, maximum working hours, minimum wages, and so on. As I have already given a very detailed reply, I have nothing to add now.

MR LEE CHEUK-YAN (in Cantonese): *Madam President, the Secretary has not yet answered my question. However, I know you, Madam President, will probably say that nothing can be done even if I am not satisfied with his answer. However, I request it be put on record that the Secretary has not answered my supplementary question.*

MS LI FUNG-YING (in Cantonese): *Madam President, I would like to ask the Secretary about the concept of equal pay for work of equal value which he said, in the main reply, has been addressed in the Sex Discrimination Ordinance. May I ask the Secretary to further clarify how this has been addressed?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the issue of equal pay for work of equal value is addressed under the concern for equal opportunities. This subject has been of grave concern to the EOC, and some studies have been conducted. As for the content of those studies, I will reply to Ms LI Fung-ying in writing. (Appendix II)

MR WONG KWOK-HING (in Cantonese): *Madam President, may I ask the Secretary via you if the Government has issued focused instructions to responsible officers of different departments on compliance with the ICESCR provisions? If the Government has issued such instructions, why do the relevant officers turn a blind eye to complaints against the deprivation of holidays and rest days of workers undertaking outsourced work made by staff of several departments employing outsourcing services, and do nothing despite complaints are received?*

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, the subject of this question is the implementation of the ICESCR by the Government. Though your supplementary question is not directly related to the Secretary's main reply, I allow you to put this question.

MR WONG KWOK-HING (in Cantonese): *Madam President, I*

PRESIDENT (in Cantonese): You are allowed to raise this question. *(Laughter)*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, regarding contracts granted by the Government, if contractors fail to comply with the Employment Ordinance, they have already contravened certain stipulations of the Employment Ordinance, which is not allowed.

MR WONG KWOK-HING (in Cantonese): *Madam President, I was about to respond to you. Though you allowed me to raise this supplementary question, I would like to point out that I am actually referring to subclause (d) of the ICESCR on rest, leisure and reasonable limitation of working hours and periodic*

holidays with pay, as well as remuneration for public holidays. It is exactly according to this clause

PRESIDENT (in Cantonese): If you are discontented with my decision or consider it necessary to clarify certain points, please take the matter up with me outside the meeting, for our schedule is very tight now and I do not want to keep other Members waiting while you clarify your point. Shall we?

MR WONG KWOK-HING (in Cantonese): *It is exactly because of this clause that I have to ask the Secretary if the Government*

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, we better discuss this outside the meeting.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, my supplementary question is on the explanation given by the Secretary in the main reply regarding sexual orientation, age discrimination, unfair dismissal, minimum wages, and so on. I heard the Secretary explain that legislation on these areas might cause a stir, exert pressure on the business sector or small and medium enterprises, increase operating costs, and so on, and it was thus concluded that legislation could yet to be enacted in the mean time. I am particularly concerned about age discrimination, for we already have the Sex Discrimination Ordinance and Disability Discrimination Ordinance. In the interest pre-empting allegation of breaching the law in recruitment, the Secretary stated in the main reply on the part related to age discrimination that businesses would have to maintain comprehensive records of all recruitment exercises, which could increase business costs. However, businesses should be keeping similar records at present to provide against allegations related to sex discrimination or discrimination against the disabled. Why could legislation on this area be regarded as inappropriate at this stage for exerting additional pressure?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I said in the main reply earlier, many kinds of discrimination involve our value

judgement, and preference for these values are deeply ingrained in society of Hong Kong. If we consider a consensus on this has yet been reached in society at the moment, we will put more efforts in terms of promotion, education and publicity. As to when legislation will be enacted, we should keep an open mind, working progressively for the introduction of legislation at an appropriate time.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, I am not asking the Secretary about the progressive approach. My supplementary question is very clear indeed; it requested the Secretary to explain in what way would costs be increased. As businesses are required to keep such records under the existing ordinances, I do not see how the keeping of records regarding age discrimination will cause business enterprises to incur additional costs?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, perhaps I will provide a written reply to Dr Fernando CHEUNG in this respect later. (Appendix III)

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, in the reply to Mr LEE Cheuk-yan's question earlier, the Secretary said that he had already given a detailed elucidation in the relevant paper. However, I think if the Government has already responded to most of the issues regarding those areas, should the Government not consider facing them squarely? The Secretary mentioned minimum wages in his reply to Mr LEE Cheuk-yan, and indicated that the matter had been put to the LAB for discussion. Regarding the United Nation's urge for the proper handling of the issue by the SAR Government, the Secretary stated that the matter had been put up to the LAB for discussion. But such a discussion may drag on for five to 10 years. Does the Government have no role to play in this? My question is: Could the Government consider it has fulfilled its duty by simply passing the issue on minimum wages and maximum hours of work to the LAB for resolution? Should not the Government assume a role as the proponent?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the responsibility of the Government is to handle these problems and monitor the

progress made in these respects. We will respond appropriately and take suitable measures in due course.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, has your supplementary question not been answered?

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, I know we are running short of time, but the Secretary has not yet answered my supplementary question. Is monitoring a function that the Government should perform?*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): I have nothing to add.

MR LEUNG KWOK-HUNG (in Cantonese): *Madam President, I would like to ask the Secretary a question via you. In item (c) of the second part of the main reply, the Secretary said that employees are indeed protected in terms of their rights regarding unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates. He also said, "Remedies for unreasonable dismissal include orders for reinstatement or re-engagement or awards of terminal payment." I would like to ask the Secretary, first, on the repeal of several labour ordinances by the SAR Government after the reunification. In 2001, the Secretary was reminded to safeguard the rights of employees. Should the Secretary not enact legislation to reinstate the ordinances repealed by the SAR Government at that time to really safeguard the rights of employees to collective bargaining and secure protection against unfair dismissal and discrimination for participation in trade unions? Has the Secretary changed his mind today, has he not?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as the Secretary responsible for handling this ordinance, the Secretary for Home Affairs is responsible for co-ordinating the relevant policies under different

bureaux. If the Honourable Member asks about the policy of one of these bureaux, I would like to reply Mr LEUNG Kwok-hung in writing. (Appendix IV)

PRESIDENT (in Cantonese): We have spent more than 26 minutes on this question. Last supplementary question.

DR KWOK KA-KI (in Cantonese): *Madam President, in response to the six areas mentioned by Mr LEE Cheuk-yan, the Secretary said earlier that clear legislative procedures have been initiated for items (a) and (f) by the Government, but not for the remaining four areas for which recommendation on legislation had been made by the United Nations to the Government in 2001. May I ask the Secretary when the recommendations made by the United Nations Committee in 2001 will be implemented, when legislative procedures regarding those four areas will be completed?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I have explained in the main reply, many items under the ICESCR have not been incorporated into our domestic law for the time being. Regarding the implementation and direction for future development of ICESCR provisions, I have to point out that it is stated in the ICESCR of the United Nation for each party state "to take steps to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." The "taking of steps" and "progressive" approaches are mentioned. How can the spirit of the ICESCR be realized? Given the nexus between the many measures involved and the social, economic and cultural values, these connections cannot be changed overnight but over a period of time. Each nation and each society has its specific need and environment, and this we must note.

DR KWOK KA-KI (in Cantonese): *Madam President, I am asking whether the Secretary's reply suggests that this will be put off to an indefinite future. Is it the case?*

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I have to add that this is not put off to an indefinite future, for we are working on it in a progressive manner.

PRESIDENT (in Cantonese): Third question.

Mainland-registered Ships Colliding Within Hong Kong Waters

3. **MS MIRIAM LAU** (in Cantonese): *Madam President, on February 17 this year, a passenger catamaran travelling to the Mainland collided with a river vessel in Kap Shui Mun Fairway, injuring more than 100 passengers. It was reported that the passenger catamaran was registered in the Mainland and the Marine Department (MD) rarely inspected mainland-registered passenger ships in the past. In this connection, will the Government inform this Council:*

- (a) *of the number of reports received by the relevant authorities on the collision of vessels within Hong Kong waters in each of the past three years and, among them, the number and details of such accidents which involved mainland-registered ships, including the dates on which such accidents occurred and their locations, the types of the mainland-registered ships involved and the resultant casualties;*
- (b) *of the respective numbers of prosecutions instituted by the relevant authorities against those in charge of mainland-registered ships for speeding, failure to navigate in designated fairways, illegal entry into or staying in Hong Kong waters, in each of the past three years; and*
- (c) *whether the relevant authorities will increase the frequency of inspections of mainland-registered passenger ships or adopt other measures to enhance safety at sea; if so, of the details of these measures; if not, the reasons for that?*

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

- (a) The number of reports on vessel collisions within Hong Kong waters was 197, 217 and 205 for the years 2002, 2003 and 2004 respectively. Of these, mainland-registered vessels were involved in 128 cases in 2002, 157 in 2003 and 147 in 2004. The details of such collisions, including the month in which they occurred, location, type of mainland-registered vessels involved and the resultant casualties are set out in Tables 1 to 4 below.

Table 1: Collisions Involving Mainland-registered Vessels (by Month)

	2002	2003	2004
January	10	14	6
February	7	1	8
March	12	21	19
April	10	15	16
May	20	14	10
June	13	14	12
July	11	9	10
August	8	18	20
September	8	14	17
October	9	12	10
November	11	13	9
December	9	12	10
Total	128	157	147

Table 2: Major Locations of Collision Involving Mainland-registered Vessels

	2002	2003	2004
Central and Hunghom Fairway	2	6	5
Kap Shui Mun Fairway	1	0	0
Kwai Chung and Rambler Channel Northern Fairway	6	11	5
Southwest of Stonecutter Islands	14	21	11
Tsing Yi Southwest and South	13	20	23
Waters off River Trade Terminal	5	2	13
Western Anchorage	3	5	6
Yau Ma Tei Anchorage and Fairway	68	48	39
Other Areas	16	44	45
Total	128	157	147

Table 3: Types of Mainland-registered Vessels Involved in Collision

	2002	2003	2004
Barges	8	9	3
Cargo Ships	35	39	44
Container Ships	72	92	93
Dry Bulk Carriers	1	2	3
High Speed Passenger Vessels	2	4	0
Oil Barges	1	3	0
Other types of vessels	9	8	4
Total	128	157	147

Table 4: Casualties of Collisions Involving Mainland-registered Vessels

	2002	2003	2004
Injuries	4	15	7
Deaths	0	0	0
Persons Missing	0	0	0

- (b) In the past three years, nine mainland vessels were prosecuted for speeding, 18 for not following traffic lanes or fairways, and 119 for illegal entry into or staying in Hong Kong waters. The details are set out in Table 5.

Table 5: Number of Prosecutions Against Mainland-registered Vessels

	2002	2003	2004	Total
Speeding	4	0	5	9
Not following traffic lanes or fairways	9	2	7	18
Illegal entry or stay in Hong Kong waters	34	54	31	119

- (c) To enhance maritime safety:
- (i) The MD conducted a total of 19 925 patrol inspections of all vessels navigating through Hong Kong waters in 2004, an increase of more than 10% over the previous year. Over half of such inspections were conducted on Mainland-registered vessels.
 - (ii) The MD will enhance the Port State Control (PSC) inspection rate of mainland-registered high speed passenger craft such that they will be subject to PSC inspection at least once every two years instead of once every five years as at present.
 - (iii) The MD has enhanced navigational safety at Kap Shui Mun, where many mainland-registered vessels enter the harbour, through enforcement of a single direction traffic scheme since November 2002 to eliminate the risk of head-on collision.
 - (iv) The MD will organize seminars for the operators, masters and crew of local and mainland-registered vessels to enhance their awareness of navigational safety. These seminars will be held locally as well as in neighbouring mainland ports and cover safe navigation in Hong Kong waters and in restricted visibility, safe speed, compliance with the International Regulations for Preventing Collisions at Sea and accident prevention.
 - (v) The MD will require all high-speed craft to install an automatic identification system (AIS) to facilitate better monitoring of vessel movements. With the installation of AIS, it will be easier for the vessel traffic regulator in the MD's Vessel Traffic Centre to identify speeding vessels.

MS MIRIAM LAU (in Cantonese): *Madam President, on 17 February when the collision occurred, the visibility within Hong Kong waters was extremely poor. Besides, the speed restriction exemption granted to both Hong Kong and mainland-registered high-speed vessels was suspected to be one of the possible causes leading to the collision. In view of this, why has the Government not*

considered tightening the issue of speed restriction exemption permits or even abolishment of such permits in its reply as one of the measures in response to the call for improvement in maritime safety stated in part (c) of my question?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I wish to thank Ms Miriam LAU for her supplementary. The reason why we have not considered the speed restriction exemption of vessels as an improvement measure is such practice is already in place, so I am glad that Ms LAU has given me an opportunity to explain that. According to the current regulation, the speed restriction exemption will be automatically cancelled if the visibility at sea level is below 1 nautical mile. In other words, under such circumstance, high-speed vessels should navigate as carefully as other vessels do and should not travel at high speed just because they are granted such exemption. In other words, this is a prevailing regulation.

MR WONG YUNG-KAN (in Cantonese): *Madam President, in his reply to part (c) of Ms Miriam LAU's question relating to maritime safety, the Secretary explained that items in (i), (ii) and (iii) were measures in progress, while there was no timetable for the measures in (iv) and (v). Can the Government inform this Council how it could expedite the relevant measures, including the AIS mentioned in (v)?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, with regard to (iv), the MD also organized seminars from time to time in the past, in view of Members' concern, we also consider that we should enhance it. For this reason, the MD will keep on organizing similar seminars in future. In fact, after the collision, the Director of Marine (the Director) reminded operators and masters to enhance their awareness of maritime safety. We will keep on promoting work in this respect.

With regard to the measure in (v), the MD will require all high-speed craft to install an AIS for better monitoring of vessel movements. Nevertheless, it needs time to install the system. For example, the system will be available on the market in several months' time. The major purpose of installing the system is to improve the MD's detection of speeding vessels. The target of the

Director is to require vessels to install the system at the renewal of the Speed Exemption Permit, which is renewable on a yearly basis as Ms Miriam LAU mentioned in her supplementary. Of course, we also understand that it will take several months to install the system, as the market also needs some time.

I also wish to take this opportunity to further respond to the supplementary raised by Ms Miriam LAU earlier. Apart from these measures, if the visibility is poor or the weather is foggy, the MD will enhance its efforts in this respect by reminding passenger vessels that their speed exemption permit would be invalid on departure from the pier, thus they have to navigate cautiously. Moreover, the MD will remind all vessels from time to time that they have to pay attention to maritime safety through high frequency and radio broadcasts.

MR ANDREW CHENG (in Cantonese): *Madam President, may I ask the Secretary to provide additional information on table 5, that is, the number of prosecutions against mainland-registered vessels. Leafing through those figures, in particular the figure of 2003, the number of speeding charges was zero, but table 4 shows that the casualty rate in that year was particularly high. As the number of prosecutions was seemingly low, can the Secretary explain whether it was attributable to a lack of monitoring resources? That is to say, whether the problem of speeding or not navigating in designated fairways was attributable to a lack of resources to conduct the monitoring work, or it was due to the difficulty in finding proof? Can the Secretary provide a more detailed reply?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): The Director told me that it did not involve the issue of resources, as we did not differentiate which of them were locally-registered and which of them were mainland-registered vessels. As long as the concerned vessel breaks the law and we have sufficient evidence, we will press charges.

MR CHAN KAM-LAM (in Cantonese): *Madam President, in view of the thriving maritime activities between the two places, is the current fairways arrangement not outdated? Have new arrangements been considered? It is because this is an important factor.*

One can see from the Secretary's main reply that after the single direction traffic scheme was implemented at Kap Shui Mun, the number of accident has significantly reduced. For that reason, in view of the risk of collision is rather high as thriving maritime activities are coupled with extreme weather conditions, will the Government consider reviewing the condition at narrow navigational channels and the busiest navigational waters where Hong Kong and Mainland maritime traffic meets by straightening out such lanes and fairways, so that collision accidents could be avoided regardless of the weather condition.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I wish to thank Mr CHAN Kam-lam for his supplementary. Hong Kong and mainland maritime authorities maintain frequent contact on this issue. For example, we have enforced a single direction traffic scheme at Kap Shui Mun since November 2002, exactly as Mr CHAN Kam-lam suggested just now, and we would review the arrangement from time to time to examine what improvement could be made. We will maintain the contact with our mainland counterparts and see if there is a need to make modifications according to the actual situation.

MR ALBERT CHAN (in Cantonese): *Madam President, the Secretary explained in (iii) of part (c) in the main reply that a single direction traffic scheme had been enforced at Kap Shui Mun since November 2002, however, such a scheme is not enforced in most Hong Kong waters. Will the Secretary inform us if he has plans to reduce the incidence of accidents by implementing measures such as single direction traffic scheme as soon as possible, in particular at those busy fairways?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I wish to thank Mr Albert CHAN for his supplementary. I think he knows fairways in Hong Kong very well, and he knows vessels should navigate according to navigational requirements. Nonetheless, Mr Albert CHAN is right; we will adopt measures according to actual traffic situation, such as enforcing single direction traffic scheme at Kap Shui Mun. I have pointed out the fact that we agree to keep an eye on the condition of fairways and we would adopt single direction traffic scheme in future if we find it necessary at certain areas as I replied to Mr CHAN Kam-lam's supplementary earlier.

MR ALBERT CHAN (in Cantonese): *The Secretary has not answered my supplementary. I asked him whether a timetable was in place, because a timetable is also very important.*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I have answered that, that is, we would watch the condition closely. If the need arises, we would of course implement the measure and if the situation changes, we would adopt corresponding measures.

MR DANIEL LAM (in Cantonese): *Madam President, the supplementary I intended to ask was already asked by Mr CHAN Kam-lam and Mr Albert CHAN, but I still wish to ask a follow-up question. The recent vessel collision involved a passenger catamaran travelling to the Mainland from Hong Kong, will the Secretary inform this Council whether sailing schedules would be modified to avoid troubled hours, or whether it would enhance the provision of guidelines to inbound vessels?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, vessels involved in a collision are not necessarily mainland-registered vessels, and all vessels stand risks of collision. I have also explained in the main reply that the most important thing was to adopt enhancement measures, including the installation of AIS and the organization of seminars to enhance the safety awareness of masters and crew.

Moreover, in the respect of vessel inspection, I have explained in the main reply that although mainland-registered craft would be inspected on a yearly basis, we took the initiative to enhance PSC inspection rate according to the current condition by requiring vessels to undergo PSC inspection at least once every two years instead of once every five years. Besides the PSC inspection of mainland-registered vessels at least once every year, we would enhance the work in this respect.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary set out the figures of major locations of collision in table 2, for example, the number*

of accidents occurred in Yau Ma Tei Anchorage and Fairway has dropped from 68 cases in 2002 to 39 cases in 2004. Was the decline in the number of accidents attributable to the adoption of special enhancement measures, or was it a natural phenomenon? If it was attributable to special measures, will these measures be applied to fairways where the accident rates are rising? Tsing Yi South, for example, the accident rate there has increased from 13 to 20 and 23.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the Director has been watching this situation all along, and he also told me that accidents that took place at Yau Ma Tei Anchorage and Fairway were mostly minor accidents. I believe Mr Tommy CHEUNG also knows that vessels travelling through that area are mostly slow-moving and smaller vessels. Although the number of vessels there is higher, they usually involve rather minor accidents. I believe the MD will keep on monitoring the situation and see what they can do.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary enumerated the number of prosecutions against mainland-registered vessels in table 5 in part (b) of the main reply, most of them involved illegal entry or stay in Hong Kong waters, and the figures in respect of speeding or not following traffic lanes or fairways were quite low, in particular, there were only two cases in 2003. Nevertheless, the number of prosecutions as opposed to the number of collisions is quite low. May I ask the Secretary whether charging vessels of speeding or not following traffic lanes or fairways is rather difficult? However, vessels charged for illegal entry or other reasons were not actual causes leading to the collisions. How can the Secretary differentiate these cases?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the recent vessel collisions actually involved high speed navigation in addition to poor weather condition or poor visibility, for that reason, it does not necessarily mean that the concerned vessels were not following traffic lanes or fairways. The MD has been watching all sorts of circumstances closely, instead of confining to failure in following traffic lanes or fairways, illegal entry or speeding. The MD has actually been watching all kinds of violations closely, but the most important thing is that they should gather

sufficient evidence to identify the concerned vessel before they can make the prosecution. If there is irrefutable evidence, the MD will definitely make the prosecution.

MR HOWARD YOUNG (in Cantonese): *Madam President, the Secretary explained in the last part of his main reply that the MD would require all high-speed craft to install an AIS in future. May I ask the Secretary whether it would be implemented by way of advice, guidelines or legislation? In addition, vessels navigating within Hong Kong waters are not necessarily registered in Hong Kong, can the MD enforce the regulation against them?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, we will adopt a pragmatic approach to advise shipping companies to install the AIS. I have explained earlier that our approach would be rather pragmatic, in future, at the yearly renewal of the Speed Exemption Permit, we would require vessels to install the AIS before considering granting them the permit. I believe this is a very effective way.

MR LAU KONG-WAH (in Cantonese): *Madam President, most of us have an impression that most mainland motor vehicle drivers are more "daring" than local drivers, so are mainland masters more "daring" than local masters? I am not sure whether the Secretary share the same feeling, but according to part (a) of the Secretary's main reply, over 70% of vessel collisions in the past three years were caused by mainland vessels. Does the Secretary share the same view as mine?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I will not argue over the figures. As far as the figures are concerned, there were over 400 collisions involving mainland-registered vessels, if my memory serves me right. There were 341 collisions involving local registered vessels while there were 432 collisions involving mainland-registered vessels over the past three years. The difference was about 90 cases, that is, the average number of collisions involving mainland-registered vessels was approximately 30 cases in each year. Nevertheless, Madam President, the most

important thing is that the training of masters of mainland vessels is also conducted according to international standards, thus their qualifications should meet international standards.

MR LAU KONG-WAH (in Cantonese): *The Secretary has not answered whether or not the MD told him that mainland masters were more "daring"?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Mr LAU Kong-wah can see that the Director has also told me that he was not aware of the fact that mainland masters were particularly "daring".

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

MS MIRIAM LAU (in Cantonese): *The Secretary stated in (ii) of part (b) of the main reply that the MD would enhance the PSC inspection rate of mainland-registered craft such that they would be subject to PSC inspection at least once every two years instead of once every five years as at present, but locally-registered craft are subject to an inspection on a yearly basis. May I ask the Secretary, how many mainland-registered high-speed vessels are navigating in Hong Kong waters? If the number is not that high, will the Government change its policy by requiring mainland-registered craft to undergo a yearly PSC inspection?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): I believe Ms Miriam LAU also understands that currently there are 42 mainland-registered craft. Locally registered craft should undergo a yearly inspection conducted by the MD. Similarly, mainland-registered vessels should undergo inspection at least once a year which is carried out by mainland maritime authorities. I have also explained earlier that this is in line with the international standards, and in order to address public concern, we took the initiative to enhance the PSC inspection from once every five years to at least once every two years. In other words, we have made an improvement. We understand the public concern and we will watch the situation closely. If

necessary, some vessels will be subject to a yearly inspection instead of once every two years, but it depends on the actual situation.

PRESIDENT (in Cantonese): Fourth question.

Regulation of Columbaria

4. **MR BERNARD CHAN** (in Cantonese): *Madam President, in 2004, the Food and Environmental Hygiene Department (FEHD) handled 31 332 cremations. Yet I learn that in the columbaria managed by the Government and Board of Management of the Chinese Permanent Cemetery, not many vacant niches are available for placing the ashes of the deceased, while niches in columbaria managed by religious bodies only cater for their followers and privately-run columbaria charge higher rates. Furthermore, the Government has not formulated legislation or other measures to regulate privately-run columbaria. In this connection, will the Government inform this Council:*

- (a) of the total number of government departments, religious bodies, public and private institutions that provide niches for placing the ashes of the deceased, the total number of niches provided and the average waiting time of each application for a niche;*
- (b) of the estimated time for all the current vacant niches to be taken up, and whether the Government or private institutions have plans to build new cemeteries or columbaria; and*
- (c) whether it will enact legislation to regulate columbaria in monasteries, private industrial/commercial premises or domestic units?*

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

- (a) At present, the FEHD is the only government department that provides columbarium niches. The columbaria managed by the

FEHD provide a total of 138 000 niches, whilst the Board of Management of the Chinese Permanent Cemetery, a non-government organization, provides 195 000 niches at its four Chinese Permanent Cemeteries. In addition, there are also niches available in cemeteries managed by religious bodies (for example, the Roman Catholic Cemetery, Protestant Cemetery and Buddhist Cemetery), private institutions (for example, Po Fook Hill at Sha Tin) and monasteries/nunneries/temples for sale to the public for interring ashes of their family members.

The new niche spaces of the FEHD have been sold out in March this year. As for the purchase arrangement for old niches, the FEHD updates information about niches available for allocation on its website in the middle of each month. Applicants may select and purchase niches at the beginning of the following month. The waiting time for individual applicant depends on the number of niches surrendered to the FEHD by the public and whether the applicant has any special requirements. On the other hand, applicants who wish to purchase a new niche in the Chinese Permanent Cemeteries have to make advance appointment. It usually takes an average of two to three months to complete the formalities of transaction after making the appointment.

- (b) The FEHD has about 1 100 old niches (mostly located at Cape Collinson Columbarium) available for allocation and sale to the public. Around 12 000 new unallocated niches are available at Junk Bay Chinese Permanent Cemetery. These unallocated niches of the FEHD and Chinese Permanent Cemetery are expected to be sold out by the end of this year. We do not have any information about the available niche spaces at columbaria run by religious bodies and private institutions.

In view of our limited land resources, it is the government policy to encourage cremation. There is no plan to develop new burial grounds. In line with the policy, the FEHD is actively studying plans to develop new columbaria or expand the existing ones. The work involves the following:

- (i) To provide about 10 000 new niches of smaller size at Kwai Chung Crematorium, Cape Collinson Crematorium and Wo Hop Shek Crematorium. These new niches will be completed in phases and become available from the first quarter of next year on.
- (ii) To build a columbarium at Diamond Hill Crematorium to provide about 18 500 new niches. To address the concern of Wong Tai Sin District Council about traffic arrangements for the proposed development, the FEHD consulted its Traffic and Transport Committee on 29 March. The FEHD would apply to the Finance Committee for funds in due course with a view to completing the project by the end of 2008.
- (iii) To review expansion plans for Fu Shan Columbarium at Sha Tin and Kwai Chung Columbarium and to examine the feasibility of adding columbaria at other crematoria (including Cape Collinson Crematorium and Wo Hop Shek Crematorium).

Besides, two non-government organizations have applied to the Government for land to develop columbaria in the past year. One of the organizations has already submitted a planning application to the Town Planning Board whilst the other intended to develop a columbarium in a "Green Belt" zone and will seek the views of the Planning Department on the proposal.

- (c) Ash interment does not give rise to any public hygiene problems. The FEHD and the Home Affairs Departments have not received any complaints about private columbaria causing nuisance to their neighbourhood in the past two years. Hence, the Government has not enacted any legislation or implemented any other measures to regulate private columbaria. However, these columbaria must comply with the land use and planning requirements for that land or building, the lease conditions, as well as other statutory requirements, and must be a permitted use under the terms and conditions of Deed of Mutual Covenant of the buildings in which they are located.

MR BERNARD CHAN (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary said that it was the Government's policy to encourage cremation. However, the Secretary mentioned in the same part that all niches would be sold out by the end of this year, and there seems to be no specific scheme for the long-term planning so mentioned, for only 10 000 new niches of smaller size are at best to be built. These niches are very small indeed. I can hardly imagine how they can be even smaller. I think that even if the long-term plan of the Government is to increase 10 000 new niches, the problem cannot really be solved. Given the prevailing death rate and many other factors, the number of niches to be provided appears to be sufficient to cater for the long-term demand. Does the Government have any plans to build multi-storey or high-rise columbaria, or does it have other plans?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I have to thank Mr Bernard CHAN for raising this question around the Ching Ming Festival.

It is only after I have assumed office do I realize that the people of Hong Kong may not have a place to rest in peace after death. I thus have grave concern about this issue. During the past few months, I have inspected various cemeteries, giving particular attention to the feasibility of extension works in these cemeteries. I recognize that in the short term, only the open space within the bounds of these cemeteries can be used for extension. We have now decided that extension works will be carried out in the next two to three years, in particular at Cape Collinson Crematorium and Wo Hop Shek Crematorium, with a view to providing sufficient services to the public. However, in the long run, we have to identify new sites or expand existing sites. Having considered the situation of all existing cemeteries and locations for niches, it is noted that not much space is available for further development. Besides, whenever a development plan is proposed, the District Councils concerned have to be consulted, which may take quite some time, and many other problems have to be addressed, such as transportation and reaction of the residents concerned. Therefore, it is hoped that 10 000 new niches may be provided at the beginning of next year, which can at least provide some temporary relief until 2006. However, other options must be examined later to find a solution to the problem. In the meantime, I think that Wo Hop Shek Cemetery offers greater potential for

extension, for the site includes a mountain that is available for development. We wish to increase our cremation services on the one hand, and build some high-rise columbaria as mentioned by Mr CHAN earlier on the other. Planning on this is now underway, and the FEHD is studying with the Efficiency Unit of the Government on the best management option to be implemented. I hope that an option for handling the issue in the longer term may be worked out shortly.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, in part (b) of the main reply, Diamond Hill Crematorium is mentioned, and it is also said that the Government has already submitted the proposal to the Traffic and Transport Committee of the District Council. I am a member of the District Council of that district. May I ask the Secretary, if the District Council considers the complementary arrangement on transport inadequate and suggests the Government not to carry out the project in the district, how the problem will be solved? Will the complementary transport arrangement of the district be improved or will new locations be identified?*

PRESIDENT (in Cantonese): Miss TAM Heung-man, the supplementary question you put forth just now is hypothetical, that is, you assume the relevant committee of the District Council will oppose the proposal because of the transport arrangement. I will not allow Members to ask hypothetical supplementary questions. Perhaps I will let other Members raise their supplementary questions first. You may think it over now. I will let you to raise another question later.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I do not know whether the FEHD or the Government has ever considered promoting virtual columbarium services?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): May I ask the Member to explain what he means by virtual columbarium services, for there are many different kinds of virtual models?

PRESIDENT (in Cantonese): Mr SIN Chung-kai, this is an exceptional case, but I have to ask you to explain it, otherwise, the Secretary will not be able to answer your supplementary question.

MR SIN CHUNG-KAI (in Cantonese): *I asked the Secretary but the Secretary asked me in return. Anyway, it does not matter.*

At present, services like virtual churches are available, allowing people to memorize some of the deceased on the Internet. Will the FEHD consider providing this kind of service?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the deceased can be remembered in many different ways. For example, some of our services available now allow family members to scatter ashes of the deceased in the environs of crematoria. They only need to pay a small fee to put the ashes of their deceased family members on a tree to serve as a memorial. However, this is physical rather than virtual. I think the focus of our discussion today falls on the handling of ashes rather than virtual services for ashes handling. I think we can hardly handle ashes of the deceased in a virtual environment.

To me, despite the various possible ways of remembering one's ancestors, the Government has to draw up a policy on the handling of ashes. By the same token, some people are allowed to bring the ashes of the deceased home, while some may wish to have their own ashes scattered in certain places after death. However, I believe, at the moment, many people do wish to have a place for interment. We note that the death rate in Hong Kong currently stands at around 30 000 yearly, but the demand for niches provided by the FEHD is very low, only about 2 000-odd yearly. However, the demand for niches provided by Chinese Permanent Cemetery amounts to 10 000 approximately. Regarding other arrangement, there are 10-odd percent who prefer land burial, while many others prefer to be interred in places of private or religious organizations. Therefore, we hope that while the Government has to provide adequate choices to the public, it should at the same time allow other private or religious organizations to develop their services.

DR RAYMOND HO (in Cantonese): *Madam President, in part (c) of the main reply, the Secretary said that the Government had not enacted any legislation or implemented any other measures to regulate private columbaria, but in reality, as the Secretary mentioned just now, a substantial number of ash interments are handled by private organizations. The issue not only involves concerns for hygiene and fire safety, but also that on land leases, for consumers' interests may be affected if only a very short-term of services could be provided despite the expensive cost charged. Given that, will the Secretary consider conducting a proactive review in this respect to study whether the regulation of these private columbaria is necessary?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, since we have not received any specific complaints in this respect over the past years, we consider it favourable to allow these organizations some room for free development for the time being. Definitely, if the convenience enjoyed by the public is affected, or that some private columbaria are causing inconvenience to the public, we will not rule out the possibility of conducting a comprehensive review to identify specific aspects where regulation should be stepped up.*

DR KWOK KA-KI (in Cantonese): *Madam President, I agree with the Secretary that niches provided by the Government are very important. However, I notice from the Secretary's main reply that, discounting the situation at the end of this year, a total of only 28 500 new niches will be provided at Kwai Chung, Cape Collinson and Diamond Hill, which may be used up very soon. May I ask whether the Government has any emergency or short-term planning to cater for the pressing needs that will arise in the next few years?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, as I said earlier, we hope that around 10 000 niches will be added by the end of this year or the beginning of next. This may alleviate the problem in the short term. In the long run, as I said, we will consider extension within the bounds of existing cemeteries on the one hand, where Wo Hop Shek Cemetery is the only site with much more space available for extension. On the other hand, we are considering applying to the Government for the allocation of*

land beyond other existing cemeteries to increase land available for interment or cremation. We are now working hard to identify suitable sites, but as I said just now, this is no easy task. Nonetheless, we fervently hope that policies and plans for a longer term will be formulated shortly, so as to eliminate the possibility that Hong Kong people may have no choice for a certain period.

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

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, I have reconsidered my supplementary question. May I ask whether complementary measures for district transport will be considered in the government proposal?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Miss TAM, if a new facility is to be built in certain places, especially when particular impact may be caused around the time of Ching Ming Festival, giving rise to many traffic problems, we will certainly consider the traffic arrangement and complementary measures concerned before making a decision. I believe my colleagues will explain their views to the Wong Tai Sin District Council and make matching arrangements with colleagues responsible for transport. I know that the issue, in particular the one in Wong Tai Sin District, has been discussed since 1995, and has been shelved for quite a long period owing to the problem with schools concerned or flyovers. I believe the public know much more about the issue now. I hope that we will come to a decision as soon as possible with a view to constructing a new columbarium extension there.

PRESIDENT (in Cantonese): Fifth question.

Open Design of Light Rail Stops

5. **MR ALBERT CHAN** (in Cantonese): *Madam President, recently I have received a number of complaints from members of the public that, because of the open design of the Light Rail (LR) stops, many passengers forgot to pay their fares or bought a wrong ticket at LR stops, and incurred a fine as a result.*

Many passengers concerned even suffer from chronic insomnia and anxiety as they often worry that they may forget to pay their fares or buy a wrong ticket. In this connection, will the Government inform this Council:

- (a) of the respective numbers of LR passengers who were warned or prosecuted for not paying their fares or buying a wrong ticket in the past three years;*
- (b) of the number of staff deployed to warn or prosecute the above LR passengers and the amount of expenditure involved in each of the past three years; and*
- (c) whether it will request the Kowloon-Canton Railway Corporation (KCR) to improve the open design of LR stops, so as to address the problem that passengers often forget to pay their fares or buy a wrong ticket because of the design?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, in the past three years, under the North-west Railway By-laws, the number of LR passengers without a valid ticket and were required by the KCRC to pay a surcharge is 54 183, and the number of LR passengers who refused to pay such surcharge and were prosecuted is 4 162. For 2002, 2003, and 2004 respectively, the KCRC deployed 50, 50 and 60 staff for the By-laws enforcement. According to the KCRC, apart from warning and prosecuting passengers who breached the By-laws, the above staff members are also responsible for other customer service duties. Hence, the KCRC is not able to provide the amount of expenditure involved only on warning or prosecution duties.

The KCRC adopts the open fare system for the LR stations in order to suit the mode of operation of the railway. Due to geographical constraints, the design and scale of the LR stations are not comparable to those of heavy rail. The LR platforms are mostly only of the width of 3 m to 5 m and the length is about 40 m. It is therefore difficult to install ticket gates at the LR platforms. On the other hand, the open fare system for the LR can bring convenience to the boarding and alighting of passengers and facilitate passenger flow. The KCRC points out that since the operation of the LR 16 years ago, most passengers have

accustomed to the operation of the open fare system. They have been fully aware of the travelling norm of "purchasing a ticket before boarding". Indeed, the fare evasion rate for the LR has been at a very low level. For the past three years, the average fare evasion rate is only 0.4% (or about four for every 1 000 passengers).

The Government encourages the KCRC to continuously strengthen the communication with passengers in order to ensure the provision of efficient and proper railway services. As regards the open fare system for the LR, the KCRC will continue to enhance publicity through different means, including posting of posters and banners at platforms, erection of signage, regular announcements at platforms and inside train compartments, and distribution of promotional leaflets, and so on. These measures aim to arouse passengers' awareness of the operation of the LR fare system. Furthermore, the KCRC regularly holds large-scale community events, through different activities and publicity programmes, to educate passengers of the proper way to use the LR system.

MR ALBERT CHAN (in Cantonese): *Madam President, in the main reply, the Secretary said that most passengers had accustomed to the operation of the open fare system. However, quite a number of people have not yet grown accustomed and suffered from psychological pressure. Moreover, they keep making mistakes. This 30-year-old design is already outdated. In response to public request, the MTR has installed platform screen doors which are of a new design. As regards the LR's fare system, which is unacceptable to the public and often leads to mistakes, does the Secretary not think that the Government has the responsibility — even though the KCRC does not conduct any study — to conduct a study and adopt some measures such as setting up the Octopus System in the train compartments so that passengers can have the opportunity to rectify their mistakes after boarding the trains? Technically, this is feasible. Will the Secretary consider improving the inadequacies of the existing operation by adopting various ticketing modes?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, Hong Kong people all accept that it costs to travel. I will feel strange if some passengers consider the otherwise.

Furthermore, many instructions have also been provided at the stations. For instance, the hoods of the entry processors are orange in colour while the hoods of the exit processors are green. In addition, a lot of publicity on this has been launched. Regarding complaints against the LR's excessively open fare system or the ticketing system, the KCRC received only four complaints and the Government's Transport Complaints Unit just one in 2004. So, passengers do not have to worry if they pay fares according to the regulations. On the contrary, if they want to evade fares by sheer luck, they really have to worry and suffer from insomnia.

MR ALBERT CHAN (in Cantonese): *Madam President, the Secretary has not answered my question at all. In the past three years, the number of passengers who failed to pay fares is 54 183, which is a very substantial number. My supplementary question is based on the fact that the design was made 30 years ago rather than the concern of fare evasion. Due to the problem in design, many passengers suffer from long-term insomnia under mental stress. Under such circumstances, will the Secretary not consider that the Government has the responsibility to conduct a review to see whether a better method can be adopted in the light of advances in technology? I only request for the conduct of a study rather than a pledge of immediate implementation of new measures by the Secretary. Is the Secretary willing to conduct a study so that people's pressure can be alleviated?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): The data quoted by Mr CHAN seem to be substantial. But in fact, among a yearly ridership of 300 000-odd passengers, only 50 000-odd have been prosecuted which only represented 0.4% of the total number (Appendix 1). The percentage is very low. So, in respect of adopting other options, we can strengthen publicity and adopt, for instance, the monthly ticket system which was recently introduced. If passengers use the monthly tickets of the West Rail, they do not have to worry at all. What they have to do is to produce their monthly tickets for inspection without the need of pressing their Octopus cards against the card reader on boarding and alighting. I believe these are the continual improvements initiated by the KCRC. At present, to study how to improve the system is not the Government's priority task because the LR has to adopt an open fare system due to geographical constraints.

MR TAM YIU-CHUNG (in Cantonese): *Madam President, I would like to ask a follow-up question on design. Although the Secretary said that the problem was not serious, there is indeed confusion because the hoods of the entry and exit processors and the hoods of the passenger enquiry processors for they are put in the same place. With the same appearances, they can only be differentiated by their colours. It is very confusing, particularly to the elderly, tourists on Individual Visit Scheme and new arrivals who may make mistakes unintentionally or do not know how to take the LR. Although the Secretary mentioned in the third paragraph of the main reply that publicity would be enhanced, it seems to be inadequate according to our understanding gained from the community. May I ask the Secretary whether the design can be further improved?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, as I have just said, the hoods of the entry and exit processors and the hoods of the passenger inquiry processors are differentiated by colours. The KCRC is now studying whether it is necessary to provide clearer indications, whether signage on the platforms is sufficient and whether broadcasting can be enhanced to the extent that it is not disturbing. These measures are under consideration.

CHEUNG HOK-MING (in Cantonese): *Madam President, the KCRC and the LR are of two entirely different designs. In the main reply, the Secretary mentioned that in the past three years, the number of passengers who failed to buy tickets is 54 183. These are the so-called "passengers caught". For those not caught, the number may be even greater and very substantial. I would like to ask the Secretary: Since the KCRC and the LR have adopted two totally different fare systems, how great is the difference between the two? Did the KCRC meet similar deceptive tricks or fare evasion problems as mentioned above? Can the Secretary provide the relevant figures?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, Mr CHEUNG's question is about cases concerning the West Rail of the KCRC. Since I do not have any information in hand, I will provide a written reply later. (Appendix V)

MR WONG TING-KWONG (in Cantonese): *Madam President, what are the penalties for passengers who have forgotten to pay fares or bought a wrong ticket? Will a lenient warning be given to them first? What is the procedure for them to pay the fare difference?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): *Madam President, when an inspector finds that a passenger does not hold a valid ticket, he will request the passenger to give an explanation in the ticket office. If the passenger accepts the inspector's conclusion that a penalty ticket should be issued, the passenger will receive such a ticket. The fine specified on the penalty ticket is 50 times of the highest fare of the LR which is now \$5.8. In other words, the passenger has to pay \$290. If the passenger does not agree to the prosecution, he can fill in a form in order to lodge a complaint. The KCRC has kept a file in which the names of repeated offenders are recorded. It will also consider the justifications such as over-crowdedness or other reasons to explain why the passengers concerned have forgotten to pay fares in some individual cases. Under such circumstances, the passengers concerned may be successful in their complaints and spared prosecution. However, the prosecution process may continue if the passenger cannot provide sufficient justification. This is my reply to Mr WONG's supplementary question.*

MR HOWARD YOUNG (in Cantonese): *Madam President, I seldom take the LR but I have had a chance to do so recently. I also quite agree with some Members that the signage on the platforms is not very clear. When I took the LR on that day, I really did not know how to pay the fare and just followed what other people did. I would like to ask a question. Towards the end of the second paragraph of the main reply, the Secretary mentioned that the average fare evasion rate was only 0.4%. However, according to what I saw on that day, which was around 11 am on a Sunday, 20 or more people had passed by and at least four or five of them did not do anything, meaning that they did not buy tickets at all. Unfamiliar with the system, I am not sure whether they did not have to buy tickets because they were using monthly tickets. May I ask the Secretary what data basis the calculation of the fare evasion rate is? Have the authorities concerned studied through other channels whether the fare evasion rate is really so low? According to my observation, more than four in every 20*

passengers did not act in a way that they had bought tickets before boarding and alighting the LR. Does the fare evasion rate mentioned really tally with the reality?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, I do not know if Mr YOUNG took the LR during the past six months or last year. The use of monthly tickets was introduced this year (Appendix 1). Perhaps Mr YOUNG saw that many passengers had evaded fares on that day. Regarding this issue, we have requested the KCRC to provide information to us. The KCRC has also agreed that it would step up efforts in fare charging and to make continual improvement. Publicity and broadcasting on the platforms, as I have just said, have been enhanced. We, of course, cannot catch all those who have evaded fares. I said four in every 1 000 passengers have evaded fares, which refers to the fare evasion rate calculated on the number of passengers caught. As regards how many have not been caught, it must be a substantial number. However, I believe that for the sake of its operating profits, the KCRC has to make more efforts in prosecuting those who have evaded fares.

MS MIRIAM LAU (in Cantonese): *Madam President, does the Government know whether the KCRC has calculated the loss it suffers every year due to fare evasion? As Mr CHEUNG Hok-ming has just said, while 5 400-odd passengers have been caught, the number of those not caught might be much greater. Will the loss suffered by the KCRC from this be passed onto other passengers?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, according to my understanding, the KCRC has not provided any data in this aspect. We will request such information in future. (Appendix VI)

MS MIRIAM LAU (in Cantonese): *Madam President, the Secretary has not answered the latter part of my question on whether the loss will be borne by other passengers.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, since we have not calculated the amount of the loss, it is difficult to speculate whether the loss will be passed onto other passengers.

MR LI KWOK-YING (in Cantonese): *Madam President, may I ask the Secretary whether passengers who were prosecuted for refusing to pay the surcharge had provided any justifications and reasons? Can the Secretary provide the number of passengers who were not prosecuted after providing acceptable justifications to the KCRC? Is such figure available?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, first of all, reasonable explanations include whether the passengers' behaviour is affected by illness and whether the passengers are unfamiliar with the operation of the LR because they are occasional riders or new residents of the district. Furthermore, they are not repeated offenders. Over the past year, about 1 500 cases are exempted by the KCRC from paying penalty after complaints have been lodged.

MR SIN CHUNG-KAI (in Cantonese): *Madam President, the question just asked by Mr Albert CHAN is very simple. He asked whether it was possible to install an additional facility in train compartments so that passengers could pay the fare difference. In fact, technically it is not difficult. Although I believe that some passengers have deliberately evaded fares, some have not the least intention to violate the laws. But once on board, they will not have any opportunity to rectify their mistakes in having bought a wrong ticket if they are asked to produce it for inspection. Given the existing technology, it is possible to install a facility allowing remedies to be made. This will be an all-win measure and the KCRC can collect the fares to which it is due. Why is it not willing to install such a facility? According to the Government's understanding, why does the KCRC not adopt such a measure?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, I do not know the KCRC's reason because I have not asked. To make a simple analysis, however, the fares of the LR are

calculated on a zonal basis. This is the first point. If a facility allowing passengers to pay the fare difference is installed in the train compartments, passengers who have boarded the train at a certain zone can pay the fare difference at the last stop. In other words, it will provide an additional channel to encourage passengers to pay less fare. Besides, such a facility is not monitored by any inspector. The inspectors will not conduct inspection in every train and the rate of random checking is very low. If passengers are allowed to pay the fare difference, some will probably not buy tickets when they see that no inspector is around. It will be more chaotic as a result. My consideration of this matter is based on my common sense. This will provide an additional fare evasion channel to those who do not pay fares deliberately.

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

MR HOWARD YOUNG (in Cantonese): *Madam President, I would like to follow up my supplementary question just asked. The Secretary asked me the time when the case I cited happened. It was in November last year before the implementation of monthly tickets. If monthly tickets had not been introduced at that time, apparently the fare evasion rate was very high. May I ask the Government whether it has urged the KCRC to conduct a more objective assessment in order to reflect the seriousness of the situation? If yes, the KCRC may be willing to step up its efforts to pre-empt it.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, if the example cited by Mr YOUNG occurred in November last year, the monthly ticket system had been introduced. Sorry, I just remember that the monthly ticket system was implemented in February 2003. I believe that tens of thousands of monthly tickets in total had been sold at that time. So the number of passengers using monthly tickets must be very great. Besides, fines will also have a deterrent effect. An extra fine of around \$500 was imposed on 1 000-odd passengers who pleaded not guilty and took legal action afterwards.

PRESIDENT (in Cantonese): Last oral question.

Development of New Cruise Terminal Facility

6. **MR ALAN LEONG** (in Cantonese): *Madam President, at the Harbour-front Enhancement Committee meeting held in November last year, the Government advised that it was preparing to launch an open invitation for proposals from interested parties for the timely development of a new cruise terminal facility to meet the medium-term needs of Hong Kong, with a view to signing a provisional agreement with the selected proponent in 2005-2006. However, planning details such as the location, development and operation of the cruise terminal have not been drawn up by the Government but are left to be proposed by the interested parties; and the land adjoining the cruise terminal will also be granted to the selected proponent for development. On the other hand, there are recent suggestions to build a cruise terminal at the West Kowloon Cultural District (WKCD). In this regard, will the Government inform this Council:*

- (a) *of the reasons for not adopting the established planning policy and procedure by firstly deciding on the location, site area, content of planning and development, as well as the operation mode of the terminal before conducting open tenders and relevant land auctions; and whether the authorities have plans to adopt the development mode of "Public Private Partnership" (PPP) of the Cyberport and WKCD projects for developing the terminal, whereby the Government invests the land costs in the development project and grants the land concerned, the development project and operation contracts by way of private treaty;*
- (b) *whether it will consider consulting the public on the preliminary planning and location of the terminal facility before or concurrently with the launching of an open invitation for proposals from interested parties; if it will, of the format, timetable and contents of such consultation; if not, the reasons for that, and*
- (c) *whether it will consider the proposal to build a cruise terminal at the WKCD, and whether it has assessed the feasibility of the proposal in terms of fairways, transport, attractiveness to tourists and technology, and so on; if the assessment results are positive, of the grounds for that?*

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

- (a) According to the "Cruise Market Study for Hong Kong" commissioned by the Hong Kong Tourism Board in 2002 and the latest consultancy study on the market demand for cruise terminal facilities commissioned by the Tourism Commission, the cruise industry in the Asia-Pacific Region has considerable development potential. Taking into account the development and demand forecast of the cruise industry, together with the feedback and development plans of major cruise operators, the consultants advised that Hong Kong would require an additional berth to meet the market needs in the medium term (2009 to 2015), and to further develop one to two additional berths to meet the market needs in the long term (beyond 2015). The Government intended to develop cruise terminal facilities in South East Kowloon (the Kai Tak area), and therefore incorporated the development of a cruise terminal in the Approved Kai Tak (South) Outline Zoning Plan. In view of the Court of Final Appeal's judgement on reclamation within the Harbour, the Planning Department is now reviewing the development plans for the Kai Tak area. It is expected that the entire planning review process and the statutory procedures will be completed in 2008. To meet the market needs for cruise terminal facilities in the medium term as soon as possible, we considered last year inviting proposals from interested parties on the development of cruise terminal. The objective was to allow flexibility for the private sector to put forward proposals on the location, construction method and operation of the cruise terminal. The Government would then examine the feasibility of the proposals and consult the public. We hoped that such an approach could speed up the development of new cruise terminal facilities in order to meet our needs in the medium term.

We have consulted the industry, the Economic and Employment Council, the Legislative Council Panel on Economic Services and the Harbour-front Enhancement Committee on the above approach. Whilst there was general support for the Government to accelerate the development of a new cruise terminal, there were diverse views

on the approach of open invitation for proposals, for example, there were concerns that the Government should take into account the established planning procedures, draw up a specific development framework and ensure the transparency and fairness of the process.

In view of the public concerns, we are, on the one hand, continuing our efforts to secure a site in the Kai Tak Planning Review for cruise terminal facilities and accelerate the timetable of this option. On the other hand, in order to satisfy Hong Kong's medium-term needs for cruise terminal facilities as soon as possible, we shall invite initial proposals from interested parties on the location, construction method and timetable for developing a cruise terminal. An interdepartmental committee will be set up by the Government to assess such proposals. We shall set out parameters for the project such as the suitable location and development framework for public consultation and conduct an open tender. We shall ensure that the project will meet the various requirements such as planning and environmental protection.

- (b) As I have just mentioned, we intend to conduct public consultation after receiving the initial proposals and defining the location and development framework. Such an approach will enable the public to obtain more information and comment on the proposals. In the long run, we consider that the Kai Tak area, which is within the Victoria Harbour and has expansion capability, the ideal location for the development of cruise terminal facilities. We intend to reserve a site at Kai Tak for the development of cruise terminal facilities in order to cater for the long-term needs of Hong Kong. We have proposed the development of cruise terminal in the Kai Tak Planning Review. The Planning Department is consulting the public on this Review.
- (c) The Government intends to develop the WKCD into a world class arts, cultural, commercial and entertainment district. A cruise terminal is not envisaged in the Invitation for Proposals for the Development of the WKCD. In fact, none of the three screened-in proponents has proposed to build a cruise terminal in their proposals.

As to the feasibility of the proposal, our preliminary assessment indicates that the site has the following technical constraints:

- (i) without substantial dredging, water depth in the Yau Ma Tei Fairway and the berthing area is insufficient for the manoeuvring and/or berthing of mega cruise ships;
- (ii) building a cruise terminal in the WKCD would affect vessels operating to and from a number of nearby marine facilities, including the China Ferry Terminal, Yau Ma Tei Anchorage and mooring buoys. At the same time, these vessels would affect cruise ships sailing to and from the cruise terminal; and
- (iii) the existing vehicular transport system and ancillary facilities in the West Kowloon would not be able to support the development of a cruise terminal in addition to the WKCD development envisaged for the site.

Madam President, in the light of the above, the Government considers that the WKCD site is not suitable for building a cruise terminal.

MR ALAN LEONG (in Cantonese): *Madam President, first of all, I note that the Secretary has not answered part (a) of my main question concerning whether the authorities have plans to adopt the development mode of PPP for developing the cruise terminal. So, I hope the Secretary can answer this part of my question. Besides, regarding part (a) of my main question, may I ask the Secretary in passing whether the interested parties which have submitted proposals on the cruise terminal are required to take part in the open tenders before they can obtain the development right of the cruise terminal?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, to reply the first part of the supplementary question, the Government does not have any plans to adopt the development mode of PPP. As regards the second part of the supplementary question, my reply is that they will certainly have to take part in the open tenders.

MR PATRICK LAU (in Cantonese): *Madam President, everybody knows that cruises now berth at the Ocean Terminal which, I think, operates well. Moreover, people in Tsim Sha Tsui can see these cruises which can attract tourists. May I ask the Government whether it has considered expanding the Ocean Terminal or how to improve the cruise service? I would like to make sure whether the consultancy report or the Government has considered the development direction in this aspect.*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Economic Development and Labour.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Thank you, Mr Patrick LAU. I believe everybody knows that the Ocean Terminal is operated by a private company. For the sake of its own interest, the company will consider, as what Mr Patrick LAU has just said, how to better utilize the berthing facilities by deepening or dredging the fairways, for instance, so that even bigger ships can utilize them. I believe it will be considered by the company concerned.

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

MR PATRICK LAU (in Cantonese): *Yes, Madam President. What I meant is that the development is not necessarily to be conducted by this company. We can build an additional terminal nearby or adopt a new operation mode. In my supplementary question, I ask whether planning issues such as expansion of the terminal or whatever have been considered and whether it is desirable to do so.*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Economic Development and Labour.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, let me reiterate that since the Ocean Terminal has been leased out to a private company, its development should be determined by that company. I believe Mr Patrick LAU's supplementary question asks whether it is possible to build more terminals and berths nearby. In fact, this is exactly our major concern, and that is, which part of our harbour is most suitable for the building of a new cruise terminal. In this regard, the former Territory Development Department (TDD) conducted a survey in 2003 and considered more than 30 locations. The final conclusion is that the South East Kowloon or the Kai Tak area is the most suitable location for developing a cruise centre. So, work is now being done in this aspect.

MR RONNY TONG (in Cantonese): *Madam President, concerning the cruise terminal, it has been discussed for a long, long time but the situation remains one of all thunder but no rain. In part (a) of the main reply, the Secretary said that the Government had considered last year inviting proposals from interested parties on the development of cruise terminal. May I ask what conclusion has been drawn after the issue has been considered for so long since last year? The Secretary then explained in part (b) of the main reply that the Government intended to conduct public consultation after receiving the proposals. May I ask, in respect of timing, whether the Government has invited proposals from interested parties or whether it is still considering the issue? If invitations have been issued, is there any timetable enabling Hong Kong people to know when concrete actions are expected to be taken?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the main reply has already answered Mr Ronny TONG's supplementary question. We have adopted a two-pronged approach to take forward the work concurrently. First, as I said just now, the former TDD had looked for suitable locations for building a cruise terminal in 2003 and considered more than 30 locations before it came to the conclusion that South East Kowloon was the most suitable location. So, we are working in this direction. Members can see that efforts will continue to be made in this aspect, as I said in the main reply. However, planning in this aspect has been delayed due to various problems such as reclamation and efforts have to be made all over again. In the main reply, I have already said that we would continue to strive

for a cruise terminal at Kai Tak area (South East Kowloon). Besides, I also hope that we will strive to simplify the procedures. I understand that Members are very concerned about this and hope that the cruise terminal can be completed as soon as possible. In this connection, we will consider how to expedite the planning and building of the cruise terminal in South East Kowloon.

Secondly, we understand that in the long run Hong Kong needs not only one cruise terminal. We may need more than one cruise terminal. So, we have taken the initiative to give greater flexibility to the interested parties. If they are interested, they can propose the locations where they would like to develop cruise terminals.

After making the above suggestions, we have consulted many organizations and committees. They have also expressed concern and hoped that a public consultation could be conducted so as to ensure transparency and that open tenders would be carried out. After considering these views, we, as I have said in the main reply, have proposed to carry out such work. However, as I said in answering Mr Alan LEONG's question, we will change our approach. In other words, apart from conducting consultation, we will make sure that the whole project will comply with various requirements in planning and environmental protection. In addition, we will conduct open tenders to ensure that everybody has an opportunity to bid for the project.

MR RONNY TONG (in Cantonese): *Madam President, can I follow up? I have not listened carefully or perhaps I do not understand. Did the Secretary say that interested parties had been invited to submit proposals and all proposals had been received or it was just at the consultation stage? Is that what the Secretary meant?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): No. I said that relevant organizations and committees had been consulted and we are now thinking about how to take forward the relevant work. Our current approach will be different from our former practice. As I have just said, we will consult the public and conduct open tenders. Our goal is to invite interested private organizations to submit proposals to us this year.

MRS SELINA CHOW (in Cantonese): *Madam President, first of all, I have to declare that I am Chairman of the Tourism Board. On the issue of cruise terminal, we have in fact discussed it for a very long time. We urgently need a cruise terminal. We can see that the study on the construction of a cruise terminal in East Kowloon has been conducted for many years. Just now the Secretary said that the entire planning review process and other statutory procedures could not be completed until 2008. Everybody knows that in order to enhance our competitiveness, we badly need this terminal which should be completed as soon as possible in order to secure our international status. But the Secretary has not mentioned the target date of inviting private organizations to submit their proposals. Can the Secretary tell us when the result can be expected to be seen in a short time?*

PRESIDENT (in Cantonese): Which Secretary will answer this supplementary question? Secretary for Economic Development and Labour.

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I think the most pragmatic approach is to turn South East Kowloon into a cruise centre at full speed because, after considering all locations, we consider it the most suitable. We will examine how best to simplify or expedite various procedures because I, just like Mrs Selina CHOW, also hope that the cruise terminal can be completed as soon as possible. This is the most pragmatic approach. Besides, however, we will adopt a new approach and see whether other locations, apart from South East Kowloon which is regarded as the most desirable by us, are considered by others to be more suitable for building a cruise terminal. As I said in the main reply, we will invite them to submit proposals this year.

MRS SELINA CHOW (in Cantonese): *Madam President, apparently the Secretary has not answered my question. The Secretary seemed to have implied in the main reply that various procedures would only be completed in 2008. Does this mean that the plan to invite private organizations to submit proposals will be implemented at a later date than that of the East Kowloon project? Does the Secretary mean that?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, let me reiterate that we will exert all efforts to expedite procedures relating to all aspects because we also hope that the cruise terminal can be completed as soon as possible. Secretary Michael SUEN is now sitting next to me, I think he would like to give further details on how the planning process can be expedited.

PRESIDENT (in Cantonese): Miss CHOY So-yuk.

(The Secretary for Housing, Planning and Lands indicated that he wished to reply)

PRESIDENT (in Cantonese): Please wait, Miss CHOY So-yuk. Secretary SUEN, do you wish to reply?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): No, Madam President, I just wish to provide some additional information. As we all know, the planning of Kai Tak area is affected by reclamation. We have decided that planning is anew necessary and the relevant procedures have been commenced. After several rounds of consultation, we have arrived at a direction. We will then prepare a draft Outline Zoning Plan before such statutory procedures as gazettal, public consultation and handling of objections can be undertaken. So, all these procedures will only be completed in 2008. Such is the additional information I would like to offer.

MISS CHOY SO-YUK (in Cantonese): *Madam President, many people mentioned that a cruise terminal could be built at North Point. May I ask the Secretary whether a cruise terminal will definitely be built at South East Kowloon instead of North Point, which will certainly not be chosen as the location for a cruise terminal?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, if I remember correctly, the location was once proposed but vetoed by the Town Planning Board. I think we have adopted an open attitude in this aspect. Should any developer be interested, the location is not necessarily at North Point. Instead, other locations can be chosen. If the developers concerned hold any land, they may apply in accordance with the normal procedures. This is another channel.

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

MS EMILY LAU (in Cantonese): *Madam President, I welcome the Secretary's categorical remark that open tenders would be conducted for the project. I hope the Secretary will not follow the example of Secretary Stephen LAM by making a volte-face after saying these words.*

Madam President, I would like to ask a question about planning. Just now the Secretary said that the entire procedure would only be completed in 2008 but the work currently being undertaken could be expedited. Can the Secretary tell us how these two can reconcile? Will the project be launched as soon as the Government has completed the planning in 2008 and views on this issue have been solicited?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Certainly, Madam President, we must do it this way because the development concept and details can come only after these procedures have been completed. They are not separable. Besides, it also depends on whether reclamation is necessary. If it does, we have to go through and handle other statutory procedures. We have to clearly address these problems before the draft Outline Zoning Plan can be finalized.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Provision of Fitness Facilities for Elderly**

7. **MR JAMES TO** (in Chinese): *Madam President, of the fitness facilities provided in open areas such as gardens and playgrounds managed by the Leisure and Cultural Services Department (LCSD), only a few are suitable for the elderly. In this connection, will the Government inform this Council:*

- (a) *whether the LCSD has formulated policies on the provision of fitness facilities for the elderly in venues under its charge; if so, of the specific details of the policies, including the criteria adopted for determining the provision of such facilities; and*
- (b) *as many elderly in West Kowloon have expressed to me their hope that more of such fitness facilities will be provided in the gardens and playgrounds of the district, whether the LCSD has drawn up plans in this regard; if so, of the details of such plans, including the implementation timetable; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, the Administration's response to the two parts of the question is as follows:

- (a) The Administration is committed to promoting the health of our elderly population and encourages them to participate in the sports activities that are good to their healthy living. In this connection, the Administration has installed fitness equipment for elderly people in some suitable parks, playgrounds and sitting-out areas of various districts so that they can carry out stretching exercises. So far, we have provided fitness equipment for elderly people in 70 leisure venues in Hong Kong. Taking into account the configuration of these leisure/recreation venues, age profile of the district population, local demand for such equipment and availability of resources, the Administration would consider the provision of additional fitness equipment for elderly people in other existing or new leisure venues for the use of the elderly.

- (b) Fitness equipment for elderly people are installed in major leisure venues in West Kowloon districts. These venues include Lai Chi Kok Park, Shek Kip Mei Park, Fa Hui Park, Tseuk Kiu Street Sitting-out Area, Children's Playground of Cheung Sha Wan Sports Centre, Po On Road Playground, Shek Kip Mei Street Rest Garden, Wai Chi Street Rest Garden, Shun Ning Road Recreation Ground, Sai Yee Street Garden, Kowloon Park and King's Park Rest Garden. Fitness equipment for elderly people would also be provided in the Cherry Street Park, which is expected to come into service soon. In addition, the Administration has planned to provide fitness equipment for elderly people in Tai Hang Tung Playground, Tung Chau Street Park and Nam Cheong Park in Sham Shui Po District in this financial year.

Review of Competition Policy and Competition Policy Advisory Group

8. **MR RONNY TONG** (in Chinese): *Madam President, the Financial Secretary stated in his Budget speech this year that the Competition Policy Advisory Group (COMPAG) would appoint an independent committee to review existing competition policy and the COMPAG's composition, terms of reference and operations. In this connection, will the Government inform this Council:*

- (a) *whether the review will include:*
- (i) *an assessment of the COMPAG's effectiveness in promoting fair competition since its inception;*
 - (ii) *a comparison, in terms of effectiveness in ensuring fair competition, of the Government's approach of enacting trade-specific fair competition law with the approach of most countries of enacting a single fair competition law to regulate most trades; and an assessment of which of them is more suitable for the economy of Hong Kong;*
 - (iii) *drawing reference to and studying the experience and effectiveness of the Office of the Telecommunications*

Authority in enforcing the provisions on anticompetitive practice in the Telecommunications Ordinance (Cap. 106);

- (iv) drawing reference to and studying the experiences of other places in ensuring fair competition; and*
- (v) an assessment of the feasibility and effectiveness of setting up an independent fair competition body with statutory powers and introducing fair competition legislation that covers most trades;*
- (b) of the membership and appointment criteria of the independent committee and whether international academics or specialists with experience or background in studying or handling competition policy and fair competition law in other places will be appointed to that committee; and*
- (c) of the anticipate time for the commencement and completion of the review, and whether the review report will be published in whole?*

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

- (a) The work of the independent committee to be appointed by the COMPAG (the Committee) will cover those aspects mentioned in this part of the question.
- (b) The Committee will be chaired by a non-official, with members drawn from different sectors of the community. All non-official members, appointed on an *ad personam* basis, will be selected on the merit of the individual concerned, taking into account the person's ability, expertise, experience, integrity and commitment to public service.
- (c) The Committee will be set up within this quarter. The Committee is expected to complete its review in 12 months' time. We will inform the Legislative Council and the public of the outcome of the review.

Promoting Development of Cultural and Creative Industries

9. **MR CHIM PUI-CHUNG** (in Chinese): *Madam President, on promoting the development of cultural and creative industries, will the Government inform this Council whether it will:*

- (a) *draw reference to the Cultural and Creative Industries Development Act to be enacted by the authorities in Taiwan to facilitate the introduction of legislation for cultural and creative industries as a basis for various policies to promote cultural and creative industries;*
- (b) *encourage government departments and public bodies to procure products and services provided by local cultural and creative industries; if so, of the specific incentive measures;*
- (c) *encourage individual and private sector donations to cultural and arts groups by introducing tax concessions;*
- (d) *encourage estate developers to include cultural and arts facilities in their developments through measures such as increasing plot ratio;*
- (e) *set a work target based on the percentage of cultural and creative industries output in Gross National Product; if so, of the target ratio; and*
- (f) *enhance the contents of the basic education curriculum in the aspects of culture, arts and creativity so as to better equip our next generation for future employment in the industries?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, having consolidated the views of various Policy Bureaux, I would like to reply to the question raised by the Honourable CHIM Pui-chung as follows:

- (a) Legislation is just one of the many options to implement a policy. The Government can facilitate the development of individual industries through provision of financial support, establishment of

loan funds, publicity, hosting or co-organizing promotional activities relating to the industries, and so on. Currently the Government adopts a holistic approach in the promotion of cultural and creative industries and has made considerable progress. We are of the view that existing legislation is adequate and there is no need to introduce legislation for cultural and creative industries. We will continue to facilitate and promote cultural and creative industries and step up the protection of intellectual property rights so as to enable the healthy growth of related industries.

- (b) The Government's procurement policy is based on the principle of openness, fair competition and cost-effectiveness. In procuring goods and services, departments must follow the procurement regulations and principles laid down by the Government. Whether the goods and services come from a local or overseas supplier is not a consideration. This policy is also in line with the principle of being non-discriminatory and transparent as set out in the procurement procedures under the Agreement on Government Procurement of the World Trade Organization. The procurement policies of public bodies are not subject to government regulations.
- (c) According to section 88 of the Inland Revenue Ordinance, charitable institutions or trusts of a public character are exempt from tax. When furnishing tax returns, taxpayers may claim deduction of the amount of donations made to charitable institutions that are exempt from tax. The aggregate amount of deductions can be as high as 25% of the assessable income or profit of a taxpayer. Like charitable institutions, cultural and arts groups are exempt from tax under section 88 of the Inland Revenue Ordinance if they meet the relevant requirements. At present, taxpayers are entitled to claim deduction of the amount of donations made to cultural and arts groups that are exempt from tax.
- (d) In our opinion, through the inclusion of cultural and arts facilities in their development projects, estate developers can raise the potential value of their projects on the one hand, and enhance people flow on the other. In this connection, relevant Policy Bureaux do not have any plan to encourage estate developers to include cultural and arts facilities in their development projects by increasing plot ratio.

- (e) At present, cultural and creative industries account for around 4% of our Gross Domestic Product. Although there is still room for growth, the Government has no plan to set a work target for the percentage share of cultural and creative industries in Gross National Product, like some planned economies.
- (f) We fully agree that provision of cultural and arts education for our next generation can greatly facilitate the nurturing of local arts talents and promote the long-term development of cultural and creative industries in Hong Kong. In this regard, the Curriculum Development Council published a curriculum guide on basic education and eight learning areas in 2002. The guide recommends that schools should provide students with five essential learning experiences in moral and civic education, intellectual development, community service, physical and aesthetic development, and career-related experiences for whole-person development. It also recommends the development of an open and flexible curriculum framework that helps build up the generic skills of students, including creativity, critical thinking skills, communication skills and study skills. For instance, science and technology education, which puts emphasis on practice and problem-solving, enables students to understand that technological development is closely linked to culture and the prevailing situation, thus helping to develop their creativity in the process. Arts education is an effective means to foster creativity. Through participating in arts creation and performing activities, students can comprehend the relationship between arts and human life and society. Moreover, the two elective subjects, namely music and visual arts, proposed for the new senior secondary level will prepare students for further studies or employment in the arts and creative industries. The Education and Manpower Bureau also launched in 2003 a career-oriented curriculum as a pilot scheme for senior secondary students to cater for individual learning and development needs. Curriculum in areas such as arts and the media, design, performing arts, information technology and recreation serve to suit the different learning needs, abilities and aptitudes of students, forming a good foundation for their future study and career.

Besides, the Leisure and Cultural Services Department's museums, libraries and programming offices offer educational activities on cultural heritage, literature and performing arts to school children as well as the general public. In 2004-05, over 6 500 school visits were organized to public museums (with more than 500 000 students participating). Over 700 schools have also joined the School Culture Day and a total attendance of around 450 000 has been recorded since the programme was launched in 2001.

The Home Affairs Bureau will continue to promote arts education by giving support to the Hong Kong Arts Centre, the Hong Kong Academy for Performing Arts and other tertiary institutions to run more arts-related courses in order to provide opportunities of further education to young people and nurture talents for creative industries. It is noteworthy that the Hong Kong Academy for Performing Arts has obtained approval to convert Bethanie, a historical building, into its second campus to establish a film and television centre. Hong Kong Baptist University has also recently announced its plan to establish a Visual Arts Academy in September 2005 in another historical building in East Kowloon.

Suspension of Fresh Water Supply in Sai Kung District

10. **MR JAMES TIEN** (in Chinese): *Madam President, I have received complaints from members of the public that fresh water supply to some areas in the Sai Kung District was suspended on many occasions in recent months. Despite repeated complaints by the local residents to the relevant government departments, the situation has not improved. In this connection, will the Government inform this Council of:*

- (a) *the dates at which fresh water supply to areas in the Sai Kung District was suspended in the past year, the duration of such suspensions and the areas affected;*
- (b) *the reasons for the water supply suspensions mentioned in (a) above and why the situation has not improved so far; and*

- (c) *the measures adopted by the authorities for solving the fresh water supply problem in some areas in the Sai Kung District, including whether they will consider exercising their statutory powers to enter private land to replace water pipes, as well as the timetable for implementing such measures?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) The details of incidents of suspension of fresh water supply to Sai Kung District due to main bursts and leakage from March 2004 to February 2005, including the date and duration of each incident and the area affected, are set out at Annex.

The following is a breakdown by area:

<i>Area Affected</i>	<i>No. of Cases</i>
Sai Kung Town Centre	5
Ho Chung	16
Che Keng Tuk, Ta Ho Tun, Ma Lam Wat	17
Pak Sha Wan	4
Po Lo Che	13
Tai Mong Tsai and along Sai Sha Road	14
Villages along Clear Water Bay Road	15

The average duration of water supply suspension due to main bursts is two hours.

- (b) Most of the fresh water mains in Sai Kung were laid some 20 years ago and some of them are showing signs of ageing. In view of this, the Water Supplies Department (WSD) has drawn up a plan to replace these mains. As Sai Kung District covers a wide area, the mains carrying water to the villages may be up to a few dozen kilometres in length. Moreover, the roads in the district are usually narrow but busy, especially during commuting hours. It is, therefore, necessary to study in detail the traffic impacts of the replacement works so that appropriate diversions of traffic can be arranged as the works proceed. In addition, some replacement

works may take a longer time to complete because of the need to interface with other public works in the district.

The WSD started to replace the old fresh water mains in Sai Kung District in August 2003. The replacement of the trunk main along Hiram's Highway and the main serving Po Lo Che is expected to complete in 2006, while the replacement of the main serving Che Keng Tuk Village is expected to commence in the middle of this year and to complete by the end of the year. The replacement of old mains serving the other Sai Kung villages has been incorporated into the large-scale water mains rehabilitation and replacement programme of the WSD, which is scheduled for completion in 2009.

Furthermore, the WSD has since last year sped up the installation of gate valves in major mains networks serving various villages in order to isolate the area affected by each main burst and minimize any inconvenience so caused to the consumers.

- (c) According to the Waterworks Ordinance, the responsibility for fresh water plumbing maintenance within private premises lies with the registered consumers or registered agents (that is, the management companies and owners' corporations). When leakage is found in an internal plumbing system, the WSD will usually require the registered consumer to fix the defect within a specified period of time and may consider disconnecting the water supply if the registered consumer fails to do so. For smaller private housing estates with multiple ownership and without any management companies or owners' corporations, the WSD may seek the assistance of the relevant district offices in contacting the parties concerned so that the necessary maintenance works can be carried out as soon as possible.

In case of urgency (for example, flooding) where human lives and property are at risk or when the consumers or agents concerned fail to maintain their pipes for whatever reasons, the WSD may enter private premises to carry out maintenance on behalf of the consumers and recover the costs afterwards. How exactly the WSD deals with the problems may vary, depending on the circumstances of each incident.

Annex

<i>Area Affected by Suspension of Water Supply</i>	<i>Date</i>	<i>Duration</i>
Sai Kung Town Centre	24.4.2004	1-2 hours
	21.8.2004	< 1 hour
	26.8.2004	< 1 hour
	27.8.2004	< 1 hour
	14.9.2004	< 1 hour
Ho Chung	31.5.2004	1-2 hours
	10.7.2004	1-2 hours
	11.7.2004	1-2 hours
	17.7.2004	< 1 hour
	18.7.2004	< 1 hour
	18.7.2004	1-2 hours
	2.8.2004	< 1 hour
	25.8.2004	< 1 hour
	31.8.2004	< 1 hour
	6.9.2004	< 1 hour
	10.9.2004	< 1 hour
	29.9.2004	< 1 hour
	12.11.2004	< 1 hour
	20.11.2004	< 1 hour
	27.11.2004	1-2 hours
	28.11.2004	< 1 hour
Che Keng Tuk, Ta Ho Tun, Ma Lam Wat	8.3.2004	1-2 hours
	8.7.2004	2-3 hours
	7.8.2004	1-2 hours
	23.8.2004	< 1 hour
	23.8.2004	< 1 hour
	28.8.2004	< 1 hour
	28.8.2004	< 1 hour
	8.9.2004	1-2 hours
	14.9.2004	5 hours
	5.10.2004	< 1 hour
	22.10.2004	1-2 hours
	8.11.2004	4 hours
	2.12.2004	1-2 hours
	9.12.2004	< 1 hour
	15.12.2004	4 hours
	1.1.2005	6 hours
	9.1.2005	2-3 hours

<i>Area Affected by Suspension of Water Supply</i>	<i>Date</i>	<i>Duration</i>
Pak Sha Wan	19.6.2004	7 hours
	2.7.2004	< 1 hour
	20.8.2004	6 hours
	26.8.2004	< 1 hour
Po Lo Che	5.7.2004	< 1 hour
	23.8.2004	< 1 hour
	16.9.2004	1-2 hours
	20.9.2004	3 hours
	27.9.2004	< 1 hour
	30.9.2004	1-2 hours
	8.10.2004	1-2 hours
	11.10.2004	3 hours
	14.10.2004	< 1 hour
	23.10.2004	1-2 hours
	15.11.2004	8 hours
	23.11.2004	4 hours
	5.2.2005	5 hours
Tai Mong Tsai and along Sai Sha Road	19.3.2004	1-2 hours
	6.5.2004	2-3 hours
	8.5.2004	1-2 hours
	3.7.2004	1-2 hours
	13.7.2004	1-2 hours
	18.7.2004	1-2 hours
	23.7.2004	< 1 hour
	27.7.2004	1-2 hours
	8.8.2004	< 1 hour
	15.8.2004	< 1 hour
	10.12.2004	1-2 hours
	10.1.2005	5 hours
	25.1.2005	3 hours
	1.2.2005	4 hours
Villages along Clear Water Bay Road	3.3.2004	4 hours
	14.3.2004	2 hours
	20.4.2004	< 1 hour
	18.6.2004	2-3 hours
	20.7.2004	6 hours
	24.7.2004	1-2 hours
	7.8.2004	< 1 hour

<i>Area Affected by Suspension of Water Supply</i>	<i>Date</i>	<i>Duration</i>
	9.8.2004	1-2 hours
	9.10.2004	3 hours
	18.10.2004	< 1 hour
	19.10.2004	< 1 hour
	30.10.2004	< 1 hour
	16.1.2005	3 hours
	18.2.2005	2-3 hours
	21.2.2005	6 hours

Retrofitting Diesel Vehicles with Emission Reduction Devices

11. **MS EMILY LAU** (in Chinese): *Madam President, the Finance Committee of this Council approved the provision of fundings totalling \$720,880,000 to the departments concerned in 2000, 2002 and 2004 respectively for the implementation of programmes to subsidize owners of pre-Euro diesel vehicles (that is, diesel vehicles registered before April 1995) to retrofit their vehicles with emission reduction (ER) devices so as to improve the air quality. The Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation was also made in December 2003 to authorize the relevant authorities to refuse to license or cancel the licences of diesel light vehicles not installed with ER devices, and to impose fines on owners who have failed to comply with the installation requirement. In this connection, will the executive authorities inform this Council of:*

- (a) *the current respective numbers of licensed pre-Euro diesel light and heavy vehicles and, among them, the numbers of those installed with ER devices;*
- (b) *the reductions in the daily emissions of nitrogen oxides, hydrocarbons and carbon monoxide by diesel vehicles as a result of the installation of ER devices, and their respective percentages in the total daily emissions of such pollutants from motor vehicles;*
- (c) *the number of complaints or reports received by the relevant authorities since 2000 about the emission of black smoke from diesel vehicles already installed with ER devices, and the reasons for the emission of black smoke from such vehicles; and*

- (d) *the number of licence applications rejected and the number of licences cancelled by the relevant authorities under the above Regulation, as well as the number of persons fined for non-compliance with the installation requirement, together with the total amount of fines involved?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) As at end-January this year, there were about 16 500 licensed pre-Euro light diesel vehicles in Hong Kong, all of which had been retrofitted with particulate reduction devices. There were about 29 900 licensed pre-Euro heavy diesel vehicles (excluding franchised buses), of which 28 700 (96%) had been retrofitted with catalytic converters. In addition, the franchised bus companies had retrofitted about 1 400 buses with catalytic converters at their own cost.
- (b) The prime objective of retrofitting pre-Euro diesel vehicles with ER devices is to reduce particulate emissions. After the retrofitting programme, the amount of particulates emitted by diesel vehicles in the urban area each day has been reduced by about 0.3 tonnes, which is equivalent to 21% of the total particulate emissions from all vehicles in the urban area.

Catalytic converters of the ER devices installed on heavy diesel vehicles can simultaneously reduce the emissions of hydrocarbons and carbon monoxide but not nitrogen oxides. After the retrofitting programme, the daily emissions of hydrocarbons and carbon monoxide from these diesel vehicles in the urban area have been reduced by 0.5 tonnes and 1.8 tonnes respectively, or 13% and 8% of the total emissions of hydrocarbons and carbon monoxide from all vehicles in the urban area.

- (c) From January 2000 to end-February this year, the Environmental Protection Department received a total of 220 571 complaints and

reports about smoky vehicles, 13.5% (29 811 cases) of which concerned diesel vehicles already installed with particulate reduction devices.

The emission of black smoke is mainly attributable to the lack of proper repair and maintenance of the engine or components of a vehicle. A vehicle installed with ER devices still needs to be properly repaired and maintained in order to prevent the emission of excessive black smoke.

- (d) Since the Air Pollution Control (Emission Reduction Devices for Vehicles) Regulation (the Regulation) came into effect in December 2003 and until end-February this year, a total of 844 pre-Euro light diesel vehicles were found not in compliance with the Regulation during their annual inspections. Their licences were thus not renewed. In addition, 64 pre-Euro light diesel vehicles were found to be not compliant with the Regulation on the road and had their licences cancelled as a result. So far, no one has been fined for non-compliance with the Regulation.

Feasibility of Cross-boundary Operation of Shenzhen and Hong Kong Taxis

12. **MR LEUNG YIU-CHUNG** (in Chinese): *Madam President, it has been reported that the Shenzhen Municipal Government is exploring the feasibility of cross-boundary operation of Shenzhen and Hong Kong taxis. In this connection, will the Government inform this Council whether:*

- (a) *the two Governments of Hong Kong and Shenzhen have discussed the above idea; if so, of the responsible department of the Hong Kong Government, as well as the details and outcome of the discussions;*
- (b) *it has studied this idea; if so, of the result of the study; if not, the reasons for that; and*
- (c) *it has assessed the pros and cons for Hong Kong if this idea is put into practice; if so, of the result of the assessment?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): Madam President, the proposal "cross-boundary operation of Shenzhen and Hong Kong taxis" (that is, allowing the provision of cross-boundary taxi services in these two places) is one of the preliminary ideas included in the "Implementation Plan for Shenzhen's Integration into Regional Co-operation in the Pan-Pearl River Delta" promulgated by the Shenzhen Municipal Government in early February this year. The Governments of Shenzhen and Hong Kong have not started formal discussion on the proposal.

We maintain an open mind towards any proposal that could facilitate cross-boundary people and vehicular traffic flows. However, in considering the above proposal, we need to carefully examine the detailed operational arrangements and the implications, such as the relevant laws regulating taxis in the two places and their enforcement, the impact on the taxi trade and taxi services in Hong Kong, the handling capacities of boundary control points and the impact on existing cross-boundary transport services, and so on.

Impact of Chief Secretary for Administration Serving Concurrently as Acting Chief Executive on Progress of West Kowloon Cultural District Project

13. **MR CHEUNG HOK-MING** (in Chinese): *Madam President, it has been reported that there are concerns among various sectors of the community that the arrangement for the Chief Secretary for Administration to serve concurrently as the Acting Chief Executive following the resignation of the former Chief Executive will affect the progress of the West Kowloon Cultural District (WKCD) project. In this connection, will the Government inform this Council:*

- (a) *given that the Chief Secretary for Administration's workload has increased as a result of his serving concurrently as Acting Chief Executive, of the amount of time he spends in handling the WKCD project, and whether it has assessed if the progress of the project will be affected because of his increased workload;*
- (b) *apart from extending the period of public consultation on the project, whether the authorities will make other changes to the original timetable for the project; if so, of the details;*

- (c) *whether it will make public the views collected during the consultation period, such as by publishing a compendium of views; and*
- (d) *whether the authorities will further consult the public on the development option for the project before making the final decision?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese):
Madam President, my reply to the four-part question is as follows:

- (a) While assuming the role of Acting Chief Executive, the Chief Secretary for Administration continues to perform his original duties, including those on the development of the WKCD. The Government has a sound mechanism and system to handle any personnel changes in the Government. Civil servants will continue to perform their duties vigilantly so as to ensure that the daily operation of the Government and the progress of various development plans will not be affected by any changes in the Principal Officials.
- (b) The public consultation on the WKCD is still in progress. We shall consider carefully all public views received before deciding the way forward. We shall therefore not make any changes to the timeframe set out in the Invitation for Proposals at this stage.
- (c) After the consultation period on the WKCD ends, we will make public the views received if individual respondents do not object.
- (d) The public consultation on the WKCD is still in progress. We encourage the public to submit their views during the consultation period. We will continue to consult the Legislative Council and listen to views from all sectors of the community in different stages of the development process. In addition, we will consult the Town Planning Board (TPB) before selecting the preferred proposal. Development parameters of the preferred proposal must be agreed by the TPB before the Government signs the provisional agreement with the successful proponent. We will then formally submit the proposed development parameters to the TPB. The TPB will

incorporate these development parameters into the draft South West Kowloon Outline Zoning Plan (OZP) and gazette the draft OZP pursuant to the Town Planning Ordinance for public inspection. Members of the public may comment on or raise objection to the draft OZP. The TPB will consider and process all the views received in accordance with the statutory process. Only after the required town planning and other statutory procedures have been completed will the Government sign a final project agreement with the successful proponent.

Breakdown on Expenditures on Primary, Secondary and Tertiary Education

14. **MS AUDREY EU** (in Chinese): *Madam President, will the Government inform this Council of the following in relation to the 2004-05 to 2009-10 school years:*

- (a) *the respective estimated amounts of public money spent on primary, secondary and tertiary education each year; and*
- (b) *in respect of primary, secondary and tertiary education respectively, the respective estimated annual expenditures on:*
 - (i) *teachers' remuneration;*
 - (ii) *training for teachers;*
 - (iii) *mandatory provident fund contributions;*
 - (iv) *extra-curricular activities grant;*
 - (v) *rates and government rents;*
 - (vi) *furniture and teaching aids;*
 - (vii) *renovation of school premises; and*
 - (viii) *other purposes (please list out)?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Madam President, the Government compiles its annual estimates and maintains expenditure information on a financial year basis. Financial information in the 2004-05 Revised Estimate and 2005-06 Draft Estimate, broken down as required where available, is given below. For 2006-07 and beyond, the annual provision for the education sector has yet to be determined having regard to, *inter alia*, the fiscal position of the Government.

The estimated expenditure under Head 156 Education and Manpower Bureau in respect of primary and secondary education is as follows:

Primary education

	<i>2004-05 Revised Estimate \$m</i>	<i>2005-06 Draft Estimate \$m</i>
Teachers' remuneration	7,744	8,241
Training for teachers ⁽¹⁾	4	4
Teachers' provident funds contributions	651	660
Extra-curricular activities grant ⁽²⁾	-	-
Rates and government rents	84	87
Furniture and teaching aids ⁽³⁾	157	70
Renovation of school premises ⁽⁴⁾	187	170
Other purposes		
Grants for non-teaching staff expenses of aided and government schools	682	702
Grants for other operating expenses of aided and government schools	981	1,003
Other subventions	254	294
Total	10,744	11,231

Secondary education

	<i>2004-05 Revised Estimate \$m</i>	<i>2005-06 Draft Estimate \$m</i>
Teachers' remuneration	10,442	10,920
Training for teachers ⁽¹⁾	3	3

	<i>2004-05 Revised Estimate \$m</i>	<i>2005-06 Draft Estimate \$m</i>
Teachers' provident funds contributions	982	1,087
Extra-curricular activities grant ⁽²⁾	-	-
Rates and government rents	125	134
Furniture and teaching aids ⁽³⁾	223	141
Renovation of school premises ⁽⁴⁾	202	222
Other purposes		
Grants for non-teaching staff expenses of aided and government schools	1,549	1,612
Grants for other operating expenses of aided and government schools	861	894
Other subventions	1,515	1,651
Total	15,902	16,664

Note

- (1) Refer only to the Training and Development Grant provided to schools. Separately, the Education and Manpower Bureau has a central provision for teacher training (\$110 million under the 2004-05 Revised Estimate and \$150 million under the 2005-06 Draft Estimate) for organizing in-service and pre-service training courses for teachers and for refunding course fees to teachers. Training courses for in-service teachers is also provided through the University Grants Committee (UGC)-funded programmes as well as funded by the Language Fund.
- (2) Funding for extra-curricular activities is subsumed in the non-salary block grants for schools.
- (3) Comprise the Composite Furniture and Equipment Grant and the provision for replacing and upgrading of information technology facilities in schools. The decrease in the estimate for 2005-06 as compared with the revised estimate for 2004-05 is due to the completion of a major replacement and upgrading exercise in 2004-05.
- (4) Refer to provision for maintenance, repairs and minor improvement not exceeding \$2 million per project per school. Projects with a value exceeding \$2 million each are funded by the Capital Works Reserve Fund.

Tertiary education

The UGC-funded institutions and Vocational Training Council (VTC) are the main providers of publicly-funded tertiary education. The estimated expenditure for financial year 2004-05 and 2005-06 as provided by the UGC and VTC is shown below:

UGC-funded institutions

Recurrent grants are provided to the UGC-funded institutions through the UGC mainly in the form of block grants to support institutions' academic work and related administrative activities. Once allocations are approved, institutions have a high degree of freedom in deciding on how the resources available are to be put to the best use. The approved recurrent grants and other funding provided by the UGC to support the institutions for 2004-05 and 2005-06 are set out in the table below.

	<i>2004-05 Revised Estimate \$m</i>	<i>2005-06 Draft Estimate \$m</i>
Total Recurrent Grants	10,424	9,904
Home Financing Scheme (HFS)	1,213	1,213
Housing-related Expenses other than HFS	61	61
Refund of Rates and Government rents	150	150
General non-recurrent (Student Exchange Programmes, Scholarship Scheme for Outstanding Mainland Students and Matching Grants Scheme)	118	30
Total	11,966	11,358

Note

The above figures are provisional figures only. The total figures do not include capital grants provided by the Administration to the UGC-funded institutions for major capital works projects. Such projects are funded by the Capital Works Reserve Fund.

*Vocational Training Council**(Courses at higher diploma and diploma level)*

	<i>2004-05 Revised Estimate \$m</i>	<i>2005-06 Draft Estimate \$m</i>
Teachers' remuneration ⁽¹⁾	1,105	1,057
Training for teachers	13	14
Contribution to Mandatory Provident Fund Scheme (MPFS) ⁽²⁾	7	7
Extra-curricular activities	5	5
Rates and government rents	13	13
Furniture and teaching aids	117	139
Renovation of school premises	96	105
Other purposes		
Administrative staff remuneration ⁽³⁾	222	212
Other operating expenditure	46	52
Total	1,624	1,604

Note

- (1) Include employer's contribution to provident fund for teachers.
- (2) Include employer's contribution to the MPFS for part-time and temporary staff.
- (3) Include employer's contribution to provident fund for administrative staff.

Declaration of Personal Investments and Other Interests by Judges

15. **MR MA LIK** (in Chinese): *Madam President, in connection with the Judiciary's requirements on declaration of personal investments and other interests by Judges upon their appointment and during their tenure, will the Government inform this Council whether it knows:*

- (a) *how these requirements differ from those applicable to civil servants, and the justifications of the differences;*

- (b) *how these requirements compare to those applicable to Judges in other jurisdictions; and*
- (c) *if the Judiciary has plans to tighten these requirements?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): Madam President, the question raised by the Honourable Member relates to the Judiciary's requirements regarding declaration of investments and other interests by Judges and judicial officers. Based on the information provided by the Judiciary, we now provide the following response:

- (a) The Judiciary reiterates that it is of fundamental importance that Judges must observe the highest standards of conduct. This is essential for the maintenance of public confidence in the Judiciary itself and its work on the administration of justice. As Judges and judicial officers (hereinafter collectively referred to as Judges) are not civil servants, the guidelines issued by the Civil Service Bureau regarding declaration of investments by civil servants upon their appointment and during their tenure are not directly applicable to the Judges, but are used as reference by the Judiciary.

Upon acceptance of appointment, a Judge is required to declare in writing his/her investments in Hong Kong. Upon examination, if the Judiciary Administrator is of the view that any of the investments may conflict with the Judge's judicial duties, he may refer the matter to the Chief Justice of the Court of Final Appeal for consideration. The Chief Justice of the Court of Final Appeal may request the Judge concerned to divest himself/herself of the investment.

In addition, in discharging their judicial duties, Judges conduct judicial proceedings in public and in accordance with the law. The common law has prescribed the circumstances under which a Judge should be disqualified from hearing a case. In practice, questions of disqualification of a Judge from sitting are most likely to arise in relation to suggestions of apparent bias. By application of the

common law test, a particular Judge is disqualified from sitting if the circumstances are such as would lead a reasonable, fair-minded and well-informed observer to conclude that there is a real possibility that the Judge would be biased. The "Guide to Judicial Conduct" issued by the Judiciary has set out details on matters concerning disqualification.

- (b) As far as the Judiciary is aware, the arrangement of requiring Hong Kong Judges to make a declaration of investment upon their appointment is most exceptional among common law jurisdictions. As regards circumstances in relation to disqualification mentioned above, they are very similar to those in other common law jurisdictions.
- (c) For the time being, the Judiciary does not have any plan to change the existing arrangements of declaration by Judges of their investments or other interests.

Food Products Containing Sudan I

16. **MR FRED LI** (in Chinese): *Madam President, it has been reported that more than 400 types of food products sold in the United Kingdom have to be recalled recently after being found to contain the carcinogenic dye Sudan I. Food products containing Sudan I are also available in the mainland market. In this connection, will the Government inform this Council:*

- (a) *whether the Food and Environmental Hygiene Department (FEHD) has identified from the tests conducted under the food surveillance programme any food products sold in Hong Kong containing Sudan I in the past year; if so, of the details;*
- (b) *given that food products which are found to contain Sudan I are mostly spicy products (such as chilli sauce), whether the FEHD has carried out any tests particularly on spicy food products in the past year; if so, of the test results; if not, the reasons for that; and*

- (c) *as food products containing Sudan I are found in both the United Kingdom and the Mainland, whether the FEHD has approached the manufacturers and dealers concerned in the past year to ascertain if such food products are sold in Hong Kong; if such products are sold in Hong Kong, whether the FEHD has made arrangements with the manufacturers and dealers concerned for recalling the food products; if arrangements have been made, of the details; if arrangements have not been made, the reasons for that?*

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

- (a) Both Sudan I and Sudan IV are non-permitted colouring matters in food under the existing food law in Hong Kong. During 2004, the FEHD had tested about 2 200 food samples for colouring matters and none of them were found to contain Sudan I or Sudan IV.
- (b) In response to the report of food items being contaminated with Sudan I in the United Kingdom, the FEHD had immediately taken follow-up actions, including checking the availability of the concerned products in local market, and had taken more than 60 food samples for testing. According to the test results of 42 food samples available so far, five food samples were found to contain Sudan dyes with details as follows:
- (i) Two samples of chilli powder collected from a grocery store were tested to contain Sudan I and Sudan IV. The item was sold in plastic bags without brands. The remaining stock had been surrendered for disposal;
- (ii) Two samples of chilli powder collected from two different Indian restaurants were tested to contain Sudan I. Investigation revealed that the products were imported directly by the owners of these restaurants from India and Pakistan for food preparation in the restaurants. The remaining stock had been surrendered for disposal; and

- (iii) One sample of locally manufactured chilli oil taken from a supermarket was tested to contain Sudan IV. The FEHD had requested the manufacturer and supermarket to recall the concerned product.
- (c) The FEHD has checked with the major vendors to see if those products found to contain Sudan dyes in the United Kingdom, Canada and the Mainland were offered for sale in Hong Kong. In addition, the FEHD had also checked with the relevant food authorities to see whether those products had been imported to Hong Kong. According to the responses received by the FEHD, the vendors had identified five different food items that were on the list of affected food items and had removed these items from the shelves. The FEHD had also conducted checks at the local markets and had not found any of the concerned products.

Impact of Introduction of Standard Drug Formulary on Civil Servants and Their Eligible Family Members

17. **MS LI FUNG-YING** (in Chinese): *Madam President, at present, civil servants, retired civil servants, their eligible family members and surviving family members may obtain free medical services provided by the Government and the Hospital Authority (HA). On the other hand, the HA is conducting a public consultation on the proposal to introduce the Standard Drug Formulary (the Formulary). In this connection, will the Government inform this Council:*

- (a) *of the impact on the above persons upon the implementation of the Formulary, including changes in the policy regarding the prescription of drugs for them by public hospital doctors, and whether they may be provided, free of charge, with drugs other than those listed in the Formulary; if not, whether imposing drug charges on them will be in breach of the provisions on medical benefits in the Civil Service Regulations, and how the drug charges payable by them will be determined; and*
- (b) *whether the HA consulted civil service organizations when drafting the Formulary; if not, of the reasons for that; and the reasons for not including in the public consultation paper the impact of the implementation of the Formulary on the above persons?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, under the existing policy, medical advice and treatment, X-ray examinations and medicines are available free of charge to civil service eligible persons (that is, civil servants, pensioners and their eligible dependants) only when these benefits are provided by the Government or the HA medical services. Civil service eligible persons may apply to the Government for reimbursement of expenses on drugs/equipment/services which form an essential part of the medical treatment as prescribed and certified by the HA attending doctors on medical grounds but which are not available in the HA or are chargeable by the HA.

The HA has recently put forward a proposal to introduce a Drug Formulary in its hospitals and clinics for public consultation. The proposal seeks to standardize drug utilization across public hospitals and clinics and to provide equitable access to clinically efficacious drugs to be provided within the public health system. Under the proposal, drugs that have not been included in the draft Drug Formulary will be self-financed by patients. For patients who do not have the financial means to pay for drugs proven to be of significant benefits but are extremely expensive for the HA to provide as part of its subsidized service, financial assistance will be provided. The HA's proposal is not specifically targeted at the Civil Service.

The extent to which the HA's recent proposal may have implications on the medical benefits to be provided to civil service eligible persons, specifically whether the medical expenses incurred on drugs outside the Formulary may be reimbursed to these persons, is a matter for consideration by the Civil Service Bureau (the Bureau). Taking account of the latest development, the Bureau has put forward proposals on certain refinements of the arrangements for reimbursement of medical expenses for consultation with the staff side of the four central consultative councils through the Standing Committee on Medical and Dental Facilities for Civil Servants. In brief, we have proposed to reimburse to civil service eligible persons medical expenses incurred on drugs that have been certified by the HA attending doctors as drugs proven to be of significant benefits but are extremely expensive for the HA to provide as part of its subsidized service. Expenses on other drugs outside the Formulary (including those drugs which have preliminary medical evidences only, drugs with marginal benefits over available alternatives but at significantly higher costs, and lifestyle drugs) would not be reimbursable. Legal advice is that the proposed refinement of the arrangement on reimbursement of medical expenses to civil service eligible persons is lawful and may be put forward for staff consultation. The Administration will make a decision on the matter taking

account of relevant considerations, including the views of staff as well as any changes which the HA may make to the draft Drug Formulary following its public consultation exercise.

Whether or not the HA Drug Formulary is introduced, the HA doctors will as at present prescribe drugs and other medical treatment for patients (including civil service eligible persons) based on their medical conditions and, where applicable, the patient's personal choice. As at present, where the expenses incurred do not meet the stipulated criteria for reimbursement, the civil service eligible persons will have to bear the costs as charged by the HA and other service-providers themselves.

Proposal to Reduce Betting Duty Rate

18. **MR ABRAHAM SHEK** (in Chinese): *Madam President, it has been reported that the Hong Kong Jockey Club (HKJC) has proposed to the Government a reduction of the rate of betting duty in view of the continued drop in betting turnover in horse racing. On the other hand, betting on horse racing with an extra-territorial element, including horse racing held in Macao, is prohibited in Hong Kong under the existing Gambling Ordinance. However, a number of programmes have been launched by the HKJC in co-operation with the Macao Jockey Club (MJC) in recent years, including the holding of annual races in both places and the introduction of cross-betting on Hong Kong races in Macao. In this connection, will the Government inform this Council:*

- (a) *apart from receiving views from the HKJC on the drop in betting turnover in horse racing, whether it has assessed the reasons for such a drop; if it has, of the assessment results; if it has not, the reasons for that;*
- (b) *how the authorities deal with the proposal for reducing the rate of betting duty, and whether an in-depth study, with reference to overseas experience, has been conducted on the proposal, especially on its revenue implications; if so, of the study results; if not, the reasons for that; and*
- (c) *whether the authorities will consider amending the relevant provisions of the Gambling Ordinance, having regard to the strengthened co-operation between the HKJC and the MJC as well*

as the fact that both places are within the territory of China, so that betting by people in both places on horse racing organized by the two jockey clubs will be permitted, thereby alleviating the pressure of holding additional races in Hong Kong to maintain the level of betting revenue and the HKJC's charitable and community donations, combating illegal bookmaking activities on horse racing, and increasing the betting revenue for Hong Kong and the HKJC; if so, of the details; if not, the reasons for that?

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

- (a) The decline in turnover on horse racing bets can be attributed to a combination of various factors, including the general economic performance, availability of other betting forms, and competition from overseas betting and illegal bookmakers. With a view to enhancing the competitiveness of its licensed betting operations *vis-a-vis* illegal bookmakers, the HKJC has proposed to change the current betting duty regime, which is based on turnover, to a regime taxing on gross profits (that is, betting turnover minus payouts), and to reduce the betting duty rate. We are considering the proposal.
- (b) Betting duty has been a stable source of government revenue. The Administration has been keeping the betting duty under constant review. We have looked at the experience of other relevant jurisdictions, such as the United Kingdom, in changing from a turnover-based system to one on gross profits. We noted that there are both pros and cons in switching to a duty system based on gross profits, but found that the experience of other jurisdictions cannot be directly applied to Hong Kong. In considering the HKJC's proposal, apart from studying the experience of other jurisdictions, we would also need to assess the impact of the proposed changes to the betting duty structure on the effectiveness of combating illegal gambling activities and the Government's revenue.
- (c) Under the Gambling Ordinance, it is illegal for a person in Hong Kong to place bet with any unauthorized bookmaker, irrespective of where the bet is received, including Macao. This is in line with our gambling policy which seeks to restrict gambling opportunities

to a limited number of controlled authorized gambling outlets only. The underlying rationale is not to encourage gambling.

Allowing people in Hong Kong to place bets on Macao horse races with an overseas bookmaker would in effect be providing a new authorized gambling opportunity in Hong Kong. Under our gambling policy, we would consider authorizing a certain type of gambling only if all the following three criteria have been satisfied:

- (i) there is substantial and persistent demand for that particular gambling activities;
- (ii) the demand are now satisfied by illegal means and the problem cannot practically and fully be tackled by law enforcement alone even with the devotion of substantial resources; and
- (iii) the proposition of authorizing the new gambling outlet commands wide public support.

We do not consider that betting in Hong Kong on Macao horse races satisfies the above three criteria at the moment. We do not have any plan to allow two-way betting arrangement with Macao.

New Type of Trolley Stretchers

19. **MR LI KWOK-YING** (in Chinese): *Madam President, it was reported that the Fire Services Department (FSD) introduced a new type of trolley stretchers last year and there was an incident a few months ago in which a patient was injured after falling from such a trolley stretcher. In this connection, will the Government inform this Council whether:*

- (a) *it has investigated this incident; if so, of the investigation results; and*
- (b) *the authorities have provided guidelines and on-the-job training for front-line personnel when introducing new equipment; if so, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) An investigation of the incident has been completed by the FSD. In that incident, an ambulance crew responded to an emergency call in Tsim Sha Tsui at around 2.30 am on 25 December 2004. During the removal of the patient from the ambulance upon arrival at the hospital, the patient fell off the stretcher. The results of the investigation indicate that the incident was attributable to the failure of the ambulance supervisor concerned to follow the proper operational procedures. The incident was not related to the design of the stretcher, which was a new model introduced in phases from January 2003. The FSD will consider taking disciplinary action against the ambulance supervisor.
- (b) Whenever a piece of new equipment is introduced, the FSD will provide clear guidelines and adequate training for relevant staff before the equipment is used extensively. In the case of the new stretcher, the FSD has arranged appropriate training for all front-line ambulance staff to ensure that they are conversant with the usage and operating procedures of the stretcher before they are deployed for duty on the ambulances equipped with such stretchers. In addition, during the daily training session for ambulancemen on duty, ambulance unit commanders will conduct briefing on the operating procedures of individual ambulance equipment to ensure that the ambulancemen are fully competent in using such equipment.

Procurement of Fertilizers

20. **MISS CHOY SO-YUK** (in Chinese): *Madam President, will the Government inform this Council:*

- (a) *of the respective amounts of imported and locally produced compost, soil conditioner and fertilizer procured by various government departments and the expenses involved in each of the past three years;*

- (b) *whether all the compost produced at the composting facility in Sha Ling had been fully utilized in the past three years, and the amount of such compost utilized by various government departments; and*
- (c) *of the current annual compost output of the above composting facility and the production cost per tonne?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President,

- (a) compost, soil conditioner and fertilizer are mostly used by the contractors of government departments in landscape works as part of the works contracts and the purchase may be made direct by departments or their contractors. No separate account is kept for the purchase of compost, soil conditioner or fertilizer by government departments. Their consumption may vary with the number of works contracts in hand. Also, we do not have comprehensive information on whether the soil conditioner or compost procured by the departments is imported or locally produced.
- (b) Over the past three years, the Sha Ling Livestock Waste Composting Plant produced an average of 3 600 tonnes of compost annually. All the compost produced had been fully utilized. In 2004, about 485 tonnes of compost were supplied to various government departments (including the Agriculture, Fisheries and Conservation Department, Civil Engineering and Development Department, Fire Services Department, Hong Kong Police Force, Housing Department and Leisure and Cultural Services Department).
- (c) The Sha Ling Livestock Waste Composting Plant has been producing an average of 3 600 tonnes of compost annually over the past three years. In the past three years, the Environmental Protection Department has paid an average of \$12 million each year to the contractor to operate the livestock waste collection and composting contract. It is estimated that over 95% of this payment is for the livestock waste collection service and less than 5% is for the operation and maintenance of the composting plant.

STATEMENTS

PRESIDENT (in Cantonese): Statement. Chief Secretary for Administration will make a statement on "The term of office of a new Chief Executive".

In accordance with Rule 28(2) of the Rules of Procedure, no debate may arise on the statement but I may in my discretion allow short questions to be put to the Chief Secretary for Administration for the purpose of elucidating its contents. I also remind Members that in the process of elucidation, questions should be as concise as possible and Members should not express their personal opinions. Chief Secretary for Administration.

The term of office of a new Chief Executive

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, after thorough and careful consideration, the SAR Government has decided to submit a Report to the State Council, proposing that the State Council make a request to the Standing Committee of the National People's Congress (NPCSC) to interpret, at their meeting to be held at the end of April, Article 53 of the Basic Law concerning the term of office of the new Chief Executive. I have made arrangements for the Chief Executive's Office to submit the Report to the State Council later today. I would like to thank you, Madam President, for allowing me to explain to Members and the general public at the Council meeting today the rationale and considerations behind our decision.

On 12 March this year, the State Council approved by Order the request of Mr TUNG Chee-hwa to resign from the office of the Chief Executive. The office of the Chief Executive became vacant on that date. Article 53 of the Basic Law stipulates 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 Article 45 of the Basic Law. Section 10 of the Chief Executive Election Ordinance (CEEO) requires that we shall hold the election on 10 July, not earlier nor later.

Regarding the term of office of a new Chief Executive to be elected to fill a vacancy in the office of the Chief Executive which arose other than due to the expiry of term, the Secretary for Justice had examined thoroughly and carefully the relevant provisions of the Basic Law and the legislative intent of such

provisions, and explained the position of the Government at the press conference held on 12 March and the Legislative Council House Committee meeting held on 15 March. Our position is that the term of office of the new Chief Executive shall be the remainder of the term of the preceding Chief Executive.

As the CEEO has no express provision regarding the term of office of the new Chief Executive elected to fill the vacancy in the office of the Chief Executive which arises other than due to the expiry of term, we will submit the Chief Executive Election (Amendment) (Term of office of the Chief Executive) Bill (the Bill) to this Council for First Reading and commence the Second Reading debate today. The purpose of the Bill is to set out clearly and explicitly the term of office of the Chief Executive in accordance with the position of the SAR Government.

Madam President, I believe that Members fully understand that the SAR Government has the responsibility to elect a new Chief Executive lawfully and in time on 10 July. This is a constitutional and legal requirement which we must fulfil. This is also the expectation of Members and the community which we must meet.

Moreover, we have to address a practical issue. On the one hand, the term of the current Election Committee will expire on 13 July this year. On the other hand, we need to elect a new Chief Executive within the six-month limit — as the office of the Chief Executive became vacant on 12 March, the six-month limit will end by 12 September — stipulated in Article 53 of the Basic Law. If we failed to elect a new Chief Executive on 10 July, we would not be able to complete the tasks within the remaining two months. These tasks include further amending the CEEO to change the 120-day limit stipulated therein for electing a new Chief Executive, forming a new Election Committee, and electing a new Chief Executive.

If the SAR failed to elect a new Chief Executive lawfully and in time on 10 July, it would affect adversely the formulation of major government policies, the governance of Hong Kong and the normal operation of the Government. It might even precipitate a constitutional crisis. Also, residents of the SAR and the international community might cast doubts on the determination and the ability of the SAR to implement the Basic Law. It would also have a negative impact on the operation of the financial market and the confidence of investors. All these would not be conducive to the prosperity and stability of Hong Kong.

Madam President, ever since the issue of the term of office of the new Chief Executive became a subject of discussion in the community, the SAR Government has been listening attentively to the views of Members of the Legislative Council, the legal profession, media commentators and various sectors of the community. Some consider that it should be the remainder of the term; others consider that it should be a five-year term. We note that some Council Members have stated their opposition to the Bill that we will submit today. More importantly, a Council Member and individual members of the community have stated publicly that they will be seeking judicial review of the Bill. In fact, the Courts have received one such application on 4 April. Therefore, we are facing two major issues: the first is the matters relating to the legislative process; and the second is the matters relating to the judicial proceedings.

On matters relating to the legislative process, I hope that Members will adopt a reasonable and pragmatic attitude, and will make the best use of time available to pass the Bill before the end of May. However, since some Members consider that the Bill is inconsistent with the Basic Law, in order to ensure the timely completion of the legislative process, we need the most authoritative interpretation of the relevant provisions of the Basic Law to provide a more solid basis for the local legislation.

As regards judicial proceedings, it is highly likely that we will be facing challenge by way of judicial review. Once the judicial process is initiated, it will take a relatively long time to go through the Court of First Instance, the Court of Appeal and the Court of Final Appeal. Past experience has also shown that there are a range of uncertainties involved in this process. Furthermore, the Central People's Government is vested with the substantive power to appoint the Chief Executive. The term of office of the Chief Executive is a matter which falls within the responsibility of the Central People's Government, and which also concerns the relationship between the Central Authorities and the SAR. Therefore, when a case is brought before the Court of Final Appeal, the Court will need to seek an interpretation by the NPCSC in accordance with Article 158 para 3 of the Basic Law.

Even if the Courts could expedite the process in view of the urgency of the matter, we might not be able to finish the proceedings in time. The request for interpretation by the NPCSC alone would take some time, and it has to fit in with

the meeting schedule of the NPCSC. Therefore, if the interpretation by the NPCSC was sought through the judicial process, it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July.

Madam President, some Members have proposed amending the Basic Law to specify the term of office of the new Chief Executive. We note that the Legislative Affairs Commission of the NPCSC has stated earlier on that the Basic Law already has a clear design regarding the term of office of the new Chief Executive to fill the vacancy in the office of the Chief Executive. The legislative intent is clear. The current difference in opinions arises from different understanding of the Basic Law. The legislative intent could be made clear through legal interpretation, and there is no need to amend the Basic Law. Furthermore, the power to amend the Basic Law is vested with the National People's Congress (NPC) and not with the NPCSC. The next session of the NPC will not be convened until some time around March 2006. In terms of timing, it is not possible to amend the Basic Law in time before 10 July.

The fact is, in the past few weeks, the community has put forth quite a few suggestions on how the issue of the term of office of the new Chief Executive may be resolved. However, we have not yet come across any options which, on the one hand, could ensure the election of a new Chief Executive lawfully and in time on 10 July and, on the other hand, could obviate the need to seek an interpretation by the NPCSC.

Madam President, I understand that although interpretation is a constitutional arrangement provided for in the Basic Law, many in the community still hope to avoid as far as possible seeking an interpretation to settle the matter. In the past seven years, we have had two interpretations. I fully understand the impact of interpretation on our residents and the community. If only there were an option which could obviate the need to seek an interpretation and which could resolve the problem, I would have gladly adopted it. However, as I have said, we have yet to come across such an option to date.

I have carefully reflected on the matter and the circumstances we face. In order to preserve the stability of the community and the effective operation of the SAR Government, I, as the Acting Chief Executive, have finally decided to request the Central Authorities to make an interpretation to settle the matter. I fully understand that this decision would not necessarily be well received.

However, I am confident that the decision would not affect "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". Nor would it damage the rule of law on which Hong Kong's success is based. Under the design of "one country, two systems", the NPCSC has the power to interpret the Basic Law. This is part of Hong Kong's constitutional structure. To settle the issue of the term of office of the Chief Executive by seeking the NPCSC to provide the most authoritative interpretation in accordance with the Basis Law is lawful and constitutional.

Madam President, in order to remove the uncertainties affecting the normal operation of the Government and the community, we must elect a new Chief Executive lawfully and in time on 10 July, and ensure that the electoral process and the result will not face any legal challenge. In view of the pressing circumstances, after full and careful consideration, and on the basis of preserving the rule of law and "one country, two systems", we consider seeking an interpretation by the NPCSC is the only way forward and is consistent with the fundamental interests of Hong Kong.

I hope that Council Members and the community will understand the consideration behind the decision of the SAR Government to seek an interpretation by the NPCSC. This is a correct and necessary decision. I appeal to every one of you to support the decision of the Government, so that Hong Kong could elect a new Chief Executive lawfully and in time on 10 July.

Thank you, Madam President.

PRESIDENT (in Cantonese): Twelve Members have pressed the buttons indicating their wish to request the Chief Secretary to further elucidate.

MR LEE WING-TAT (in Cantonese): *Madam President, in the 15th paragraph of the Statement, the Chief Secretary for Administration made this remark: "To settle the issue of the term of office of the Chief Executive by seeking the most authoritative interpretation.....". In accordance with Article 158 para 1 of the Basic Law, the NPCSC has the power to interpret the Basic Law. May I ask the Chief Secretary which Article of the Basic Law has conferred on the SAR Government the power to request the NPCSC to interpret the Basic Law?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, Article 43 of the Basic Law states, "The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region. The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law." Furthermore, Article 48 of the Basic Law states, "The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions.....", and Article 48(2) states, "To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region;". The difficulty confronting us now is that we have encountered difficulty in implementing Article 53 of the Basic Law. On finding such difficulty, we have to assume the responsibility of adopting measures to resolve it, and this responsibility falls on the Chief Executive who is duty-bound. In our previous attempts to seek interpretation, we exercised the same power to present our difficulty to the Central People's Government.

MR FRED LI (in Cantonese): *Madam President, the current request seeks an interpretation of Article 53 of the Basic Law. May I ask the Chief Secretary, in connection with the request to interpret the Basic Law to resolve the issue of the remaining term of the Chief Executive, whether clarification will be sought on whether the term of the new Chief Executive is considered a new term or what? Is it considered to be a full term? Will this important issue be dealt with by way of the interpretation as well?*

PRESIDENT (in Cantonese): Mr Fred LI has sought an elucidation on whether the interpretation will include clarifying, in addition to the term of office, whether it is considered a full term.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, we will propose to the State Council to request the NPCSC to interpret Article 53 of the Basic Law in order to decide on issues relating to the term of office. I am not entirely certain whether the NPCSC will follow up the matter by interpreting other issues. However, this is not our request.

Madam President, Honourable Members, our request for an interpretation is made under the circumstances that there is no precedent. We seek interpretation only when it is clear that this is required urgently. Our urgent task at the moment is to tackle this issue of concern to all of us — should the term of office of the new Chief Executive be two years or five? This is our major task. Although it is uncertain whether this decision will precipitate other issues, we have to conduct full consultation and discussion in relation to these issues. We will not decide our way forward until the study is completed and the SAR Government has formed its own position. I hold that there is no urgency to deal with this for the time being. What we are required to do urgently at the moment is to, by every possible means, enable a new Chief Executive to be returned smoothly on 10 July.

MR ANDREW CHENG (in Cantonese): *Madam President, regarding Mr LEE Wing-tat's request for the Chief Secretary to elucidate his question earlier, I wish to request the latter to elucidate further because it appears that he has failed to give us a reply and his elucidation is not clear. He has cited Articles 43 and 48 of the Basic Law in his reply. However, we want him to particularly elucidate the 15th paragraph of his Statement. He has repeatedly stressed that the most authoritative interpretation is required and that the decision will not in any way undermine the rule of law on which Hong Kong's success is based. However, from the power of the interpretation of the Basic Law provided in Article 158 of the Basic Law, we cannot see any scope in the existing provisions of the Basic Law for the Government to exercise power to request the NPCSC to interpret the Basic Law. As such, I hope the Chief Secretary can elucidate the 15th paragraph concerning why it is held that the Government can seek the most authoritative legal interpretation in accordance with the Basic Law? If the Basic Law does not provide for this, why does the Chief Secretary hold that the rule of law in Hong Kong would not be undermined by doing so?*

PRESIDENT (in Cantonese): Your request seeks to elucidate whether this point is included rather than the reasons.

MR ANDREW CHENG (in Cantonese): *Madam President, I wish to reiterate that Articles 43 and 48 of the Basic Law were cited when the Chief Secretary elucidated Mr LEE Wing-tat's question earlier. I request the Chief Secretary to*

further elucidate what room does the Government find in the provisions of Article 158 that it has the power to seek an interpretation by the NPCSC?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I wish to make it clear that the report to the State Council concerning the submission of a request to the NPCSC regarding the interpretation of Article 53 of the Basic Law is not made according to Article 158. Instead, the report will be submitted to the State Council by virtue of the power conferred on the Chief Executive according to Articles 43 and 48(2) of the Basic Law. It is hoped that the State Council will support our request for an interpretation by the NPCSC in order to resolve the difficulty confronting us currently.

MS AUDREY EU (in Cantonese): *Madam President, I would like the Chief Secretary to elucidate the 15th paragraph in which he indicated that he was confident that the decision would not undermine "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" and that the decision would not damage the rule of law on which Hong Kong's success is based. I would like to request the Chief Secretary to elucidate this point. The position of the Hong Kong Bar Association and The Law Society of Hong Kong, as members of the legal profession in Hong Kong, is very clear, and that is, they oppose the interpretation. May I ask why, under such circumstances, the Chief Secretary could still insist that the Government's request for the interpretation would absolutely not damage the rule of law on which Hong Kong's success is based?*

PRESIDENT (in Cantonese): Ms Audrey EU has requested the Chief Secretary to clarify whether his remark that "the decision would not damage the rule of law on which Hong Kong's success is based" has taken into account the views of the two legal professional bodies.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, we fully respect the views expressed by the two legal professional bodies. Similarly, we respect the legal opinions expressed by other legal professionals on the relevant provisions as well as the public's views on this matter. Our conclusion is that it is correct to interpret Article 53 of the Basic

Law to resolve the existing problem relating to the term of the office of the Chief Executive to be elected. Furthermore, our request for an interpretation by the NPCSC is in full compliance with Article 158 of the Basic Law. This Article clearly states that the power of final interpretation of the Basic Law shall be vested in the NPCSC. Therefore, the way in which we handle the matter will not, in any way, damage the concept of "one country, two systems" and the rule of law.

MR RONNY TONG (in Cantonese): *Madam President, I would like to ask the Acting Chief Executive the reasons for making the request for the interpretation. His explanation is that he hopes the election of the next Chief Executive can be conducted in time. In the 11th paragraph, he even mentioned, "Therefore, if the interpretation by the NPCSC was sought through the judicial process, it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July". May I ask what justifications, including legal ones, the Acting Chief Executive has in believing that it is quite possible that this judicial process would make it impossible for the new Chief Executive to be elected in time on 10 July?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): The Chief Secretary is going to reply. The Chief Executive is not here, right? *(Laughter)*

According to my understanding, there can be a wide range of uncertainties involved in the judicial review process. Moreover, everyone can exercise his right to apply for judicial review. The two sessions of the NPCSC will be held in end April and end June. Even if the NPCSC can make a decision in end June, all our needs can still not be met. The decision must be made in May to enable us to promulgate all the procedures for nomination and election and conduct the election in July. Therefore, we have to seek Members' acceptance that the NPCSC shall be responsible for ultimately resolving this issue. If this matter is handed to the NPCSC for a decision, regardless of the need to go through the Courts, the only chance of resolving the matter is to make use of the session conducted before the end of April. As far as I understand it, if we are to seek judicial review through the Courts, and someone has already taken this action, the Court of First Instance will make a ruling. The case, if remains unresolved, will be submitted to the Court of Appeal, and then to the Court of Final Appeal (CFA). After a ruling is made by the CFA, the case will be

submitted to the NPCSC. I find it extremely difficult to ensure that all these procedures, including all judicial review applications, can be completed by end April. For these reasons, I made the Statement earlier.

MR RONNY TONG (in Cantonese): *Madam President, he has not yet answered my question. My question is: Why does he hold that it is quite possible that a new Chief Executive would not be elected in time on 10 July because of the judicial process? My question concerns why he holds that it is quite possible that a new Chief Executive would not be elected because of the judicial process, rather than when the judicial process will complete. He has not answered my question.*

PRESIDENT (in Cantonese): Mr Ronny TONG, you should be requesting the Chief Secretary to elucidate, not to answer your question. First of all, in terms of wording

MR RONNY TONG (in Cantonese): *Madam President, does it mean that he can refuse to answer*

PRESIDENT (in Cantonese): You may sit down first. Let me finish

MR RONNY TONG (in Cantonese): *Does it mean that he can refuse to answer or elucidate?*

PRESIDENT (in Cantonese): Mr Ronny TONG, please sit down. I had waited for you to finish before I started. You may speak again after I have finished. Please? You have requested the Chief Secretary to answer your question. Actually, you should request him to elucidate why he considers it "quite possible".

May I ask the Chief Secretary whether he has anything to add in elucidation?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): It is quite possible that all judicial review processes relating to this case would not be completed in mid-April to enable the NPCSC to handle it before the end of April.

MR ALBERT HO (in Cantonese): *Madam President, in the 13th paragraph of the Statement, the Chief Secretary stated, "However, we have not yet come across any option which, on the one hand, could ensure the election of a new Chief Executive lawfully and in time on 10 July and, on the other hand, could obviate the need to seek an interpretation by the NPCSC." Actually, Article 53 of the Basic Law has stated very clearly 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". Has the Chief Secretary considered that this is the best assurance to ensure that the Chief Executive can be returned in time? Even if the judicial process is not yet completed, the Court must consider this provision and so it will not make any decision that will impede the election of the Chief Executive. Has the Chief Secretary considered this?*

PRESIDENT (in Cantonese): Excuse me, Mr Albert HO, I really feel that you are asking a question here, not seeking elucidation.....

MR ALBERT HO (in Cantonese): *Madam President.....*

PRESIDENT (in Cantonese): You may perhaps put it in another way.

MR ALBERT HO (in Cantonese): *Madam President, I hope you can listen to me carefully. In the 13th paragraph, the Chief Secretary stated that nothing "could ensure the election of a new Chief Executive lawfully and in time on 10 July" and he expressed his fear of procedural problems. So I reminded the Chief Secretary that the Basic Law had explicitly pointed out that in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months. This is actually the best assurance. The Courts will surely consider this. Has the Chief Secretary not considered this six-month*

stipulation? As this is clearly stated, the Courts will comply with this stipulation and will do nothing to prevent the election from being held in time. Has the Chief Secretary considered that this is the best assurance?

PRESIDENT (in Cantonese): Mr Albert HO has requested the Chief Secretary to elucidate his remark that "we have not yet come across any option". Chief Secretary, during the process, have you considered the relevant provisions of the Basic Law as mentioned by Mr HO earlier?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Yes. Article 53 of the Basic Law, as I read out earlier, has bestowed on the SAR Government a constitutional obligation.

MS EMILY LAU (in Cantonese): *Madam President, the Chief Secretary mentioned in the 12th paragraph the legislative intent. He said the Legislative Affairs Commission of the NPCSC had stated its view clearly. He further pointed out subsequently, "The current difference in opinions arises from different understanding of the Basic Law." May I ask the Chief Secretary to elucidate whether the "different understanding" mentioned by him refers to different understanding within the territory itself? Or is it the case that there was originally consistent understanding within the territory until the Bureau Director and Secretary of Department "took a u-turn" and hence there is different understanding between us and the Central Authorities? May I also ask the Chief Secretary to elucidate whether he has advised the Central Authorities to respect the views of the Hong Kong people, the legal profession, the Legislative Council and the SAR if the understanding in Hong Kong is consistent?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the issue of the term of office of the new Chief Executive to fill the vacancy in the office of the Chief Executive which arose other than due to the expiry of term is due to the different understanding of the matter among the public at large and in the legal profession. Insofar as this issue is concerned, the number of people supporting two years is greater than those for five years according to my knowledge and a recent survey.

DR KWOK KA-KI (in Cantonese): *Madam President, in the 10th paragraph of his Statement, the Chief Secretary stated, "The term of office of the Chief Executive is a matter which falls within the responsibility of the Central People's Government, and which concerns the relationship between the Central Authorities and the SAR." He then continued by saying "the Court of Final Appeal will need to seek an interpretation by the NPCSC in accordance with Article 158 para 3 of the Basic Law". May I ask the Chief Secretary or Acting Chief Executive whether it is the case that the SAR Government can interpret any matter which concerns the relationship between the Central Authorities and the SAR or any affair which falls within the responsibility of the Central People's Government must necessitate a requirement on the Court of Final Appeal (CFA) to seek an interpretation by the NPCSC? This is because it is stated in writing very clearly that whenever the CFA encounters such problems, it has to seek an interpretation by the NPCSC. In other words, the Acting Chief Executive has predetermined the necessity of, or almost set the stage for, requiring the CFA to seek an interpretation by the NPCSC.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I think the Honourable Member was merely reading out the provisions of Article 158 of the Basic Law.

MR MARTIN LEE (in Cantonese): *Madam President, the Chief Secretary said in the 14th paragraph that if only there were an option which could obviate the need to seek an interpretation and which could resolve the problem, he would have gladly adopted it. Furthermore, he made the following remark when mentioning in the 12th paragraph the need to amend the Basic Law, "The next session of the NPC will not be convened until March 2006. In terms of timing, it is not possible to amend the Basic Law in time before 10 July." May I ask the Chief Secretary to elucidate whether he had referred to our Constitution when he said that the next session would not be convened in time? According to the Constitution, the NPCSC may, if it deems necessary, convene a session for the NPC at any time to amend the Basic Law.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I am aware that we can do this in case of major events and very urgent

situations. In other words, the NPC may assemble its 3 000-odd Deputies for a meeting to deal with special issues. Madam President, the remark I made in the 12th paragraph is based on two reasons, one being legal justifications, and the other, practical difficulty. Of the two, legal justifications play a more important role. As I said earlier, it is not that there are problems with the provision, only that there are currently different interpretations of the provision. Our legislative intent is extremely clear. What we are required to do now is clarify our legislative intent. We consider that — the Legislation Affairs Commission of the NPCSC also holds the same view — if this has to be done, we have to interpret the Basic Law, not to amend its provisions.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, it is revealed in the eighth paragraph of the Statement made by the Government that the Courts have received one application for judicial review. In the 11th paragraph, it is stated that "the judicial proceedings would take some time and it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July". In the 15th paragraph, it is stated that the Government's attempt to seek an interpretation by the NPCSC would not damage the rule of law on which Hong Kong's success is based. Can the Government elucidate whether it is deliberately making use of its request for the NPCSC to make an interpretation to prevent, block or deprive the public's right to seek judicial review? Can the Government elucidate whether the rule of law on which Hong Kong's success is based would still not be damaged even if the interpretation is made?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, the SAR Government fully respects the right of every citizen to approach the Judiciary for judicial review. However, when it comes to seeking judicial review over this matter, we cannot but adopt this very special measure to request the NPCSC to make an interpretation due to time and procedural constraints and the time limitation on electing a new Chief Executive. This will not only shorten the duration of our argument, but also ensure the smooth selection of a new Chief Executive on 10 July.

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, your ruling please. My request for elucidation is: Is the Government attempting to prevent,*

block or deprive the public's rights to seek judicial review? Is the Government confident that its decision would definitely not damage the rule of law on which Hong Kong's success is based?

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I may try to add some information.

Although we seek an interpretation by the NPCSC, we cannot completely prevent anyone from continuing to petition our Courts for judicial review. Neither is it possible for us to block anyone from exercising his right by this means. I have explained clearly earlier that our judicial independence will not in any way be damaged as a result of doing this because the measure we adopt is designed in accordance with the Basic Law itself. In order to resolve certain questions, we have to apply the power of interpretation vested in the NPCSC.

MR LAU KONG-WAH (in Cantonese): *Madam President, regarding the seeking of an interpretation by the NPCSC, the Chief Secretary pointed out in the 13th paragraph that it is reasonable, and in the 15th paragraph that it is lawful and constitutional, to do so. However, at the beginning of the 15th paragraph, the Chief Secretary stated that he had carefully reflected on the matter. May I ask the Chief Secretary to elucidate, given that it is lawful, constitutional and reasonable to do so, why he had to carefully reflect on the matter rather than acting with great confidence?*

PRESIDENT (in Cantonese): Mr LAU Kong-wah requested the Chief Secretary to elucidate what he had on his mind when he carefully reflected on the matter, given that it is lawful, constitutional and reasonable to do so, am I right?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, it was because I respect the people's sensitive response to the request for an interpretation by the NPCSC. I believe all government employees must

take this matter into careful consideration. We do not merely look at the rationality and legality of a matter, but also compliance with the needs and wishes of the public at large.

DR FERNANDO CHEUNG (in Cantonese): *Madam President, the Chief Secretary stated at the end of the 11th paragraph that "if the interpretation by the NPCSC was sought through the judicial process, it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July". Does the Chief Secretary imply that we would not be able to elect a new Chief Executive in time on 10 July should an interpretation be sought through the judicial process? I do not entirely understand the meaning of this remark made by the Chief Secretary. I would like him to elucidate.*

PRESIDENT (in Cantonese): Chief Secretary, do you understand it? I ask you because I do not. *(Laughter)*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): What I referred to in the 11th paragraph is, if an interpretation is sought through the judicial process of Hong Kong Courts, it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July due to the session schedule of the NPCSC and the fact that the judicial process has to take some time to deal with related issues. Now we are seeking to submit a Report to the State Council to inform it of the current facts of Hong Kong and the disputes facing the territory in the hope that it will support our request to the NPCSC for an interpretation of Article 53 of the Basic Law. This is all we are seeking to do. We do not consider this a judicial process. Actually, this is an administrative course of action. This responsibility is bestowed upon the Chief Executive in accordance with Articles 43 and 48(2) of the Basic Law as I referred to earlier. I am acting in accordance with this responsibility.

DR FERNANDO CHEUNG (in Cantonese): *May I ask the Chief Secretary to elucidate why the expression "quite possible" was used if the interpretation was sought through the judicial process? Why is it that it is quite possible that the judicial process would delay the election of the Chief Executive on 10 July?*

PRESIDENT (in Cantonese): Dr Fernando CHEUNG, what you are seeking to elucidate is similar to what Mr Ronny TONG sought to elucidate earlier. Elucidation by the Chief Secretary has already been made.

MR FREDERICK FUNG (in Cantonese): *Madam President, I would like the Chief Secretary to further elucidate the reply given by him when answering the questions raised by two Members regarding the 15th paragraph, particularly the remark made at the end of the paragraph which read, "To settle the issue of the term of office of the Chief Executive by seeking the most authoritative interpretation in accordance with the Basis Law is lawful and constitutional." This is what the Chief Secretary said. In replying the questions raised by Mr LEE Wing-tat and Mr Andrew CHENG, the Chief Secretary said that this so-called lawful and constitutional action would be taken in accordance with Articles 43 and 48(2) of the Basic Law. According to my understanding, however, only Article 158 of the Basic Law mentions interpretation provisions and makes it clear that the NPCSC has the power to interpret the Basic Law, whereas Hong Kong Courts have also the interpretation power in adjudicating local cases. However, when it comes to adjudicating affairs relating to the Mainland, Hong Kong Courts will have to seek an interpretation from the NPCSC. How can the Chief Secretary, by virtue of Articles 43 and 48(2) of the Basic Law, change the power conferred on the Courts to request the NPCSC for an interpretation into a power vested in the Chief Executive or Acting Chief Executive? What I mean is I cannot see the relationship between the two and I do not understand why the Acting Chief Executive quoted the two Articles in reply to the questions raised by Members.*

PRESIDENT (in Cantonese): The Acting Chief Executive is not here in the Chamber. It is the Chief Secretary who is present here.

MR FREDERICK FUNG (in Cantonese): *Yes, it is the Chief Secretary. Sorry.*

PRESIDENT (in Cantonese): The Chief Secretary has given his reply just now. He was not acting according to Article 158 of the Basic Law. Instead, he was acting according to Articles 43 and 48, as pointed out by Mr FUNG.

MR FREDERICK FUNG (in Cantonese): *It should be Articles 43 and 48(2).*

PRESIDENT (in Cantonese): What exactly do you want the Chief Secretary to elucidate?

MR FREDERICK FUNG (in Cantonese): *I want him to further elucidate how, as the Chief Secretary, the Acting Chief Executive or the SAR Government, he invokes Article 43 or Article 48(2) to request the NPCSC for an interpretation? There is no such provision in the Basic Law.*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Let me state it clearly once more. Article 48(2) stipulates that the Chief Executive is responsible for the implementation of the Basic Law. Therefore, should any difficulty be encountered in the implementation of Article 53 of the Basic Law, I must voice out because I am responsible for stating where the difficulty lies as well as the solution. I have now found problems with the implementation of Article 53 because I personally cannot guarantee that the Chief Executive election can be smoothly conducted on 10 July. Therefore, I have to submit a Report. I have to reiterate that I am submitting a Report to the State Council, proposing that the State Council make a request to the NPCSC to interpret Article 53 of the Basic Law. This is the entire process. This is evidently what I am responsible to do and also what I am supposed to do within my authority.

MR ALBERT CHAN (in Cantonese): *Madam President, I hope the Chief Secretary can elucidate the difference between "the implementation of this Law", as stipulated in Article 48(2), and the seeking of an interpretation by the NPCSC by the Courts, as prescribed in Article 158. The Chief Secretary repeatedly emphasized earlier that he would submit a Report to the State Council. According to legal procedure, the Chief Secretary may submit a Report to the State Council. However, according to Article 158 of the Basic Law, the Courts may directly request the NPCSC for an interpretation. While this is a direct channel, the Chief Secretary is opting for a circuitous one. Can the Chief Secretary elucidate that he is going to submit a Report and that he has no power to request the NPCSC for an interpretation?*

PRESIDENT (in Cantonese): Mr Albert CHAN, you are seeking an elucidation as to whether the SAR Government has the power to directly request the NPCSC to interpret the law, the Basic Law.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): I have to make it clear that I am not making a direct request to the NPCSC to interpret the Basic Law. I would merely submit a Report to the State Council. This decision is based on Article 48(2) of the Basic Law. Under Article 89(2) of the Constitution of the People's Republic of China, the State Council has the power to submit proposals to the National People's Congress or its Standing Committee. According to the responsibility bestowed on me as derived from the clauses of the Constitution, we hope the difficulty currently confronting us can be resolved. Madam President, I would like to reiterate that my ultimate goal is that a new Chief Executive can be elected smoothly on 10 July.

MR JAMES TO (in Cantonese): *Madam President, actually, I want to follow up the question on which Mr Ronny TONG has sought elucidation, that is, the question relating to the 11th paragraph. Let me try to put it this way. The last sentence of the 11th paragraph reads, "it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July." This sentence implies that if an interpretation was sought through the judicial process, it would be impossible for a new Chief Executive to be elected on 10 July. Does "impossible" mean legally impossible or something else? If it is legally impossible, in what way it is legally impossible? There has been a legal argument, and someone in the community has already written an article, indicating that a new Chief Executive can actually be elected in time on 10 July. So long as the Courts have not issued any injunction, even if it is presumed that the NPCSC has made a judgement, the Chief Executive can practically be elected on 10 July. There is no doubt at all about this. As such, does "impossible" mean legally impossible? If the answer is in the affirmative, can the Chief Secretary explain why this is legally impossible?*

PRESIDENT (in Cantonese): Chief Secretary, please further elucidate why this is impossible.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, it is not legally impossible. It is purely that there are procedural difficulties, and the risk is very high. As I said earlier, once a judicial review is initiated, it will take time to go through the Court of First Instance, the Court of Appeal and the Court of Final Appeal, a dual process we greatly cherish. To resolve the issues, we ultimately have to submit our request to the NPCSC. The meeting of the NPCSC is scheduled for end April, but then we have to inform the NPCSC of our intention to include our request on its agenda. To achieve this, the Courts will have to decide in mid-April, but it is virtually impossible, and extremely difficult, to do so. Furthermore, we cannot deprive the rights of others because they might petition the Courts to conduct judicial review after April or May. By then, the meeting of the NPCSC will have already ended, and this is where the problem lies. If, under normal circumstances, and if we are given ample time, we can surely proceed according to the procedures prescribed in Article 158 of the Basic Law.

PRESIDENT (in Cantonese): As the Chief Secretary spent 11 minutes delivering his Statement earlier, whereas Honourable Members have spent more than 31 minutes seeking elucidation, it is now the turn of the last Member to seek elucidation.

MS MARGARET NG (in Cantonese): *Madam President, I would like the Chief Secretary to elucidate the 11th paragraph with respect to "it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July." A judicial review may be related to the term of office of the Chief Executive only, whereas according to the provisions of Article 53, the election is to be held within six months in accordance with Article 45. Why would a judicial review concerning the term of office affect whether the election of the Chief Executive could be held in time? Will the Chief Secretary please elucidate the relationship between the two?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, when we invite nominations for the election in accordance with the

domestic Chief Executive Election Ordinance, I am convinced that people must be told whether the term of office is two years or five. Should the term of office be challenged, how could we convince them that it is two years? Under the circumstances that judicial review is being conducted or a Judge of the Court of First Instance has decided that the term of office shall be five years, how can the election be conducted smoothly? Based on these reasons, I feel that there would be enormous risk.

MS MARGARET NG (in Cantonese): *Madam President, the Chief Secretary has not answeredexcuse me, the Acting Chief Executive has not answered my question.*

PRESIDENT (in Cantonese): It should be the Chief Secretary.

MS MARGARET NG (in Cantonese): *Excuse me, Madam President, the Chief Secretary has not answered my question. A judicial review may be about the term of office only. Why can the election not be conducted in accordance with Article 45 if it is not yet known whether the term of office is two years or five? The election has no bearing on the term of office. It makes no difference at all to the election. What are the Chief Secretary's justifications? Why did he say "quite possible"?*

PRESIDENT (in Cantonese): Chief Secretary, you need only elucidate the contents of your remarks. Please try to elucidate.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Madam President, I would try. I find it unreasonable for us to request people to run in the election without telling them the term of office.

MR MARTIN LEE (in Cantonese): *Madam President, point of order. Madam President, the Chief Secretary was in such a great hurry to come to see us this*

time and requested to include the Statement on the Agenda without notifying us in advance. Can I raise a question as a second turn? I have signed up to raise my question in the second turn. As this is a very important issue, please consider my request.

PRESIDENT (in Cantonese): Actually, the Government normally will notify me on Wednesday morning when it is prepared to make a Statement. Therefore, the schedule was very tight. There is no exception this time. However, since Honourable Members started to seek elucidation, I have sensed that they have a lot of questions to ask, not merely seeking elucidation. They all hope to raise questions of a more substantive nature. As Members can only seek further elucidation on the Statement according to the Rules of Procedure, I would therefore advise Members to expeditiously convene a committee meeting or invite government representatives to here to answer Members' questions on other occasions. I believe Members may wish to express their views on this matter too. However, I do not consider it appropriate for Members to constantly raise substantive questions by way of seeking elucidation in this Chamber or even exchanging their diverse views here.

MR MARTIN LEE (in Cantonese): *Madam President, please allow me to raise one more question. He is prepared to submit a Report to the State Council, so could we still have time for debate? The present situation is so urgent.*

PRESIDENT (in Cantonese): Mr Martin LEE, please sit down first. Actually, I believe you are also aware that before the Chief Secretary indicated his intention to make a Statement, Mr Albert HO had already given me a letter to express his hope that I could consider giving permission, under Rule 16(2) of the Rules of Procedure, to conduct an adjournment motion. Now that the Chief Secretary has already made his Statement and answered some questions raised by Members for the purpose of seeking elucidation, I am prepared to, after finishing this Agenda item, request the Deputy President to chair the meeting so that I can consider Mr HO's request.

End of Statement.

BILLS**First Reading of Bills**

PRESIDENT (in Cantonese): Bills: First Reading.

BANKING (AMENDMENT) BILL 2005**SECURITIES AND FUTURES (AMENDMENT) BILL 2005****CHIEF EXECUTIVE ELECTION (AMENDMENT) (TERM OF OFFICE OF THE CHIEF EXECUTIVE) BILL**

CLERK (in Cantonese): Banking (Amendment) Bill 2005

Securities and Futures (Amendment) Bill 2005

Chief Executive Election (Amendment) (Term of office of the Chief Executive) Bill.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

BANKING (AMENDMENT) BILL 2005**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:**

Madam President, I move that the Banking (Amendment) Bill 2005 (the Bill) be read the Second time.

The main purpose of the Bill is to amend the Banking Ordinance to provide for the implementation in Hong Kong of the revised international capital adequacy framework, promulgated by the Basel Committee on Banking Supervision (the Basel Committee) in June 2004 and commonly known as "Basel

II". The Bill also contains a few proposals to enhance the operation of individual provisions of the Banking Ordinance in the light of experience.

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

To ensure stability of the banking sector, bank supervisors around the world have a strong interest in maintaining adequate capital in the banking system, and this has generally been achieved through imposing minimum capital requirements.

The Basel Committee published in June last year a new capital adequacy framework, Basel II, which adopts a three-pillar structure for enhanced identification, quantification and management of risk. The three pillars are minimum capital requirements, supervisory review process and market discipline.

The benefits of and the need for implementing Basel II in Hong Kong are clear. First of all, the greater risk sensitivity of Basel II and the inclusion of a wider range of risks in the assessment of capital adequacy will further enhance the safety and stability of the banking sector.

Secondly, since Basel II will provide incentives to banks to adopt the best risk management practice, it will improve their ability to offer to customers, and use internally, more sophisticated products such as derivatives. It will also enhance banks' ability to assess lending to sectors such as small and medium enterprises, and allow for better risk-adjusted pricing. This means lower rates for better customers.

Hong Kong is a major international financial centre and we take pride in having a regulatory regime on a par with international standards. It is important that we are committed to adopting Basel II. Actually, Basel II is an enhanced version of the capital adequacy framework we have already subscribed to. Other major non-Basel economies, such as Australia and Singapore, have decided to adopt Basel II in full.

The Hong Kong Monetary Authority (HKMA) will adopt a menu-based approach in implementing the new regime, providing authorized institutions (AIs)

with a choice of options of capital charge calculation methodologies, depending on their size of operations and sophistication in risk management. Those institutions which opt for the advanced approaches will be given a transitional period up to the end of 2009. The HKMA has also developed a basic approach for AIs with small, simple and straightforward operations. In other words, we are working towards a pragmatic and proportionate approach to ensure that Hong Kong gets Basel II implemented in the right way.

The calculation method for the capital adequacy ratio under Basel II is much more complex than that currently embodied in the Third Schedule to the Banking Ordinance. For this reason, attempting to incorporate all the detailed Basel II requirements and methodologies in the Banking Ordinance will be neither practical nor effective. Furthermore, there will be a continuing need to revise the capital adequacy ratio regime in Hong Kong to keep pace with both industry developments and international practices. We therefore propose that a rule-making approach be adopted, under which the Banking Ordinance will provide for the revised capital adequacy framework to be operated in accordance with rules to be promulgated by the HKMA.

I have to emphasize that the proposed rule-making powers for the HKMA are confined to those strictly necessary for implementing Basel II in Hong Kong, and will be subject to negative vetting by the Legislative Council.

Apart from providing for the implementation of Basel II, the Bill includes some miscellaneous amendments to improve the working of the Banking Ordinance in the light of experience. I would like to highlight three major points:

- (a) Clause 7 of the Bill seeks to confine the liability of a manager of an AI for certain contraventions under the Banking Ordinance to the case where the contravention results from an act or omission of the manager himself or a person under his control. This amendment is proposed to address the banking industry's concerns on the present strict liability offences in the Ordinance, which extend liability to every manager of an AI in contravention;
- (b) Clauses 9 and 13 expressly provide that the HKMA may publish details of his disciplinary decisions in respect of AIs' securities

business. The amendment is proposed to allow the HKMA to publish his disciplinary decisions in a manner similar to that followed by the Securities and Futures Commission, thereby maintaining a level playing field between those persons regulated by the two regulators; and

- (c) Finally, it is proposed that the HKMA be allowed to extend the ceiling of the minimum capital adequacy ratio of licensed banks from 12% to 16%, which is currently the figure applicable to restricted licence banks and deposit-taking companies. This amendment under clause 5 serves purely to allow the HKMA to set higher minimum capital adequacy ratios should extraordinary circumstances so require.

The HKMA has undertaken extensive public consultation on an ongoing basis in developing the implementation plan for Basel II. Responses received have been supportive. A number of comments on the technicalities are being addressed in finalizing the detailed implementation proposals. The Administration has also taken into account the feedback of the industry and other interested parties in finalizing the Bill.

Madam Deputy, Hong Kong is one of the first group of jurisdictions globally working on the implementation of Basel II, and this is important. It keeps us at the forefront regionally and internationally, reinforcing our position as one of the major international financial centres in the world. The HKMA intends to implement Basel II on 1 January 2007, in accordance with the Basel Committee's timetable. Passage of this Bill will be important for the HKMA to proceed with other preparatory work including the drafting of Capital Rules and Disclosure Rules.

I hope Members will support the Bill. Thank you, Madam Deputy.

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

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

SECURITIES AND FUTURES (AMENDMENT) BILL 2005

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Deputy, I move that the Securities and Futures (Amendment) Bill 2005 (the Bill) be read the Second time.

The Securities and Futures Commission (SFC) plays a vital role in maintaining and consolidating the status of Hong Kong as an international financial centre. Like Honourable Members, the Government also hopes to seek continuous progress on the existing basis, so as to enhance the competitiveness of the Hong Kong financial markets.

With a view to further upgrading the governance and credibility of the SFC, enhancing its ability of setting overall directions and strategies, and enabling the financial system of Hong Kong to meet the challenges brought about by changing circumstances and market situations, the Government proposes a legislative amendment whereby the SFC shall be led by a chairman whose role will be separated from the executive arm, while the executive arm will be headed by a Chief Executive Officer (CEO). With the proposed amendment, the chairman of the SFC can focus on matters relating to the overall directions, policies and strategies of the SFC and become independent of the executive arm, thus enhancing the internal checks and balances mechanism.

This proposal is in line with best governance practice both locally and internationally. For instance, many other regulators in Hong Kong, such as the Hong Kong Exchanges and Clearing Limited and the Mandatory Provident Fund Schemes Authority, have already implemented the separation of roles with satisfactory results. Therefore, it can be said that successful experience in this direction is already available in Hong Kong. Besides, many public bodies, such as the Airport Authority, the Kowloon-Canton Railway Corporation and the MTR Corporation Limited have also implemented this mode of governance. And, we have also considered the experience of the United Kingdom Financial Services Authority in splitting the post of its chairman.

Under our proposal, following the division of roles, the chairman shall be responsible for setting the overall direction, policies and strategies of the SFC and monitoring the performance of the executive arm in implementing the objectives, policies and strategies set by the governing body. With a view to

enhancing internal checks and balances, the chairman shall not be involved in the day-to-day operation of the SFC. As for the CEO, he or she shall have executive responsibility for the day-to-day running of the SFC. He or she should implement the objectives, policies and strategies agreed by the SFC governing body, and facilitate the effective functioning of the governing body.

With a view to ensuring the independence of the chairman and avoid any conflict of interest, we propose that:

1. the current provisions in the Securities and Futures Ordinance concerning avoidance of conflict of interests and the SFC's internal Code of Conduct be also applied to the non-executive chairman; and
2. during the tenure of the office of chairman of the SFC, one should not be a director of any listed company in Hong Kong; or have any material interest in any principal business activity of or is involved in any material business dealing with a listed company, or any person or institution engaged in activities regulated by the SFC.

We are convinced that the above proposals will be effective in ensuring the independence of the chairman, avoiding any conflict of interests and enhancing the credibility of the SFC.

Before the submission of the Bill to the Legislative Council, the Government held discussions on the relevant proposals with the Legislative Council Panel on Financial Affairs (the Panel) at three of its meetings. The Panel also invited a number of organizations and individuals to put forward their views. Most of these organizations and individuals, including professional bodies such as the Hong Kong Institute of Certified Public Accountants, The Law Society of Hong Kong and the Hong Kong Institute of Directors, all expressed support for the proposed division of roles. At its meeting on 17 February 2005, the Panel also passed a motion on supporting the Government's proposal in principle.

The passage of the Bill will further enhance the governance and credibility of the SFC, help consolidate the status of Hong Kong as an international financial centre and promote good corporate governance.

Thank you, Madam Deputy.

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

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

CHIEF EXECUTIVE ELECTION (AMENDMENT) (TERM OF OFFICE OF THE CHIEF EXECUTIVE) BILL

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Deputy, I move that the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill) be read the Second time.

The purpose of the Bill is to provide that the term of a new Chief Executive elected pursuant to Article 53 para 2 of the Basic Law shall be the remainder of the term of the preceding Chief Executive.

Madam Deputy, the office of the Chief Executive became vacant on 12 March 2005. Pursuant to Article 53 of the Basic Law, a new Chief Executive shall be selected within six months. In accordance with the Chief Executive Election Ordinance (CEEEO), the election of the new Chief Executive shall be held on Sunday 10 July 2005. We shall make the necessary electoral arrangements in accordance with the CEEEO and related subsidiary legislation to ensure that the election is conducted in a fair, honest and open manner.

At the same time, we have to clarify the term of office of the new Chief Executive who filled the office of the Chief Executive which became vacant during the term. In this regard, the Government has stated its position at the press conference on 12 March and at the House Committee meeting of the Legislative Council on 15 March, stating that the term of office of the new Chief Executive returned in a by-election should be the remainder of the term of the preceding Chief Executive. The Government reiterated its stance and the related justifications at the Legislative Council adjournment debate on 16 March. We also briefed Members on the content of the Bill at the meeting of the Panel on Constitutional Affairs on 21 March.

Let me briefly set out again the main justifications for the position taken by the Government:

Firstly, there is no direct link between Article 53 para 2 and Article 46 of the Basic Law. Instead, Article 53 para 2 specifically refers to Article 45 of the Basic Law. Article 45 refers to Annex I which prescribes the specific method for selecting the Chief Executive.

Annex I to the Basic Law stipulates that the Chief Executive shall be elected by an 800-member Election Committee (EC). The duty of the current EC is to elect the second term Chief Executive, whose term of office runs from the year 2002 to 2007.

Article 7 of Annex I also stipulates 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 agreement of a two-thirds majority of all the Members of the Legislative Council, the Chief Executive and the Standing Committee of the National People's Congress (NPCSC). According to the design of the Basic Law, the method for selecting the Chief Executive in or subsequent to the year 2007 can be further opened up to allow for wider public participation, in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. This design should not be frustrated simply because a vacancy in the office of the Chief Executive has arisen during the term.

Secondly, the Decision of 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". The NPCSC has affirmed that the election of the Chief Executive to be held in 2007 is the election of the Chief Executive for the third term. According to the Government's proposal, the new Chief Executive election will fill the office left vacant by the Chief Executive for the second term. It is not an election of the Chief Executive for the third term. This is consistent with the interpretation of the term of office of the Chief Executive under the Decision; it is also consistent with the relevant provisions in Annex I.

Thirdly, when Article 53 para 2 of the Basic Law was first drafted, the wording "new Chief Executive" was used. It was subsequently changed to "the Chief Executive of a new term". But at a later stage, the wording was reverted

to "new Chief Executive ". This demonstrates that Article 53 para 2 does not provide for a new term to commence afresh.

The SAR Government's position that the new Chief Executive shall serve the remainder of the term of the preceding Chief Executive is based on a thorough understanding of the provisions of the Basic Law and the legislative intent. The Legislative Affairs Commission of the NPCSC made a statement on 12 March in support of the position of the SAR Government.

Madam Deputy, since work for the legislative amendments must tie in with the Chief Executive election, the legislative timetable is quite tight. We hope that scrutinization of the Bill can commence early. The SAR Government will work closely with the Bills Committee to facilitate its work.

Thank you, Madam Deputy.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill be read the Second time.

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Vocational Training Council (Amendment) Bill 2004.

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 2004

Resumption of debate on Second Reading which was moved on 13 October 2004

DEPUTY PRESIDENT (in Cantonese): Dr Raymond HO, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

DR RAYMOND HO: Madam Deputy, as Chairman of the Bills Committee on Vocational Training Council (Amendment) Bill 2004 (the Bill), I wish to report on the main deliberations of the Bills Committee.

The main purpose of the Bill is to empower the Vocational Training Council (VTC) to perform its statutory functions outside Hong Kong.

Some members have queried whether the proposed sections 6(3) and 6(4) are consistent with the objects of the VTC, and whether the powers conferred by these provisions would exceed the objects provisions in section 5, as there is no reference for the VTC to carry out its activities outside Hong Kong. As the participants of extra-territorial activities to be conducted by the VTC may include non-Hong Kong persons, it is questionable whether the extension of a power to provide training to non-Hong Kong persons outside Hong Kong and whether the use of public money to finance such activities for the education and training of non-Hong Kong persons are within the scope of the objects provisions.

The Administration has explained that section 5 of the Vocational Training Council Ordinance (the Ordinance) sets out the objects of the VTC. However, the section does not specify any territorial limit of the objects. Section 6 of the Ordinance is therefore proposed to be amended to expressly enable the VTC to perform its functions outside Hong Kong, so as to remove any uncertainty or presumption in respect of the territorial limit.

The Administration considers that for Hong Kong to remain as a regional hub of commerce and industry and an international city, the VTC's work would also need to be expanded to cover the training needs and opportunities arising from Hong Kong's economic activities beyond the territory, particularly onto the Mainland. Expanding the power of the VTC to conduct extra-territorial activities would bring about benefits to Hong Kong as a whole. These include meeting the trained and qualified manpower requirements of Hong Kong business establishments with operations in the Mainland, providing useful exposure to the trainees and better equipping workers for employment in the Mainland, as well as facilitating the bilateral exchange of experience and expertise in vocational education and training between Hong Kong and the Mainland, thereby contributing to the work of the VTC in this area. These are in tune with the spirit behind the objects of the VTC.

To address the concern about the use of public money by the VTC when conducting extra-territorial activities, the Administration has agreed to amend the proposed section 6(4). The proposed section, as amended, will allow the VTC to perform its functions outside Hong Kong for the training and education of persons who are not Hong Kong persons. However, no subsidy from public sources will be provided to subsidize non-Hong Kong persons participating in such activities to be conducted by the VTC.

Members are concerned about the term "Hong Kong person", as it is sensitive in nature and may be subject to challenge in its interpretation. Having considered members' view, the Administration has agreed to amend the term to "eligible person".

While members are in support of the policy intent of the provision of extra-territorial activities by the VTC, some members have expressed concern about the implications of the proposed activities on the existing staff of the VTC, in particular that the proposal, if implemented, may adversely affect the job security of existing VTC staff. These members consider that should there be a need to employ staff for conducting activities outside Hong Kong, priority should be given to Hong Kong people.

The Administration has assured members that the proposed expansion of the VTC's services outside Hong Kong will not adversely affect the job security and terms of service of existing VTC staff. The VTC staff will be deployed to work outside Hong Kong only if they are willing and if they possess the necessary skills and expertise required of the jobs. The Administration has also assured members that where it is necessary to recruit additional staff for the expanded activities outside Hong Kong, and where a Hong Kong person and a non-Hong Kong person are found equally suitable for the appointment for certain training or educational programmes, the VTC will give priority to the Hong Kong person.

In response to members' concern about employees' protection for the VTC staff deployed to undertake extra-territorial activities, the Administration has undertaken to seek professional advice on the employees' compensation insurance of the VTC staff working outside Hong Kong before implementation.

Madam Deputy, the Bills Committee has raised a number of concerns about the operational arrangements of the proposed extra-territorial activities,

including the liabilities incurred in carrying out such activities, the accounting and tax arrangements, how surpluses accumulated from the operation of such activities could be transferred to the VTC, and the financial arrangements when a loss is incurred.

The Administration has advised that it is the intention of the VTC to carry out extra-territorial activities through limited companies or in partnership with third parties through these companies. The liabilities incurred in carrying out such activities will be borne by these companies as independent legal entities. Separate accounts for the VTC's subsidiary companies for conducting extra-territorial activities will be maintained. To minimize financial risks, the VTC will not undertake any programme unless the "break-even point" test is met. In the event that a loss is incurred, the VTC could offset the loss by the accumulated surpluses from the account on the self-financed activities in Hong Kong. Should the need arise, the VTC would make a loan at cost to its subsidiary company. The VTC intends to use surpluses accumulated from operating these activities to fund its other activities. Professional advice will be sought to devise the most appropriate accounting system and the transfer of surpluses.

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

Thank you, Madam Deputy.

MR WONG KWOK-HING (in Cantonese): Madam Deputy, the object of setting up the Vocational Training Council (VTC) is to provide vocational training to young people of Hong Kong. Unfortunately, in the lack of government planning, the manufacturing industries in Hong Kong are in decline. As a result, many young people are unable to join the manufacturing industries. Even though they may have such an aspiration, they lack the opportunities to apply what they have learned. The amendment of the relevant ordinance by the VTC aims at facilitating young people to engage in industrial attachments on the Mainland. The Hong Kong Federation of Trade Unions supports the amendments because the young people will at least be provided with another way out. Unfortunately, in view of the declining manufacturing industries in Hong

Kong, it is not sure whether the young people can be absorbed into the industries and apply what they have learned after training. So after the ordinance has been passed, I hope the Government can fully consider how to help our young people to seek employment.

When the Bill was under scrutiny, Miss CHAN Yuen-han and I had met several staff associations of the VTC. Afterwards, in the relevant meetings, I reflected their expectation that Hong Kong people should be given priority in employment by the VTC. The Government and the VTC in the meetings of the Bills Committee, undertook that Hong Kong people would be given priority in employment. Besides, existing staff of the VTC will be deployed to work in its mainland organizations if the staff are willing. The move is not necessarily a bad thing because it will provide another development opportunity to Hong Kong people and staff of the VTC.

However, during the deliberation of the Bill, the VTC could not give us a clear picture concerning the various kinds of protections for Hong Kong employees working on the Mainland, such as the insurance arrangements. So, I hope the VTC can continue to follow up and give us a clear reply in order to ensure that when Hong Kong people or VTC staff really start to work on the Mainland, there would be no problems adversely affecting the protections and benefits they are entitled to. In future, we will also continue to keep a close watch of the VTC to see whether or not it has fulfilled its pledges.

Madam Deputy, these are my remarks.

MR WONG TING-KWONG (in Cantonese): Madam Deputy, the economic integration between the Mainland and Hong Kong and the economic development of the Pan-Pearl River Delta (Pan-PRD) Region has led to a growing number of Hong Kong workers employed by Hong Kong and mainland enterprises in the Pan-PRD Region. Thanks to the rapid economic development in the PRD Region in recent years, many young people go to seek employment on the Mainland. The proposal to amend the Vocational Training Council Ordinance aims at enlarging the functions of the Vocational Training Council (VTC) so that it is empowered to expand the territorial limit of its objects and functions, thus enabling it to organize extra-territorial activities and provide training to Hong Kong workers in order to meet the requirements of the companies concerned and maintain our workers' competitiveness and employment prospects.

I strongly support the proposals. However, during our discussions in the meetings of the Bills Committee, I expressed my concern about the problem that loss incurred from the operation of cross-border activities might affect the VTC's financial position. Besides, I also expressed my concern about whether surpluses accumulated from the operation of extra-territorial activities could be transferred to the VTC and what kind of employment relation exists between the VTC and its staff working outside Hong Kong.

The VTC has noted the problems of "surplus" and "loss" that I have raised. The Administration responded that the VTC intended to use surpluses accumulated from operating these activities to fund its other activities. The transfer of funds, including any surpluses accumulated under the VTC's subsidiary companies, is an administrative matter and it is, as the Administration explained, not necessary to be spelt in the legislation. The VTC will seek advice from its legal and accounting advisers on such matters.

Besides, separate accounts for the VTC's subsidiary companies for conducting extra-territorial activities will be maintained. To minimize financial risks, the VTC will not undertake any programme unless the "break-even point" test is met, and that is, the number of students or participants will reach such a level that will enable the programmes to be financially self-sufficient. In the unlikely event that loss is incurred, the VTC would make a loan at cost to its subsidiary company concerned.

Regarding the expansion of the VTC's services outside Hong Kong, 13 out of 14 VTC staff associations have indicated their support. Despite that, some Members are worried that local VTC staff will be adversely affected. So, the Administration has undertaken that the job security and terms of service of the existing staff will not be adversely affected by the expansion of the VTC's services outside Hong Kong. VTC staff will be deployed to work outside Hong Kong only if they are willing and if they possess the necessary skills and expertise required of the jobs. The VTC staff deployed to undertake extra-territorial duties will also be covered by employees compensation protection. For instance, when a Hong Kong person and a non-Hong Kong person are equally suitable for appointment to certain training and educational programmes, the VTC will give priority to the Hong Kong person.

When conducting extra-territorial duties, the VTC may get involved in issues concerning the laws and regulations of the Mainland and civil liabilities may incur. We must attach sufficient weight to this problem. I have expressed my concern about the legal liabilities of the VTC in carrying out extra-territorial activities for I am worried that the VTC as a whole will be involved when litigations occur and the VTC is held liable. Clause 4 proposes to add the word "agent" in the new section 6(3). It refers to limited companies which carry out extra-territorial activities. In other words, extra-territorial activities are carried out in partnership with third parties through these limited companies. The liabilities incurred in carrying out such activities will be borne by the companies concerned as independent legal entities.

Besides, according to proposed section 6(5), only Hong Kong persons will be eligible to participate in extra-territorial activities on a subsidized basis. Some members considered the term "Hong Kong person" sensitive in nature. But the Administration opined that if the proposed section 6(5)(b) was deleted, persons such as those holding work visas or student visas would then become eligible, this would have public resource implications. So, for the sake of clarity, the Administration has finally agreed with members that the term "Hong Kong person" be amended to "eligible person".

As a statutory organization of the SAR Government, the VTC's object is to provide vocational education and training in order to cope with Hong Kong's development needs. With the further development of Hong Kong society, the VTC's duties will also change. The purpose of vesting the VTC with more powers is for the better carrying out of its functions so that it will obtain more resources for the expansion of its services. Hence its scope of services can be expanded. Having said that, the VTC cannot deviate from the principle of making the best use of public funds.

Madam Deputy, these are my remarks.

MR HOWARD YOUNG (in Cantonese): Madam Deputy, I wish to declare my interest first, I am a current member of the Vocational Training Council (VTC).

The Liberal Party supports the idea of expanding the VTC's training functions to the Mainland. We believe the move will benefit all parties concerned, including the VTC, Hong Kong businessmen, local youngsters and the economic integration of Guangdong and Hong Kong.

During the 1990s, many Hong Kong industries relocated northwards in view of the labour shortage problem. In recent years, ties between Hong Kong and China are getting closer and closer in view of mainland policies to open up and reform its trade and economy. With the Mainland's economic take-off, businessmen considered opportunities on the Mainland boundless. At present, a lot of Hong Kong businesses have been established on the Mainland, especially in the Pearl River Delta (PRD) Region where over 80% of foreign investments comes from Hong Kong. If the VTC is allowed to conduct classes and provide training courses on the Mainland, it is believed that Hong Kong businesses could be provided with more qualified technicians, and together they can promote the economic development policy relating to CEPA and the "Nine plus Two" Agreement.

(THE PRESIDENT resumed the Chair)

The VTC is a organization which provides professional education and vocational training, with an objective to meet the needs posed by Hong Kong's economic development and manpower. In recent years, in the wake of social changes, ties between Hong Kong and the Mainland are getting closer, the VTC therefore takes the advantage and expands its practical training to the Mainland through co-operation with mainland organizations. If the VTC can organize classes officially on the Mainland, students who are determined to develop their careers on the Mainland can be given more practical training opportunities in mainland organizations. They can gain more opportunities and they can gear themselves up and lay a solid foundation for their development on the Mainland. In the wake of the economic boom on the Mainland in recent years, many factories are set up by foreign investors on the Mainland, hence prompted the demand for technical personnel. If the relevant courses can lead to the granting of "two certificates" with "one examination", that is, if students can obtain the recognized professional qualification both in Hong Kong and on the Mainland through the completion of the relevant courses, then it would further enhance the competitive edge of Hong Kong employees. In the long run, the VTC's courses conducted on the Mainland can provide an alternative to young people of Hong Kong, which will alleviate Hong Kong's youth unemployment rate.

Some Members opined during the meeting that extra-territorial training courses should give priority to Hong Kong residents as far as recruitment of

instructors was concerned. In fact, in order to enhance the knowledge of Hong Kong students in mainland affairs, a number of tertiary institutions have recruited mainland professors; this move is to address the needs of society. It is believed that VTC courses conducted on the Mainland and the recruitment of mainland and Hong Kong scholars will enhance the competitiveness of young people of Hong Kong in terms of employment on the Mainland. In particular, in view of the Mainland's rapid technological developments, our students can stand to benefit if both mainland and local instructors can be invited at the same time, as this will help us overcome our weaknesses by acquiring others' strengths in addition to enhancing our skills. Moreover, the most important factor in considering the employment of a qualified instructor is the extent of knowledge in his or her own field instead of his nationality or his domicile.

The VTC operates extra-territorial courses on the Mainland on a self-financing basis, thus the Government needs not provide any form of subsidy or make any funding. So it is believed that the Government's financial position would not be affected. On the contrary, it will alleviate the financial commitment of the Government on the VTC. During the meetings of the Bills Committee, I had raised the issue of risk management with respect to conducting extra-territorial courses, but the VTC would conduct a "break-even point" test in order to avoid any unnecessary losses. According to information obtained, the VTC anticipates that it can break even after the first year's operation on the Mainland, and it will generate a revenue of tens of million dollars within three to five years, and the VTC may use the surplus obtained to provide more training courses which will meet the needs of society.

With these remarks, Madam President, I support the Vocational Training Council (Amendment) Bill 2004.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, first of all, I would like to declare that I am a member of the Vocational Training Council (VTC).

Madam President, as my Honourable colleague Mr WONG Kwok-hing has said, we are supportive of the major direction of the contents of the amendments to the Bill as proposed by the Government. However, when deliberating on the Bill we have expressed many worries. For example, all

along I have been under the impression that the VTC was founded to offer vocational training to young people and in these young people, they all have their own unique features and merits. Some of these young people may not do very well in their formal schooling, but that does not mean that their potentials in other aspects, such as vocational skills, are likewise unsatisfactory. If only they can be provided opportunities such as those by provided by the VTC, they may be able to give full play to their potentials and after making efforts they can carve out a career for themselves.

Ever since I became a Member of the Council in 1995, for a long time I have been a critic of the VTC. This is because I have a feeling that the kind of training as offered by the VTC is changing. After the criticism we have made, there has been some kind of change in the VTC but still I would think that the Secretary should ponder over some areas. As manufacturing industries in Hong Kong have declined, there may not be many opportunities for the apprenticeship programmes to meet such needs as in the past. Another problem is that many of the programmes offered by the VTC have become self-financing and market fees are charged.

Madam President, I would like to point out that the VTC was set up with the aim of developing the potentials and providing training in vocational skills for young people who may not have done so well under a formal academic curriculum. Now as we face the changes which have taken place in the manufacturing industries in Hong Kong as well as changes which have taken place in the apprenticeship programmes, that does not mean that for these young people there is no other direction of development opened to them.

As we can see, the VTC has not addressed the difficulties they face presently, on the other hand, it is turning some of the smash hit courses like those in computing and languages into self-financing courses and expensive tuition fees are charged. Some teachers in the VTC have told me that some students with good potentials are forced to forgo training courses which may develop their potentials because they cannot afford the tuition fees, not even 80% of the tuition fees.

Madam President, I would think that the VTC should focus its attention on addressing the problems which I have mentioned and constant efforts must be made to strive for excellence. I wish to stress again that over these few years there has been some improvement with respect to the courses offered by the VTC

and such courses are increasingly in tandem with market demand and the needs of the young people are well taken care of. But I think this is not sufficient. As we can see from the Bill introduced by the Government now, it is intended that the further expansion should be made on the mainland market which has been opened up. We would think that while it is a good thing to let young people from Hong Kong to undergo a practicum on the Mainland after they have finished their studies in Hong Kong and this would also be a rewarding experience for them, as we can see in the Bill, in order to make the young people adapt to the conditions better, the Government is prepared to co-organize courses with mainland institutions and mainland residents may also enrol in such courses. As a result, we begin to get worried.

The Government explains that this is because many manufacturers from Hong Kong have hired many workers in Shanghai and these workers will need to undergo technical training as well. We are perfectly aware of this situation but the problem is if the Government wants to change the direction in this way, the problems which we have noticed 10 years ago in the VTC may crop up again. Despite the improvements made recently and that the VTC is attaching greater importance to local training, if efforts are shifted to developing the mainland market, how are these problems going to be tackled? I would think that while the proposals made will help Hong Kong manufacturers solve the problem of manpower training when they expand their operations on the Mainland, such an approach would still by itself open to queries.

Having said that and in any case, we will still lend it our support. This is because it would be hard to think of any reasons to oppose it. On one hand we hope that students from Hong Kong can be given training opportunities on the Mainland, but on the other hand, we want to impose some restrictions on some areas. When we were deliberating on the Bill, discussions were held and sometimes the issues were hotly debated. In the end the Hong Kong Federation of Trade Unions agreed to accept the recommendations. However, we raised some other problems afterwards and these were if institutions admitting mainland students were to co-operate with the Employees' Retraining Board of Hong Kong, a host of problems might appear and these included insurance, accounting and so on and all these would have to be carefully addressed by the Government. Another question is how should profits made be used? We do not want to see the money so earned be used on other areas of work done by the VTC, we would think that the money should be used on the young people in Hong Kong whom I have just mentioned to help them pay the fees.

I hope very much that the Secretary could see the point we are trying to make. Now as the Government says that funding for certain areas are to be slashed, so while some courses offered by the VTC may operate because they can get the funding, some other courses are not given any funding and they have to operate on a self-financing basis. Together with some other members of the VTC, including you Madam President, I requested the Government not to take the self-financing initiative forward, but in the view of the Education and Manpower Bureau — at that time Philip CHOK Kin-fun was still in his office — that could not be done because the policy had been formulated. In my opinion, if this institution offers some courses on the Mainland, it will certainly be very popular with people on the Mainland, this is because after all, Hong Kong has a broader international perspective. I would reckon that many people will come to enrol in such courses. I hope that when money is made, the institution may use this money to help the young people in Hong Kong. I know that the VTC would like very much to help aspiring young people by offering them allowances. It hopes that even if they cannot pay for the expensive tuition fees, they may get an allowance amounting to 80% of their tuition fees like the university students. These students should not be asked to pay 80% of the tuition fees as they are asked now. This is a point I wish to stress in particular.

Madam President, while we are bringing this problem up, there is yet another one which we are worried about and that is, it is not sure whether or not such developments would affect the job opportunities of the VTC staff. This is because when VTC is to collaborate with the mainland institutions, the latter would also have the right to decide on the staff to be hired. In this regard we have consulted the trade unions under the VTC and in fact we have discussed with many of these trade unions and generally speaking, they are supportive of the spirit of this practice, but as Mr WONG Kwok-hing has said, we will keep a close watch of the developments. If we find out that the Government will not give first priority to employing VTC staff and it starts to employ instead mainland instructors right away, we will not agree to it.

Madam President, I would like to emphasize again that in any case if the VTC's developments on the Mainland are beneficial to Hong Kong, we would of course give them our full support. We would also do the same if such moves are beneficial to business expansion. But we are concerned about how to strike a balance between the two. I wish to emphasize and it is my hope that after local institutions have made money, the money should be put in a fund which is especially set up for those young people who do not achieve so well under formal

academic curriculum, so that when they enrol in a VTC programme, they do not have to pay for 80% of the tuition fees. This is really what I want to see most.

I so submit. Thank you, Madam President.

MR ANDREW LEUNG (in Cantonese): Madam President, I wish to declare my interest, I am a member of the Council of Vocational Training Council (VTC) and I am also a representative of the Federation of Hong Kong Industries (FHKI) in this Council.

I welcome the Second Reading and amendments of the Vocational Training Council (Amendment) Bill 2004. From the viewpoint of the FHKI, despite many Members are of the opinion that Hong Kong's industries are declining, they are just declining in a regional sense. According to a survey conducted by the FHKI, about 12 million mainland workers are currently employed by 80 000 Hong Kong industries in the Pearl River Delta (PRD) Region. We need a lot of supportive services in this enormous industrial development process and these 12 million workers facilitate the development of Hong Kong's service industries. Two years ago, Prof Richard WONG estimated that about one half of our GDP comes from producers' service, because Hong Kong's service industries benefit from the industries. We consider that the expansion of VTC's services to the Mainland through the provision of training to workers in the PRD will enable the continuous development or even a high-speed development of our industries in the PRD. We can also see that our achievement has enabled China to take one step ahead and become the workshop of the world. We hope that more people will receive training under a more liberal environment, so that they can serve their employers and the employers can make money, and subsequently it will lead to a return of the service industries to Hong Kong.

With these remarks, I support the Vocational Training Council (Amendment) Bill 2004.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, I have said in this Council that once when I gave a talk in some vocational training institute, I met a student who was working in the student union. He told me that he would not continue his studies for his family was very poor. Though his father who

was laid off managed to find a job as a security guard later, his father is now suffering from sciatica pains caused by bone spur and is having a hard time. So this young man gave up the idea of furthering his studies.

Actually, insofar as vocational training is concerned, there is no right or wrong. The spending of public money by the Government on the training of talents who will finally work for enterprises can be viewed from two perspectives. On the one hand, this arrangement does enable some people to learn some survival skills, allowing them to work in a certain trade and secure a stable job to support the whole family. But on the other hand, the arrangement helps enterprises by sharing their responsibility for providing staff training. Why do I say so? I am not talking nonsense. Let us look at the case in other countries. Take Germany as an example. It adopts a three-year apprenticeship system during which apprentices receive intensive and comprehensive training, enabling them to enter a specific trade on completion of the programme. This is certainly not the case in Hong Kong. However, I wish to point out that many colleagues are wrong when they say that the Government has wasted a lot of money and efforts in placing local workers or enabling them to acquire certain skills to join a certain trade or do a certain job.

On the contrary, I would say the Government has spent quite a lot of money to provide training to the staff on behalf of the capitalists. So, this definitely cannot be regarded as a favour. However, with so many capitalists sitting on the Vocational Training Council, how could the problem of a mismatch in jobs happen? But it turns out to be the case. Graduates cannot find a job and they are required to pay hefty tuition fees. The truth of the matter is indeed very simple. First of all, those capitalists do not want the Government to spend too much public money on these trainees. If these trainees have to pay tuition fees, the cost of their training will not be borne by those capitalists but by the trainees themselves and they are workers who have to pay the fees from their own savings or family savings and they will be working for their employers after they have completed their training. So, what is the thread of thought in the entire issue? That is to say, in an affluent society like Hong Kong, a structural imbalance of the industries was experienced in the past (including the era of the British Hong Kong Government). That is to say, this structural imbalance was resulted from the indulgence in speculations on properties and stocks and the craving for easy money, which in turn has led to structural unemployment. How should this problem be addressed?

We can see that the Government is in lack of any long-term policy in this respect, only an array of piecemeal measures have been implemented. In the past seven years, Hong Kong has had a dreadful time because of TUNG Chee-hwa. As unemployment rate, that is, the unemployment of the youth and the middle-aged, remained high, the Government became anxious. The Government decided to find a quick solution to the problem presented by those figures — I have to stress that it is the problem presented by the figures but not the real plight faced by the unemployed. Therefore, the Government, by hook or by crook, introduced all kinds of training programmes to take in those affected by structural unemployment caused by the imbalance resulted from the blunders in government policies. By placing those affected by structural unemployment under another category, they will not be shown in the unemployment figures. Since these people are classified as trainees, their unemployment status will not be reflected in the unemployment rate. Incredibly, such a strategy, which is like making up a story, is discussed as if it were a real policy. It is utterly ridiculous. In fact, this is no a new invention, any government in the Western countries may do the same. At some time in the past, when the United Kingdom considered the expenditure on unemployment benefit too heavy, it proposed that every unemployed person would be given an extra £10 requiring them to study. This was how it was done.

In a society like Hong Kong, it is too bad that we have to resort to the provision of vocation training to handle unemployment today. Now, this kind of bad experience is to be introduced to the Motherland. What are they up to? Are they suggesting that mainland officials are not doing a good job in covering up the unemployment rate? These officials have been concealing the actual unemployment rate by tagging unemployment with terms like going off duty or released from duty. Have they not done enough?

I think if the Vocational Training Council is to organize courses on the Mainland, it has to tackle one question first, that is, why Hong Kong cannot implement an industrial policy, a comprehensive approach which is somewhat similar to the four-pillars approach proposed by Mr TUNG that includes the logistics industry, the financial services industry, and so on? The four pillars have already collapsed, but people continue to lie about the existence of these four pillars. In fact, upon the collapse of these four pillars, structural unemployment will definitely persist. If we want to bring our experience to the Mainland, it is actually too late. In fact, the many Hong Kong people who are now unemployed have once been to the Mainland on private employment

contract to teach mainland workers employed by Hong Kong capitalists investing on the Mainland, which have left them in the predicament of unemployment subsequently. This state of affairs resembles very much the experience of the little girl in the story *The Little Match Girl* written by Hans Christian ANDERSEN (this year celebrates the bicentenary of his birth).

Honourable colleagues, I can in no way support a method aiming to conceal the mistakes of this Government which in fact make them more conspicuous. I hope that all Honourable colleagues will not support this method. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Education and Manpower to reply.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I must express my gratitude to Dr Raymond HO, Chairman of the Bills Committee on Vocational Training Council (Amendment) Bill 2004 (the Bills Committee), and also members of the Bills Committee for their meticulous scrutiny of the Bill and for the constructive advice they have offered. During the scrutiny of the Bill, we also received the assistance of the various staff unions of the Vocational Training Council (VTC). My thanks are also due to them. The Committee stage amendments of the Government have already taken into account the views of Bills Committee members and the staff unions of the VTC.

Madam President, I wish to repeat that the object of the Bill is to amend the Vocational Training Council Ordinance, so that it can be empowered to engage in extra-territorial training activities to cope with the demands brought about by Hong Kong's overall economic development.

Owing to the rapid growth in the Pearl River Delta Region in recent years, an increasing number of Hong Kong firms are engaged in cross-border

operations and activities, and they would like or even need to employ workers from Hong Kong. The ability of the VTC to equip our workforce to cater for the demand of these firms will therefore be crucial to maintaining the competitiveness and employment prospects of our workers. It will also be beneficial to young people for the VTC to arrange for industrial attachment across the border for its students to acquire valuable working experience and to enhance their employment opportunities upon graduation.

During the scrutiny of the Bill, some members expressed the concern that the proposal to enable the VTC to engage in extra-territorial training activities might affect the job security and terms of service of existing VTC staff.

The VTC has assured members that the proposed expansion of VTC's services outside Hong Kong will not adversely affect the job security and terms of service of existing VTC staff. VTC staff will be deployed to work outside Hong Kong only if they are willing and if they possess the necessary skills and expertise required of the jobs. As regards arrangements, the Education and Manpower Bureau will seek professional advice to ensure adequate protection for VTC staff working outside Hong Kong.

The proposed expansion of the VTC's activities outside Hong Kong, is one of the key initiatives under the VTC's eight-year Strategic Plan, on which staff have been extensively consulted. Staff members, including their unions, are generally supportive of the proposals. The VTC has also accepted the Bills Committee's advice and carried out another exercise to consult the various staff unions on the proposed extra-territorial activities. As many as 13 staff unions representing a total of 3 500 employees have indicated their support in writing.

Some members consider that should there be a need to employ staff for conducting activities outside Hong Kong, priority should be given to Hong Kong people. In this regard, the VTC has undertaken that where it is necessary to recruit additional staff for the expanded activities outside Hong Kong, and where a Hong Kong person and a non-Hong Kong person are found equally suitable for appointment for certain training or educational programmes, the VTC will give priority to the Hong Kong person.

Members are also concerned about whether any public money will be used when the VTC conducts extra-territorial activities. The policy of the

Government on this is that no subsidy from public sources will be provided to subsidize non-Hong Kong persons participating in the extra-territorial activities to be conducted by the VTC. After considering the views of members, we have agreed to amend the term "Hong Kong person" to "eligible person", so as to reflect the policy intent more clearly.

The Bill also contains two minor amendments to the Vocational Training Council Ordinance. Under the first amendment, the term "disabled person" is replaced by "person with a disability", with a view to conforming to international usage. The second amendment provides for any one of the Council Deputy Chairmen to be the signatory of accounts when the Chairman is absent from Hong Kong or when the Chairman is unable to exercise the powers or perform the duties of a Chairman.

Madam President, I move that the Bill be read the Second time. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Vocational Training Council (Amendment) Bill 2004 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Vocational Training Council (Amendment) Bill 2004.

Council went into Committee.

Committee Stage

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

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 2004

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

CLERK (in Cantonese): Clauses 1, 2, 3 and 5.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendments to clause 4. The amendments are proposed for two purposes. First, they seek to modernize the existing provisions of the Vocational Training Council Ordinance in order to more clearly empower the Vocational Training Council (VTC) to participate in partnership and set up joint ventures, hold shares of companies and make loans, and also to perform its functions under the Vocational Training Council Ordinance through its subsidiary companies. Second, an amendment is proposed to more clearly

reflect the policy intent of the arrangements concerning the use of public resources for extra-territorial activities conducted by the VTC and that is, non-eligible persons will not be provided with government subsidy when participating in such activities. The proposed amendments have been scrutinized and endorsed by the Bills Committee. Thank you, Madam Chairman.

Proposed amendments

Clause 4 (see Annex)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move the amendment to the long title. The amendment to the long title seeks to better reflect the amendments to be made by the Bill on the Vocational Training Council Ordinance.

Proposed amendment

Long Title (see Annex)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Education and Manpower, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 2004

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese):
Madam President, the

Vocational Training Council (Amendment) Bill 2004

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Vocational Training Council (Amendment) Bill 2004 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Vocational Training Council (Amendment) Bill 2004.

MOTION ON ADJOURNMENT

PRESIDENT (in Cantonese): Mr Albert HO, would you please sit down and please do not hurry. Mr Albert HO has requested that pursuant to Rule 16(2) of the Rules of Procedure that this Council do now adjourn for the purpose of debating the following issue: The Chief Executive's Office will submit to the State Council later today a Report, proposing that the Standing Committee of the National People's Congress interpret, at their meeting to be held at the end of April, Article 53 of the Basic Law concerning the term of office of the new Chief Executive.

In view of the fact that the Chief Secretary for Administration has made a statement in this Council earlier, Mr Albert HO has revised the wording of his motion.

In my capacity as the President, I need to consider the urgency or otherwise of this issue. As the Chief Executive's Office will submit a report later today to the State Council, that is, later today, therefore, if Members are not permitted to express their views on the issue today, it would not be too meaningful if they express their views on the issue later. Therefore, I have permitted Mr Albert HO to move this motion on adjournment for his request fully complies with the urgency requirement. The reason why I use the Council time to explain to Members in brief the reason why I have given my approval is because I do not intend to issue a written ruling on the matter.

As this is an adjournment debate, pursuant to Rule 16(2) of the Rules of Procedure on motion on adjournment, the mover of the motion and other Members will each have up to 15 minutes to speak. Members who wish to speak please press the "Request to speak" button.

MR ALBERT HO (in Cantonese): Madam President, I move that his Council do now adjourn for the purpose of debating the move to be made by the Acting Chief Executive to submit to the State Council this afternoon a Report, proposing that the Standing Committee of the National People's Congress (NPCSC) interpret the Basic Law concerning the term of office of the new Chief Executive.

Madam President, the Democratic Party expresses its utmost regret and strongest opposition to the announcement made by the Acting Chief Executive that a request will be made to the State Council asking the NPCSC to interpret the Basic Law again.

This attempt made by the Government at its initiative to request the National People's Congress (NPC) to interpret the Basic Law serves to destroy the statutory mechanism on interpretation of the Basic Law as provided in Article 158 of the Basic Law. This *ultra vires* move has exceeded the legal powers conferred on the executive authorities under the constitutional system. The move has also laid waste to the foundations of the rule of law and judicial independence which account for Hong Kong's achievements. If an interpretation is to be made, the Government of the Hong Kong SAR is sowing the seeds of its own destruction by making this appalling move to undermine the rule of law.

The motion on adjournment is moved today in emergency and with the hope that the Acting Chief Executive would after listening to this eleventh-hour plea call a halt to this attempt to wreck the rule of law in the territory and hence leaving a ray of hope for "a high degree of autonomy" and "one country, two systems" to shine in Hong Kong.

Madam President, in these seven years after the reunification the NPCSC has on two occasions exercised this right to interpret the Basic Law. Great controversies and perturbations are caused in the community. Many people in the legal profession and political circles are very worried and dissatisfied. They are shocked to see that in the eighth year — that is, in the eighth year since the reunification — another interpretation of the Basic Law or another request to the NPCSC to interpret the Basic Law is about to be made.

Madam President, we recall in 1998 after the Government had lost its case in the Court of Final Appeal (CFA) on the right of abode issue, it made a request

at its own accord, through the State Council of course, to ask the NPC to interpret the Basic Law. The result was that the judgement made by the CFA was quashed, hence a severe blow was dealt to the rule of law and judicial independence in Hong Kong.

Now in 2005 on the issue of the term of office of the new Chief Executive, the Government has acted on the instruction of some officials of the Central Authorities and overturned completely the legal position it used to hold at the time when the Chief Executive Election Ordinance was enacted in 2001. The unambiguous meaning of Article 46 of the Basic Law has been grossly disregarded. Article 46 specifies that the term of office of the Chief Executive returned by an election shall be five years for each term of office and no distinction is made on whether the election is one prompted when the office becomes vacant or when the term of office has expired. What the Government is doing is to force through a concept of a by-election prompted when the office becomes vacant before the tenure of the Chief Executive expires. This is creating out of nothing a concept that a Chief Executive returned by a by-election can only serve the remaining term, that is, two years, of the preceding Chief Executive.

Today a Bill introduced by the Government on the Chief Executive election is read for the First time in this Council. This move is an attempt to act on the instructions of officials of the Central Authorities to force through a revision and supplement made to the existing Ordinance. This is adding a proviso and an exception clause to Article 53 of the Basic Law which provides that the term of office of the Chief Executive shall be five years. Such a move is absurd and it is a blatant disregard of the rule of law. If this amendment is passed, this is tantamount to relegating the Basic Law into an ordinary piece of legislation in Hong Kong and this is both sheer folly and great misfortune.

Being conscious of its shaky grounds and flimsy arguments, the Government is terrified to see judicial reviews applied by members of the public on this issue. It is spreading false arguments that judicial review if allowed would prevent the timely selection of a new Chief Executive as provided in Article 53 of the Basic Law.

As a matter of fact, the Government should know perfectly well that its phobia of judicial reviews is totally unjustified. The Court of law would give a priority to any lawsuits on constitutional issues of major significance. Two

days ago and on this morning there were members of the public who lodged an application for judicial review on the Bill to be introduced to this Council today. Starting from today to the beginning of July, we will have exactly three months' time to enable the judicial procedures to run their natural course. We have no grounds to doubt that the Court cannot act efficiently to handle and manage cases so that trial can be conducted and judgement be handed down on time. As some Honourable colleagues have said, should judicial review fail to complete its course on time, no impact would be made on the election. This is because the issue to be dealt with in the judicial review is on the term of office while elections will remain elections and nothing else. This is clearly stipulated in the Basic Law.

Another thing is that the Chief Secretary for Administration points out today that if an interpretation of the Basic Law is sought, it will dispel such challenges and remove the risks. But he does not know that people can still apply for a judicial review. At any time after the interpretation of the Basic Law and before the election takes place, any person may exercise his or her civil rights and request that a judicial review be made on any issue related to this election, regardless of whether or not the SAR Government has the right to submit a report to the State Council and ask it to request the NPC to interpret the Basic Law. And so the SAR Government will have to face a judicial review in such circumstances. That is why even after the Basic Law is interpreted, we may still have to face such challenges.

What the Government fears is actually not judicial review but the meting out of justice by the Court of law, that the judgement passed is something it does not want to see. To avoid facing the disgrace, the Government is inviting the Central Government to intervene and upset the running of the judicial procedures.

Madam President, the legal proceedings instigated this time related to the application for judicial review of the term of office of the new Chief Executive are vastly different from those related to The Link REIT incident. In The Link REIT incident, the restrictions imposed by the listing rules and the insufficient disclosure of information by the Housing Authority (HA) at that time resulted in a scenario that any appeal would stand a chance of being allowed. Since the Government and the HA had grounds to fear that great risk was involved, so in the end they decided to shelve the listing. However, I wish to stress that

irrespective of whether or not the Court rules this time that the term of office shall be two years or five years, the Election Committee should hold the election according to the stipulations found in Article 53 of the Basic Law. I must emphasize that this constitutional obligation shall be binding not only on the Government but on the Court as well. The Court cannot issue an order in disregard of the stipulations in Article 53 of the Basic Law to such an effect that the election cannot take place as scheduled on 10 July.

Madam President, in view of the above we think that the so-called fear in the Government is merely scaremongering and the Government is only trying to spread worrying stories to frighten people. In the opinion of many people from the legal profession, this even runs counter to common sense and it will only serve to mislead the public.

The gravest problem that we face today is that we have an impression that the Government is playing a trick. Under the pretext of asking the NPC to intervene and give an interpretation to the Basic Law, it is impeding the Court of law to exercise its judicial powers independently. This is in effect creating or creating yet another time an extremely undesirable precedent. When this happens time and again, people are left with a feeling that an interpretation of the Basic Law can be made in such a simple and straightforward manner. This is both outright tragic and totally shameful. In our opinion, when the SAR Government led by Mr Donald TSANG, Acting Chief Executive, has done such great damage to the foundation of the rule of law in Hong Kong, it is believed that this will in turn deal a heavy blow to the new Chief Executive and the credibility of his governance.

Madam President, I recall in the 1980s, when Mr Martin LEE and Mr SZETO Wah were serving as members of the Drafting Committee, I worked with some people from the democratic camp, people from the legal profession and the political circles, and together we put in a lot of our time and efforts to examine, design and draft the important provisions in the Basic Law together with these two members of the Drafting Committee day in and day out. We hoped that our hard work would help establish and consolidate the scope of powers in the SAR to make "a high degree of autonomy" a success and that there would be a division of powers in the executive, legislative and judicial branches in the SAR which is unambiguous and intact. We know that the right to interpret the Basic Law and the right to amend it are in fact a point of intersection

of the powers under the two systems. This will be crucial to the successful implementation or otherwise of "one country, two systems". The exercise of these two kinds of powers should serve to manifest the sovereignty of the nation while also guarantee "a high degree of autonomy" in the SAR. Therefore, it is most important that an all-embracing and sound statutory mechanism be used to regulate the exercise of the rights to interpret and amend the Basic Law. We recall Articles 158 and 159 were actually discussed repeatedly and these two Articles as they are today are the result of repeated deliberations and refinement. At that time it was only after careful considerations that the version we have today was accepted.

It is beyond our wildest imagination that the SAR Government can act in such gross contempt of Article 158 of the Basic Law and it is even putting forward a lame argument saying that pursuant to Article 48(2) of the Basic Law, it can exercise the powers for the implementation of the Basic Law and so it is submitting to the State Council a report requesting the NPC to interpret the Basic Law.

Madam President, I am really out of words to describe how our hearts sink and the anger in us. The move made by the SAR Government is in our view — and I repeat it — sowing the seeds of its own destruction and it is wrecking the rule of law with its own hands. We really do not want to see our Government act so despicably. At this moment in time, on behalf of the 25 Members from the democratic camp in this Council, I implore the Government again not to submit the report to the State Council today to request the NPC to interpret the Basic Law. We want to stress again that this mistaken move would mean irreparable damage done to "one country, two systems", "a high degree of autonomy", as well as to the rule of law and independence of the Judiciary in Hong Kong. In future, no one can afford to shoulder such grave responsibilities, not even the Acting Chief Executive or any other government official. It is because there is no way they can do to mend this grave error, not even by resigning or subjecting themselves to public condemnation. I so submit.

Mr Albert HO moved the following motion: (Translation)

"That this Council do now adjourn for the purpose of debating the following issue: The Chief Executive's Office will submit to the State

Council later today a Report, proposing that the Standing Committee of the National People's Congress interpret, at their meeting to be held at the end of April, Article 53 of the Basic Law concerning the term of office of the new Chief Executive."

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

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

MR JAMES TIEN (in Cantonese): Madam President, it is only natural that after Mr TUNG Chee-hwa has resigned from the post of the Chief Executive more than a month ago that consideration should be made to hold a by-election. Members will know that the by-election must be held in six months, that is, within the period from 12 March to 12 September so that a new Chief Executive can be returned. It is also a fact that we only have that much time to do this.

At first we did not notice this and later on we found out that the Election Committee composed of 800 people was formed in July 2000 and the term of office of its members would expire on 13 July this year. Then if we must select a new Chief Executive within this six-month period and while this Election Committee of 800 people still exists, then we really do not have much time. Therefore, the matter must be finished by 13 July.

After making the calculations, the Government is of the view that Sunday 10 July is the deadline for holding this by-election. We must be practical and there is an argument that should be noted and that is, would there be a possibility that a new Chief Executive cannot be selected by 10 July or even after 13 July? If that happens, what can be done about it? The Basic Law is silent on this, for it does not take into account this scenario that a Chief Executive cannot be selected. Then would there be a need to ask the Central Authorities to appoint a Chief Executive? And as the six-month period would have lapsed by that time, would there be a need to form a new Election Committee, that is, the Election Committee composed of 800 people will be returned by election again and that newly returned Election Committee members will be tasked with the selection of a new Chief Executive?

There is one practical problem that we must resolve and that is on the selection of the Chief Executive. The Liberal Party holds the view that this is a most important issue as it would affect our international image, that is, the message we will send home to the international community. If we cannot even select the Chief Executive, then would it mean that there is something wrong with our laws or with the Basic Law, or Annex I of it? That is why the Liberal Party thinks that it is of vital importance that a Chief Executive can be selected. It remains of course, that the selection of a Chief Executive must be lawful. By being lawful we mean that the election laws of Hong Kong and the Basic Law shall be complied with. So the democrats are right when they say that these two aspects must be taken well into account.

On the issue of two years or five years, Madam President, the initial view of the Liberal Party was under existing laws of Hong Kong, should a seat in the Legislative Council become vacant, the election to be held is to return a Member to serve the remainder of the term of office of the outgoing Member. This is the same case with the District Councils. We agree that the election to be held for the Chief Executive is a by-election in nature and the special thing about it is that such kind of by-election is not mentioned in the Basic Law. However and with respect to our election laws, Secretary for Justice Elsie LEUNG had said on the previous occasion when she came here on this point and Secretary for Constitutional Affairs Stephen LAM also gave a reply to questions on this point as well that their initial understanding was that the term of office would be five years, but after discussing the issue with the jurisprudence experts in the Central Authorities in Beijing, they were convinced that the correct view should be that the term of office for the Chief Executive to be returned in a by-election shall be the remainder term of office of his or her predecessor. As for this point, I would leave it to the Government to respond to comments made on it.

We would think, however, that if the view held by the community is that the term of office for every Chief Executive returned in a by-election is five years, instead of the remainder of the term of the outgoing Chief Executive, then it will mean that for every by-election, a new Chief Executive will be returned to serve a five-year term. In the long run and assuming that things shall remain unchanged for 50 years, by 2047, we will have had many Chief Executives and there would have been many terms of office for these Chief Executives, as the total number could be seven or eight terms or even more. If a term of office is five years, two terms will mean 10 years. In the meantime, there is always a

possibility that the office may fall vacant again because of various reasons, such as when a Chief Executive resigns of his or her own accord due to poor health or when he or she loses the ability to discharge his or her duties as the Basic Law provides and so on, the list of scenarios may go on indefinitely. An election may be required for a new Chief Executive selected by a by-election after he or she has assumed office for less than six months, and there is also a possibility that there would be a need to hold an election after four years or so. We think that it would not be a good idea to select a new Chief Executive to serve a term of five years whenever the office of the Chief Executive falls vacant. For in so doing, a Chief Executive of a certain term may not tally at all with the Government of a certain term and the Legislative Council of a certain term.

Moreover, there may also be a need for some new arrangement with respect to the appointment of the principal officials of the Second SAR Government. These principal officials are the three Secretaries of Departments and the 11 Directors of Bureaux. They are all appointed by the Central Authorities. As they are appointed by the Central Authorities, these principal officials would think that under the accountability system they will be accountable for both their words and policies. I believe they used to think that if the policies they formulate proved to be good in practice, this would be a good thing and they can hope to finish their five-year term of office. If halfway through that period, the policies go wrong or if some serious blunders have occurred, with the result that there are public grievances and they are condemned by this Council, these principal officials may think that they cannot stay in office any more. So they may resign or even be dismissed. Now there is a new factor that needs to be considered and that is, these principal officials are appointed by the Central Government on the recommendation made by the Chief Executive, but since the Chief Executive concerned has resigned because of his or her own reasons and his or her office becomes vacant, then should all the three Secretaries of Departments and the 11 Directors of Bureaux stay in their office by virtue of the appointment they receive from the Central Authorities? Or would the matter be different and they cannot remain in office as the Chief Executive who has recommended them has for some reason resigned — that may happen any time, after the Chief Executive has assumed office for one year or four years — then should all these principal officials leave their office together with the Chief Executive? If this is the case, that would not be fair to these principal officials and it would be very hard in future to find people who will assume such posts.

Now the offices of principal officials are either taken up by civil servants or people recruited from outside the Civil Service. If it is said often that civil servants only want to assume such offices for five years and after becoming principal officials they cannot revert back to the Civil Service, if people from the business sector or the professions assume such posts, would these people be prepared to serve as principal officials for five years? The problem is that there is always a possibility that they can only be allowed to serve a year or so, then what would happen to the policies they have formulated? In view of the above, I think that the argument that the term of office of the new Chief Executive should be five years would lead to a host of problems when put into practice.

It remains of course that another view is that if the new Chief Executive returned by a by-election is not allowed to replace, choose and make recommendations on principal officials, and he or she must only take forward existing policies, then the new Chief Executive would also be put in a very difficult position. If it is said that the new Chief Executive is only returned by a by-election and he or she must follow all the policies which have already been formulated by his or her predecessor, then does it mean that the new Chief Executive can only do what his or her predecessor has been doing and no more? Therefore, overall speaking I would think that it would be a more viable option for the new Chief Executive to serve only the remainder term, that is, two years, of his or her predecessor. As a matter of fact, opinion polls show that on this issue of two years or five years, the public is more inclined to support a two-year term.

Madam President, I would like to come back to the question of law. It is found that more members of the public are in favour of the two-year term and they think that it is a viable option. The thing now left to be done is how to proceed with this matter — should we legislate on it? If this is the case, now today is already 6 April, even if work on this begins right now, it will have to be end June — I am sorry, I should have said end May — that this law can be enacted. By then those interested may run for the election. Time is very short. When the legislative attempt is to proceed in this way, we are actually ruling out the possibilities of a judicial review as well.

A Mr CHING has filed an application for judicial review two days ago and our Honourable colleague Mr Albert CHAN says that he will apply for judicial review in this couple of days. It can be seen that these things will happen and they are not assumptions. We may say never mind, let them make their applications and the matter can be left to the Courts after the law is passed. But

we need to watch out for the time. If the case is filed with the Court, the party who loses may appeal and if that party loses again, an appeal may be lodged with the Court of Final Appeal. Much time is bound to be involved, for it is simply impossible to have a case filed with the Court and the Judge will give a judgement right away and on the next day an appeal is made to a higher court of law and then after two or three days the case is brought before the Court of Final Appeal. In any case, a period of time would be required. The Liberal Party thinks that if this is the case, it is very unlikely that a Chief Executive can be selected by 10 July.

In view of the above, we think that it would be much better to solve certain problems now than letting them happen one after another, that is to say, after the law is passed, someone applies for judicial review, the Court will handle the case and then the case is either submitted to the Central Authorities or the Government will ask the Central Authorities to interpret the Basic Law. Madam President, we would think that this question of interpreting the Basic Law, even if it may come a bit later, say in May or June, it is bound to happen. It is better to have it come earlier and tackled sooner than not.

In this connection, since the Standing Committee of the National People's Congress (NPCSC) will convene on 20 April and if this matter is not dealt with on 20 April by the NPCSC, then we will have to wait until the end of June. If the matter is handled only in end June, then our plan to have a new Chief Executive selected by 10 July would have an even slimmer chance of becoming a reality.

Last Friday afternoon the Liberal Party met the Chief Secretary for Administration and we told him what we thought, that is, we have strong reservations about interpreting the Basic Law. Actually, we have strong reservations about any attempt to interpret the Basic Law, for the reason that the public is worried about such attempts and they think that they should avoided as much as possible. This is a point we agree completely. But we have also weighed this option against others, that is, whether or not there are any other workable options without having to interpret the Basic Law. We could not think of any.

Some Honourable colleagues may well say that there can be some other workable options, such as when the new Chief Executive is selected, he or she should not assume office at once or that a new Chief Executive will not be

selected on 10 July. If so, a way has to be found to form a new Election Committee during the timeframe from 10 July to 12 September. Some people say the Basic Law should be amended, but that will mean the 3 000 Deputies to the NPC from all over China will have to convene and pass a resolution on it. This possibility though exists, is never considered a practical one.

So in view of all the above and with reluctance, the Liberal Party support the move to be made by the Government to submit the case to the State Council in the hope that the NPC will discuss this very narrow topic of a two-year term of office. Of course, we are also aware of some remaining problems, such as those on "two plus five plus five" or how some possibilities should be dealt with in future, that is, after six months, what should be done about six months and one day or six months and four days. These two possibilities are not mentioned in Annex I to the Basic Law or any where in it, not in the least. Therefore, with respect to these remaining problems, if they are not dealt with now, what should we do in future? Honourable colleagues from the pan-democratic camp have raised this point and it is a good one. For if the problems are not tackled now, the third Chief Executive will need to be selected in 2007, then the two problems which I have mentioned will crop up again. Can we afford to wait and find a solution after some months or a year or so has lapsed and will this solution include an interpretation of the Basic Law? All these make the public feel very worried.

However and on a whole, the most pressing task for us now is that a new Chief Executive can be selected by 10 July. And the only way which will permit us to do so is to interpret the Basic Law on this extremely narrow topic of a two-year term of office.

I so submit. Thank you, Madam President.

MR MA LIK (in Cantonese): Madam President, we are glad to see the Hong Kong SAR Government is fulfilling its obligations by submitting a report to the State Council requesting the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law. I would think that as the Government is fulfilling this obligation, it is also obliged to explain to the people of Hong Kong that it is part of the rule of law and the legal system of Hong Kong for the NPCSC to interpret laws, including the Basic Law of Hong Kong. We must also know that when in the end we decide not to ask the NPC to amend the

Basic Law in order to dispel uncertainties about certain provisions found in the Chief Executive Election Ordinance, it is inevitable that the NPCSC would have to be called in to interpret the Basic Law.

But we also need to know that for the NPCSC to make such an interpretation of Basic Law, there are three channels that it can resort to. The first one is that the NPCSC will make the interpretation on its own, pursuant to the stipulations found in the Constitution of the People's Republic of China and the organic law of the NPCSC under it. Such stipulations are also found in Article 158 of the Basic Law.

The second channel is for the State Council to request the NPCSC to interpret the Basic Law. Having regard to this point, it would be inaccurate to say as many people have said, that the SAR Government requests the NPC to make such an interpretation. A more accurate way would be to say as the Chief Secretary for Administration Mr TSANG has said today, that the SAR Government will request the State Council and the State Council will request the Chairman of the NPCSC to include such a request into the agenda of the NPCSC for it to interpret the Basic Law. This is in compliance with the Organic Law of the National People's Congress of the People's Republic of China which provides that the special committees of the NPC, the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate may submit to the NPCSC bills and proposals that fall within the scope of its functions and powers. The Council of the Chairman shall decide whether to directly submit the bills and proposals to a meeting of the NPCSC for deliberation. What kinds of law for interpretation are requested by the State Council or to the NPCSC? These are mostly national laws and problems which occur in the ministries, committees, local governments and provincial governments. As the Hong Kong SAR is a Special Administrative Region of the People's Republic of China directly under the Central People's Government, that is, the State Council, therefore, it is only natural that the SAR Government will make a request to the State Council to clarify some uncertainties which appear in the course of enforcing the laws and for which we have to face. The above is the second channel. We know that this is the channel which the SAR Government is presently resorting to and that is part of our existing mechanisms.

The third channel is for the Court of Final Appeal of the Hong Kong SAR to request the NPCSC to interpret the Basic Law. Pursuant to Article 158 of the Basic Law, if the Courts of Hong Kong in adjudicating cases, need to interpret

the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the SAR, and if such interpretation will affect the judgements on the cases, the Courts of the SAR shall, before making their final judgements which are not appealable, seek an interpretation of the relevant provisions from the NPCSC.

I therefore hope that Members of this Council will know that all these three channels are lawful and constitutional. There is no question about which one is right or wrong, or which one is better or worse. All these three are existing channels and it is only when channels other than these three are resorted to in requesting the NPC to interpret the Basic Law that the move made can be said to be wrong.

So with respect to what Mr Albert HO has said earlier that the people have the right to seek a judicial review of the move made by the SAR Government to submit a report to the State Council requesting the NPCSC to interpret the Basic Law, notwithstanding our respect for this right enjoyed by the people, we would have to find out whether these applications for judicial review are made purely for their own sake. This is open to doubts. As the abovementioned three channels would require the NPCSC to interpret the Basic Law in the last analysis, so we would think that irrespective of which channel resorted to, it will be considered constitutional and lawful. Now the SAR Government plans to resort to the second channel and we think this should be supported as it is a workable option to solve the existing problems.

I would like to make another point and that is how this interpretation of the Basic Law by the NPC should be viewed. I do not think we should think that it is the end of the world whenever we talk about the NPC making an interpretation of the Basic Law or things like there will be no rule of law in Hong Kong and Hong Kong is hopeless and no one will come here to invest and so on. We should explain to the people of Hong Kong that this kind of interpretation of the Basic Law is part and parcel of the legal system of Hong Kong. The fact that the SAR Government seeks an interpretation of the Basic Law from the NPC finally is in full compliance with the Basic Law stipulations and it will cause no harm to the stability and prosperity of Hong Kong. We should never be afraid of interpretations being made to the Basic Law, nor should we feel enraged and resist them.

Let us look back at the past two occasions where the Basic Law was interpreted to see whether positive or negative impacts have been produced. The two past attempts to interpret the Basic Law by the NPC have all solved serious problems faced by Hong Kong at that time and they can be considered as moves made to perpetuate stability and prosperity in Hong Kong. So we need to see whether or not interpreting the Basic Law is beneficial to Hong Kong in the first place and we should not oppose to interpreting the Basic Law whenever mention is made of it. I would think that this is the attitude we should hold and this is also a rational one.

The next point is on the stance held by the SAR Government that the term of office of the new Chief Executive should be two years. I would think that this stance should be supported. The most important reason being it is in compliance with the legislative intent. I think Members will find it easy to understand why the term of office of the Chief Executive returned by a by-election to fill a vacant office should be the remaining term of office of the preceding Chief Executive. In the past, there were great disputes concerning interpretations and legislative intent and these were caused by the divergent views on the legislative intent and the literal sense of the provisions. As a matter of fact, such divergences are understandable. What I mean is that we can see clearly what the mainland law experts think of the remaining term of office of the Chief Executive when the office becomes vacant. Of course, the legal profession in Hong Kong also holds a very clear opinion. However, as the Basic Law is a national law, I would think that the views of the mainland experts should be studied in the first place. Then why is an interpretation of the Basic Law sought? It is precisely because the term of office problem is closely linked to the election. Mr Albert HO has said earlier that the election may go ahead as scheduled and the term of office problem can be tackled later. However, personally I would think that if candidates do not even know how long the term of office is, how can they persuade the people to lend them their support? If candidates do not know how long they can stay in office after elected, how can they stand for the election? This is a problem. As to whether or not judicial review would cause any delay to the election or even interfere with it, Members may hold different views. I would think that based on the principle of mutual respect, the legal experts from Hong Kong should listen more to what their counterparts on the Mainland think. Likewise, the mainland experts should hear the views of Hong Kong experts as well. This will help us reach a final understanding of the Basic Law and this would be very helpful to how we are to put into practice the stipulations of the Basic Law in strict adherence to the same.

Mr Albert HO has made a very good point earlier and that is many people, including those from the democratic camp, have put up strenuous efforts in the drafting of the Basic Law. Despite the fact that some people in this Council want to brand themselves as democrats and insist that others belong to a different camp, I would think that our common goal is for the good of Hong Kong and its well-being as a whole. Therefore, with respect to the move made by the Chief Secretary for Administration to submit a report to the State Council requesting the NPCSC to interpret the Basic Law regarding the issue of the term of office of the new Chief Executive, I would think that what we must consider is whether or not this would be beneficial to Hong Kong and favourable to its general well-being and stability. My opinion is that any thing which is good for Hong Kong should be done by the Government and we should bear our responsibilities.

I so submit. Thank you, Madam President.

MR MARTIN LEE (in Cantonese): Madam President, if we look at this issue from the common law perspective, it is actually very clear as to whether the term of office should be five years or the remainder of Mr TUNG's term. The Secretary for Justice, Elsie LEUNG, also stated most explicitly that it should definitely be five years. In reply to the eighteenth written question in this Council on 5 May last year, the Secretary for Constitutional Affairs, Stephen LAM, also stated clearly that any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that in the Ordinance and as the remainder of the preceding Chief Executive's term will contravene the Basic Law. Why could they state this position so categorically? It was because they were well aware that this was not a problem at all. Then why has this become a problem now? It is because the Chief Executive, Mr TUNG, has resigned.

As far as we understand it, the Central Authorities have two problems. Firstly, is Sir Donald TSANG, who will be appointed to succeed the post, absolutely trustworthy? It seems that he is not. The leftists, particularly the traditional leftists, are very angry. Our Honourable Miss CHOY So-yuk has recently made her comments and spoken her mind in the "Letter to Hong Kong". So, on the one hand, the Central Authorities plan to put Mr Donald TSANG on probation for two years, although the probation period for other government posts is one year, and on the other, they come up with this politically expedient measure of setting the term of office as two years to pacify the leftists.

I, therefore, hope that the Secretary for Justice, Elsie LEUNG, can answer this question: Who proposed all of a sudden that it should be the remainder of the predecessor's term? If it was the Central Authorities, then the problem will rest with the Central Authorities. Let him who tied the bell on the tiger take it off. In that case, the SAR Government should not meddle in it and should leave it all to the Central Authorities for handling. But if it was the proposal of the SAR, then I really wish to know why. The Government has all along stated firmly that the term of office is five years and that there is no exception to it. Why is there this problem now?

In the statement issued by Chief Secretary Donald TSANG today, he clearly stated in the 14th paragraph that "If only there were an option which could obviate the need to seek an interpretation and which could resolve the problem, I would have gladly adopted it." When he made clarification, I asked him a question about the 12th paragraph in which he mentioned that some people had proposed to amend the Basic Law. He stated two points in his clarification. First, the Mainland, particularly the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPCSC), has expressly stated that the Basic Law has a clear system or design regarding the term of office of the new Chief Executive to fill the vacancy in the office of the Chief Executive. It is said that the legislative intent is clear, that the difference in opinions arises from different understanding of the Basic Law, and that the issue can be resolved through an interpretation of the Basic Law. It seems to imply that, as stated by the Central Authorities before, the Basic Law has to be amended if there are mistakes and interpreted if there are none. This, we would certainly consider unacceptable. If that is the case, why does Article 159 of the Basic Law not provide that the Basic Law shall be amended if there are mistakes?

Chief Secretary Donald TSANG did not clarify the other point, although he said that he was aware that under Article 61 of the Constitution, an ad hoc session of the National People's Congress (NPC) may be convened at any time the NPCSC deems it necessary. Since that is possible, why is this not done? If it is because of the costs, I believe many Members of this Council are willing to shoulder all or half of the costs required. The money spent is worth it, in order to protect the legal system of Hong Kong. The Government can give away benefits amounting to hundreds of millions of dollars to some tycoons without thinking for a second. So, if it is because of the costs, we can certainly solve the problem. This is already a good way for Chief Secretary Donald TSANG to solve the problem. But to our regret, this option is not adopted.

There is actually enough time for us to solve the problem by amending the Basic Law. The NPCSC can put forward a proposal at end April and then convene an emergency session of the NPC. There will be two months' time. Why is it considered impossible? Regrettably, as the Secretary for Justice, Elsie LEUNG, has gone to the Central Authorities, probably in Beijing, I believe, to meet some legal experts and she was brainwashed by other people's river water. After she returned to Hong Kong, she then poured the water that she took from a muddy river into the crystal clear water from the well of common law, muddling up our legal system now. The Secretary for Justice has failed to do her part to defend the Basic Law. On the contrary, she has seriously damaged our legal system underpinned by the common law.

The provisions of the Basic Law are very clear. Under Article 8 of the Basic Law, the laws as practised in Hong Kong, that is, the common law and rules of equity previously in force in Hong Kong shall be maintained. No provision in the Basic Law, not even in Article 158, mentions that mainland laws shall be adopted to interpret the Basic Law if interpretation is sought. If we do this, it will, in fact, be very dangerous. If Article 46 is interpreted in accordance with the mainland laws, what about the other articles? Should they also be interpreted in accordance with the mainland laws? Article 27 of the Basic Law, for instance, protects our freedom of the press. But if it is interpreted in accordance with the mainland laws, we will not be able to criticize the Communist Party, because no one in the Mainland will do this and hence, it is an exception. Article 32 of the Basic Law provides that residents of the SAR shall have freedom of religious belief; Article 141 of the Basic Law also states clearly that the Government will not restrict religious activities which do not contravene the laws of the SAR. But if the new Pope wishes to visit Hong Kong, the interpretation could be that he cannot come to Hong Kong for the reason of Taiwan.

Insofar as the Basic Law is concerned, the most important assurances from the common law have all vanished into thin air. During an interview with the Radio Television Hong Kong this morning, I said that if every article of the Basic Law is subject to interpretation by the NPCSC, we might as well take the opportunity of the 15th anniversary of the promulgation of the Basic Law to seek an interpretation of all the 160 articles. Of course, I do not really mean it. But they have now been interpreted one by one, and an interpretation is sought when there is a problem and when foul play is intended. If this is allowed to go on, will foreign investors still believe in our legal system? So, I hope the Secretaries of Department can think about this clearly. If the Central

Authorities know that an interpretation of the Basic Law will cause great discontent among Hong Kong people, and the Secretaries of Departments will not wish to make an interpretation either, as they will not wish to be the "bad guy", then why is the SAR Government willing to become the "bad guy" by requesting the State Council to ask the NPCSC to interpret the Basic Law?

Chief Secretary Donald TSANG said in the 15th paragraph of his statement that he had carefully reflected on the matter and the circumstances. I asked him why, after carefully reflecting on the matter and the circumstances, he did not state in the report in express terms to tell the State Council that the opinion in Hong Kong is very clear and that is, the term of office is considered to be five years. So on this issue, we must look at it from the common law perspective and for this reason, Chief Secretary TSANG cannot and will not seek an interpretation from the NPCSC via the State Council directly or indirectly to reinterpret five years as two years. He can also state in the report that if the Central Authorities see this as a problem and insist on their own way, the Central Authorities can interpret the Basic Law by themselves. This can at least pass the responsibility onto the Central Authorities. In fact, I have said before that there are three different ways for the Basic Law to be interpreted. In our view, the way that will do the least damage to our legal system is resorting to the Court, so that the Court of Final Appeal can refer the issue to the NPCSC for interpretation under Article 158 para 3 of the Basic Law. The second way, which is more damaging, is for the NPCSC to interpret the Basic Law on its own initiative. The third way, which is the worst option being adopted now, is for the SAR Government to request the State Council to invite the NPCSC to make an interpretation.

Mr Albert HO has spoken of the pain that we had suffered when drafting the Basic Law — of course, I do not mean that we had no meal every day. But I remember that when we discussed the interpretation of the Basic Law, we had argued for a long time indeed. My position at the time was that only the Court can interpret all the laws of Hong Kong and that an interpretation by other parties will be detrimental to our common law. A member of the Drafting Committee from the Mainland disagreed. He considered that the Constitution has conferred on the NPCSC the power of interpretation and so, the NPCSC has the duty or power to interpret national laws or basic laws, including the Basic Law of Hong Kong. The mainland member further stated that this was irrefutable, for this was already provided for in the Constitution. He said that para 1 was unarguable. It provides that "The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress" and so,

Hong Kong people could only strive for the NPCSC conferring this power on the Courts of Hong Kong. Therefore, para 2 provides that "The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region."

On this point, I had actually worked for it for a long time, because if the interpretation has to be made by the NPCSC, as cases in the local Courts often involve the power of interpretation of certain provisions of the Basic Law, will the NPCSC attend the hearing on every such occasion to make an interpretation? Fearing that I might continuously pursue this issue, members from the Mainland agreed to confer this power on the Courts of the SAR, but their power is confined to provisions falling within the limits of the autonomy of the SAR. But I still objected and asked: What about provisions outside the ambit of the SAR? Should the NPCSC come to Hong Kong to make an interpretation all the time? So, they further budged and in para 3, it is provided that "The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases". But in order to play safe, they added "However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region."

On this point, we were also told that we should prevent the Court of Final Appeal from committing mistakes, and that for issues involving diplomatic relations with foreign countries or provisions in the Basic Law involving diplomacy, a wrong judgement by the Court of Final Appeal may undermine, say, China's relations with the United States. So, under such circumstances, the Court of Final Appeal should not make an interpretation and that the power of interpretation shall be vested in the NPCSC.

Madam President, since such cases can be initially tried in Magistracies and even in the Court of Appeal, why should they be surrendered only when they have reached the Court of Final Appeal? If the Government's argument can stand, it would suffice to only set out para 1, which provides that "The power of

interpretation of this Law shall be vested in the Standing Committee of the National People's Congress". Then the NPCSC can exercise this power whenever it likes, and the SAR Government can also seek an interpretation anytime. In fact, there is another reason why the SAR Government should not seek an interpretation from the NPCSC. It is because the SAR Government will be one of the litigants. Now, a Hong Kong citizen or a Member of this Council may institute proceedings against the SAR Government. How can a litigant unilaterally seek an interpretation from the NPCSC to solve this problem? In the event of disputes between major property developers and ordinary citizens over the purchase of property and when the Basic Law is involved, can the major property developers unilaterally exert their influence to seek an interpretation from the NPCSC to settle the disputes? So, this is something that we must never do, come what may.

Finally, Madam President, we must understand that every time when the Basic Law is interpreted, it will invariably do damage to the common law system. In fact, I do not intend to comment on the integrity of Chief Secretary Donald TSANG or the Secretary for Justice, Elsie LEUNG. I can accept that they are good people, but good people may at times do bad things. What Hong Kong needs now is not a good person to be a Secretary of Department, a Director of Bureau or the Chief Executive. We need a person of integrity who is courageous and daring to fight for the interests of Hong Kong people, defend the common law and uphold the Basic Law to serve the people of the SAR.

Thank you, Madam President.

DR YEUNG SUM (in Cantonese): Madam President, at a luncheon meeting recently, Singapore's Minister Mentor, Mr LEE Kuan-yew, made comments on or drew a comparison between the former Chief Executive, Mr TUNG, and Chief Secretary Donald TSANG. He said that Mr TUNG was a nice person, but not a street fighter and so, he did not know how to deal with public opinions or face the media. He did not comment on Chief Secretary TSANG directly. He only said that he was younger and that he had a different personality and character.

Perhaps I should add a few points. Chief Secretary Donald TSANG, by displaying just some of his abilities this time around, has opened up the eyes of all Hong Kong people. He may not be a street fighter, Madam President, but

he certainly is a very seasoned civil servant good at handling public opinions, or a principal official who started out as a civil servant. He is well versed in the operation of the Government, and has handled public opinions very tactfully since he took up the office of a principal official.

At an public meeting on the constitutional system recently, Dr KUAN Hsin-chi of The Chinese University of Hong Kong said that the principal officials of the Government had been more and more skillful in leveraging on public opinions. He said that they were good at using public opinions or "playing the public opinion card" to defend the Government. But he also cautioned that public opinions were unpredictable and even uncontrollable. While they could work in the Government's favour, they could also work against it.

Let me state this once again openly. The Government, particularly Chief Secretary Donald TSANG, is very good at handling and making use of public opinions. He had made plans for this statement today step by step, and stated that the SAR Government would seek an interpretation from the NPCSC through the State Council under Article 48(2) of the Basic Law. The plans that he had made include meeting different political parties, followed by an official announcement of the Government's plan today. So, I think members of the public should have an in-depth understanding of Chief Secretary Donald TSANG. He is a very seasoned civil servant and a very experienced principal official. It is certain that basically he will safeguard the implementation of "one country" from the Central Authorities' standpoint. But can he achieve "a high degree of autonomy", uphold "one country, two systems", protect the rule of law and take democracy forward for Hong Kong? I personally have great reservations about this.

With regard to the approach adopted by the Government on this issue, as colleagues of the Democratic Party, Mr Albert HO and Mr Martin LEE, have said, we feel very sad and very regretful, and we strongly oppose this approach adopted by the Government. As mentioned by Mr Martin LEE earlier, there are basically three ways for the Basic Law to be interpreted by the NPCSC. Before the case is passed onto the Court of Final Appeal for it to make a judgement under Article 158, since electoral legislation and the relationship between the Central Authorities and the SAR are involved, the Court of Final Appeal is required to seek an interpretation from the NPCSC before making the final judgement. Now that a member of the public has filed a case in Court, and our colleague, Mr Albert CHAN, has also instituted the legal proceedings

concerned. If an interpretation of the Basic Law is necessary, this approach will be most consistent with the Basic Law.

Besides, the NPCSC can, of course, interpret the Basic Law on its own initiative. Mr MA Lik also said earlier that it is appropriate for the Government to invoke Article 48(2). Article 48(2) provides this: "To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region". Chief Secretary Donald TSANG said that he could not enforce the law on the election of the Chief Executive and so, he must seek an interpretation from the NPCSC through the State Council. Madam President, Article 48(2) does not provide that the Government can seek an interpretation from the NPCSC through the State Council. If he can seek an interpretation from the NPCSC through the State Council on the ground that he cannot fulfil the responsibility of implementing the Basic Law, does it mean that the Chief Executive can amend all the laws on his own on the ground that he cannot implement these laws? That would be very dangerous.

We have handled so many pieces of legislation in the Legislative Council, and we do interpret the legislation very clearly according to their literal meanings. How can we suddenly add some meaning or interpretation, change the context and to make an entire piece of legislation completely different? Article 48(2) does not mention at all that a request for interpretation by the NPCSC can be made to the State Council on the ground that enforcement is deemed impossible. But Chief Secretary Donald TSANG is officially using this as a reason and this has indeed opened up our eyes. If this reason can stand, it is basically unnecessary for us to place trust in any provision of the Basic Law because the wording of the provisions can be interpreted to take on another meaning when the Government holds a different view.

Now, it is the Acting Chief Executive, Chief Secretary Donald TSANG, who has destroyed with his own hands the system of the rule of law in Hong Kong, subjecting the legal system of Hong Kong to an enormous impact. Regarding the three ways of interpretation, I do not see why the worst option has to be chosen. It now turns out that he has been working painstakingly for it. Madam President, as he said in the 11th paragraph of his speech that it is quite possible that we would not be able to elect a new Chief Executive as scheduled on 10 July. Mr Justice WOO Kwok-hing of the Electoral Affairs Commission also stated that under the Chief Executive Election Ordinance, the election will

certainly be held on 10 July unless an injunction is issued by the Court, which, as he subsequently said, would rarely happen. LIAO Cheung-shing, a Member of the Executive Council, also mentioned that the Court would generally give more consideration to the time factor when dealing with constitutional issues and so, he does not see why the Court will issue an injunction in this case.

Therefore, why did the Acting Chief Executive say that it might be possible that a Chief Executive could not be returned on 10 July? Mr James TIEN and Mr MA Lik even said earlier that it would be an international laughingstock if a Chief Executive could not be returned and hence a political vacuum would emerge in Hong Kong. In fact, why does the three of them consider that the election cannot be held on 10 July?

The Bill relating to the Chief Executive Election Ordinance under Members' deliberations is tabled for First Reading today and amendments will be proposed to include a by-election mechanism. In the course of the scrutiny of the Bill, we all knew that after a date is basically set, the election has to be conducted. If, in the future, the Court makes a judgement ordering a different term of office, this can still be handled then. But insofar as the date of election is concerned, I do not understand why the election cannot be conducted on 10 July. However, the SAR Government is seeking an interpretation of the Basic Law to the detriments of the rule of law precisely on this very ground.

As we have said in our meeting with Chief Secretary Donald TSANG, how possibly can the Democratic Party prevent the election of the Chief Executive from being held on 10 July? From our experience and understanding of the Chief Executive Election Ordinance, we do not see why the election cannot be held on 10 July. Even though there may be changes in the term of office, that would be something to be dealt with only afterwards. We do not see any reason for the Court to stop the election from being held as scheduled. Making such an important decision on such a flimsy ground has dealt a heavy blow to the legal system of Hong Kong. I think this is unforgivable and utterly regrettable. Today is a very sad day for the rule of law in Hong Kong, it is a day which has brought disgrace to the rule of law in Hong Kong.

Mr MA Lik said earlier that a merit of seeking an interpretation of the Basic Law was that whoever wished to run in the election of the Chief Executive would know whether the term of office in store for them would be two years or five years. In fact, can an interpretation of the Basic Law fully dispel all the

doubts and concerns? Should it be "two plus five" or "two plus five plus five"? The Secretary for Justice, Ms Elsie LEUNG, once said that it should be "two plus five plus five", which means 12 years. But she said later that it might be "two plus five", and two terms would be all. These two terms, which include the remaining two years, would be seven years altogether at most. Even Prof WANG Zhenming of the Law Faculty of the Tsinghua University has changed his view from 12 years to seven years. Different conclusions were drawn at different times, and laws were interpreted differently at different times.

The Secretary for Justice, Ms Elsie LEUNG, said that while she did not hold this view back then, she had to face this mistake since she did not have a thorough understanding of it. She said that since she had now understood the views of the legal authorities on the Mainland, the SAR Government had no reason to continuously cling to its previous view knowing that it is wrong. It is a very important virtue to rectify one's mistake after knowing it and that a responsible government should rectify its mistake after knowing it. The problem is that if the Government can make changes to anything that it has written down in black and white to fit in with the changing times and circumstances, can the Basic Law be trusted any more? If its interpretation will change because of a different environment and different political considerations, will the Basic Law gain any international recognition? This is, in fact, a very serious problem. The Democratic Party has conducted a survey, Madam President, and it is found that members of the public actually may not be very concerned about whether it should be two years or five years. The result does not show a big difference in respect of the two options, as one of the options has a support rate of some 40% whereas the other has some 50%. They do not quite understand why the democratic camp has to waste so much time arguing about this. A group of people from the Democratic Party will stage a petition at the Government Secretariat at four o'clock this afternoon, and lawyers from Article 45 Concern Group will take some actions later to express their dissatisfaction. But members of the public may not know exactly why we have to argue about this.

The Secretary for Justice, Ms Elsie LEUNG, has written an article recently to state that the term of office should, in fact, be two years. This is because many people are suggesting that the number of members of the Election Committee should increase from the present 800 to 1 200 or 1 600 in 2007. Does the democratic camp not wish to see the Election Committee making this

progress? Increasing the number of members of the Election Committee from 800 to 1 600 is in any case better than the present. People ask why we do not think the same way. Some commentators asked: What is going on with the Democratic Party? If the election is held to return a Chief Executive to serve a term for two years, there will be a new Election Committee formed to start the game all over again. In fact, the Secretary for Justice, Ms Elsie LEUNG, and the relevant commentaries have been looking at this issue from the angle of political interest. But the pan-democratic camp, including the Democratic Party, does not wish to look at it purely from the angle of political interest.

However, the Government and the Central Government have considered this precisely from political interest. They find it very strange as to why we do not conform to their wish. It is because we think that it is written very clearly in the Basic Law that the term of office for every election is five years. The SAR Government could have amended the Basic Law for the purpose, but it has chosen to seek an interpretation out of all the options. Even if an interpretation of the Basic Law is sought, among the three options there are still choices that are not too bad and yet, but the worst one is chosen. According to Chief Secretary Donald TSANG, the "safety coefficient" of the chosen option is the highest. But is that really so? Does the Government think that there will be no judicial review after the Basic Law is interpreted? There will still be such proceedings, for many doubts have not yet been dispelled. Many doubts will remain unresolved even after the Basic Law is interpreted. Proceedings for judicial review will appear one after another. To avoid judicial review, it is best to amend the Basic Law, so that a complete overhaul of the system can be conducted according to the procedures to resolve all doubts and to set out in express terms the mechanism of by-election. The District Council Election Ordinance and the Legislative Council Election Ordinance have, in fact, provided for the mechanism of by-election. Just that there is no such mechanism for the Chief Executive election.

With regard to the decision made this time, I think Chief Secretary Donald TSANG has already made a lot of efforts. But I am afraid that his efforts will set a very bad precedent. No one would have thought that before he has formally assumed the office of the Chief Executive, he would lead the entire Government to wreck the legal system of Hong Kong. Today is indeed a very sad day for the system of law in Hong Kong. I have never expected that a new head of government who has yet to assume office formally could have made such

a ruthless and swift decision to deal such a deadly blow to the legal system. This is indeed very shocking and terrifying.

Madam President, I so submit.

MS EMILY LAU (in Cantonese): Madam President, I speak in support against Mr Albert HO's motion. I can go home if I support it. So, I mean I am against it, Madam President.

Madam President, in fact, it should not be Mr Albert HO who proposes this motion. As I have proposed to the authorities many times, whenever a major decision has to be made — even in The Link REIT incident, Mr Albert CHENG should not be the person who proposed a motion for an adjournment debate to be conducted — there is every reason for the authorities to properly propose a motion for debate in the Legislative Council, in order to state clearly their intention to take this step and enlist support from the Legislative Council. However, the authorities have refused to do so. Worse still, they have acted furtively and secretively. The authorities are here in the Legislative Council today, but on Monday and even yesterday, reporters were still asking questions about the intention of the authorities. Everyone was speculating. I told the press that I did not know why the authorities had to act so secretively. Since they will come to the Legislative Council, they should do it in an open and aboveboard manner by telling the press and everyone about it. As we have mentioned in the Legislative Council, the House Committee and also on many occasions, we hope that everything will be done after our discussion with the authorities. But today, we are told of this decision out of the blue. So, Madam President, this is much to be regretted.

On Monday, Madam President, 25 Members of the Legislative Council wrote to the Acting Chief Executive. We wrote to him in that capacity. He promptly gave us a reply, telling us that he did not have time to meet with us. In the letter, we stated our objection to the interpretation of the Basic Law by the NPCSC and we also put forward some arguments. We expressed the wish for a meeting with him before the meeting of the Executive Council. But he promptly replied on the same day, saying that no meeting could be arranged for he did not have the time to meet with us. At around 10 o'clock this morning when I was in a meeting of the Panel on Education, the Chief Secretary paged me. I replied, and I thought that he wished to give an advance notice to me, as

he would seek the approval of the President to make a statement in the Legislative Council. I put forward our different view to him again at that time and mentioned the letter again. I said to the Chief Secretary that as mentioned in the letter, we wished that he could meet the Members. He said that he had already met all the Members. I said that we had met only once and insofar as this major issue is concerned, it would not be considered too much even if he had 10 meetings with Members over it. I asked him why he refused to meet us again after just one meeting. He considered that he had already listened to all our views. But if Members feel that we have already said all that we wish to say, we would not have taken all the trouble to raise this issue again and again in the letter. So, I asked him whether he would spend more time communicating with Members. I also told him that in our earlier discussion on the medium of instruction in the Panel on Education, our views were poles apart from each other, and I also proposed to Chairman Michael TIEN that he should meet parents more, especially those who hold an opposition view. Communication should be fostered to see if a consensus can be reached. That was what I told him.

Madam President, I think it is much to be regretted, because on this major issue, Members have time and again requested more meetings with the Chief Secretary but still, no meeting can be arranged. Today, while we thought that we could have an immediate opportunity to debate the issue, the letter to the State Council has already been prepared. Madam President, I think the letter has even been submitted to the State Council. In other words, it will be useless no matter what we said. The matter has been passed onto Beijing. No wonder some people said that as President HU Jintao acts swiftly and decisively and Donald TSANG also acts swiftly and decisively, the duo will really work in harmony. But can they win the support of the people in making this move so swiftly? Madam President, in his speech earlier, the Chief Secretary mentioned that the people were very unhappy about it and that they did not wish to see this happen. He said that many in the community still hoped to avoid as far as possible seeking an interpretation to settle the matter and he was aware that seeking an interpretation of the Basic Law was not a most popular decision.

Earlier on Mr MA Lik, commended on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), the SAR Government for making commitments or willing to shoulder this responsibility. He opined that he should explain to the public that this epitomizes the rule of law and that the interpretation of the Basic Law is part of the legal system. Madam President, I

do believe that if the Chief Secretary is here in the Chamber, he would agree that he has failed to do this. Over the years, after the transfer of sovereignty, we have been dealt a blow as a result of the two interpretations of the Basic Law. The worries in the hearts of the people have never been dispelled. Perhaps Mr MA Lik, after lavishing so many praises, should tell us why this is unavoidable. If this is such a good approach, why are the people not convinced? Why is he here to tell us that this is actually not the best option and that this option is chosen only out of no choice?

Madam President, we also heard Mr MA Lik talk about three mechanisms for the Basic Law to be interpreted. The first and the third mechanisms are provided for under Article 158 of the Basic Law. But I do not see that there is a mechanism whereby the State Council can be requested to ask the NPCSC to interpret the Basic Law. Mr MA Lik may have learned how an interpretation of the Basic Law is sought. Why are we so worried about an interpretation of the Basic Law? Madam President, to put it simply, the so-called interpretation of the Basic Law actually means "saying whatever one feels like to say". That is, when somebody says that it has to be done this way, then it will be done this way, and that is what interpretation means. Now that Mr MA is also saying whatever he likes to say. It would be best if Mr TAM Yiu-chung were in the Chamber now. Yesterday, he announced on behalf of the Government that the Government would come to the Legislative Council today. He had known this earlier than other people. Would he please explain to us where in the Basic Law can these three mechanisms be found? Many colleagues mentioned earlier that it was not viable under Article 48(2). Of the three mechanisms proposed by Mr MA Lik earlier, I can understand the first and the third mechanisms. But where does the second mechanism, that is, putting a request to the State Council for the interpretation of the Basic Law, come from?

So, the problem now is that the people of Hong Kong, the international financial community and also the international community all feel very frightened. Recently, many visitors of the Legislative Council asked us why we were so worried. They asked whether or not it was because many things were not within our control. When whatever they say becomes the rule and when Hong Kong is entirely unable to put up any opposition, Madam President, that will be a big problem. In his speech earlier, the Chief Secretary said that if we failed to return a Chief Executive on 10 July, that would cause Hong Kong residents and the international community to cast doubts on the determination and ability of the SAR to implement the Basic Law.

Madam President, there are already doubts now. Now that they even have doubts about the SAR's "understanding" of the Basic Law, not to mention its implementation. Why? It is because there can be an about-turn concerning what has been said. Why is there an about-turn? Not only Secretary Stephen LAM and the SAR Government have made an about-turn. Even other political parties and factions have made an about-turn as well. Earlier on I asked the Chief Secretary: Have we been holding the same view throughout? Even in February, Secretary Stephen LAM said in a radio programme that he was not the first to say that it should be five years when he replied a question, and that Secretary Michael SUEN had said that it should be five years during the drafting of the Chief Executive Election Bill. Nobody was against this at the time and so, this view was endorsed. Last year, Secretary LAM said in reply to a question on behalf of the authorities that it is undoubtedly five years. At that time, I did not hear the DAB or the Liberal Party say anything.

The Chief Secretary said earlier that many people disagreed. That was the situation only in March this year. When problems emerged after the office of the Chief Executive became vacant, some people on the Mainland said something and then, there were people saying things in Hong Kong. But there was no problem before that. Had there been problems, they would have been raised for discussion long before. So, I must ask: Why did you not have the moral courage to tell the Central Authorities that views in Hong Kong are, in fact, unanimous? The views of the legal profession, the Legislative Council and the community are all unanimous. Why do we not handle this issue using a proposal acceptable to a common law jurisdiction? Regardless of who will assume the office of the Chief Executive, we hope that he will have such moral courage and noble character to state the case to Beijing. But this is not so in reality. Other people have made an about-turn. So have we.

What did Mr MA Lik also say earlier? He said that he supported making an about-turn because we must listen to what the Mainland had said. He added that he supported a two-year term of office. Madam President, he said that he supported a two-year term of office. Why does he support that the term of office should be the remaining two years? It is because this is consistent with the legislative intent that a by-election has to be held when the office of the Chief Executive falls vacant. He said that on this issue, it would be most important to first study the views of the legal experts in the Mainland. Madam President, the so-called "one country, two systems" means that we have our own system. Not

that we should ignore "one country", but there must be room for our system, that is, the common law system, to be put into practice. If the opinions of legal experts on the Mainland must be followed whenever there are controversies, "two systems" will vanish into thin air. This is particularly so as our opinions were quite similar at first. This was the case even at end February. It is only now that our views are not similar.

So, having listened to Mr MA Lik's speech, I really felt very frightened. He said that the people were terrified and angry when it comes to interpreting the Basic Law. Let us now discuss this issue calmly. This incident has dealt a blow to the rule of law in Hong Kong. In his speech the Chief Secretary said that he felt the concern of the public. Then why should we still insist on doing this? Mr James TIEN said that our failure to return a new Chief Executive by 13 July would lead to very serious consequences. We all understand that not being able to return a Chief Executive is certainly a serious problem. But will it be the end of the world? It is already provided that this must be done within six months after the office has become vacant. Some people said that it will surely be the end of the world because the Election Committee will be disbanded on 13 July for its term of office is only five years.

Frankly speaking, during our meetings with the authorities, Members were very worried because if the Chief Executive cannot be returned on 10 July, it may be attributed to a host of factors. Madam President, as mentioned by Members, judicial review will not pose any obstacle to the authorities in their work. But the Government has refused to listen. Nor has it put forward strong justifications. Mr Justice WOO Kwok-hing also said that there might be a typhoon in Hong Kong then and so, he had booked the venue on the 10th, the 11th, the 12th and the 13th (perhaps it is because we have lots of money that the venue at the Hong Kong Convention and Exhibition Centre has been booked on all of these days). His intention was that the vote must be taken and that the task must be accomplished successfully. But there is another possibility which we have discussed. That is, even though a candidate is lucky enough to obtain the prescribed number of nominations, if he or she dies, Madam President — not that you die, Madam President; I mean the candidate dies, and as you have said that you will not run in the election, this absolutely will have nothing to do with you. And a candidate may also be disqualified, in which case the whole thing will be screwed up. What will happen then? The entire election may come to a halt and has to start afresh again.

Knowing that this could happen, Justice WOO has declared that first, if a new Election Committee has to be returned, that would make it impossible for the election to be held before 13 July. How long does it take to return a new Election Committee? He already told us that it would take four months, which means that the election could not be held before September. So, after thinking about this for the Government, colleagues suggested that the Election Committee be returned earlier. But the Secretary said that it would not be viable, for there would be constitutional reforms in 2007 and this "bird cage" might have to be enlarged a bit and by then. What should we do about this Election Committee? Our colleagues said that it did not matter because a new piece of legislation could be enacted then to disband this Election Committee and to return a bigger "bird cage".

So, Madam President, our colleagues have, in fact, put forward many views, but I do not know whether or not the Government has listened to these views. Now that they are putting forward something to make their arguments sound plausible. The legislation was enacted by us together. Last year, I asked a question in this regard and was told that it should be five years. Nobody had voiced opposition at the time. Now that the "Grandfather" has said something or some people have said something and so, people have danced to the music. What should we do?

Madam President, I think this really gives us the impression that the issue has been handled very frivolously. We had a meeting with Chief Secretary Donald TSANG last week. In fact, before our meeting with him, the media already said that we were just putting up a show. To be honest, who wants to put up a show? Madam President, we surely cannot win the best actor or actress award, but some people may win this award. Members of the public are not concerned about who will win this award. They do understand that the situation is very difficult and complicated. But what the people wish to see is that the person concerned, regardless of the post he holds, will come forth to give an account or explanation to the community very sincerely and candidly, rather than putting forth a proposal which has long been placed inside the drawer and just finding someone to read it out once again as a mere formality while everything will in fact remain intact and work is carried out as originally planned. What has made the situation worse is that many Members do wish to have more meetings. We do not intend to put up a show. We only wish to talk more about it and put forth some justifications, difficulties and views. But a

meeting cannot be arranged between us. Under such circumstances, Madam President, how can the Legislative Council accept this?

Some people may wish to institute proceedings for judicial review. Some may take other actions, and some wish to stage a petition or take other courses of action. I only hope that all these will be done in a peaceful and rational manner. These people do not intend to stir up any trouble. The problem that we face now has given people a feeling — of what? Madam President, it's a feeling that they have no other choice. They know that something is bound to happen, and that may contravene the Basic Law. Those people who wish to have their voices heard have shouted themselves hoarse, but their voices are not heard. The only channel that remains is the Court. I know that some people in the Court do not like people bringing political issues to the Court. But this does happen in other places. In the United States, it is the Court which decides who will be the President in the end. So, if the people wish to do this, we must show understanding and sympathy to them. We must not sling mud at the public. We should even assist them, because they have already been pushed to the wall.

Madam President, we almost know the result today. I hope that the Central Government will listen to the wish of Hong Kong people. I believe it is precisely because the Central Government has heard the voices of the people that TUNG Chee-hwa can no longer remain in his office. Do we have to do something more damaging to the system of Hong Kong and the rule of law in Hong Kong? So, not only should the SAR Government listen to the views of the public at the final moment. I wish all the more that the Central Government will listen to the aspirations of the people.

MR ANDREW CHENG (in Cantonese): Madam President, to express my views I will focus on the viewpoints stated by the Chief Secretary for Administration on this issue earlier in the Legislative Council in response to Members' repeated questions and requests for elucidation as well as the relevant paragraphs in his statement.

Madam President, first of all, in reply to Members' repeated questions, the Chief Secretary for Administration has stressed time and again that the purpose is to seek an authoritative interpretation in law. However, he also admitted that as a matter of fact, the Government does not have the power to seek an

interpretation of the Basic Law by the NPCSC. So, he said in the end that a Report would be submitted to the State Council on this issue. In any case, the objective of this report is obvious and that is, as stated by Mr Albert HO in today's motion, it aims to seek an interpretation of the Basic Law by the NPCSC, and this is not to be disputed.

If this is really the case, basically, as far as we can see, concerning the room for seeking an interpretation of the Basic Law under Article 158 of the Basic Law, the Chief Secretary or the Secretary has been unable to put forth any justification even to date to show that the Government does have this power to seek on its own initiative an interpretation of the Basic Law by the NPCSC on provisions of the Basic Law which are ambiguous or controversial. The Chief Secretary put forward a very absurd reason today. In reply to questions from Mr LEE Wing-tat and me and even from Mr Frederick FUNG, he repeatedly cited Articles 43 and 48. In particular, he cited Article 43 which provides that "The Chief Executive shall represent the Hong Kong Special Administrative Region", and Article 48(2) which provides that the Chief Executive is responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region. Then he added that owing to operational difficulties, that is, as he sees difficulties in respect of Article 53, he, therefore, proceeded to seek an interpretation of the Basic Law by the NPCSC on this ground.

This is intended to confuse and mislead. We asked the Government whether it had the power to seek an interpretation of the Basic Law, but the Government replied that it was facing difficulties in implementing the Basic Law and must, therefore, seek an interpretation by the NPCSC. Our question is about whether or not the Government has this power, not about what problems the Government is currently facing. The Government faces numerous problems every day, and if the Government uses this as a reason, then whenever it faces problems in the implementation of the Basic Law in future, such as the enactment of legislation on Article 23 of the Basic Law two years ago, or civil service pay cut in future, and even when facing some very sensitive problems relating to the freedom of speech, academic freedom, freedom of religious belief, and so on, the Government will think of seeking an interpretation of the Basic Law by the NPCSC when it sees difficulties in implementing the provisions of the Basic Law. Once this precedent is set, Madam President, actually I should not have used the word "once" — the fact is that the Basic Law has been interpreted once, twice and thrice and damages have been done again, again and again, and now, it

is already the third time. Concerning the three interpretations of the Basic Law, members of the public have already felt very helpless. However, judging from the reason put forward by the Government this time around, the Government, like what it did when interpretation was sought for the first time on the right of abode issue, has leveraged on public opinions and "played the public opinion card". In this statement, we can see over and over again that the Government mainly wishes to solve the problems that Hong Kong people do not wish to see happening with regard to 10 July, and to return a Chief Executive who is better than TUNG Chee-hwa in the eyes of the people. In fact, this can be achieved very easily. It is very easy to return a Chief Executive who is more suitable for the job than TUNG Chee-hwa. Moreover, as there is this candidate of Donald TSANG now, Hong Kong people are, in fact, happy to see him being returned as the Chief Executive. That is why the Government has made this move. It makes me feel that this "stroke" of the Government is indeed a foul play politically, an instance of "queue jumping" in a political sense, the effect of which is once again damaging to the rule of law in Hong Kong.

We do not wish to give people the impression that we seem to be opposing whatever the Government will do. But the problem is that this approach of the Government is, indeed, worrying to us. Moreover, concerning the 15th paragraph of this statement, I very much appreciate the question asked by Mr LAU Kong-wah earlier on. So, a few days ago there was a CHOY So-yuk and today, there is LAU Kong-wah. They have really touched a raw nerve in Chief Secretary Donald TSANG. If the Chief Secretary considers it a righteous and justifiable move to make, why does he have to carefully reflect on the matter and the circumstances? I think the DAB's impact on the Chief Secretary this time around is definitely much greater than the democratic camp's head-on impact on him.

So, what has caused the Chief Secretary to have carefully reflected on the matter and the circumstances may not be the challenges from the democratic camp to his decision to seek an interpretation of the Basic Law, but his worries about failure in the next year or two or even in this election. So, Madam President, we do not wish that the Government has any ulterior motive in this. We do not wish that the Government has taken this step to achieve some political end. Certainly, it would give no cause for criticisms if a political tactic engineered to achieve a political end is legitimate and reasonable. However, the Government seems to be too overbearing and domineering in what it has been doing now.

I have to mention the 15th paragraph again, which is the most controversial paragraph. Many colleagues have also asked questions on this paragraph, and we feel very upset after reading it. How can the Chief Secretary be so certain? If he feels that it will in no way damage the rule of law on which Hong Kong's success is based, why should he carefully reflect on the matter and the circumstances we face? Why should he say that this interpretation of the Basic Law would not necessarily be well received? If it is legitimate and reasonable to do so, the Government can still do it even though it is not well received. But obviously, this precisely shows that he has a guilty conscience, knowing that this step is illegitimate and knowing that the people do not like it. But still, he has sought to achieve his objective by unscrupulous means and so he makes this move. If it will in no way do damage to the rule of law on which Hong Kong's success is based, why does the Chief Secretary not tell us what room there is for the Government to do so under Article 158? We have been waiting for the Government to give us its justifications, but the Government cannot give us any. The reasons put forth by the Government are actually adequate for us to institute proceedings for judicial review, for the Government has outrageously invoked Articles 43 and 48 of the Basic Law as the reasons for seeking an interpretation of the Basic Law by the NPCSC. I cannot figure out at all why the Government can so shamelessly justify its course of actions on this ground.

So, Madam President, I hope that the Government will not say again that the people are already tired of all this and ask what good it will do to further argue on two years or five years and so, and it is better for the SAR Government to boost the economy under the leadership of Mr Donald TSANG. I understand that this aspiration is very common among members of the public. But we, as legislators, must uphold the principles that we have insisted on and also the spirit of the rule of law. Furthermore, we feel that even if the Government does not make this move, we still do not see any difficulties in holding the election on 10 July. Earlier on many colleagues have already explained this point. So, I feel that what the Government has done this time around will again open the floodgates for seeking an interpretation of the Basic Law. I am worried that should problems arise in the implementation of the Basic Law in future, the Government will again seek an interpretation of the Basic Law by the NPCSC. This will plunge the Government over and over again into an abyss that it will never be able to get out. Madam President, I do not wish to talk about this anymore.

I hope that today, the Secretary, or the Chief Secretary Mr TSANG rather, who, to our regret, is not in the Chamber, can understand that it is not our wish to bring troubles to the country, as the President of our country has always said. Why does the Government have to give one more reason for the President to say that we cannot even solve problems within the limits of our autonomy and that we have brought more troubles to the country? Why is there still continuous bickering? All these have become pretexts for putting labels on us. When we put up opposition against the Government in future, these will become the excuses used by the Government, and these will also make our "Grandfather" query why the SAR can never solve its own problems.

Madam President, I so submit.

MR CHIM PUI-CHUNG (in Cantonese): Madam President, no matter what the result of interpretation will be, that is, be it two years or five years, there will certainly be people putting up their opposition, and opposition may even come from the same group of people. What are the reasons? If it is two years, they will think that it is inconsistent with the Basic Law; if it is five years, they will think that we will be deprived of the right to have the two elections held by universal suffrage in 2007, and it will also confirm the prediction of a businessman that this is a "sure-win tactic". So, regardless of whether the term of office of the Chief Executive is two years or five years, there will still be people opposing it. I will definitely not oppose other people raising their objection, as it will be more excited. Hong Kong is a dynamic city full of vigour. It is absolutely reasonable to have political rows here.

Are the laws of Hong Kong totally impeccable? Twelve — it should be 11 — Members of the Legislative Council are lawyers, and they are very concerned about this issue. In fact, as I have mentioned thrice, in the case of the civil service pay cut, it is outrageous to find the High Court has the power to overturn legislation enacted by the Legislative Council and endorsed by the Standing Committee of the National People's Congress (NPCSC). What use is there for the Legislative Council to enact legislation in future? We might as well ask the High Court to decide whether or not a piece of legislation should be enacted and be given final endorsement by the High Court. So, I very much wish to seek the advice of these 11 lawyers, and many of whom are barristers, and I hope they can state their position or express their views on this issue.

Madam President, applications for candidacy can be submitted starting from 5 June, which falls on a Sunday. So, the first day for application may be 6 June, which is two months from now. Should any person take advantage of the judicial procedures in Hong Kong, including filing proceedings for judicial review, and if the person lodges an appeal when his case is lost and even appeals to the Court of Final Appeal when he loses his case again, given the general legal proceedings in Hong Kong, can the whole thing be completed in two months? I dare say that it is absolutely impossible. Even if it is possible, it will still be criticized by some people as abusing the legal proceedings of Hong Kong and bringing disgrace to the laws of Hong Kong again. What we must also pay attention to is the possibility of legal aid applications in the process. So, I firmly believe that lawyers who strongly oppose these legal procedures should fully understand the time factor. So, Madam President, are the laws of Hong Kong that perfect after all? Everyone seems to be saying that it does not matter even if we do not have meals to take and it is not important if there is no CSSA, because it is most important to have laws. Of course, I may be going a bit too far.

Turning back to this issue, I think insofar as the interpretation of the Basic Law is concerned, we must make the people and our voters understand what an interpretation of the Basic Law is all about. By an interpretation of the Basic Law, it means that if, after first trial and the final adjudication, problems concerning the local laws of Hong Kong still cannot be solved formally, the relevant laws will be reinterpreted by the Central Authorities. Before the reunification in 1997, where was the Court of Final Appeal? The Court of Final Appeal was in Britain. An interpretation is almost equivalent to the fourth level of the Court of Final Appeal. What will be interpreted are questions and doubts concerning the laws, with a view to putting an end to arguments. We must understand that "arguments" is most fundamental to courts and laws, and also the most essential condition for lawyers to make a living. Without arguments and without laws to serve as a basis, there will not be any reason for lawyers to exist at all. So, we should not mislead the people and voters, causing them to develop a phobia for the interpretation of the Basic Law. Like in the past when people saw a tiger, they would keep on scolding it — the older generation will know what it is all about. Therefore, we should not keep on escalating the interpretation of the Basic Law to a political plane, describing it as if it is horrendous.

Certainly, not all the people would consider the interpretation of the Basic Law absolutely acceptable, and they may not necessarily like it. But most importantly, it is premised on the word "China". First, how should we face China? Should we respect it as our own country? Or should we look at it from an international viewpoint? We understand that internationally, there is an anti-communist force led by the United States. As China is "communist", this force then becomes "anti-Chinese". As China is the sovereign state of Hong Kong, this can also be considered as "anti-country". So, the key lies in how the word "China" is interpreted. Should we adopt an international standard and be hostile or antagonistic to China, thinking that whatever it says will certainly not conform to our wish? I am not saying that I am a patriot. But there is actually not a very big gap with respect to what we think.

Madam President, what warrants our greater concern is that regarding this interpretation of the Basic Law by the NPCSC which can provide a clear definition of the term of office as to whether it should be two years or five years, the SAR Government can also be urged to elucidate the number of terms a Chief Executive may serve. Can the Chief Executive serve one term only or can he seek re-election for a second term? Although legal professionals or academics on the Mainland have stated their position, we must bear in mind that they are legal professionals and academics of another kind. They cannot manipulate the situation and what they say is not necessarily the truth. No matter how brilliant these lawyers and academics are, their opinions are purely their personal opinions. So, when seeking an interpretation of the Basic Law, the SAR Government must also seek clarification on the number of terms a Chief Executive may serve. Only in this way can the worries of Hong Kong people be allayed, and this is a very important point. I hope Members will ask the Government to do this.

Madam President, we are more concerned about Article 55 of the Basic Law, and this should be the second time that I mentioned it. Article 55 provides 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 appoints them. The Chief Secretary also explained this point the other day and stated that he must immediately urge other officials to remain in their office. As this provision is unclear, the NPCSC may need to interpret it someday. If a literal interpretation is made, all the incumbent Members of the Executive Council will

theoretically have to leave their office after the stepping down of TUNG Chee-hwa and then be reappointed by the new Chief Executive. Mr James TIEN also mentioned this point earlier on. As these Secretaries of Departments and Directors of Bureaux will need the reconfirmation of the Central Authorities, in order not to cause further legal disputes in future, it is necessary to make a clarification or an amendment, so that people of calibre who are interested in serving Hong Kong people can decide on their future and be told whether their term of office is five years or whether they have to leave their office following the stepping down of the Chief Executive. This is very important and most constructive. As regards the controversies over the question of two years or five years, what is there to argue about? That is purely a show of political stance. The Chief Secretary said the other day that he would ask all officials to remain in office. In fact, if the Chief Secretary assumes the office of the Chief Executive in the capacity of the Chief Secretary for Administration, he does not actually have the power to do so. If the team of officials does not have to step down, that would be in conflict with the interpretation of Article 55. So, Madam President, we hope that the SAR Government can give a clearer and more explicit account to all Hong Kong people or the relevant parties.

Madam President, I also wish to mention the by-election of the Chief Executive. The arguments or controversies about two years or five years as I have mentioned earlier are not important. I am more concerned about Hong Kong's existing political system at large. There used to be 180 000 to 200 000 civil servants in Hong Kong and now, there are only some 160 000. They are well-organized, but they have no political affiliations, and politically speaking, they used to be absolutely neutral. Now, our Chief Secretary stands a good chance of becoming the most popular candidate for the office of the Chief Executive. Although he is not a civil servant now, he did start out as a civil servant after all. If he really becomes the second Chief Executive on 10 July, it will bring great changes to and create a great impact on the overall political landscape of Hong Kong in future.

I would like to take this opportunity to tell colleagues that this does warrant our concern. Why? It is because he used to be politically neutral and now, political powers are conferred on him, and once the powers are given, it will be very difficult to retrieve them in future. If Members of the Legislative Council or political parties raise any problem in the future, he would

intentionally or unintentionally put a spoke in their wheels, with a view to seizing powers and benefits. Apart from drawing Members' attention to this point, I hope all the more that the Central Authorities can listen to this and conduct a clear-headed analysis.

In this connection, I am not saying that this means a comeback of the "British coterie" without flying the British national flag. What I mean is not as narrow as this. But it will formally deal a blow to the future politics of Hong Kong. Although I have said before that politics in Hong Kong will have no future and that the barristers are just wasting their time serving in this Chamber (they also said so before), the point is that since we are all interested in it because we have been addicted to politics or for whatever reason, I hope Members can build the system in a better way. But if civil servants have turned from being politically neutral to belonging to political groups one day — it is not difficult to deal with the 10 Members of the Liberal Party, but dealing with this non-politically affiliated but powerful political pressure group or organization with substantive political powers consisting of 160 000-odd civil servants will deal another political blow to the future of Hong Kong.

Therefore, I wish to tell Members that when we discuss this issue here, we should take an impartial attitude. It is most important for us not to mislead the public. Many people do not know what has happened. They do not understand why we have to argue about this. But as I have said, members of the public certainly hope that we can be more pragmatic and that we can work hard to fight for all the rights and interest to which they are entitled. As I mentioned earlier, even though the Central Authorities have approved that the term of office should be five years, there would still be contentions and the arguments will be even more cogent, because we all wish to see dual elections by universal suffrage in 2007 and 2008, and a term of five years will deprive us of the opportunity of conducting both elections by universal suffrage. Now, after the election on 10 July, the election of the third Chief Executive will be conducted in less than two years' time. Unless Members consider it impossible to achieve universal suffrage for the two elections and have instead directed their effort to fighting for a term of office of two years or five years, we should persevere with the position of fighting for dual elections by universal suffrage in 2007 and 2008, and that was an undertaking made by Members to the public in the election on 12 September last year.

DR KWOK KA-KI (in Cantonese): Madam President, I wonder if it is the case that the NPC or the Central Authorities like to play jokes on Hong Kong very often, however, they do have a strong preference for the date of 6 April. Members will remember full well that in 6 April last year, after the interpretation of the Basic Law by the NPC, the hope of having dual elections by universal suffrage in 2007 and 2008 in Hong Kong was dashed and Hong Kong people were told formally and all too clearly that they no longer have to think about "one country, two systems" and "Hong Kong people ruling Hong Kong". That is to say, that was the end to all such thinking.

6 April this year is yet another unusual day in April. This time, the representative of our Government, Chief Secretary for Administration Donald TSANG, requested the State Council to seek an interpretation of the Basic Law from the NPC, with a view to resolving the issue concerning the remaining term of office through an interpretation of the Basic Law.

I have just heard the speech delivered by Mr CHIM Pui-chung, who said that it seemed to be a waste of time for us to be speaking so much here because the majority of Hong Kong people are not interested in knowing anything about this. Fortunately, there are still some very obstinate Legislative Council Members or barristers who are defending "one country, two systems" and the rule of law here, otherwise, I believe the rule of law in Hong Kong and concepts such as "Hong Kong people ruling Hong Kong" will be completely wiped out.

Mr James TIEN has spent a lot of time talking about the question of whether the term of office should be two years or five years and why he believes two years is better and five years is not suitable for Hong Kong, and so on. I totally agree with Mr James TIEN's comments. In fact, the crux of the matter today does not lie in whether it should be two years or five years. We are fully aware that from the viewpoint of Hong Kong people and for the sake of promoting democracy, two years is better because at least there will be an opportunity to replace the Chief Executive — this is probably also because we have a dream, hoping that election by universal suffrage can really be implemented in 2007, although the developments are basically becoming further removed from our dream. However, the point is, the focus of all the viewpoints and arguments over this issue is not on whether the term should be two years or five years, but rather, on the legal issues, or on how the Government understands the Basic Law.

The Secretary is still sitting here. We all know and the Secretary also knows full well that in May last year, he said very clearly in this same Chamber that should the office of the Chief Executive become vacant, the term of office of the new Chief Executive, or the successor, would be five years. That was all very clear. I do have great sympathy for some people and this includes the Secretary. Often, they have to heed the biddings from the north and have to be prepared to disown their past deeds by saying something else these days. I will talk about this point later.

Just now, many Honourable colleagues have quoted the remarks made by Mr LEE Kuan-yew on 30 March. Mr LEE Kuan-yew raised one very interesting point, namely, that it was necessary for Hong Kong to have a street fighter. Apart from this, he also raised another point, saying that the master of the Chief Executive was in China. If we translate this into Cantonese, that means the boss of the Chief Executive is on the Mainland. Moreover, this is not all. He also said that there were also many subsidiary masters in Hong Kong, that is, people who considered themselves to be bosses. This being so, I believe whoever wants to be the Chief Executive in future must have many tricks up his sleeves in order to do the job well.

Donald, that is, Chief Secretary TSANG, is now on probation. However, he had not been in probation for long before he showed us his great abilities. I still remember that last Friday, some Members of the Legislative Council, including me, were summoned by Chief Secretary TSANG to discuss what I believe were issues related to the request for an interpretation of the Basic Law, which has been announced today, in order to consider how the election could be concluded by 10 July. The acting skills of Chief Secretary TSANG were first-rate. He was very serious and poker-faced, asking Honourable colleagues how they could assist the Government so that the election on 10 July could be held as scheduled. It looked as though he could not possibly think of any other way, therefore, he was asking us sincerely for some ideas. Of course, some of our Honourable colleagues fell into the trap immediately, saying that we still wanted to seek a judicial review. I believe it was exactly here that he thought we had fallen into his trap he had set because that was precisely the remark that the Chief Secretary wanted to elicit from other people. Subsequently, today, we all know the ending of this story, that is, another interpretation of the Basic Law has been sought and it has been shown yet again that our dream of "one country, two systems" or "Hong Kong people ruling Hong Kong" has been dashed.

However, the tact of Chief Secretary TSANG in going about this matter this time was really astute. First, he devised a game plan to give everybody the impression that initially, the Government had no intention of seeking an interpretation of the Basic Law, then he gradually pushed the interpretation of the Basic Law to the centre stage. He was adept in exploiting public opinions and sentiment. Recently, I have looked at the opinion polls in several newspapers and the results actually all showed that many members of the Hong Kong public agreed there was a need to interpret the Basic Law.

In fact, originally there was nothing wrong about interpreting the Basic Law because the Basic Law states that the power of interpretation and amendment of the Basic Law shall be vested in the NPCSC. This we fully understand. However, what worries and shocks us is that each time after interpretation, we are more firmly convinced that it is not possible to implement the principle of "one country, two systems". The Basic Law states that the law is intended to protect "one country, two systems". However, let us see what the effects of the interpretations of the Basic Law are. The interpretation of the Basic Law on 6 April last year put a full-stop to constitutional development in 2007 and 2008 abruptly and the demands of over 500 000 Hong Kong people who took to the streets to demand further democratization were all but completely incinerated. Furthermore, the move to seek reinterpretation of the Basic Law on the right of abode cases prior to this also denied the Court of Final Appeal the final say.

I think Hong Kong people would not mind interpretations on the Basic Law by the NPCSC as such, what they are worried or concerned about are the consequences of such interpretations. If an interpretation is made under a sound system, with good intentions and in a desirable approach, if the principle of "one country, two systems" can be implemented all the better after each interpretation and if each interpretation gives us the impression that we will have a more democratic future, then Hong Kong people would not mind any interpretation at all. However, on the contrary, each interpretation was made at will and what is more, in compliance with the will of the Central Government or the SAR Government. I believe Members know that making an interpretation is no simple matter, although a number of Honourable colleagues have claimed that this does not matter as long as the election on 10 July can proceed and it would not matter if an interpretation is made. However, all of us should be able to discern what is important and should take priority, and this is exactly what we fail to do.

Chief Secretary TSANG has talked at length about this, saying that 10 July was a deadline that had to be met and everything had been done for the sake of 10 July. I understand that 10 July is a deadline set by the Central Authorities in order to put him to test, however, this should not be considered a deadline for Hong Kong people because their baseline should be to defend the rule of law, democracy and the political system, rather than being stubborn for the sake of holding an election on 10 July, to the extent of even sacrificing the rule of law to make an interpretation.

However, to Chief Secretary Donald TSANG, things are of course different. The examination he is sitting for has put such a question to him. The Central Authorities want him to answer this question and see how he can conclude the election by 10 July and how he can accomplish all tasks that in their opinion need to be done, moreover, to do them with fine showmanship and impressive flourishes. In my opinion, Chief Secretary TSANG should be able to pass the examination this time.

However, it is the Central Authorities that are even shrewder. After looking at the performance of Chief Secretary TSANG, we also appreciate why the Central Authorities wanted to kick Mr TUNG out and let Donald succeed him. The Central Authorities purposely found someone with the highest public standing, one who can best gauge public sentiments and manipulate Legislative Council Members to do the job. In his performance lasting 20 to 30 minutes just now, Members could see that he had disdain for our questions and was loath to answer them, thinking that we were keeping him. I thought that the Central Authorities might find such a spectacle pleasing to behold. However, Hong Kong people look at such behaviour from another perspective. They will ask: can such a person be of service to Hong Kong people? Although his words can move us greatly because he has talked about how he grew up drinking the water of Hong Kong and with the blood of a Hong Kong person flowing in his veins, how can he make us feel that he has confidence in defending the democratic system under "one country, two systems" and is able to do so? I believe this is in serious doubt, however, these are probably terms with which he strikes a deal. When he bargains or strikes a deal with his "boss", I think these were the cards in his hands.

However, it is pathetic that the strategies employed by the Central Authorities have not only prevented some Honourable colleagues or many

political parties from becoming kingmakers, these people even have to play a part in the drama. In fact, it is not the Government that has suggested seeking an interpretation in the first place, although the Government knows full well that this has to be done. However, throughout the whole affair, many political parties have been cheering the Government on at the sideline, maintaining all the time that an interpretation is necessary, that it is impossible not to interpret the Basic Law and the slightest delay in doing so would lead to problems. They have all my sympathies and I feel that it is pathetic of them because not only have they no chance to take part in the game and are booted out, they even have to continue with the acting for the sake of the successor to the Chief Executive, that is, for the new Chief Executive.

Secretary Elsie LEUNG said in her reply to us on the last occasion that when interpreting or understanding this issue of the term of office, she attached great importance and even valued the views of some scholars of legal studies on the Mainland. Perhaps allow me to review the views of these scholars on the Mainland together with Members. A scholar on the Mainland, whom we call the minor defender of the Basic Law, that is, Mr WANG Zhenmin, or Prof WANG Zhenmin, who is the vice dean of the School of Law of Tsinghua University, said on 11 March that according to the constitution of the United States and general international practice, the term of office of the new Chief Executive should only be two years since the period involved was less than half of the normal term of office, therefore, the Chief Executive could serve two successive terms, that is, he could remain in office for 12 years at the longest. He said this very clearly. By 30 March, the same person — the minor defender of the Basic Law, Prof WANG Zhenmin — said that a Chief Executive could not serve for more than two terms, that is, 10 years. In other words, a person can serve as the Chief Executive only twice at the most. That means the period cannot be more than 10 years. In less than a month, this defender of the Basic Law, who is revered as a god by our Secretary, can have made such off-hand remarks on such important legal viewpoints. I wonder what evidence there are to convince us that people are still abiding by the law when they do anything. Moreover, at the same time, I find that the provisions concerning the remaining term of office in Articles 45 and 46 of the Basic Law have not been complied with in any way. Should we follow what legal scholars on the Mainland have said just because they have cited some authoritative work? If this is not sending the rule of law to the guillotine, then what is it?

Of course, I believe that it is in vain and meaningless for us to demand again that the Government or Chief Secretary TSANG withdraw this move to interpret the Basic Law. We believe that Hong Kong can only consider how to further uphold the rule of law and we have said must revolve round this. I am very surprised to find that Mr CHIM Pui-chung has actually spelt out what we should do, that is, we must continue to push for the democratic system of universal suffrage. We hope that there will be democracy in Hong Kong and of course hope that our Motherland will also enjoy democracy. Only by implementing democracy can we debunk those fallacious remarks and deeds that even the speakers themselves would be ashamed of, so that they will not become a reality. However, on this point, I am not sure if we have pinned our high hopes correctly on a certain person or if we have misplaced our trust because judging from the recent actions taken by the Government and Chief Secretary TSANG, I believe it is unthinkable to request them to introduce democracy or even implement elections by universal suffrage in 2007 and 2008. However, even so, I can say that we will never give up fighting for democracy, democratic progress and dual elections by universal suffrage.

I wish to reiterate that to Hong Kong people, 6 April is a heartbreaking date. Be it last year or this year, and no matter how many Hong Kong people only care about the rises in interest rate, the stock market or the prices of properties, or even consider these matters to be more important than what has happened on 6 April, I believe that when we think about the important dates in Hong Kong that we have to remember, many Hong Kong people will remember 6 April and feel sad about it. I also hope that the Government will not repeat the mistakes made on this date.

I so submit. Thank you, Madam President.

MR RONNY TONG (in Cantonese): Madam President, I believe everyone in this Chamber, including Madam President you yourself and Honourable colleagues, should be able to recall the circumstances in 1999 when the Government of the Hong Kong Special Administrative Region (SAR) requested the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law for the first time. At that time, a group of people fighting for the right of abode in Hong Kong sued the SAR Government. During the time of the legal proceedings, the Court had asked the Senior Counsel Mr Geoffrey MA, who was acting on behalf of the SAR Government — now a Chief Judge of the High Court — whether the court should seek an interpretation of Article 24 of the

Basic Law from the NPCSC according to Article 158. At that time, the Government said that it was not necessary. Very regrettably, after the Court had passed a judgement against the Government, Mr TUNG claimed that there could be an influx of 1.67 million people from the Mainland into Hong Kong and this would cause a very heavy burden to the economy of the SAR. Therefore, he said there was no alternative but to request the NPCSC to interpret the Basic Law in order to overturn the judgement of the Court of Final Appeal (CFA). This was a deal in which the rule of law was traded off in exchange of economic stability — perhaps I was wrong; this was not a deal at all because we got nothing in return. This was a bad deal in which the rule of law was traded off, and it was a starting point for the demise of the rule of law in the SAR.

In April 2004, the Central Government, on the pretext of providing the SAR with stability, once again proceeded with the second interpretation of the Basic Law to rule out universal suffrage for the elections in 2007 and 2008. This was another raw deal in which the rule of law was again traded off in exchange of political stability. Was this raw deal put forward by Mr TUNG? Or should he be held responsible for this? We have no way of knowing. However, even if this was not proposed by him, the so-called instability of the SAR was caused by his ineffective governance. He should once again be held responsible for this raw deal.

Today, we are confronted with the third interpretation of the Basic Law. Once again explicit provisions of the Basic Law are distorted. By abandoning the five-year term in favour of the two-year term, the authorities just intend to ensure a stable handover of power to facilitate a smooth promotion for Chief Secretary Donald TSANG. Again, who is behind this raw deal in which the rule of law is traded off in exchange of a stable transfer of power?

The Acting Chief Executive spoke before television cameras last week with an apprehensive look, expressing his worries that the Chief Executive election could not be conducted as originally scheduled. The desperate helplessness on his face was actually conveying the underlying message, "You made me do it. I have no alternative but to seek an interpretation of the Basic Law from the NPCSC." The Acting Chief Executive and Secretary for Justice Elsie LEUNG have been holding whirlwind meetings with members of the various political parties during the past few weeks — sorry, it should be in the past few days. The Article 45 Concern Group did not have such a chance to meet with the Chief Secretary, but we did have the chance to meet Secretary

LEUNG. The first remark she made right on seeing us was, "Do you have any suggestions on avoiding an interpretation of the Basic Law?" It is very difficult for me to describe my feeling. There is an English idiom for describing such tricky manipulation of power — "adding insult to injury". In fact, speculations of the resignation of the Chief Executive TUNG Chee-hwa have been going on for nearly two weeks. I believe, no one in the whole territory knew better than Mr Donald TSANG about what was happening at that time. Right on the day when the resignation of the Chief Executive TUNG Chee-hwa was accepted, Mr TSANG ignored how explicit Article 46 was, what the usual stance and the rule of law principles of the SAR Government were, he announced right away that the term of office of the new Chief Executive would be two years. At that juncture, the Acting Chief Executive knew very clearly that when the explicit Article 46 was interpreted to mean a two-year term for the new Chief Executive, he actually knew all too well on that day that this was already a serious violation of the rule of law.

The most fundamental principles of the rule of law include several core values. But it seems that the SAR Government could not care less about them. The Government knows these values very well, but let us remind it of such values here: (1) Provisions of the law and the Basic Law should be respected, and they should never be arbitrarily distorted; (2) The Government is bound by the law and the Basic Law, and should never arbitrarily amend the law or the Basic Law without going through the legitimate procedures; and (3) The Government should respect and accept the judgements of the Court, and it shall not stop the people from exercising their basic rights of taking to the Court cases in which the Government appears to have committed acts in violation of the laws. Such core values are not just the foundation stones upon which Hong Kong has built its success, they are also the only protection for our "one country, two systems" principles. Mr Donald TSANG fully understands this logic and he has exemplified his way of thinking to Hong Kong people on more than one occasion. Under "one country, two systems", the people do not expect that the Central Authorities would do their best to safeguard the rule of law of the SAR because this is not its duty; instead, this is the duty of the SAR Government. Starting from the time when Mr TUNG was considering his resignation, to that of proposing his resignation and the moment he eventually made up his mind to resign, the responsibility has fallen upon the shoulder of Mr Donald TSANG, be he in the capacity of the Acting Chief Executive or the Chief Executive designate. If he does not stand up to safeguard the rule of law of Hong Kong, who else will?

Right at the moment when Mr Donald TSANG gave up the task of safeguarding the rule of law, he should know clearly that many Hong Kong people will stand up to request the Court to defend our rule of law. After making the announcement on 12 March, Mr Donald TSANG had already provided some hidden hints for the possibility of seeking an interpretation of the Basic Law from the NPCSC. So how can he claim that he is not responsible for the bad consequences? What saddens us most is, those eventually standing up to defend the rule of law of Hong Kong are labelled as "creating chaos in Hong Kong" and "responsible for causing an interpretation of the Basic Law".

During the seven years after the reunification, we have witnessed three interpretations of the Basic Law — three raw deals in which the rule of law has been traded off. None of these raw deals was initiated by Hong Kong people. On each of such occasions, Hong Kong people are the victims we are so helpless, powerless and unaided Why are those ultimately responsible for such consequences not able to come forward to honestly tell us, "All these are not your fault, it is all because 'one country, two systems' is really too vulnerable."

Our Honourable colleague Mr Albert CHAN accused Secretary for Constitutional Affairs Mr Stephen LAM of "confusing the right and the wrong by calling a stag a horse". However, even for such persons, at least they do not act pretentiously to say that "I do not know whether this animal is a stag or a horse". And certainly they would not falsely accuse those defending the rule of law of "creating chaos in Hong Kong" and "causing an interpretation of the Basic Law".

For such a Government, how can we stop ourselves from finding it deeply deplorable? For such a system, how can we stop ourselves from feeling that "one country, two systems" only exists in name?

MS MARGARET NG (in Cantonese): Madam President, I would like to thank Mr Albert HO for proposing an adjournment debate. In the speech Mr Ronny TONG has made just now, he says he is overwhelmed by a sense of powerlessness and helplessness, saying that perhaps no matter how eloquently we state our case here, we cannot reverse the Government's decision to seek an interpretation of the Basic Law and avoid the associated consequences. We feel like as if we were a flock of parrots trying to put out a mountain blaze with water

droplets dripping out from our wetted wings. However, our wings are feeble, and we are unable to put out the fire. Yet, Madam President, why do the parrots have to do that? Why should they rush towards the fire in spite of all the mockeries and even run the risk of being burned to death? That is because the mountain is a place we love to go to for pleasure, and we have benefited a lot from it, so we cannot stand watching it being burnt down by a blaze. That is why we have to stand up for it. Even though we are as humble as a parrot, we still muster up our strength, feeble strength though it is, and do what we could to state our case here. Madam President, as legal practitioners, we have only limited influence. We can only state our case based on reason. Regardless whether a stag or a horse is involved, let me just view it as a chance for reasoning for the time being. Today, I will just want to reason with the Government.

Madam President, earlier today, Mr Donald TSANG explained to us why he decided to seek an interpretation from the Standing Committee of the National People's Congress (NPCSC). In the 14th paragraph of his speech, he says, ".....many in the community still hope to avoid as far as possible seeking an interpretation to settle the matter." Let me assume he meant what he said. However, in this case, it is absolutely unnecessary for the Government to seek an interpretation of the Basic Law. Why would Mr TSANG believe it is necessary? According to him, it is necessary to guarantee that a new Chief Executive can be smoothly selected on 10 July. If we are to wait for the result of the judicial review after the Court has finished its legal procedures, it would be very likely that we would not be able to accomplish this task. As a matter of fact, we had already clarified this point last week in a letter we sent to Mr TSANG — or was that last week? It was on Monday, 4 April.

The judicial review under discussion focuses merely on the issue of whether the term of office should be two years or five years, which would not in any way affect the legitimacy of the election. That is because regardless of whether a new Chief Executive is to be elected to fill a vacancy of an unfinished term or a completed term of his predecessor, the election is still to be carried out in accordance with the stipulation of Article 45 of the Basic Law. The election method is the one stipulated in Annex I and the Chief Executive Election Ordinance, and it is also governed by a number of regulations. The elected candidate, no matter it is during the election process or after he has been elected, has to accept the term of office, be it two years or five years. Unlike entering into normal contracts, he cannot demand at the time he signs his contract that the

term be specified to be either two years or five years, or the money involved be specified as either \$8 or \$10, failing which he can assume in future that the contract has never been entered into. No, we cannot do it this way. We have already explained that a judicial review like this will not impede the election to be held on 10 July. Mr Justice WOO Kwok-hing has already explained that unless an application for an injunction order is made and such order is issued by the Court, the election will take place as scheduled. In that case, on what grounds can one apply for an injunction order? As a matter of fact, regardless of how the election will be conducted, so long as the election procedures are proper and in order, the term of office will not be a matter of dispute. Contrarily, the Court must take into account the stipulation of Article 53 of the basic law, which says that the Government of the Hong Kong Special Administrative Region (SAR) shall elect a new Chief Executive within six months. Therefore, there is no ground to say that the 10 July election will be impeded. Given all these, what worries Mr TSANG most will not actually happen at all. As such, he should feel at ease to allow the judicial procedures to run its normal course, should he not?

I asked Mr TSANG earlier, why he said "it is quite possible" in the 11th paragraph of his speech, and whether there was any causal relationship between the duration of the term of office and a properly conducted election. He replied, "It is reasonable for a candidate to wish to know whether his term of office will be two years or 10 years." What he said was reasonable. Yes, maybe it is reasonable. However, this is not a justifiable cause for the Court to issue an injunction order. This is very clear. Therefore, it is absolutely unnecessary to seek an interpretation simply because anyone can apply for a judicial review — regardless of when this legal procedure will complete, or if it cannot be completed even when it has taken a very long time — it is still not a reason that can stop the election from being conducted.

In fact, right upon hearing the reasons given by the Government for seeking an interpretation of the Basic Law, we would immediately know how feeble they are. First of all, the Government does not believe in the Basic Law. According to the Government, the Basic Law does not have any ambiguities and the Government is full of confidence. After having considered the issue carefully, the Government realizes that its past stance was wrong and it has rectified its mistake. So, the Basic Law is unambiguous, and the term of office for the new Chief Executive is the remainder of his predecessor's unexpired term, in other words, two years. Since the Government believes it is right, and

we are all wrong, then the Government should allow us to challenge it in the Court and let the Court rule we are wrong. If Mr Albert CHAN wants to challenge the Government, just let the Court rule against him. It does not matter. Why does the Government need to seek an interpretation of the Basic Law simply because somebody is putting up a challenge?

Mr TSANG said that the Government needs to get the most authoritative interpretation to solve the problem. Assuming that this is true, and then the Government should exercise the law of the SAR within the SAR. If the Government needs to clarify any legal provision, it should go to the Court. Under our legal system, the Government could request the Court to issue a judicial declaration to inform the Government of the standing of the legal provision in question. Meanwhile, under the Basic Law, the Court of Hong Kong absolutely possesses the right to interpret the provisions of the Basic Law. Why should Mr TSANG lose his faith in our Courts all of a sudden and insist on seeking an interpretation from the NPCSC? In doing so, has he complied with requirements found in the legal system of the SAR?

In the ninth paragraph of his speech, Mr TSANG said another reason for seeking an interpretation was that some Members considered that the current amendment bill to the Chief Executive Election Ordinance was inconsistent with the Basic Law, so he had to seek an interpretation. However, that is nothing new. Just ask the legal advisers of the Legislative Council, they can testify that when bills are being examined, there are many occasions on which Members believe that certain legal provisions might be in breach of the Basic Law. On some occasions some Members would even cast their votes against these legal provisions. Did these things happen in the past? They surely did. Even when the legislation on the pay cut of the civil servants was first proposed, the Government was very confident that the legislation totally complied with the Basic Law, and it said that if, in future, any of the provisions were found to be in breach of the Basic Law, let it be taken to the Court. At that time, the Government was totally confident. But why do they have to do it this way this time? In fact, there is no need for the Government to do it this way, nor is there any urgency in time either. The fact is not like what Mr TSANG has described, nor are there any abnormal impact felt. However, an interpretation from the NPCSC would cause a very serious impact to the rule of law, as Mr TSANG himself has admitted. Members of the public would not appreciate it either.

As regards the blow dealt to the rule of law, first of all, it affects the normal functioning of the Court. If somebody were to apply for a judicial

review from the Court, at the current stage, he has to put forward his grounds, so that the Court could listen to the evidence put forward by both parties before making a judgement. However, since Mr TSANG has decided to seek an interpretation on a specific date, the act of interpretation from the NPCSC will superimpose itself on the Court of the SAR. Whatever is the reason, the Court will be bound by it, thereby making normal judicial procedures unable to proceed, and the Court will be unable to exercise its jurisdiction or exercise the rights endowed by the Basic Law.

Second, the rule of law is based on reasoning, justice and legality. The explanation of any legal provisions or constitutional provisions, no matter how broad the explanation is, should be based on legality and precedents. Any decisions have to be made with reference to such principles. No decision should be made by forceful exertion of authority. Although forceful exertion of authority might succeed in forcing the people to accept decisions, the people will remain unconvinced, and they will say so. We cannot adopt political goals for deciding how to implement legal provisions and say that this is the rule of law. As regards original intention, or the interpretation of law based on personal memory, they are even further away from the rule of law. This is not the rule of law as we know it. Instead, this is the rule of the people. However, the biggest blow dealt to the rule of law is that, as we can see today, the Government has become very comfortable with seeking an interpretation, leaving members of the public so helpless about it.

A newspaper published the findings of a survey yesterday which show that the public is not mindful of an interpretation. I am not sure if that accurately reflects the fact. However, Madam President, there is no greater grief than the death of hope. Fighting for the rule of law has never been an easy task at any given moment, but if we simply give up, it will not be possible to maintain the rule of law. To date, the rule of law has become a term government officials feel free to trifle with. This is indeed the biggest insult to the rule of law.

Madam President, as we have seen, on each of the three occasions when an interpretation is sought, the situation has been getting worse and worse. The first time when an interpretation was sought, Hong Kong was shocked, as so was the international community. At that time, whenever the Chairman of the Hong Kong Bar Association met with the Chief Executive, the former would invariably ask the latter not to seek an interpretation again. On each occasion the Government refused to give any undertaking. Instead, the Government

strongly hinted that it would be a rare occurrence, that it was almost an exception, and that it was almost impossible to happen again, because the Government was aware of the price it had to pay. However, when the second time an interpretation was sought, the Government was already taking things easy, which is, as long as it would benefit Hong Kong, it would seek an interpretation, and seeking an interpretation was deemed to be a normal and standard procedure. The third time when an interpretation is sought, which is what we are facing now, it is one which is not necessary at all. The excuse being given as the reason for the move is extremely flimsy and can hardly stand up to any scrutiny. As such, in future, will hegemony replace justice, or will the rule of the people replace the rule of law in Hong Kong? Will it be like what Mr Ronny TONG has said just now, that the principles of "one country, two systems" will only exist in name?

Madam President, the power is in the grips of the Central Government. The Basic Law may safeguard the principles of "one country, two systems", but arbitrary interpretation by the Central Government may also destroy it. After the first interpretation of the Basic Law, Mr QIAO Xiaoyang of the NPCSC paid a visit to Hong Kong and carefully explained that self-discipline should be exercised in using the power to interpret the Basic Law. However, his words are now nowhere to be heard. Today, through our speeches, we keep on speaking up to protect the rule of law. Even though the rule of law may have already demised, at least we will still remember there has been such a thing as the rule of law. I am not sure if what we are doing today will have any effect at all. What I know is that we have to tell the truth, and that the truth must be told in the face of authority. Thank you, Madam President.

MR LEE CHEUK-YAN (in Cantonese): Madam President, today I met Secretary Frederick MA outside this Chamber; he remarked that the weather was very fine. But I felt the weather of today is by no means fine. What is happening here now is like certain tragic episodes in some old Cantonese movies: In a night with heavy rainstorm accompanied by thunder and lightning, the best actor Donald TSANG puts on a most melancholic look as he tells Andrew LI Kwok-nang that, in order to help him to have a smooth reincarnation on 10 July, he has to stab him. I absolutely have no idea why the whole incident should have developed this way. Why can the new Chief Executive not be returned smoothly on 10 July? If there has been no dispute over the term of the new Chief Executive that it should be two years or five years — Secretary

Stephen LAM used to say that it should be five years — then we shall go ahead with the procedure of implementing a five-year term. If someone would like to change it into a two-year term, procedurally the Basic Law has to be amended, instead of adopting the approach of interpreting it. The Chief Executive election to be held on 10 July will not be affected. In fact, the whole episode was written, directed and acted by these people themselves for the purpose of telling all the Hong Kong people that, without an interpretation of the Basic Law, the election on 10 July would definitely fall through. I feel that this is a deliberate attempt to manipulate public opinion and to fool the Court. However, what is the final outcome? The SAR Government has sacrificed the rule of law of Hong Kong in requesting the NPCSC to interpret the Basic Law this time, and it has sacrificed "one country, two systems" by employing political tactics to interfere with the court and the law as well as inviting interference from the Central Authorities.

Among these political incidents, we are most afraid of the fact that our law is being trampled. In the right of abode incident, our law had been trampled once. Last year, the NPCSC made another interpretation of the Basic Law, our law was trampled a second time. And today, our law is trampled one more time. Should this be allowed to go on, there will not be much in our legal system that is left intact. Besides, the problem I am most afraid to see and do not wish to see is the emergence of a confidence crisis among the people. Hong Kong people often say that our core value is the rule of law. However, if our law is frequently trampled, even we Hong Kong people will not believe that we can have the rule of law in Hong Kong. Having seen that our law has been trampled for so many times, we may eventually lose our determination to defend the rule of law here. This is the last thing I would like to see. Similarly, I also do not wish to see that Hong Kong would eventually become accustomed to being trampled because this has happened too frequently — so much that they feel that it does not matter for Andrew LI Kwok-nang to be stabbed a few times more; that it does not matter even if he should bleed to death; and that it still does not matter even if nothing is left at the end of the day. If so, what else will be left for Hong Kong?

What disappoints me most is that people in the business sector have not shown any strong response to this incident. In fact, in a certain debate, Mr Patrick LAU had even said that the people of the business sector found the move to seek an interpretation of the Basic Law acceptable because of the ambiguities. As such, an interpretation is needed to clarify the issue. However, I would like

to remind professionals in the business sector that, if such a practice is adopted, there will be many more issues that may require the interpretation of the Basic Law by the NPCSC. However, this time, it is not a case of clarifying any ambiguities, it is actually an attempt of twisting the fact to say black is white.

As a matter of fact, there are many places in the Basic Law that may be amended. For example, the recent increase in the tunnel tolls of the Eastern Harbour Crossing (EHC) has made us very angry. Perhaps we may seek an interpretation of the Basic Law provision which says that all contracts are protected — if so, we may feel very happy. But I will not do that. If an interpretation of the Basic Law has been made by the NPCSC, the Government will definitely win the lawsuit and it can claim that the EHC and the two power companies are exceptional cases. In fact, many have expressed dissatisfaction over the fact the two power companies are not required to reduce electricity tariffs before 2008, and many dislike that particular company operating the EHC. However, we shall not ruin the rule of law just because of these incidents. The business sector often says that they are concerned about the rule of law and the contract spirit, why do they not raise their objection in this case? Or is it like what I have been saying: As the rule of law of Hong Kong has been trampled so many times in the past, so we have already lost our sensibility over such an issue?

Besides, I also feel very disappointed that, throughout the incident, there are problems with what the Government is telling the people. The 10th paragraph of today's statement mentions their views on the present judicial proceedings, it says: "It is highly likely that we will be facing challenge by way of judicial review. Once the judicial process is initiated, it will take a relatively long time to go through the Court of First Instance, the Court of Appeal and the Court of Final Appeal (CFA). Past experience has also shown that there are a range of uncertainties involved in this process." On that day, I had raised this question with the Chief Secretary. He said that while Mr A could apply for a judicial review, so could Mr B; on the other hand, Mr C might have a different perspective, and Mr D could apply for an injunction. However, Madam President, if that is the case, then the Government is not trusting the Court, and it has absolutely ruled out the role of the Court. Most important of all, the Central Authorities have said that the term of office of the new Chief Executive should be two years, so the Government must win the case, and it simply cannot afford to lose it. Therefore, no uncertainty can be tolerated. As such, the Government must not let the Court deal with the case. It is as simple as that and

there is no other explanation. However, if so, what has happened to the "high degree of autonomy" of Hong Kong? Judging from the present circumstances, the headquarters of the Hong Kong Government has in effect been relocated from Hong Kong to Beijing and our court has already been moved to the NPCSC — there is no more CFA in Hong Kong. The CFA in Hong Kong has become a rubber stamp because before the case is presented to the CFA, the NPCSC's authority of interpreting the provisions under the Basic Law has been exercised to the maximum. So the Court does not serve any purpose. If this should be allowed to go on, what else is left for Hong Kong? During the past two decades or so, there have been a lot of discussions in Hong Kong on how to make "one country, two systems" a success and how to ensure a "high degree of autonomy". Such issues entail endless arguments which were found when the Sino-British Joint Declaration and the Basic Law were formulated. However, it appears that the situation is deteriorating. "One country, two systems" is fast disappearing. When the Government has brought Hong Kong to such a state, what kind of prospects and hope is left for Hong Kong people now?

On that day, the Government put up a pretentiously miserable face to stress to us that they did not wish to do that. Last week, the Government staged a consultation show, which I often describe as paving the road for seeking an interpretation of the Basic Law from the NPCSC. The Government often asks, is there any alternative? As a matter of fact, why not? The term of office of the new Chief Executive can still be five years. Or we may amend the Basic Law. But the Government said that amending the Basic Law would take a long time. If so, let the term remain five years, why should there be any problem? There are problems because the Central Authorities have already decided that way. But we feel that a problem has emerged. If the Government seeks an interpretation of the Basic Law because it wishes to clarify an issue, then the problem will only become more confusing after an interpretation has been sought. It is because the Basic Law is an integrated entity, instead of just consisting of some isolated provisions, not just Article 46. I would like to ask, what is the current thinking of the Government? By taking this move, the Government is triggering some fundamental changes, and ultimately will create trouble and confusion for themselves as it will expose more uncertainties in the Basic Law.

For example, the first question which remains unanswered to this day is: Should the term of the new Chief Executive be "two plus five plus five" or "two plus five"? If the Government seeks an interpretation now, it will lead to

another uncertain factor. I think it does not matter. As our Government is so intelligent, all unclear issues can be left for interpretation in future. So we may leave such issues for the moment. They may say it is "two plus five" for the time being. If the Central Authorities would prefer the new Chief Executive to continue with his work, then they could interpret the Basic Law by saying that the term is not "two plus five", but "two plus five plus five". They can say whatever they like. This is exactly the design of the present arrangement. They are completely at their liberty to say whatever they like.

Second, as stipulated in Article 50, "The Chief Executive may dissolve the Legislative Council only once in each term of his or her office." According to the logic of this interpretation, a Chief Executive can dissolve the Legislative Council only once in each term, then if TUNG Chee-hwa has already dissolved the Legislative Council once, and if Donald TSANG assumes the office of the Chief Executive to complete Mr TUNG's unexpired term, will Mr TSANG's term be considered a separate term in its own, or is it only a part of the original term of Mr TUNG? Can he dissolve the Legislative Council once more? I do not know the answer because the Government has just sought an interpretation of the Basic Law from the NPCSC. This issue was originally very clear in that the term of office of each Chief Executive should be five years. But now it is interpreted in such a way that the term can be split up to mean Mr TUNG's term would take up three years, and Donald TSANG will take up a two-year term. In that case, can the Legislative Council be dissolved twice? This has become possible now. Of course, the Government may say that this will not happen at the moment, but they do not know the answer for future cases. However, uniformity is required insofar as the law is concerned.

Third, there is one point which we have not considered yet, that is, can Mr TUNG run in the election again? I now realize that he can actually run in the election because this is the remainder of an unexpired term, of which there is no provision specifying that he cannot. If this time the term of office is five years, then he will not be able to run in the election because the provisions have clearly specified that a Chief Executive can only serve two terms, and Mr TUNG has already done that. However, as I consider the issue now, I find that actually Mr TUNG is still eligible for running in the election because the Government has made this incident happen which results in an interpretation that the term of office should be the remainder of the original term. So I will ask: Can he run in the election again? I do not know. As a matter of fact, if the Government has requested the NPCSC to interpret the Basic Law once, then it will keep on

requesting it to interpret more provisions of the Basic Law in future. I do not know whether the Government will go on seeking interpretations from the NPCSC.

Madam President, what the Government is most concerned about is whether the Chief Executive election on 10 July will fall through. As they fear that such an undesirable outcome may occur, so they insist that an interpretation of the Basic Law must be sought from the NPCSC. However, I would like to ask the Government a question. With regard to this problem, it seems that the Government is not afraid that the election may fall through, and Secretary Stephen LAM has already heard me bring it up many times before. I am talking about a particular kind of situation that will certainly make the 10 July election fall through. What I mean is, some changes may happen to the candidate before 10 July. Such changes include the following possible events that may happen to him, namely, serious illness, bankruptcy, criminal offences or the occurrences of other problems. No one knows what will happen for sure in this world. Therefore, if something has happened to the candidate, the election on 10 July will definitely be cancelled, and the election will fall through as well. Previously we raised this question with Secretary Elsie LEUNG and Secretary Stephen LAM, and asked them why they did not identify a solution first. Madam President, you may also be aware that those "used batteries" (that is, the 800 members of the Election Committee) will expire on 13 July. Suppose the election cannot be held on the day of 10 July as scheduled, what shall we do? It is the stance of the Government that it does not wish to elect another batch of 800 members whose term will expire in 2007. It does not prefer to appoint another batch of 800 people with a term of office extending beyond 2007 because this would affect the election in 2007. In fact, this is also a problem. Should such things really happen, what shall we do by then? Are we going to identify certain ways of seeking interpretations from the NPCSC? The Government's reply on that day was that it would take care of such situations by then. But I do not know how the Government is going to take care of the situations by then. I find that the Government is not handling the problems, but it is executing the problems by twisting the facts. If the Government is really concerned about the possibility that the election may fall through, why does it not care about this problem?

Lastly, let me quote a remark made by Mr Albert CHAN the other day: Throughout the incident, right and wrong are confused and a stag is called a horse. We all know the origin of this idiom. ZHAO Gao was a head eunuch

of the Second Emperor of the Qin Dynasty. He had been abusing his power in an unrestrained manner in the imperial court, and even when he called a stag a horse, other officials would still agree with him. Sometimes I would think ZHAO Gao was not the worst person. He was just abusing his power. Those who agreed with him in calling a stag a horse were actually the worst persons. If the Government or Chief Secretary Donald TSANG, Secretary Elsie LEUNG or Secretary Stephen LAM has been acting like calling a stag a horse, such as saying that it should be "two years" even though they know perfectly well that it should be five years, then the most deplorable fact is that all other political parties, such as the DAB, the Liberal Party or all those royalists, agree with the view of the "two-year term". If Hong Kong people cannot distinguish between right and wrong and just look up to the people in power and agree with what they say, and if they do not have any independent thinking and any basic human integrity as a human being, then this would be most pathetic. I do not wish to see the occurrence of such a situation in Hong Kong. Therefore, I think it is most important for Hong Kong people to insist on distinguishing between right and wrong and they should never agree with those people who confuse right and wrong by calling a stag a horse.

Thank you, Madam President.

DR FERNANDO CHEUNG (in Cantonese): As a new Member of the Legislative Council, I have never thought of having to face such a major challenge like this. Now, the Government is tabling before us an amendment to the Chief Executive Election Ordinance. Very obviously, this amendment has violated the Basic Law. As a Member of the Legislative Council, I feel that the Government has apparently violated our Basic Law in proposing an amendment to this Ordinance. It is really hard to imagine this could ever happen. But what is even harder to imagine is that the Acting Chief Executive and some relevant officials of the Government of the Hong Kong Special Administrative Region (SAR) have told us that the SAR Government has to present a report to the State Council to seek an interpretation of the Basic Law from the Standing Committee of the National People's Congress (NPCSC). It is really hard for us to imagine that despite Hong Kong's being a major cosmopolitan city with great success and high status in the international arena, our Government could have given up its integrity.

Regarding the arrangements after the resignation of Mr TUNG as well as those for electing a new Chief Executive and his term of office, these had been

considered in the past, and there were lots of papers on the issue, including some internal papers of the Government which indicated the term of office of the Chief Executive; they were all very explicit on the issue. The Basic Law provisions (I do not have to repeat them here) are also very clear on the issue. Both the Hong Kong Bar Association and The Law Society of Hong Kong have also explicitly said that the issue is by no means ambiguous — that the Basic Law has already made it perfectly clear that the term of office should be five years. However, our SAR Government has abandoned its originally resolute stance to make a 180 degree U-turn. Such a change is obviously affected by some views from the Mainland. To put it bluntly, those are the views of the "Grandfather". In the face of the views of the "Grandfather", the Legislative Council completely abandons its own views, makes a 180 degree U-turn, turns black into white, and insists on something which no one has ever uttered. For such a practice, I already find it very hard to believe or accept. But today, our SAR Government even says that it has to ask the NPCSC to interpret the Basic Law.

Mr Donald TSANG has said clearly that he understands that the Hong Kong people do not like to see the interpretation of the Basic Law by the NPCSC. I believe and we also understand that this is not a good approach — the interpretation of the Basic Law is not a normal course of action to take. However, he still insists that he has to do it; he still insists on inviting our NPCSC to interpret some crystal clear provisions of the Basic Law. Acting with such an approach, he has basically abandoned all the integrity of the SAR Government.

Just now, many Honourable colleagues have spoken on the disasters and bad consequences that will be brought about by such a move. I do not wish to repeat them here, but the lesson I have learned in this incident is: I find out to my amazement that our SAR Government can abandon its integrity so easily; that I find out to my amazement that our topmost management and our Government can give up reasoning; and that I find out to my amazement that all we need to pay heed to is nothing but authority. I do not know what kind of consequences will be brought about by such a move. I just know that today our SAR Government has set a very, very bad example for our younger generation. It is really a very, very bad example for our younger generation, and it also let the international community see that our SAR Government actually does not care about the rule of law, and it does not care about the facts or any reasoning at all. When the "Grandfather" says something, our SAR Government will do its best to comply with his wishes.

During the past few days, I can obviously see the whole incident has taken place with a series of well-arranged episodes. Just as some Honourable colleagues have said, what have happened during these days are episodes well scripted, well directed and well rehearsed beforehand. Several days ago, the Acting Chief Executive was still having scheduled meetings with the various political parties. I do not know how they feel right now. But personally, I am saddened and heart-broken. When our SAR Government was going to abandon its integrity completely, the Acting Chief Executive was not only doing nothing to stop it, but he even went further to act pretentiously to say that he was distressed, pretending that this was the only way out. It is really beyond my comprehension that how the Acting Chief Executive Mr Donald TSANG and his entourage of principal officials could have played such tricks to manipulate the public and the Legislative Council? We understand that as the situation has progressed to such a stage, the Hong Kong people are probably already feeling hopeless, very much like what Ms Margaret NG had said, "There is no greater grief than the death of hope". We have no parts in such affairs, which are all manipulated by the "Grandfather". Probably the role of the SAR Government is just to make the wishes of the "Grandfather" come true. Should this go on, our "one country, two systems" will soon become "one country, one system" and the spirit of the rule of law will continue to be undermined. May I ask: If the situation goes on this way, how bad will Hong Kong become? How many more times such interpretation of the Basic Law will take place in future? Is it true that whenever the "Grandfather" feels like doing it, he can interpret the Basic Law as freely as he likes? In this connection, regarding the various aspects of Hong Kong such as the social environment, the business environment or the overall future development of Hong Kong, how bad will Hong Kong be affected by such a practice?

Today, maybe many Hong Kong people still do not realize the implications of this debate, nor can they understand why such an incident would once again cause very bad damage to the rule of law. Many citizens may not understand the dispute of "two- or five-year term", nor can they understand the difference between interpreting the Basic Law and amending it. However, I think the people basically understand that this incident shows that once again the SAR Government has done by hooks or crooks to comply with the decrees of the Central Authorities. But what saddens me most is that it has once again abandoned its integrity. For a Government without any integrity, how can the

Legislative Council or the people be expected to co-operate with it wholeheartedly to jointly promote the development of Hong Kong?

Madam President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, I have actually said many times before that all the controversies over a two-year term and a five-year one are not relevant to the crux of the problem faced by Hong Kong now. The crux of the problem is whether or not there can be universal suffrage to form our government and the Legislative Council. However, since the Government has turned increasingly outrageous in its arguments, I just cannot help saying a few words despite my wish otherwise.

I also wish to discuss the rule of law concept with Members. I think the rule of law in Hong Kong has long since been dead. In the process of formulating the Basic Law, a handful of preordained figures was appointed to various organizations known by such names as Basic Law Drafting Committee (BLDC) and Basic Law Consultative Committee (BLCC). There was just a handful of these people, but they were described as a big party. There was really just a handful of these people. I do not know whether anyone in this Chamber was at any time a member of the BLDC or the BLCC. Well, after the formulation of the Basic Law, they even established a certain Basic Law Committee, and appointed four "elders" or "defenders of the Basic Law". All this tells the fact that the people of Hong Kong do not enjoy any sovereignty and have no power to draw up their own constitution. The people responsible for drawing up the constitution were all assigned and appointed by the Central Authorities. The Basic Law was formulated by all these people. Since they were the very ones who drafted the Basic Law, they can interpret it in whatever ways they like, even by mere recollection. Even though they never said anything on a particular topic, they can still give an interpretation by claiming that it was on their minds at that time. For our part, since we do not have any power to draw up our constitution, we do not enjoy any authority of interpretation.

There are two mechanisms here. Under one of these mechanisms, if anything fear is aroused, the Courts may interpret the provisions of the Basic Law by invoking Article 158. Furthermore, if the Courts of Hong Kong have

any doubts when adjudicating cases involving the relationship between the Central Authorities and the SAR, they may seek an interpretation of the relevant provisions from the Central Authorities. However, what has been happening recently is downright "foul play". Frankly speaking, Article 158 is far from being relevant to the present situation. It is totally unconvincing to argue that the controversies over a two-year term and a five-year one are connected with the relationship between the Central Authorities and Hong Kong, because it is certain that the substantial powers of the Central Authorities relating to the administration and territorial control of Hong Kong will not be involved. As far as I can remember, the Central Authorities have also argued that its substantial power of making appointments is a very important consideration because at the end of the day, it must appoint a Chief Executive or other officials. So a re-interpretation of the Basic Law should be made. The whole thing is basically very simple. If Members can realize that Hong Kong people do not have the power to draw up their own constitution, they will see that Hong Kong people are left with very few political rights. They are made to eat the leftovers of a big party of others, so to speak. People should all be aware of the reality, only that the stories told by others are very appealing, so they are all hypnotized into believing that they still enjoy political rights.

The Basic Law has been interpreted three times. At the time of the first interpretation, it was claimed that the situation was very urgent, because 1.67 million people would come here and Hong Kong would certainly sink as a result. This was said right here in this Chamber. The matter has not yet been settled. People are still demonstrating outside this building every week, accusing the Government of deceiving the Legislative Council, of seeking an interpretation from the National People's Congress (NPC) and of depriving them of their right of abode. The matter has not yet been settled, as people are still waiting outside this building every day. The Government must reflect upon what it has done, that it is such a wrong thing. These are all powerless people, but can you people walk past them without feeling any shame and disgrace?

That was not all, and an interpretation was sought later for the second time. Perhaps the matter was considered very important, so the Central Authorities decided to do it all by themselves instead of relying on all these flatterers. The Central Authorities did it all by themselves and interpreted the Basic Law of its own accord. Their action was legally justified because under the constitution of China, the Central Government is empowered to interpret any

laws. But how come they have chosen such a roundabout tactic for the third, or this, interpretation? The answer is very simple, and I suppose I can illustrate the point just by telling a story from the *Bible*, the story of the death of JESUS.

The story goes that a Jewish high priest, Joseph CAIAPHAS, hated JESUS and he wanted to sentence Him to death under Jewish laws. However, it turned out that this was not impossible. As a result, he tied up JESUS and handed Him over to a Roman governor, Pontius PILATE, who could sentence Him to death if he wanted to. However, PILATE did not think that JESUS deserved death. So, the matter dragged on, with no one willing to do the job.

I think that Chief Secretary for Administration Donald TSANG — no, he has been promoted and is now the Acting Chief Executive — is actually both CAIAPHAS and PILATE, that is, a person who can act either way. But while he is afraid of being criticized by others, he must still obey the instructions of his superiors. Actually, the Beijing authorities really do not want to do it for the second time, that is, to interpret the Basic Law yet again without being asked. That is why Chief Secretary for Administration Donald TSANG is instructed to rack his brains and deceive the people of Hong Kong by saying something that even he himself will not believe, so as to save the face of the Central Authorities. After all, who will still trust the Central Authorities if they initiate Basic Law interpretation two times in a row? No one will trust them any more.

This time around, Mr Donald TSANG was actually supposed to seek an interpretation of the Basic Law in his dual capacity as the Acting Chief Executive and the Chief Secretary for Administration. However, since both the Chief Executive and the Government are not permitted to do so under Article 158 of the Basic Law, he has worked out the "stupid trick" of filing a request with the State Council instead of the NPC. He seems to think that the people of Hong Kong are all ignorant. The State Council and the NPC are just two components of the same government. In terms of ranking, the State Council is even under the NPC. One may, for example, say to one's hanger-on, "Long Hair is detestable. So, let's kill him." But it does not make much sense to make such a proposal, because proposing others to kill is as bad as the crime itself. We can thus see that this Government is up to nothing good; it has committed every conceivable sin. It has given everybody a big runaround, treating all people as simple fools and making up various excuses, all with the aim of seeking an interpretation of the Basic Law.

When I met with Mr TSANG, I already warned him against doing so. He really should not do so. That day, I noticed that he was practically murmuring. From the psychology books I have read, I know that when one murmurs or speaks quickly, there can only be two reasons. First, he does not believe what he himself says. Second, he thinks that the listener does not believe what he says. In both cases, one will see no point in continuing. He behaved exactly like this that day. Secretary Stephen LAM was also at the meeting. Actually, he himself knew what was going on, and he also thought that it was better for him to get it all done as soon as possible. He might think that when he murmured, others would not hear him clearly and if others could not hear him clearly, he could get away. In any case, he might think, the important thing was just to say something for the record. Unfortunately, however much the Legislative Council of Hong Kong has displeased him, he must still come here to let us monitor his work. However, he is no longer present now, and only Secretary Stephen LAM is left behind to listen to our speeches. We are therefore just wasting our own time. He does not dare to stay behind to listen to us, so he has chosen to attend other occasions. To sum, I do not find the interpretation of the Basic Law at all appropriate.

Actually, the lines of poetry I presented to him are an apt depiction of the man that he is. These are: "Go ask Bo Shi for every advice,/ Master HU holds the reins of power in his hands." The lines satirize Prime Minister HU Guang. In the *Biography of HU Guang* in the *History of Later Han Dynasty*, HU Guang is depicted as an intelligent fellow, extremely knowledgeable in the laws and institutions of the State, very much like Secretary Stephen LAM and Chief Secretary for Administration Donald TSANG, who can readily cite various provisions to justify their request for Basic Law interpretation. But they have never explained why they should exercise such a power. When the question is about politics, they will cite the law in their answer. But when the question is about the law, they will talk about politics. All this is mere sophistry. When people in the capital city told HU Guang that they were hungry but did not have any food to eat, he just replied that this was the way the ancestors wanted things to be. "Master HU holds the reins of power in his hands" can be used to describe Mr TSANG. He is just like HU Guang. All along, he has just been repeating that because of all the relevant laws and regulations, he can do nothing. He has been behaving exactly like this. He has never examined his own deeds.

The next two lines, that is, "The Old Man of Eternal Joy slays enemies with others' swords,/ While JIA wines and dines with the rich and powerful"

can describe him even more aptly. Who was that "Old Man of Eternal Joy"? As I mentioned here sometime ago, he was FENG Dao, who served as many as 11 monarchs with four different family names in five different dynasties. In other words, he served a total of five "bosses". The line "While JIA wines and dines with the rich and powerful" is about JIA Shi Dao, a treacherous Prime Minister who gave the Emperor false reports on the military situation, thus causing the downfall of the Southern Sung Dynasty. Even when the invading army was approaching, he still enjoyed wine in the company of the rich and powerful in the Hall of Leisure. This is an accurate depiction of the situation now. This is what the new Chief Executive has been doing.

All these four lines of poetry can present an apt description of the present situation. Well, at this juncture, I cannot help saying that the Basic Law has been trampled on. I must spare a minute or two to talk about something else because I have been asked by the Hong Kong Federation of Students to pass this erasable board to Mr TSANG. They hope that Mr TSANG can write all the laws on this erasable board in the future, the idea being that any undesirable laws on this board can be erased easily before its presentation to the Legislative Council for stamping. When the students were waiting for him, he did not stop by to take it. As a Member, I agreed to take this board here. Members should realize that the message of the students is very simple. They think that the laws formulated by the Government are just like words written on quicksand, which can be erased easily once they are found undesirable. They are just like words written on the sand with a reed. All is just like what OU Yangxiu did when learning how to write — writing on the sand with a reed and any mistakes would be erased. Well, I really do not want to go on speaking now. My only purpose of speaking is to express my strong discontent with the seeking of Basic Law interpretation by this government. Its request is just a cover-up, meant largely to let the State Council play the "villain".

At the beginning, I wanted to gather all the letters and reports sent to us by the Chief Secretary for Administration cum Acting Chief Executive and tear them off in his presence here. But after some consideration, I have decided not to do so because I will still be unable to fully express my discontent that way. I think I must tear off the Basic Law here today. I am just following the example of the Chief Secretary for Administration, because he himself has already torn the Basic Law into pieces. Like the royalist parties, he has been accusing us for stirring up disputes concerning the Basic Law, questioning us whether we want to bring any disgrace to Hong Kong, whether we want to stop the election of a new Chief Executive. But as clearly pointed out by Ms Margaret NG,

discussions on the term of office can actually be deferred until after the election is held, and even a reduction of its length can be possible. If he subsequently finds that the term of office is too short, or too long, he may refuse to assume office. This will never affect the candidates. The fact is that the Government has just been lying. Ms Margaret NG has thrice proven that it has been lying, but it has not given any response so far. Is that what a government is supposed to do? A Member has raised a problem, but the Government never gives any reply. Well, anyway, Mr TUNG also did something like this before. He refused to give any reply, and eventually, he had to step down. Can he go on refusing to give a reply? Mr TUNG did that before, but eventually he had to step down. Ms Margaret NG has thrice said that the Government has been lying. I myself have heard her say so at least twice, and maybe, I am going to hear her say so for the third time. She has asked a question, but the Government just refuses to reply. What then is the point of giving other reasons? Why have they come to the Legislative Council anyway? To read out a pre-written script? Ms Margaret NG talked about parrots trying to extinguish a fire. This is a noble act. But parroting is a shame.

Therefore, I have no alternative but to tear off the Basic Law before everybody here. I am not going to tear off the whole Basic Law for the time being, but it looks very likely that I will have to tear off more parts of it sooner or later, such as Articles 43 and 48. They always say the SAR Government is empowered to seek an interpretation of the Basic Law from the NPC. I was right in swearing allegiance to the people, not the SAR. The situation now proves that I am correct. What has become of the SAR now? It has become a mere bureaucracy at the sole command of the Central Authorities. The people are not the same, and we must at least hold ourselves accountable to them. Do Members understand why we should swear allegiance to the people? From what they do, they do not show any allegiance to the people.

For all these reasons, the first thing I must do now is to tear up the provisions of Articles 43 and 46 — Members do not need to worry because the copy I am holding belongs to me, not the Legislative Council. This in fact what Chief Secretary for Administration Donald TSANG has done. I am just repeating the deeds of Mr TSANG and Secretary Stephen LAM, tearing all of it into pieces. Next, I am going to talk about Article 158, and I can only use the expression "completely outrageous" to describe my feeling. It is nowhere mentioned in Article 158 that the Chief Executive is empowered to seek an interpretation of the Basic Law from the NPC. But now, the Chief Executive has resorted to the State Council, openly asking for an interpretation of the Basic

Law from the NPC. I am now going to tear it apart too. All is simply an insult to the people of Hong Kong, to the Legislative Council, which includes the President. It is a shame that even the Legislative Council has failed to check the misdeed of the Government. That is why I must tear the Basic Law apart, in the hope that the SAR Government can examine what it has done.

PRESIDENT (in Cantonese): Honourable Members, there were cases where Members speaking in this Chamber made use of various objects such as press reports or other things to add force to their speeches. However, what Mr LEUNG Kwok-hung has done, that is, the destruction of a copy of laws currently in force in Hong Kong, is unprecedented and the first of its kind. I now wish to tell Members that I personally do not think that it is fit and proper to tear apart a copy of laws currently in force in Hong Kong in this very Chamber. However, since I have never said so before, and since I have never expected this to happen, I shall take no actions this time. But if in future anyone repeats this in the Chamber, or at any Council meeting, that is, tearing apart any laws currently in force in Hong Kong, I shall treat the act as disorderly conduct and it will be condemned.

MR LEE WING-TAT (in Cantonese): Madam President, many Members have actually spoken in this debate with a heavy heart because this is already the third time, the third time in six years, that the Basic Law is given an interpretation. Members are well aware of the background to the interpretation: A by-election must be held after the resignation of Mr TUNG, and there have been heated discussions on the term of office of the candidate who wins in the by-election.

Members should still remember vividly what many of their counterparts once said. On the term office, there was actually no difference in opinions in this Legislative Council Chamber. Even pro-establishment and royalist Members used to think that the term of office should be five years. They never said that — as can be noticed from their analyses or various documents — prior to all these discussions, they already knew that two years should be the case. It was not until a recent government briefing that this new interpretation was brought to everybody's attention.

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

In regard to this new interpretation, the Government has admitted that it used to think that five years should be the case under the common law in force in Hong Kong. This is truly very regrettable because the two government officials in charge of this matter are no ordinary officials. One of them is the Secretary for Justice and the other the Secretary for Constitutional Affairs. Both of them stated the term of office very clearly at the time of enacting the Chief Executive Election Ordinance in 2001. And, when replying to Ms Emily LAU's question last year, it was still asserted that the term of office should be five years.

Consequently, I am always puzzled when people, especially Members belonging to the DAB, claim that everybody should know clearly that two years should be the case. I think they are just trying to rationalize a new interpretation of theirs. If they have always thought that two years should be the case, why did they not raise any queries when Secretary Stephen LAM replied to Ms Emily LAU's question last year? There is obviously something very strange here.

Should Secretary Elsie LEUNG, Secretary Stephen LAM and even our Chief Secretary for Administration be held responsible for the present situation? They should be held responsible because they have committed such a grave error in handling such a significant issue. But so far, they are reluctant to bear any responsibility. They have certainly contributed to the occurrence of the problem.

Why are we in the Democratic Party always so serious about this issue? The reason is that we consider the rule of law extremely important, more important than any political considerations and political expediency. By referring to political considerations and political expediency, I wish to point out that we should not be influenced by any political considerations, nor should we simply weigh the possible benefits associated with each of the arrangements and then choose the one most beneficial to us. I am sure that the same view has been expressed in many analyses and commentaries on this issue, only that the Central Government, the SAR Government and even the DAB and the Liberal Party may not necessarily agree.

Put simply, the interpretation that two years should be the case is largely a means of placating those political parties which still want to vie for the office of Chief Executive and of testing the political loyalty of Donald TSANG when he assumes the office of the Chief Executive. These two considerations, together with other political factors, have led to such an interpretation. These factors,

whether connected with placating the Liberal Party, the DAB and pro-China elements, or with testing the political loyalty of Donald TSANG, are all political considerations.

This explains precisely why we have reacted so negatively. We do not think that these factors should be allowed to cloud other considerations, because we think that this will induce many Members to fall into the same trap. In the debate today, some Members have already asked for a clarification. And, at the press conference, some journalists also questioned the Chief Secretary for Administration whether the aim this time around was to resolve the problems of "two plus five" and "two plus five plus five" together once and for all. The Government has replied that there is no cause of any hurry. But we can see that many people have already started to express different opinions, and these opinions will probably plunge us into the inconsistency caused by political expediency and political considerations.

I can remember that following the Government's decision, Chief Secretary for Administration Donald TSANG, Secretary Elsie LEUNG and Secretary Stephen LAM once came to this Chamber to offer an explanation. At that time, when a Member belonging to the Article 45 Concern Group asked a question on "two plus five plus five", Secretary Elsie LEUNG suddenly uttered "12 years". Members should still remember this. But Secretary Stephen LAM was so "smart", for he hastened to add that nothing was certain yet, and that the opinions of the Mainland must first be sought. Their behaviour, even in polite language, can be described as full of contradictions and inconsistency, and if I were to be blunt, I would simply use the adjective "disgraceful". Such behaviour is disgraceful because the rule of law in Hong Kong has been subordinated to political considerations. Besides, our Government has also refused to conduct thorough discussions on this issue.

Some journalists have asked many questions (as have some Members here today). Why is it that while the question on two years or five years is considered so important to candidates, the maximum number of terms they can serve is not treated likewise? Why is it that interpretation is sought only on the issue considered as important, but not on the one for which no political decision has been made? Is that because the Government has something else in mind, so it does not want to make any decision now? Or, is that because, as pointed out by Mr TAM Yiu-chung on the radio earlier today, or a couple of days ago, that since there is no urgency for that matter, it is alright to defer making a decision

until 2006? Why does he know that there will be a decision in 2006? Why is it impossible to make a decision in late 2005 instead, or early 2006 for that matter? Why do they refuse to address the issue of concern I have mentioned, that is, the question of how many terms, how many years, a successful candidate can serve in total? This should be a factor which candidates need to consider. Why do they refuse to handle this issue as well? Why does the Government have to be so selective, seeking interpretation on just one issue it considers important and ignoring all others?

Many other provisions of the Basic Law should also be noted. For instance, Article 48(5) reads: " The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions: to nominate and to report to the Central People's Government for appointment the following principal officials" The people may think that the candidate elected, or elected *ipso facto*, on 10 July should replace all the existing principal officials and report new appointments to the Central People's Government, but the Government may not want to do so. In that case, if a member of the public applies for a judicial review, is the Government going to seek an interpretation of the Basic Law yet again, for the fourth time?

Therefore, we hope members of the public can understand our position. We want the Government to realize that this interpretation of the Basic Law (which is the third of its kind) may not be the last one. Very soon, it may be necessary to seek an interpretation for the fourth and fifth times. All these acts of seeking an interpretation of the Basic Law will surely impact the rule of law in Hong Kong very severely. To some people, there is nothing serious and special about seeking an interpretation of the Basic Law. But we must always bear in mind that one of the greatest debate topics on the reunification of Hong Kong with the Motherland was in fact the rule of law. By the rule of law, it is meant that the Court shall be vested with the power to interpret laws independently, free from political considerations and intervention. Even people with no legal training can appreciate the importance of this.

Some wonder whether there will be any difference if an interpretation is sought directly from the Standing Committee of the NPC (NPCSC). DAB Chairman MA Lik remarked in his speech that according to Article 158, there would not be any great difference, whether the NPCSC gave an interpretation of its own accord, or whether a request was made by the State Council, or whether the Court of Final Appeal made such a request before it made any final

judgements. But we do think that there is a difference, and it was precisely because of this difference that Basic Law drafters insisted on the inclusion of Article 158 years ago.

Members all know that the NPCSC is not a court of law, not a judicial institution. We all know that it is a political institution. Although Deputies to the NPC are not Well, in a way, they are. They are returned under an electoral system with limited democracy — Deputies to the Local People's Congresses at the village level are returned by direct elections, but there is no universal suffrage but just indirect elections at the county and provincial levels. The NPCSC is an institution formed under such a system. However, it cannot be denied that it is still a political institution. And, vesting a political institution with the power to interpret laws will lead precisely to the dangers very much feared by the people. The reason is that many political factors will be dragged in. I fail to see why Mr MA Lik, Chairman of the DAB, should have a different opinion on this.

Actually, this is also one important reason for Hong Kong people's strong reservations about seeking an interpretation of the Basic Law from the NPC. Following the adjudication of the Court, the losing party in a lawsuit will understandably be unhappy. But what is most important is that we can always rest assured that our Judges will never make their judgements under the influence of any political considerations, political expediency or other factors. This is an important reason explaining why the rule of law is respected so much and upheld so vigorously by the people of Hong Kong.

Madam Deputy, we are also worried that the whole process of interpreting the Basic Law by the NPC this time around is marked by a very low degree of transparency. There is just a report submitted unilaterally by the SAR Government to the State Council. This is quite unlike the procedure adopted in Hong Kong law courts, whereby both sides can submit or present their own arguments. And, we must bear in mind that under this procedure, members of the public and the press can both be present at hearings to listen to the presentation of arguments by both sides. If the NPCSC really wishes to do the job well — I certainly hope that this is the case — it should conduct extensive consultation. Unfortunately, however, it never did so on the first and second occasions of interpreting the Basic Law. Even when some sort of limited consultation was conducted, all was very superficial and the scale was extremely small. Such a political procedure, devoid of any extensive consultation and

marked by a very low degree of transparency, is truly very frightening. The reason is that people may thus confound grey and black, or white and grey, so to speak. This is precisely the reason for the Democratic Party's strong opposition.

Therefore, we have always upheld the position that even if there are really any grey areas in the Basic Law, formal amendments should still be preferred to seeking an interpretation. It seems that people do not see any problems with seeking an interpretation. But from the news on television, I have learnt that the international community has already started to make criticisms, commenting that the Basic Law interpretation this time around will lead to far-reaching consequences in Hong Kong. Besides, some commentators have even used the term "耻辱" (meaning "shame") to describe the repeated attempts to interpret the Basic Law — this is a translated term, and I do not know what word was originally used. I hope that the Government, the Chief Secretary for Administration and the Secretary for Constitutional Affairs will not underestimate the negative impacts of this move to interpret the Basic Law on the rule of law in Hong Kong in the eyes of the international community.

I also do not wish to hear any more talks about "there is not any big difference" by Chairman MA Lik. Imagine that there is one more Basic Law interpretation two months later, and yet one more next year, how will investors and rating institutions assess Hong Kong? Will they still give Hong Kong a passing grade in upholding the rule of law? The most notable feature which distinguishes Hong Kong from Shanghai, Beijing, Guangzhou and Shenzhen is that the rule of law here has not been subjected to any major queries so far. But if the Basic Law is so frequently interpreted, Hong Kong will certainly sustain irreparable damage. What distinguishes the metropolis of Hong Kong from Shanghai? The distinguishing feature is the rule of law (though admittedly our system is not fully democratic either). We have basically managed to preserve all the elements of the rule of law quite successfully. But these several interpretations of the Basic Law have done insidious damage to the rule of law in Hong Kong, and such damage will grow bigger and bigger over time.

I hope that this will be the last interpretation of the Basic Law. On behalf of the Democratic Party, I also urge the Chief Secretary for Administration to reconsider his decision today and refrain from submitting the report to the State Council to ask for an interpretation of the Basic Law by the NPC.

Thank you, Madam Deputy.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, there is no greater grief than the death of hope. As pointed out by many Members, we do think that the interpretation of the Basic Law this time around symbolizes the death of the rule of law. Yes, there is no greater grief than the death of hope, but I also think that our grief is caused not only the death of the rule of law. Like the recent increases in interest rates, the request for Basic Law interpretation is largely a foregone conclusion. Since the very beginning, we have expected the Government to do so. The only thing is that, as criticized by many Members, the Government has been pulling a long face in pretence, going around for advice while claiming that it cannot identify any solutions. But the truth is that it has long since decided to take this step and has just been waiting for the right moment to strike.

This present request for Basic Law interpretation I suppose Members are not simply talking about this request, because it is already the third of its kind I just do not think that any ordinary people in Hong Kong will wish to see all these three requests. But the greatest cause of our disillusionment is not the request for Basic Law interpretation itself. Rather, our disillusionment has stemmed from the Central Government's failure to honour its repeated assurances that after the reunification, "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" shall be implemented in Hong Kong. As a result of this incident, we have been disillusioned for yet one more time, because we simply fail to see how "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" are in any way being implemented in Hong Kong.

Regardless of which means is to be adopted — filing a request via the State Council or approaching the National People's Congress (NPC) directly — we must note that interpreting the Basic Law is not the same as amending it. What does the former imply? It means that the Basic Law shall be interpreted by the NPC and we in Hong Kong will have to accept its perspectives and judgements. That being the case, how can it be possible to implement "a high degree of autonomy" and "Hong Kong people ruling Hong Kong"? I suppose this is the precise reason for our grief. Before the reunification, we all looked forward to the implementation of "Hong people ruling Hong Kong" and "a high degree of autonomy". But how can anything be implemented now?

Today, the Government says that it is necessary to seek an interpretation on the remaining tenure of the Chief Executive. As pointed out by many Members just now, we simply do not know what circumstances may once again

lead the Government to seek an interpretation of the Basic Law from the NPC. What does this signify? This signifies that the views of the NPC must be sought. What does seeking the views of the NPC in turn signify? Can we really handle our own affairs independently? Finally, we have learnt that the answer is no. This explains all that has happened. I therefore think that the damage done by seeking an interpretation of the Basic Law from the NPC is not confined to the rule of law; most importantly, the fundamental principle underlying the Basic Law is thus totally negated. To me, this is the most serious problem.

Are there any alternatives? It must be admitted that if we really decide that the term of office should be two years, there will indeed be no alternatives other than interpreting or amending the Basic Law. If we do not consider these two options, then we may have to adopt what the Government has described as a misinterpretation of the Basic Law. If we do follow this misinterpretation, we must then adopt either one of the two options mentioned above. But I must add that having read all the relevant Basic Law provisions, we cannot help ask why the Government should say the term of office should be "two years" instead of "five years". This is the greatest problem.

Many Members have reviewed the background to this incident and pointed out that in all the papers submitted by the SAR Government in response to Members' queries at the early stage, a five-year term was mentioned. In addition, throughout the whole process, we have failed to see even the slightest reference to any remaining term of office. We have frankly failed to see any such reference. We are also unhappy about the Government's approach of "trimming the toes to fit the shoes", because the request for Basic Law interpretation it talks about today is just on the legality of a two-year term. All the consequences that may result from serving out the remainder of the unserved term are ignored.

The Chief Secretary for Administration, or, precisely, the Acting Chief Executive, admitted this morning that this incident might lead to many related problems. But he went on to say that these were not urgent problems that had to be tackled immediately, and that the most pressing task then should be to ensure that the election could be held on 10 July. The Government has behaved just like an ostrich which buries its head in the sand as a means of escaping from troubles; I find this attitude very regrettable. How can anyone ever imagine that a government can be so myopic as to focus solely on 10 July, ignoring all those problems that may arise soon afterwards, on the 11th, 12th and 13th?

Even though it knows that there will be problems, it still says that it must nonetheless go ahead first, and if there are really any problems, it will then decide how to deal with them. The SAR Government will decide how to deal with problems only when they arise. Such an approach and attitude are really deplorable, are they not? It is especially deplorable for the Government to adopt such a sort-sighted attitude and haphazard approach when discussing the Chief Executive election, when discussing a formal electoral system. How can such a government give the people any confidence in its governance? This is the most deplorable problem.

We honestly cannot see any determination on the part of the Government to make it possible for the society of Hong Kong to operate independently, for its people to enjoy any autonomy. The Government often repeats, "Let us find out what we should do." What does "let us find out" mean? Its implication is just that some people must first be consulted before any decision can be made. If the Government really has its own judgements and opinions, why is it impossible to put forward a complete blueprint, a complete scheme and a complete system for discussions?

I have repeatedly questioned Secretary Stephen LAM on the remainder of the term of office. I have been telling him that there is always the possibility of problems, and I have been asking him what actions will be taken if problems do arise. But his reply is so surprising, "No comment for the time being. Let us decide what to do when problems do arise." If the original text did mention the remainder of the term of office, then why has the Government always failed to give a definitely reply every time when it is questioned on this? The reason why the Government fails to give a definite reply shows precisely that the original text does not mention the remainder of the term of office. If the final version does provide that when the office of Chief Executive becomes vacant, the new Chief Executive emerging from a by-election shall serve for a term of five years, then all problems can be solved, and there will be no problems at all. But the present situation is not quite like this. We are now faced with many problems, all caused by the fact that we are forced to give in to a political decision.

Today, many Members have remarked that they are utterly disillusioned due to the ruining of the rule of law. But to be me, the most deplorable thing is we realize that "a high degree of autonomy" is just our wishful thinking, and that we have just been naive, because this is simply impossible, because the SAR Government must obey others' orders, must do whatever it is told to do.

It is small wonder that Secretary Stephen LAM has asserted that he will certainly resign if the SAR Government really does something against the law. I suppose Secretary Stephen LAM really means what he says because he is sure that the Government will never do anything against the law. After all, can anything happen even if it really acts against the law? Well, in that case, it can always seek an interpretation from the Central Authorities. What is illegal will then be turned legal, so there will not be any more need for him to resign, and he can then stay on happily. All is so simple. This is precisely why he dares to make such a remark. Many people thus think that he is morally upright and indifferent to wealth and power, and that he will certainly resign once the Government does anything against the law. But he really has nothing to fear. Even if he knows that something is obviously against the law, is obviously not feasible, he can just wait and ask the Central Authorities to give an interpretation. In this way, all problems will vanish. He simply has nothing to fear, for all will be turned legal at the end of the day. This is how the Government and the whole society have been handling the issue.

I do not intend to say much. I only want to say that despite our disillusionment, our desire for democracy and the rule of law in Hong Kong is not yet dead. We shall continue with our struggle. The debate today is an example of our insistence. We know only too well that it will not achieve anything worth the name, but as Members elected by the people, the majority of us have not lost heart; we still want to carry on, telling the Government that we still aspire to a democratic society in Hong Kong, with institutions which respect human rights and the rule of law. We have met with many setbacks, but we have managed to stand up again every time, and we will carry on with our struggle, in the hope that one day, institutions of democracy and the rule of law can prevail in our society.

Madam Deputy, I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, the viewpoint of the Democratic Party has been stated by Mr LEE Wing-tat and Mr Albert HO. I would like to turn to the impact of the interpretation by the NPC on the unification of Taiwan with the Motherland. It is known to everyone that the Central Authorities have the power over the NPC's interpretation. The Central Authorities can, through making a political interpretation of the Basic Law, fashion the Basic Law which is considered better to be raw than elaborate, into

whatever shapes the Central Authorities like. Also rumours are spread out of thin air, a stag is called a horse, the Basic Law is slighted, the rule of law in Hong Kong is wrecked, and the seeds of destruction are sown in Hong Kong.

However, the real crux of the problem lies with the consequences of the interpretation, not with how a political interpretation of the Basic Law can be made. The real problems occur not only in Hong Kong, but also in Taiwan.

The Chinese Government has recently proposed the Anti-Secession Law in the hope of unifying Taiwan. WANG Zhenmin, the "emperor" of the Basic Law, pointed out the absence of the wording "one country, two systems" in the Anti-Secession Law reflected that a new system might probably be introduced in Taiwan in the future to achieve the ultimate goal of realizing peaceful unification in a flexible manner.

At present, China's foremost political and historical mission is to unify Taiwan. However, Taiwan has treated the "one country, two systems" practised in Hong Kong merely as a negative example. CHEN Shui-bian has even regarded the "one country, two systems" as a laughing stock, which is absolutely unacceptable to Taiwan. The Democratic Progressive Party aside, even the masses of Taiwan do not believe the "one country, two systems" could work in Taiwan. A number of opinion polls conducted in Taiwan have also clearly reflected what is in the minds of the Taiwanese people.

Why do the political parties and people in Taiwan not believe in the "one country, two systems"? This is because, during the past seven years since the reunification, many of the promises made by the Basic Law to Hong Kong people have been twisted beyond recognition. The Basic Law has been losing its credibility. It has also become an increasing powerful tool for curbing democracy and "high degree of autonomy" enjoyed by Hong Kong people. It is precisely the persistent and repeated attempts of interpreting the Basic Law that have damaged the credibility of the Basic Law.

Such issues as the right of abode, the democratic political system and the term of office of the Chief Executive have all been dealt with by interpreting the Basic Law. As I stated earlier, the means resorted to include spreading rumours out of thin air, arbitrarily twisting the Basic Law for political ends, and turning the Basic Law into empty promises, jokes, a piece of waste paper, a cheque that can be altered at any time, and a diary in which WANG Zhenmin can

talk nonsense to justify the interpretation of the Basic Law. At one moment he says two years, the next, five, then seven or 12 years. He can modify his previous remark and refute his previous convictions literally every day and every minute. This is WANG Zhenmin I am talking about.

Why is it that WANG Zhenmin who is not even a member of the Basic Law Drafting Committee and was nowhere to be found when the Basic Law was drafted, can now fool around, pointing his finger at the SAR and act like an "emperor" of the Basic Law? This is indeed the most typical story of a fox masquerading as a tiger. At his back is a huge, mighty tiger. With the NPC's interpretation power and the NPC at its back, the Party Central Committee can exercise the ultimate, final, highest and sole power of the Basic Law to make a political interpretation of the Law to suppress all dissenting voices and all legal interpretations that might go against their wishes.

Actually, WANG Zhenmin may just be a small fox on the front stage. However, the fact that he can wield such great power and exert such influence should have sent a chill to Hong Kong, as well as Taiwan. One day, when the peaceful unification of Taiwan really materializes, whether in the form of "one country, two systems", a federal system or whatever, there must be a legal format and stipulations, and this book of law should perhaps be named Taiwan's Basic Law.

However, if the Central Authorities continue to hold the power to interpret the Chinese law or Taiwan's Basic Law, how can the Taiwanese people, after witnessing Hong Kong's experience, believe in this Basic Law of Taiwan which can be fashioned into myriads of shapes, interpreted politically, and subject to interpretation rather than revision? Therefore, Taiwanese people who have a clear mind should be aware that the obstacle to Taiwan's unification with the Motherland is actually the supreme power held by the Central Authorities in interpreting the law and the power of interpretation conferred upon the NPC by the Constitution.

Therefore, the more interpretations are made in Hong Kong, and the more they are interpreted in an irresponsible and groundless manner, the more Taiwan will distrust the Chinese Government, the Anti-Secession Law, and any legal assurance given by the Chinese Government. It might even refuse to follow Hong Kong's experience in the political system and the rule of law because of the disasters caused.

While we support China's unification with Taiwan, I must point out that, if today the Central Authorities or the SAR destroy the Basic Law, this will very soon become Taiwan's excuse for pursuing secession tomorrow. This is an example of losses outweighing the gains. This approach, driven by political expediency, has in the end caused one party to be suspicious of unification, and even hurt the great cause of unification. This is not only saddening, but also regrettable.

In a recent trip to China, Taiwan's Kuomintang reached a 10-point consensus with the Central Authorities. If a law can be altered according to the rule by man, it goes without saying that the consensus reached with an opposition party can be changed, for the consensus is a far cry from a law. The Central Government has often emphasized the need for ruling the country and Hong Kong according to the law. However, the interpretation of the Basic Law has become the biggest mockery to the ruling of the country and Hong Kong in accordance with the law, and the most pathetic footnote of such claim.

I believe the SAR's request for interpretation is merely intended to act as the "bad guy" and so that the Central Authorities can "go ahead" to enable the NPC to interpret the law in a matter-of-fact manner. The Central Authorities and the SAR Government are actually collaborating with one another. Given that the decision is inevitable, I am not prepared to give any more well-intentioned advice. Neither do I believe in the possibility of a timely turn. Today, we are simply wasting our time on this debate; we are merely talking to ourselves. With the lapse of seven years since the reunification, Hong Kong has lost its significance in the united front efforts. The Legislative Council of Hong Kong has also lost its check and balance power. The hearts of the Hong Kong people are also filled with utter despair. In exchange for peace, they cannot but accept their destiny. With the world under its feet, the Central Authorities can run wild as it wishes. It will simply not address or pay attention to the opinions and voices of Hong Kong people. Nor will there be a possibility of a so-called timely turn. It would only wish to speed up its pace and achieve its goal more quickly. It would be most preferable for an interpretation to be made thoroughly and expeditiously so as to end the dispute about whether it should be two years or five for the purpose of enabling the new Chief Executive to be elected in a sham election which in fact appointed by a decree from the Central Authorities.

The SAR Government, represented by Donald TSANG, is actually encouraging oppression openly. When he met with political parties some time ago, he put on a solemn, struggling and painful look. He was merely putting up a show. It was only that his performance was excellent, far more saddening, perplexed and sensational than TUNG Chee-hwa. Today, in this meeting, Donald TSANG said that he had carefully reflected on the matter before he finally decided to seek an interpretation from the NPC. I really feel sick and disgusting. So, you have been wronged, Donald TSANG. Actually, you have prepared to seek an interpretation a long time ago. You have prepared to do so when meeting Members of this Council. You have begun making preparations for the interpretation after meeting LIAO Hui. How come you have to carefully reflect on the matter? How come you have been wronged? You might as well openly admit that you will follow the example of TSANG Hin-Chi in making a thorough interpretation to resolve the dispute over seven and 12 years so as to eliminate any future trouble. Sometimes, a real villain is even better than a hypocrite. At least, a villain will not make people feel perplexed. Neither does he have to act pretentiously.

Madam Deputy, a Chinese poem reads:

"When the gullible Duke of Zhou feared rumours and false words,
When the usurper WANG Mang was humble and courteous,
If the two had died at that time, how to anybody
Their true colours be discerned?"

When Donald TSANG acted humbly and courteously and consulted the views of political parties, his ultimate goal was no more than to seek an interpretation. Being a hypocrite who seeks to interpret the law, should he be considered a present-day WANG Mang? At last, as he has done in this meeting today, he has revealed his fox's tail. There is nowhere he can hide. What he has done only serves to arouse scorn from the people.

Madam Deputy, I so submit.

MS AUDREY EU (in Cantonese): Madam Deputy, in less than eight years after the reunification, there have been three interpretations of the Basic Law: one in June 1999, another in April last year and yet one more in April this year. According to Mr MA Lik, Basic Law interpretation is a manifestation of the rule of law under "one country, two systems". Mr LAU Kong-wah has argued that since Basic Law interpretation is both lawful and constitutional, the Secretary for Justice does not need to be so hesitant. But Mr Alan LEONG has drawn our attention to the enactment of Article 23 legislation, reminding us of his analogy to "cooking a frog with lukewarm water". Not too long ago, the people of Hong Kong were very concerned about the danger of Hong Kong being overwhelmed by "one system", the system of the Mainland. In the end, some 500 000 people expressed their concern by taking to the streets. This time around, all is very similar except that there is a different topic. Last time, when the topics were about human rights, freedoms and sedition, the people of Hong Kong were all extremely concerned. But this time around, they are not so concerned, for they simply think that a two-year term and a five-year term will be equally fine. Actually, although the topics involved are different, the same principle should be applied. The law provides unequivocally that the term of office shall be five years, but the Government has resorted to an improper channel in a bid to justify a different interpretation. The length of the term of office is simply not the point. The concern of the democratic camp does not stem from whether it should be two years or five years. Rather, its concern is that while the law is all very clear in this particular respect, the Government has chosen to ignore it. This is the crux of the problem, my greatest concern as a legal practitioner.

XIA Yong, a mainland "legal expert", has remarked that only a two-year term is in keeping with democracy. But this is simply not the point. Admittedly, if the term of office is two years, the democratic camp may continue with their struggle for the introduction of universal suffrage and political reforms in 2007, but the aspiration to democracy should not give us an excuse for ignoring what is written in black and white in the Basic Law. I can forgive a mainland "legal expert" for saying so but I cannot do the same to our Secretary for Justice Elsie LEUNG, who remarked, in her replies to The Law Society of Hong Kong and the Hong Kong Bar Association, that it was not a bad idea to have a two-year term because it could enable people to continue with our struggle for more democracy. I simply cannot imagine how a Secretary for Justice could have made such a remark. Does she really think that the law can be ignored in the name of democratic aspirations?

Why do I say that the same principle should be applied, whether we are discussing Article 23 of the Basic Law or the term of office of the Chief Executive? The reason is that the law, or going to Court, is the only protection available to the common people when the Government commits any unlawful acts. We seem to have forgotten this principle, and we seem to be thinking that it simply does not matter even if the Government violates the law. We seem to be thinking that it is alright to shorten the term of office from five years to two, for this can enable us to try him out. We seem to be thinking that we can ignore provisions of the law and just brush them aside. We seem to be thinking that we do not have to abide by this law if we do not feel like it. We seem to be thinking that the struggle for democracy can be used as an excuse for ignoring the law and for violating it. If we still wish to tell others that this is a place where the rule of law is respected, and that it remains one of our core values, we must remind ourselves that the mindset described above is utterly wrong.

I think that the Basic Law interpretation this time around is even nastier than the previous two attempts, but why do I think so? To begin with, when it comes to the election of a new Chief Executive to fill a vacancy, when it comes to his term of office — whether it should be five years or just be the remainder of the unserved term — there were many discussions, discussions that were not only held on formal occasions but also duly put down on the records of the Legislative Council. What is more, it was on the basis of these discussions that the existing Chief Executive Election Ordinance was passed. When this Ordinance was put before the Legislative Council, some Members did raise this issue. The Government explained very clearly at that time that when there was a vacancy, the term of office of the new Chief Executive should be five years. It was only after lengthy discussions that the existing section 3 of the Chief Executive Election Ordinance was passed, with a clear provision that the term of office shall be five years.

Furthermore, on 5 May 2004, when Ms Emily LAU asked a question on the same issue in this Chamber, the Secretary for Constitutional Affairs also gave a very definite reply. The question was about whether or not the five-year term provided for in Article 46 of the Basic Law would also apply to a new Chief Executive elected to fill a vacancy, whether there were any errors in the Chief Executive Election Ordinance passed in 2001, and whether it was necessary to amend this Ordinance. The Secretary for Constitutional Affairs replied at that time, "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 is a formal record of the Legislative Council.

But now, when the office of Chief Executive really becomes vacant, the Government has done something different, giving the law a different interpretation. This explains why I think that the approach this time around is even nastier than those before. There is actually a ready answer to the question of term of office, one that is extremely clear. But the Government has still chosen to reverse its position completely because of changing circumstances and various political considerations.

Another reason that explains why I find the present approach of the Government even nastier is that in the right of abode issue, at that time the Government at least still waited until the Court of Final Appeal had made a verdict. This was bad enough, and it was very much a bad loser anyway. But at least, it still showed the decency of waiting until the Court had reached a verdict. This time around, however, when people were still exploring the possibility of a judicial review, it had already hastened to "overtake" and stop them forcibly. What else can this be if it is not a slap in the face of our Courts, not a show of distrust towards them?

The third reason is that although the law is already very clear, the Government has still tried to mystify the public, going so far as to say that such and such is the legislative intent, and that it should be very clear although nothing is written down explicitly. If what the Government says is really the legislative intent, then how come it has still failed to tell us whether the remainder of the unserved term should be counted as a separate term of its own, and how this will be counted in case the new Chief Executive concerned seeks re-election? What is more, if the remainder of the unserved term is just a few months when a

vacancy arises, should we hold two elections within a very short time, first electing a Chief Executive to serve for a few months and then another one to serve for another five years? The Government is unable to tell us why the Basic Law only makes clear reference to every Chief Executive and does not mention any division of the office of Chief Executive into "terms". There is no reference to any terms, and such a concept is applied only in the case of the Legislative Council and the Election Committee. How are we going to address the new Chief Executive elected in the coming election? Shall we call him the Chief Executive of the second and a half term, or the latter half of the second term? How can this converge with the existing provisions of our Basic Law?

If the Government can agree that the term of office under the Basic Law is five years, and that the new Chief Executive should also serve for five years as a result, all these problems will not emerge. If the Government insists that he should only serve for the remainder of the unserved term, many problems of this nature will arise. I suppose if this were the legislative intent, there should have been a ready answer, and the absence of any ready answer shows that the Government is not actually giving any interpretation of the legislative intent but just trying to change the law. And, I also think that we are probably thinking too highly of the Government when we say that it is trying to interpret the Basic Law, because what it has been doing is just to change the law. The Government is still thinking about this issue, and its mind simply keeps on changing. It wants to see how the situation unfolds before deciding on any changes: Let him first serve for two years, and if he can do a good job, then the law can always be interpreted in such a way as to allow him to serve for a maximum of 12 years or seven years. The Government does not think that it needs to answer this question now. And, in fact, it is not yet possible to do so because there has been no answer so far. This is simply not the legislative intent, but the Government still has the face to tell the community that this is so. It still has the face to say that the legislative intent is very clear, only that it is still impossible to give us any answer now. No one will ever believe all these arguments.

There is also the fourth reason. The first time when an interpretation of the Basic Law was sought on the right of abode, the Government still resorted to some kind of excuse, claiming that we would not be able to withstand the influx of 1.67 million people — though this figure was proven to be a mere exaggeration afterwards, it was still about a practical problem. But this time around, no one has challenged the legality of holding a Chief Executive election on 10 July, and no one has tried to challenge the Government and stop it from

holding the election. The only point that has been raised is that the candidates may wish to know whether the term of office is two years or five years. The Government can actually give an answer on the basis of the Basic Law, or it may tell them that under the Basic Law, the term of office should at most be two years, or even five years, seven years or 12 years. In any case, the holding of the Chief Executive election scheduled on 10 July will not be affected. Therefore, the only possible reason for the Government's request for Basic Law interpretation must be its intention of preventing the Court from exercising its constitutional power of interpreting the Basic Law. The Government now requests the Standing Committee of the National People's Congress (NPCSC) to interpret Article 53 of the Basic Law. But as a matter of fact, this particular Article is just about a local election of Hong Kong. The Government may well interpret Article 46 as dealing with the appointment of the Chief Executive, but the subject of Article 53 is just a local election. I do not quite understand why the Government should request the NPCSC to interpret a Basic Law Article on a local election.

Madam Deputy, today, many Members have remarked that there is no greater grief than disillusionment, that they feel both helpless and desperate, and that they have to resign themselves to fate. Mr LEUNG Yiu-chung, on the other hand, has remarked that we will continue to fight for our cause here in spite of all the setbacks. For my part, I can only represent this row of four Members from the legal profession. We all ran in the Legislative Council election not because of any special political motives or ambitions. Rather, we did so because of our ideals, our belief that all Hong Kong people should be entitled to equal opportunities and a democratic political system. We believe that only a democratic political system can safeguard the rule of law to which Hong Kong is entitled, because if the Government does not respect the law, there is nothing much the people can do. Time and again after the reunification, the Government has requested interpretations be made to the Basic Law, and we have repeatedly heard some Members argue that such interpretations are nothing serious, and they are just a manifestation of the rule of law under "one country, two systems". I do not know whether Secretary Stephen LAM also thinks that way. The Secretary once avowed that he would be the first one to resign if there was any damage to the rule of law. I hope that when he speaks later on, I can hear an explanation from him, an explanation on why the Government still insists that Basic Law interpretation will not do any damage to the rule of law, while the only two professional bodies of the legal sector, The Law Society of Hong Kong and the Hong Kong Bar Association, have both said that since the

relevant provision is already very clear, there should be no need for any interpretation.

Mr LEE Wing-tat has expressed the hope that this will be the last interpretation of the Basic Law. I suppose it is useless for him to express such a hope. How can this be the last time? The Government has not yet solved all the problems; there is still the question of consecutive terms. It looks likely that the water will continue to be heated up, and the Government will continue to seek interpretations of the Basic Law. I do not want to argue with the Government about this issue every April. I do not know for how much longer I will serve as a Member of the Legislative Council, but I certainly do not want to argue with the Government every time when problems of this nature arise.

Madam Deputy, as a legal practitioner, I really do not have anything more to say if the Government does not respect the law, does not respect itself, does not give the Court and the rule of law any opportunity.

MR KWONG CHI-KIN (in Cantonese): Madam Deputy, I am also from the legal sector. Today, I have listened to the views of many Honourable colleagues earnestly and carefully, particularly those of our Honourable colleagues from the legal sector. However, I feel that the discussion today is too charged with emotion, for example, there are claims such as the rule of law is dead, to interpret the Basic Law is to betray the rule of law, and a certain Member also called Prof WANG Zhenmin the "emperor". I think all these remarks are too emotion-charged and insofar as our discussion today is concerned, this is not desirable because it is not rational enough.

Of course, I understand that the legal sector holds rather strong views on the interpretation of the Basic Law. In fact, there is a shadow hanging over them because the first reinterpretation was unfortunately made after the Court of Final Appeal (CFA) had given its judgement; the second interpretation ruled out elections by universal suffrage in 2007 and 2008, thus touching a raw nerve in many people, in particular, this has gone against the sentiments of many of our Honourable colleagues.

However, there are a few things that I myself do not quite understand. Firstly, what is an interpretation? Just now, Ms Audrey EU said that she did not quite agree with the remarks made by several Honourable colleagues that the

interpretation of the Basic Law was part of our legal system. Concerning the choice of words, perhaps allow me to use a more general term and say that the interpretation of the Basic Law is part of our constitutional system. Article 158 para 1 of the Basic Law clearly states that the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC). Madam Deputy, just now I have heard several senior members of the legal sector, including Mr Martin LEE, say that its wording is unrelenting. The power of the NPCSC to interpret the Basic Law is stated very clearly in the first paragraph of Article 158 of the Basic Law. It can make interpretations on its own, without condition attached or restriction imposed. This is a premise in our discussion on the move to seek an interpretation. The crux of the problem is whether we recognize, no matter we like it or not, that according to Article 158 of the Basic Law, the NPCSC has the absolute power to make interpretations on its own.

No restriction or condition is imposed by the Constitution of the People's Republic of China on this, although it is necessary to consider if such a move is appropriate in politics. However, I am not talking about politics here and I am only talking about the provisions *per se*. We solicitors and barristers who have received training in common law are quite averse to interpretations. This is because the first reinterpretation was made after the CFA had delivered its judgement, giving people the impression that a certain party wanted to take the winnings but sack the losses. Although the reinterpretation on that occasion technically did not overturn the judgement of the CFA, no one paid any heed to that. In sum, a reinterpretation was made after the CFA had delivered its judgement, which had become part of the law. This was considered a blatant disregard for the judgement of the CFA and all of us found the repercussions unacceptable.

However, I believe that such is the fundamental difficulty in the implementation of the "one country, two systems" principle and a problem that Hong Kong and the Central Authorities have to make an effort to come to terms with. This has also become a significant challenge in the interaction between the Central Authorities and Hong Kong and calls for our wisdom. Since under the tradition of the common law, we do not have the power of legislative interpretation, therefore, on hearing the interpretation of the Basic Law by the NPCSC, we would immediately jump to our feet, thinking that this is totally unacceptable, and we do care what has been said. As long as the NPCSC

interprets the Basic Law, then this is a wrong thing to do. However, since we are living under the framework of "one country, two systems", the arrangement for the NPCSC to make interpretations is not specifically designed for Hong Kong. Mr DING Wang has published a very long article that looks back at history today. It turns out that the NPCSC has already made interpretations to the Constitution of the People's Republic of China back in 1982. On the Mainland, this is an ordinary thing and is considered to be the power of interpreting the law.

We are all quite familiar with the power of judicial interpretation. As far as our common law system is concerned, only the Court can interpret the law. The Government cannot do so, nor can the Legislative Council. Only the Court can do so. Under the common law tradition, the Court at the highest level is the CFA. It is the ultimate authority in interpreting the law. However, under the framework of "one country, two systems" and according to Article 158 of the Basic Law, the NPCSC has the ultimate power in making interpretations to the Basic Law. This is a reality concerning our constitutional system and no matter how we criticize this and whether we like it or otherwise, this is still the starting point of the discussion. Therefore, I hope that when we discuss the interpretation of the Basic Law by the NPCSC, we can base our discussion on facts because there is no telling what will happen in future and it is possible that another occasion requiring another interpretation of the Basic Law may arise. I hope that Members will not get too emotional right from the beginning and only in this way can pragmatic discussion be conducted. On the interpretation of the Basic Law by the NPCSC on this specific occasion, I am of the view that it is inevitable, although I also believe that it would be best if no interpretation of the Basic Law is required. However, despite careful consideration, I cannot think of any other way.

Our friends in the Democratic Party mentioned making amendments to the Basic Law. I think this is a major undertaking and is not feasible in actual practice. Moreover, a special meeting has to be convened for the purpose of amending the Basic Law for Hong Kong. I think doing so smacks of being rather self-centred. From the angle of the Central Authorities, there is nothing wrong with interpreting the Basic Law. No matter if we agree or not, we have to be aware of the viewpoint of the Central Authorities. The Central Authorities believe that the relevant piece of legislation was very clear when it was drawn up, however, because of the differences in legal tradition, the understanding of the two sides is different.

I think that it is not practicable to amend the Basic Law and some Honourable colleagues have already talked about this. I also think that such a move is politically inadvisable because in the course of drawing up the Basic Law, extensive and community-wide consultation was conducted in the '80s. Unless we are obligated to, I believe we should not consider amending the Basic Law. If the Basic Law is amended as one pleases — I better not say as one pleases or this will invite unnecessary argument again — if the mechanism for amending the Basic Law is triggered, I believe this will upset Members all the more.

Another possibility is for the CFA to make a request to the NPCSC, as our friends in the legal sector have proposed. There is of course the basis for doing so in the Basic Law, which is Article 158 that Members have talked about frequently. Theoretically, I think this is feasible but some actual problems have occurred. Just now, Ms Audrey EU mentioned that according Article 53 of the Basic Law, the election of the Chief Executive was a local election of Hong Kong and an interpretation of the Basic Law might not be called for. Such comments also show that there will be a lot of uncertainties if the CFA is relied upon to request the NPCSC to make interpretations. Regarding Article 46, it certainly involves affairs which are the responsibilities of the Central Authorities, does it not? The Chief Secretary for Administration is appointed by the Central Authorities and it is impossible for a Chief Executive appointed by the Central Authorities not to have a term of office. Therefore, if the Chief Executive is appointed by the Central Authorities by virtue of Article 46, Article 53 of the Basic Law will also be involved. Therefore, I do not think it possible to look at these provisions in isolation. Any appointment made by the Central Authorities must have a term of office attached. If the person appointed does not know how long the term of office is, this is against common sense and the Central Authorities can in no way accept this.

The problem with relying on the CFA to make a request to the NPCSC is that, firstly, we do not know when the CFA will conduct a hearing, nor do we know if it will make a request to the NPCSC according to Article 158 of the Basic Law. It is possible that the CFA will concur with the view of Ms Audrey EU and consider Article 53 to be an affair of Hong Kong and no request needs to be made to the NPCSC. This will be technically possible and actually, since Hong Kong enjoys judicial independence — and we all treasure this very much — we do not know what the view of the CFA will be, nor will anyone dare to remind the CFA what to do unless legal representatives for both sides are allowed to make representations on this point in Court. I think that such a move

is theoretically feasible but the Government has already made an interpretation — I do not intend to speak on behalf of the Government here — that is, in reality, there is a time constraint. We do not know how the Court will deal with this and how the progress will be. Will the subject of requesting the Central Authorities to make an interpretation be raised? We have no way of knowing. In view of this political reality and according to the legal and constitutional arrangements, it will not do without a Chief Executive after 10 July as a constitutional vacuum will occur. Under these circumstances, although Members have strong emotional reactions, my view is that an interpretation is inevitable.

I have said that the interpretation of the Basic Law by the NPCSC has created a problem now and any such move will also continue to constitute a problem in future. In view of this, I think that the legal sector in Hong Kong, Members of representative councils in Hong Kong and even members of the public in Hong Kong have to gain a better understanding of mainland law, whereas the Mainland also has to gain a better understand of the legal concepts in Hong Kong, in particular, why lawyers practising common law would think that the mention of interpreting the Basic Law is such a big deal and it is also necessary our way of thinking be understood.

On this point, it seems that even the Government does not have a good grasp of the law in China. Just now, when Chief Secretary Donald TSANG made clarifications in response to Members' questions about the Government's statement, I noticed that many Honourable colleagues queried the legal basis of the Government's move this time. I have also listened carefully to the legal basis given by the Government, with the result that I am also getting a little bit confused. We can see that the first paragraph of the statement given by Chief Secretary TSANG says that the Government has decided to submit a Report to the State Council, proposing that the State Council make a request to the NPCSC. It mentions submitting a Report again a few lines below. However, the English version is not a direct translation of this. The Chinese version says that a request has been made to the State Council but the English version says that "the Government has decided to submit a Report to the State Council". If this is translated directly back into Chinese, the translation should become "to submit a report (提交一份報告)". I believe things are rather unclear here. Concerning the 15th paragraph, I found that I could not follow its line of thinking in law at all. Chief Secretary TSANG said in the 15th paragraph, "I, as the Acting Chief Executive, have finally decided to request the Central Authorities

to make an interpretation". What is the basis for requesting the Central Authorities to make an interpretation? It is not stated in the document, however, he mentioned Articles 43 and 48 when giving his reply orally. Article 43 says that "The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region." The second paragraph says that "The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this law." Article 48 mentions the powers and functions of the Chief Executive and Chief Secretary TSANG mentioned paragraph (2), "To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region.". I believe that this is far from clear and many Members do have a point in raising their queries, since where in Articles 43 and 48 can the legal bases for requesting the Central Authorities to make an interpretation be found? However, after listening to Mr MA Lik's explanations on the practice of Chinese law, I have a much better understanding now.

According to Mr MA Lik and his understanding of Chinese law, there are three mechanisms for interpreting the law: the first is for the NPCSC to make an interpretation on its own. This not only refers to the provisions in the Basic Law but to the power of the NPCSC to make interpretations in general. This is a practice found in the legal system on the Mainland. The second is for the State Council to request the NPCSC to make an interpretation. According to Mr MA Lik, such a request involves two procedures, that is, the SAR Government submits a Report to the State Council, which will in turn make a request to the NPCSC. He said that according to the law and regulations on mainland China, it seems that it is not just one organ, that is, the State Council, which can request the NPCSC to make an interpretation. However, I am not as well-versed in Chinese law as Mr MA Lik and could not hear clearly how many relevant government departments or organs can do so.

The third mechanism is for the CFA in Hong Kong to make a request and we are all familiar with this. However, I have already mentioned the problems of leaving it to the CFA to make the request, that is, the problem of judicial independence is involved. Therefore, according to Mr MA Lik, only the State Council has the power to request the NPCSC to make an interpretation. It was after Mr MA Lik had spoken that we received Chief Secretary TSANG's formal written Report, that is, the Report submitted to the State Council to request an

interpretation and things are stated clearly in it. The seventh paragraph says that Chief Secretary TSANG has submitted a Report to the State Council according to the provisions in Articles 43 and 48(2) of the Basic Law. In fact, he has only submitted a Report and this is an administrative measure. If the Chief Secretary of the Hong Kong Special Administrative Region submits a work report to the State Council, then no problem will occur. This is because this move has not activated the mechanism for making an interpretation. By submitting a Report, he is only suggesting that the NPCSC make an interpretation on the term of office mentioned in the second paragraph of Article 53 of the Basic Law. I think that had the Government elaborated on its position in the constitutional system earlier, more accurately and in greater detail, it would have been better, otherwise, it would only be speaking in a very general fashion. Since Chief Secretary TSANG said in the 15th paragraph of his speech that the Government has submitted a Report to the Central Authorities to interpret the Basic Law, even I cannot help but have queries over this, since I cannot see what legal basis there is in Articles 43 and 48 that allows the Acting Chief Executive to submit a Report to the Central Authorities to interpret the Basic Law. Only in this formal Report is it stated clearly that what Chief Secretary TSANG did was to submit a Report to the State Council and that is all. As to the activation of the mechanism for an interpretation, it is only the State Council that has such a power..... *(the buzzer sounded)* Thank you, Madam Deputy.

MR ALAN LEONG (in Cantonese): Madam Deputy, the State Council is of course a part of the framework of the Central Authorities. Hong Kong is to submit a report to the State Council to request it to ask the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law in accordance with Article 89 of the Constitution of the People's Republic of China. This is in essence a move made by the Hong Kong Special Administrative Region (SAR) to ask the Central Authorities to interpret the Basic Law. I cannot see why there is a need for making such a technical differentiation here.

(THE PRESIDENT resumed the Chair)

Today, when the issue of the NPCSC's interpretation of the Basic Law is being discussed, it is all too natural for us to see some show of emotion in this

Chamber. It will be weird if we cannot see this happen. Ever since the promulgation of the Basic Law on 4 April 1990, Hong Kong people have started to believe that there will be "a high degree of autonomy", "Hong Kong people ruling Hong Kong", "everything shall remain unchanged for 50 years" and they can be the masters of the territory after 1 July 1997, but what they can see right now is that Hong Kong has changed from a British colony to a Chinese colony, will they feel that they have been cheated? Will they be overwhelmed by a sense of helplessness? It is only natural that there should be some show of emotion. If we have started to believe as early as 4 April 1990 that the common law and law of equity as practised in Hong Kong can remain unchanged for 50 years, that we can use the common law to interpret our Basic Law, but the message we get now is not quite the same — when the interpretation of the Basic Law by the application of common law and law of equity clashes with that by the continental law, the continental law shall prevail. In the face of such a message, if we are still unaware that we are under excessive top-down pressure, just like a crab being crashed by a big rock to its death, that some Honourable colleagues have felt totally hopeless, helpless and lost, I shall be most surprised. Please forgive me for my inability to discuss the issue with a kind of cold-blooded calmness.

Of course, Article 158 para 1 of the Basic Law does stipulate, "The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress." The system practised by our country is one based on people's democratic dictatorship. At the summit of the system is the system of the National People's Congress (NPC). It is the NPC, which possesses absolute power. However, when the Basic Law was promulgated on 4 April 1990, the NPC had already made an undertaking to Hong Kong people that, after 1 July 1997, the NPCSC would restrain its absolute power. Let us consider this: If an organization with absolute power which is not subject to any control does not exercise any self-restraint, the ideals such as "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" will only become some kind of illusion. They will never work.

Under this new constitutional order, there is an arrangement in Article 158 para 3 of the Basic Law. Before the Court of Final Appeal (CFA) of Hong Kong makes its final judgement which are not appealable, if it finds that the case before it would involve the need to discuss certain provisions of the Basic Law concerning national defence, diplomatic affairs and the relationship between the Central Authorities and the SAR, it may seek an interpretation of the relevant provisions from the NPCSC before handing down the final judgement. This is

the interpretation mechanism in line with the new constitutional order of Hong Kong after 1 July 1997, instead of Articles 43 and 58(2) which are specious. In the face of such a discussion, in the face of such specious mechanisms, in the face such remarks made by the top legal official of the SAR and the Acting Chief Executive, what kind of feelings would swell in us? Apart from feeling that it is ridiculous, we may also feel having been cheated, totally hopeless, helpless, lost and the feeling that we are under excessive top-down pressure, like a crab being crashed to its death by a bog rock, as I have mentioned earlier. What else can we do?

Today, we heard the Chief Secretary for Administration mention the reasons for requesting the State Council to ask the NPCSC to make an interpretation of the Basic Law. In fact, all such reasons can be summarized into one: That if we do not proceed with seeking an interpretation of the Basic Law, the election of 10 July may not be held as originally scheduled. As there are no other alternatives, so with great reluctance, this hard decision has to be made, after having gone through a lot of struggles and deliberation. Madam President, I feel that this reason is really fictitious, and is a completely invalid excuse. Now, let me point out his fallacies explicitly.

Even if there is no interpretation of the Basic Law by the NPCSC, the election of the new Chief Executive will not fall through. The date 10 July is by no means a deadline. Even if the Court in Hong Kong makes its final judgement after 10 July 2005 on the present judicial review applications, so what? Before 10 July, among those who have applied for judicial review, irrespective of who is applying for an injunction order, I bet he or she shall never be granted with such an order. This is because it is explicitly stipulated in the Basic Law that in the event that the office of the Chief Executive becomes vacant, a new Chief Executive shall be selected within six months. Under this explicit constitutional provision, no Courts in the SAR will issue an injunction order. Without any injunction order, it means that the Chief Executive election on 10 July can definitely be conducted as scheduled. The only dispute is: Should the term be two years or five years? The new Chief Executive cannot say that he does not accept the judgement of the Courts because he has a reasonable expectation, which is either two years or five years. Why should I say so? If the Court rules that the term should be five years, no Chief Executive will insist that he will only serve up to June 2007 and will step down thereafter. I believe such a possibility is rather slim. If the Court rules that the term should be two years, will he refuses to step down on 1 July 2007? This is again impossible because at the time when he submitted his application to contest the

office of the Chief Executive, he should have already known that some legal proceedings in this regard are going on, and he also knows that the Court will make a final judgement in favour of either a two-year or five-year term. Therefore, 10 July is not a deadline, and so there is no need for us to escalate its level of importance — that is, creating a deadline to lead others think that the SAR Government does not have any other alternatives. This is a point which I will never understand.

This interpretation exercise is actually attributable to the reluctance of the Central Authorities to accept the possible judgement that may be made by the Court of Hong Kong on certain relevant Basic Law provisions. One of the possible judgements that may be made by the Court is that the term should be five years. The move of seeking an interpretation is just an arrangement to ensure that the preferences of the top leaders shall override the law. Therefore, after having clarified the issues, may I request that the officials of the SAR as well as the critics stop misleading Hong Kong people by confusing right and wrong through calling a stag a horse?

Madam President, regarding the dispute over the term of office of the new Chief Executive, that it should be either two years or five years, I would definitely want to bring up one point, and I would like to take this opportunity to put this point on record, so as to clarify any misunderstanding that may arise. Some say that the emergence of this "two years or five years" dispute is attributable to the fact that those educated with a common law background insist on interpreting the Basic Law by applying common law principles; as they do not have any knowledge in continental law, so such a misunderstanding is caused. Madam President, it is stipulated in the Constitution of the People's Republic of China that there is a succession of governments on the Mainland every five years. This arrangement has nothing to do with continental law as practised there. In Hong Kong, the term of office of each Chief Executive is five years, whereas the term of office of each Legislative Council is four years. There is no succession arrangement. These are arrangements stipulated by the Basic Law, and they have nothing to do with the fact that the common law is being practised in Hong Kong. Explicit provisions in the Constitution of the People's Republic of China will not be rendered completely different just because they are interpreted by common law principles. Likewise, explicit provisions in the Basic Law will not be interpreted differently to change the intended meaning of five years into two just because principles of continental law are adopted. Having understood what I have said just now, Hong Kong people should

naturally realize that the discrepancies between common law and continental law actually cannot explain the emergence of this "two years or five years" dispute. Such a view is just a way of distracting others from the main issues of the dispute, and is just a lousy tactic to justify their own actions. It goes contrary to the views held by the two authoritative professional bodies of the legal sector in Hong Kong, and is simply not in line with the facts.

Madam President, on the other hand, if these people who put forward such a theory actually mean that "one country" is superior to "two systems", so mainland officials often make use of the power of interpreting the law to highlight and implement the governing intention of the people in power, and such an approach is also applicable to Hong Kong, and that no matter how explicit these Basic Law provisions are, they can be discarded and ignored altogether, if that is what they mean, then I can fully understand the rationale of such a theory. However, if this is the case, how can "two systems" continue to exist within "one country"? Has the "one system" of Hong Kong disappeared into oblivion? If so, do we actually know the height, the width, the length and the depth of the scope of the autonomy of the SAR? The answer is of course we do not. It is because the scope of our autonomy is determined by the fleeting impulse of those in power, always for the sake of expediency, instead of adhering to the black-and-white legal provisions. That is why we do not know.

Madam President, I trust national leaders of the Central Authorities must have assessed the political circumstances in Hong Kong before making the decision that the term of office of the new Chief Executive should be two years. In fact, this is a more suitable political decision which in itself is possibly made for the benefit of Hong Kong. However, the Central Authorities have failed to comprehend that this is indeed a bad deed motivated by a good intention. Hong Kong people have the respect for legal provisions; they treasure the rule of law and do not accept pretentious acts performed for the sake of political expediency. Therefore, making the decision to seek an interpretation from the NPCSC to settle the "two years or five years" dispute may achieve the purpose of political expediency, and it may serve a short-term need, or demonstrate the temporary dominance of those in power, but the damage and the heavy blow brought about by such a move to the "one system" of Hong Kong will be far-reaching and permanent. The three instances of seeking interpretations from the NPCSC, namely, on the right of abode issue in 1999, the electoral arrangements issue of the Chief Executive and the Legislative Council in 2004 and the term of office issue of the new Chief Executive this year, all involve rights and arrangements which are considered of utmost importance in any constitution. They are all

core provisions. It is most surprising that the memory of some senile members of the Basic Law Drafting Committee is heavily relied on to recall the so-called legislative intents, which are then interpreted by the NPCSC to create some views out of nothing and incorporate some words which have never existed in the Basic Law into some solemn constitutional instrument in black and white. This is all done to serve the expedient needs of those in power. The casualness involved in the process has been most astounding and it sends a chill down our spine. If this trend is allowed to go on, it will just take a few more interpretations by the NPCSC before the Basic Law eventually becomes a castle in the air.

Madam President, on the occasion of the 15th anniversary of the promulgation of the Basic Law, I would like to send my best regards to the top officials of both the Central Authorities and the SAR Government, hoping that they can adopt a humble attitude before the law, that they will strive for the long-term stability and prosperity of the SAR, and act according to the established spirit of the rule of law, and the relevant systems and procedures in Hong Kong. I would like to send them this sincere blessing on behalf of Hong Kong people and I would also like to share this aspiration with all those who are committed to safeguarding the rule of law in Hong Kong. Thank you, Madam President.

MR ALBERT CHAN (in Cantonese): Madam President, first of all, I would like to declare my interest, it is because today I have filed an application with the Court for judicial review. Of course, I have no personal financial interest in this matter. On the contrary, I have lost quite a lot.

When facing applications for judicial review from the public, the Government is using some very brutal and high-handed administrative tactics to ask the NPC to interpret the Basic Law. Such a move is tantamount to stripping the people of their rights. With respect to such brutal and high-handed administrative measures, I must put forward my strong condemnation.

Madam President, the judicial reviews this time or the disputes about two years or five years are not really about the question of two years or five years or whether the term of office of the new Chief Executive should be two years or five years. These are of no importance to me because I do not have any chance of becoming the Chief Executive. The focus of all these lies in whether a two-year term or a five-year term is lawful. This is really a question of legality.

Government views on this recently resemble more of a child's play than not. Today Chief Secretary for Administration Donald TSANG said that the public was for a two-year term. But do the people who favour a two-year term know that a two-year term is unlawful? The Law Society, the Bar Association and many legal bodies and scholars all have pointed out that this is not lawful. Even the former position of the Government was such that this should be five years. If Mr TSANG is to consult the people again and ask them whether or not they will accept a two-year term if it is unlawful, I am cocksure that most people in Hong Kong will not support a term of office which contravenes the law, be it two years or two hours. There is no question about it.

So with respect to the controversies this time, the Government has been doing a good job in misleading the people and many media are willing to become part of the propaganda machinery and mislead the people. Some time ago when I met the Chief Secretary for Administration, we talked about issues on the term of office and the possibility that the term of office may be illegal in the eyes of the law. We agreed that there could only be three ways out. The first option is to have the Basic Law amended by the NPC. We know that this may not be possible due to the time constraints. Of course, some Members suggested that the NPC should hold a special meeting, but I believe the possibilities are very slim indeed. The second is to resort to a judicial review. But that I do not think the Government will agree, for it cannot foresee the outcome of a judicial review. The third option is for the NPC to interpret the Basic Law. This is the approach the Government favours and the one course it has decided to take. This is because the outcome can be foreseen and it is simple and convenient. However, despite all these advantages, an interpretation of the Basic Law with a preconceived outcome will only serve to damage the rule of law in Hong Kong and stripping the people of their rights.

As I see it, this dispute about two years and five years is really unfounded. It is a storm in a teacup. Why should there be such a dispute on two years and five years? Why has the Central Government abandoned all of a sudden the five-year position that it has been holding for the past four years and to which the whole world agrees to adopt the two-year position instead? Some people say that it is the outcome of the forces working to topple TSANG. It is because these people do not accept this term of office for the new Chief Executive, that is to say, if Donald TSANG is selected and he assumes a five-year term, many people would have a bad time. That is why they are opposing to this idea so

firmly. They even expressed their strong discontent. In the end, the Central Authorities are forced to accept the two-year term idea. As a result, other political parties and those dislike Donald TSANG all accept this two-year idea. This is the arrangement reached after much compromise made. But frankly I have no idea about the truthfulness of this story.

Having said all that, I have the privilege of being enlightened by a sagacious person today. The person told me that we were all ignorant about the truth behind this dispute of two years or five years and why suddenly out of the blue the Central Authorities decreed that it was to be two years. The ulterior reason behind this announcement of two years is meant to be a test for Donald TSANG. This is a formal test for him to see if he will call a stag a horse and whether he will mix black and white and cannot tell right from wrong. Now all eyes are on him to see whether or not he can pass that ultimate test. If he can, it will be found that he will obey the instructions of the Central Authorities down to the letter. When he passes, he can assume the office of the Chief Executive on 10 July. The second test for him is to see whether or not he has the abilities to lead the SAR Government and contend with the democratic camp, the Bar Association, the Law Society, the numerous lawyers and experts from the universities, in such circumstances as when all these people are up against him. He will be seen to lead the SAR Government to win popular support and even as the law is twisted and mangled beyond recognition, it can be found acceptable to the people. This would be the ultimate test on Donald TSANG's prowess to govern. If he can make most people of Hong Kong swallow this mangled law, it will be proof that he can take up the office of the Chief Executive on 10 July.

I think this sagacious person's remarks ring a lot of truth. For this explains why the five years idea has changed into the two years idea all of a sudden in the absence of any prior notice and justifications given. In 2001 when the Chief Executive Election Ordinance was enacted, many Deputies to the NPC, members of the Political Consultative Assembly, top officials, members of the Drafting Committee of the Basic Law, people from the One Country Two Systems Research Institute and so on, they all knew that it was to be five years. There were no objections raised, though at that time many people doubted whether or not the meaning which the Basic Law referred to was five years. All through these years, the conclusion has been that it is five years. But things changed overnight, in the twinkling of an eye. May I give my blessing to Mr TSANG, for in these days or since this couple of weeks, he is able to show his

excellent administrative powers and his absolute obedience of orders from the Central Authorities. He is putting this decision down to the letter. I wish him best of luck in his career.

Looking back at the past three weeks or so, the political tactics and skills displayed by Mr TSANG can be aptly and concisely put into four roles, that he was playing the authority, the weak, the righteous and the one who cries wolf.

On his playing the role of being the authority, on one hand the Government met the Members and they were told that a request would be made to the NPC to interpret the Basic Law. This point has been mentioned by many Members already. Actually, the Government does not have such an authority. It is only pretending that it has such authority. The SAR Government, including the Chief Executive, does not have the authority to make a direct request to the NPC to interpret the Basic Law. It can only submit a report to the State Council and ask the State Council to table such a motion in a meeting of the Standing Committee of the NPC. But as seen on newspapers, the media and everywhere, it is reported that the Government wants to ask the NPC to interpret the Basic Law. So this kind of false pretence of authority gives people an impression that the Government can really do so while actually it does not have such authority. It is he that makes the Government take this move as if it is a matter of fact. But actually, he does not have the authority to do so and he just pretends that he has got such authority.

The second role he plays is to pretend to be righteous. Today Mr TSANG has said many times that the interpretation of the Basic Law is reasonable, sensible, and lawful and will not do any harm to "one country, two systems" and the rule of law. But many experts and many former chairmen of the Bar Association have expressed their views on this issue clearly. Many international credit rating institutions and many foreign governments are all expressing grave concern and anxiety for this request by the Hong Kong Government to seek an interpretation of the Basic Law from the NPC. However, when our Acting Chief Executive comes to this Council in the capacity of the Chief Secretary for Administration, he is playing the role of being righteous. He claims that it is reasonable, sensible and lawful and it will do no harm to our rule of law and "one country, two systems". This is like an ostrich putting its head in the sand and it will only serve to damage the rule of law in Hong Kong.

The third role he plays is to pretend to be the weak, or an underdog. Our Acting Chief Executive has been pretending to listen to views from all quarters and he is giving people an impression that there is no other way out and that had there been another way out, the Government would have used it and now the Government is forced to do this. It is like he is saying that the Government is like a woman forced to become a prostitute. But in fact the present quagmire is something of the SAR Government's own making. The law concerned is made by the SAR Government. The five-year term of office is provided in the Basic Law and this term of office of five years is confirmed and specified in the Chief Executive Election Ordinance and there is no such thing as the remainder term of office mentioned. But what he seems to be saying is that the fault does not lie in the Government, the fault lies in us because we do not understand the continental system of law, "one country, two systems" and the functions and powers of the NPCSC. He even goes as far as to suggest that this interpretation attempt is made reluctantly and the Government is compelled to do it as some people apply for a judicial review. This kind of remarks is aimed at scaring off the people and they are a distortion of truth.

Another thing is that he cries wolf and pretends that a crisis is lurking around the corner. According to him, it seems as if no Chief Executive can be elected on 10 July if a request is not made to the NPC to interpret the Basic Law. Such remarks are a distortion of truth. They are fallacies. Many Honourable colleagues have pointed out and even many barristers are saying the same that such a scenario would not happen. Even if I make an application for a judicial review, there will be no injunction whatsoever to affect the conduct of the election.

Madam President, one thing I am most embittered in the whole thing is not how the officials perform. As power corrupts and it is a true reflection in the mirror of history for centuries, I do not cherish any expectations for the principal officials and directors of bureaux. I am most embittered to see the people being misled into accepting the two-year term idea. This is because what they have accepted is not just a two-year term but an unlawful term. If the people accept an act of government which is unlawful, that would be an extremely grave crisis. This is a grave crisis related to how Hong Kong is to be governed over the long run. This is because the very foundations in our society are rocked and when foundations are rocked, a host of uncertainties are bound to happen. As society

is made up of the people and built by the people, when the people are convinced that the rule of law is not an absolute necessity, an impact will be made on the core values in our society. At a time when the people do not feel very concerned when their rights are undermined, it would be society and the people as a whole who are going to suffer in the end.

The problems on the rule of law caused by this attempt to seek an interpretation of the Basic Law may be trivial matters. The subject today is on the two-year term of the Chief Executive, but the subject tomorrow may be on the pay cut for the 160 000-strong civil servants. The Government may likewise resort to seeking an interpretation of the Basic Law from the NPC to state that a 6% pay cut complies with Basic Law provisions and that things "shall remain unchanged" means that deflation will be factored in. When deflation is considered, it would mean a pay cut of not just 6% but 11%. Then one year later, the Government can do the same to issues related to people's way of life. There will be interpretations of the Basic Law on ownership of private property, on the rights of indigenous inhabitants, on the status of professional bodies and so on. All things can be changed. Despite the fact that it is not found in the wording of the Basic Law, the legislative intent would be a different matter. You do not know this because you do not see it. What can be done is things can be relived and brought to life again and assume another form of existence when claims are made on the legislative intent, thus meanings can be interpreted at will, facts tampered with and truth pandered. These are unfortunately what our Government is most skilled in.

Madam President, more than a week ago, some media people said to me that it would be to the advantage of the democratic camp if Donald TSANG was selected the Chief Executive. I said it would not be the case. The democrats would be in for a rough time if Donald TSANG was selected the Chief Executive. This is because I am totally convinced that he would follow the instructions of the Central Authorities when assuming leadership of the officials in the SAR Government. This is to show that he has got excellent abilities to govern. Looking at the things as they are today, I would think that if Donald TSANG becomes the Chief Executive, not only will the democratic camp head for a rough time, but that the rule of law in Hong Kong will also plunge into a bleak and dismal winter.

MS MIRIAM LAU (in Cantonese): Madam President, Mr James TIEN's speech has clearly spelt out the position of the Liberal Party on the interpretation of the Basic Law on this occasion and I only want to add a few words concerning our views on the legal provisions.

The present "two versus five" controversy, that is, the controversy over whether the term of office of the Chief Executive should be two years or five years, arises because of Article 53 of the Basic Law. According to that Article, "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. During the period of vacancy, his or her duties shall be assumed according to the provisions of the preceding paragraph." No matter from which point of view, two points are missing in Article 53. First, the Article says that in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months, however, it does not state clearly what the term of office of the Chief Executive selected in by-election is. Secondly, the Article only provides that a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of the Basic Law, however, no reference is made to Article 46 of the Basic Law, according to which the term of office of the Chief Executive shall be five years. Therefore, no matter seen from which angle, there is a blank in Article 53 of the Basic Law. Should the term of office of the Chief Executive selected in a by-election be the remaining term of office or five years?

Of course, be it during the scrutiny of the Chief Executive Election Bill or when answering the question posed by Ms Emily LAU last year, the Government maintained that the term of office for a Chief Executive selected in a by-election should be five years. I believe that it is according to Article 46 of the Basic Law and in line with the common law approach that the Government interpreted the provision, thus drawing the conclusion that under the circumstances of a by-election, the term of office of the Chief Executive should be five years.

In March this year, when Mr TUNG Chee-hwa tendered his resignation, an actual situation for a by-election occurred. Moreover, this became no longer a theoretical situation and there was of course a great deal of discussion among the general public. Some people held that it should be two years while others said it should be five years. Subsequently, some mainland legal experts and even members of the Basic Law Drafting Committee pointed out that this issue

had been discussed when the Basic Law was being drafted and that the conclusion then was that it should be the remaining term of office.

Of course, I am not saying that this matter is settled after academics have discussed it. Perhaps when we scrutinize the amended version of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill, the bills committee concerned will delve into the question of what documentations did the officials concerned or the relevant persons rely on. This can help us decide the legislative intent at that time and shed light on whether the term of office of the Chief Executive should be the remaining term of office in the event of a by-election and enable us to understand this issue more clearly.

However, since mainland legal experts have put forward this viewpoint, we in the Liberal Party have therefore perused the Basic Law and considered if the Basic Law can only be interpreted only from a common law perspective and that the limits of the common law cannot be exceeded. If the Basic Law is just an ordinary statutory law in Hong Kong, I believe there will be no controversy. If the Basic Law is an ordinary law in Hong Kong, that is, a local law like the laws of Hong Kong displayed in the Ante-Chamber, I believe there would be no contention if we interpret it purely from a common law perspective. However, the Basic Law is a national law and also our constitutional law. When interpreting and understanding a constitutional law, must it be bound by the rules of the common law and that its bounds cannot be exceeded in any way?

We have made reference to other documentations and believe that other documentations can be taken into consideration if necessary to ensure that the legislative intent back then is properly understood. Therefore, we attach great importance to the views of a number of mainland legal experts. They have said that there are documentations that can help us understand whether it was the remaining term of office or other decisions that had been considered at that time.

Of course, we have also considered that if we insist that the Basic Law can only be interpreted and understood from a common law perspective, then Article 158 of the Basic Law is totally unacceptable because in common law concepts, there is no such thing as interpretation of the law. Therefore, if we really want to look at this issue more objectively, we probably cannot help but say that under

certain circumstances, we cannot always insist that an interpretation according to common law is the only option. It may be necessary for us to consider if other aspects can help us decide how the law can be properly understood.

Of course, Mr James TIEN has already pointed out in his speech that we are extremely reluctant to see and do not approve of the frequent requests for interpretations made by the Government. In fact, before the reunification, the mainland authorities stated very clearly that it would exercise the power to interpret the Basic Law with restraint. The interpretation on this occasion is already the third one and each interpretation in the past caused a uproar. Regardless of inside or outside the legislature, or among the general public, everyone dislikes the interpretations on the Basic Law because we still prefer to interpret our legislation from the common law perspective, which we are familiar with. We also hope that all the issues can be dealt with by way of our judicial procedures rather than seeking an interpretation of the Basic Law frequently. Although it can be quite convenient to request an interpretation of the Basic Law, we are in a very unique situation this time. As Mr James TIEN has said, we have to elect the new Chief Executive by 10 July and failing to do so might lead to undesirable consequences.

Of course, a number of Honourable colleagues remarked in the debate today that there were a number of ways to deal with this matter. Today, Mr Albert CHAN also mentioned seeking a judicial review, however, how long will it take for the review to be concluded? No one knows. We in the Liberal Party do not quite agree with the remarks made by some Honourable colleagues who say that it does not matter if we do so and the election can simply go ahead on 10 July anyway. However, the candidates will not know how long the term of office will be. Most importantly, those who vote will not know how long the term of office of the successful candidate will be either. To some people, will this have a bearing on the person they vote for? Some people have told me that this would have a bearing. Therefore, we cannot simply brush this issue aside and say that this matter does not have any effect and the candidates can just continue to run in the election, even if they do not know the term of office will be six months, one year, two years or whatever that may be. I believe there is no such election throughout the world and this will become the laughing stock of the international community. It will be said that an election without a definite term of office has been held in Hong Kong. This is the first point.

Secondly, many people say that it would be better to amend the Basic Law. True, this is a feasible procedure. However, firstly, the timeframe does not allow us to do so; secondly, as Mr Albert CHAN has already said, this term-of-office issue is only a trivial matter. Do we want to request the several thousand Deputies to the NPC all over the country to convene a meeting for the purpose of discussing whether the term of office of our new Chief Executive should be the remaining term of office or five years? I believe this may be rather unusual and difficult to justify.

Moreover, we have also looked at the amendments made to the constitutions in overseas countries. For example, the constitution of the United States that was enacted in 1787 was already very clear, but a number of amendments were subsequently made. However, what were these amendments all about? After the passage of the constitution in 1787, it was found that the Bill of Rights, to which great importance was attached in the United States, was not reflected in any way in the constitution. Therefore, a series of amendments to the constitutional were made so that the Bill of Rights could be incorporated into the constitution. I think that the Bill of Rights is very important and is in stark contrast to our discussion on whether the term of office of the Chief Executive should be two years or five years, so we cannot amend the Basic Law lightly because of this issue. Therefore, I think that on this issue of the term of office of the Chief Executive, apart from the time constraint, if we look at this matter from the angle of its importance, it may not be an appropriate move to make a request to amend the Basic Law. Even so, we still want to reiterate that any interpretation on the Basic Law cannot be made lightly, nor can a casual request for interpretation be made.

Many Honourable colleagues have also said that the interpretation on this occasion is only confined to a very narrow scope, that is, on how long the term of office shall be. However, an interpretation on the remaining term of office will lead to many consequential problems, including whether the term should be "two plus five plus five" years or "two plus five" years and whether it should be six months, six months and one day or six months and four days; whether it is necessary to conduct a by-election and whether the successful candidate, after serving two terms, can stand for election again after the lapse of one term, and so on. There are in fact no provisions on these issues in the Basic Law. I hope that these issues can be dealt with before they occur. One way is to draw up a piece of local legislation and then submit Reports to the NPC. After we have drawn up legislation that is very clear, the NPC will be informed of our views and if anything is not in order, we can then be corrected at such a stage.

Since we will make changes to the electoral arrangements in 2007, is it possible to make appropriate revisions to Annex I to deal with the relevant issues? I hope the Government can do so as early as possible, instead of waiting until the last minute, when there will be no more time to consider taking other courses of action and it has to request yet another interpretation of the Basic Law. I believe members of the public and the legislature will find this hard to accept.

Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): Madam President, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I are both very disappointed to see the Government of the Hong Kong Special Administrative Region (SAR) make a request to the NPCSC for an interpretation of the Basic Law to resolve the issue concerning the term of office of the Chief Executive. I believe the Government has totally disregarded a core value of Hong Kong people, that is, the respect for the rule of law. Not only is it necessary for members of the public to abide by the law, they also have to conduct their lives under the legal system and according to procedures therein. The Government must by no means override the established judicial procedures and deprive the public of the basic right to raise any objection for the sake of political expediency. However, one point in common between the present move taken by the Government and the interpretation of the Basic Law on the last two occasions is that the Government has circumvented the established legal procedures and unilaterally requested the NPC to make an interpretation based on its understanding of the Basic Law. The Government has even elaborated in a new way by giving the Basic Law another interpretation and imparting new meanings to it, in total disregard for the rule of law, which is the backbone of society, and for the basic rights of the public, thus laying waste to the sound legal system that Hong Kong has developed over the years.

To a society under the rule of law, disputes over the constitution and other laws are in fact commonplace, and such disputes are usually handed over to an independent body for adjudication, to be dealt with according to established legal procedures and objective legal principles. Article 158 of the Basic Law authorizes the Courts of the SAR to interpret on their own the provisions of the Basic Law which are within the limits of autonomy of the SAR. However,

when making final judgements on affairs which are the responsibility of the Central People's Government or concerning the relationship between the Central Authorities and the SAR which are not appealable, the CFA shall seek an interpretation on the relevant provisions from the NPCSC. It is obvious that any controversy over the provisions of the Basic Law should be resolved by activating local judicial procedures, having both sides state their cases in Court and present all arguments openly for the Court to decide if such affairs are the responsibility of the Central People's Government or those involving the relationship between the Central Authorities and the SAR, before the NPCSC is requested to make an interpretation.

Madam President, on today's issue, I believe that the Bar Association, The Law Society of Hong Kong and Members from the legal sector in the pan-democratic camp have already analysed from a legal view point the Report submitted by the Acting Chief Executive, Mr Donald TSANG, to request the State Council to seek an interpretation on Article 53 para 2 of the Basic Law from the NPCSC. I agree with the analysis and value judgements made by these people from a legal point of view and I also believe that for the Court to rule whether the term of office should be two years or five years will basically not affect the conduct of the election for the Chief Executive of the SAR on 10 July, since the Basic Law and the laws of Hong Kong have basically provided for matters relating to the relevant election. No matter if a judicial review will be sought or not, or whatever contentions are raised, all these should be withheld pending a judgement from the CFA. Before that everything has to comply with the existing law in Hong Kong and the term of office specified in the Basic Law. As to the outcomes of the controversy, if the Court is indeed of the view that this matter really involves affairs that are the responsibility of the Central People's Government or involves the relationship between the Central Authorities and the SAR as stipulated in Article 158, I believe the CFA will request the NPC to make an interpretation and the NPC will then make clarifications accordingly.

Madam President, concerning the legal viewpoints, I believe that the people in this legislature or other people in the legal sector have already elaborated on them very clearly and I do not intend to repeat them. However, I wish to discuss some major points concerning the move made by the Acting Chief Executive to request the NPC to seek an interpretation on the Basic Law on this occasion. From a certain point of view, I believe the "one country, two systems" principle has been undermined. There are two reasons:

First, on making interpretations on and amendments to the Basic Law, the wording of the Basic Law is in fact unprecedented as compared to the Constitution of the People's Republic of China because according to the Basic Law, the SAR Government is permitted to interpret the Basic Law and even to submit amendment proposals in the name of the SAR to the NPC through its Deputies in the SAR. Obviously, the major purpose of this arrangement is to allow the SAR Government to have the constitutional power to make interpretations to the Basic Law and even to propose amendments to the Basic Law in the name of the SAR Government. This fully reflects the national policy of the Central Government in those years to implement the "one country, two systems" principle. Through these two provisions on interpreting and amending the Basic Law, Hong Kong people and even people throughout the world are told that in contrast to other counties, provincial cities and even provinces on the Mainland, Hong Kong enjoys this special power to amend and interpret the Basic Law, and this power is exactly the product of the national policy of "one country, two systems".

Concerning the interpretation on and amendment to the Basic Law this time around, the Government is in a passive position. In particular, concerning making an interpretation on the Basic Law, apart from the power vested in the Central Authorities to make interpretations in unspecified ways according to Article 158 of the Basic Law, if the Hong Kong side makes a request to interpret the Basic Law, basically this will take a passive form. More specifically, it is on account of a legal need, for example, when a case is referred to the Court or perhaps to the CFA to be dealt with and when the CFA considers it necessary according to Article 158 of the Basic Law that a request should be made by the CFA to the NPCSC for an interpretation. Obviously, this type of interpretation is passive in nature from the very beginning to making an interpretation at the very end. However, what we find odd in this incident is that originally, our SAR Government has always been of the view that the term of office of the Chief Executive should be five years. Be it in the remarks made or the papers submitted to this Council by the Secretaries of Departments or the Directors of Bureaux, it was stated that the term of office was five years. What is noteworthy is that after our Secretary for Justice had discussions with mainland legal experts, this viewpoint underwent a change and five years became two years. Obviously, no legal process or other channels, or channels in which Hong Kong people can participate, had been involved, so as to enable us to agree that the legal grounds put forward by mainland legal experts are in line with the

needs of Hong Kong people and the provisions of the Basic Law. As we can see and understand it, this is a political decision rather than a legal need.

The second reason is: It is obvious that the Acting Chief Executive, in requesting the NPC to interpret the Basic Law via the State Council, has bypassed legal channel by adopting political channel. This is because according to the Basic Law, while one channel is for the NPCSC to take the initiative to make an interpretation on its own, another channel is for our law court to make a request for interpretation to the NPC. However, the move taken by our Acting Chief Executive to request the NPCSC to make an interpretation via the State Council has obviously resorted to a political channel rather than legal channel. Obviously there is a lack of respect for the legal system in Hong Kong and moves of this kind have repeatedly impinged on the rule of law in Hong Kong and this is the third time so far. The interpretation of the Basic Law serves political ends more than legal purposes. It serves political ends more than the need to interpret a legal provision. There is no need in law for it. Such a move makes people wonder how much respect our SAR Government actually has for the Basic Law and how much respect our Acting Chief Executive has for it. Can the Basic Law be amended whenever there is a political need, and such a need alone? As long as there is a political need, the original text and meaning of the Basic Law can be switched from one to the other, and from black to white in a matter of two months. If this is not undermining the rule of law in Hong Kong and eroding "one country, two systems", what is it then?

Madam President, concerning the controversy over a two-year or five-year term on this occasion, I trust Members are aware that an Honourable colleague will seek a judicial review and he will make a formal application today. However, after making this known, a lot of comments have begun to appear and the incident of The Link REIT has been made use of to discredit actions involving judicial reviews. I believe such a move is designed to use political tactics to suppress the normal and reasonable legal rights that Hong Kong people are entitled to. One claim is that seeking a judicial review will cause delays and make the selection of the Chief Executive in July grind to a halt, thus resulting in a constitutional crisis. In fact, what sort of constitutional crisis will this lead to? The law in Hong Kong and even the Basic Law stipulate very clearly that the person selected Chief Executive, be it for a new term of office or as a new Chief Executive, will serve a five-year term of office and if anyone wants to challenge this, he is free to do so and seek a judicial review with regard to the law in Hong

Kong and even the Basic Law, so how can there be any crisis? No one can prevent us from holding an election in July by means of the laws of Hong Kong or even the Basic Law, and even Justice WOO, as the Chairman of the Electoral Affairs Commission, has also said clearly in public that unless the CFA or the Court wants to order a stay of the election, otherwise, the election will be held at the specified time and date and according to the law. Therefore, it is totally unfounded and legally untenable to compare The Link REIT affair with the judicial review this time.

Earlier today, our Chief Secretary for Administration, Mr Donald TSANG, gave the reason that a judicial review might make it impossible for the new Chief Executive to be selected smoothly in July to justify his requesting the NPC to make an interpretation. In view of the analysis that I have made just now, I hope Members will see clearly that that was only an excuse. However, if Members still remember, in a meeting of the Legislative Council on 15 March this year, the Acting Chief Executive avowed in his capacity as the Chief Secretary for Administration that the Government was highly confident of its understanding on the term of office of the Chief Executive. When pressed by the DAB, Chief Secretary Donald TSANG even claimed that he was confident the Court in Hong Kong would make the same interpretation. However, hardly had three weeks elapsed when he underwent a change from being very confident to being very scared, and he was so afraid of the prospect of the election in July falling through that he has requested the NPCSC to interpret the Basic Law. What are the reasons for that? Was it because of his frequent visits to Shenzhen and the many close talks with Mr LIAO Hui that brought about this change? Was it because of political grounds and political considerations or was it because of some legal viewpoints? Hong Kong people are all kept in the dark. In fact, we have not had a single chance to see what on earth Chief Secretary TSANG said in Shenzhen and what Mr LIAO Hui said.

What we are most worried about is that we do not know anything but a lot of things are happening ahead of us and we are living in these developments. One of the core values of Hong Kong people is that they are very afraid of being manipulated and they are very afraid of being manipulated by the Central Authorities. They are afraid that the Central Government will break the promise it made about Hong Kong in the '80s. "One country, two systems" is the national policy of China and Hong Kong people have the approval of the Central Government that we can govern Hong Kong on our own.

The Basic Law, like the constitution in other countries, has stipulated very stringent amendment procedures. This precisely epitomizes its status as the foundation of the whole society and the legal instrument with the highest status. Therefore, it is a mistake to give all or some of the provisions in the Basic Law different meanings by making interpretations to the Basic Law. This is to trample on the Basic Law as the law with the highest status in Hong Kong. This is the third time that the same mistake has been repeated. If the one made in 1994 is also counted, then this is the fourth time. To interpret the Basic Law by allowing the Central Authorities to set the tone is to totally disregard the lucid legal provisions of the Basic Law and the power conferred by Article 158 of the Basic Law, which allows only the CFA to request the NPCSC to make interpretations. The Basic Law is originally the legal instrument with the highest status in the whole of Hong Kong society, however, it has been turned into a tool used by the people in power and by politicians in their governance. This has run counter to the rule of law and the "one country, two systems" principle.

The ADPL and I strongly demand that the Government withdraw the submission of the Report. The issue concerning the term of office of the Chief Executive should be referred to the Court in Hong Kong and dealt with according to the judicial procedure stipulated by the Basic Law. I ask the Government not to deal a blow to the rule of law in Hong Kong yet again and erode the foundation of the rule of law, which is considered the most important and valuable possession by Hong Kong people.

Thank you, Madam President.

DR LUI MING-WAH (in Cantonese): Madam President, following the premature departure of Mr TUNG Chee-hwa owing to health reasons, the Election Committee must select a new Chief Executive within a specified period of time under the Basic Law, so as to ensure that the Government can continue to operate smoothly. However, it is not clearly specified in the Basic Law whether the new Chief Executive to be selected should serve a separate term of office, that is, five years, or just the remainder of his predecessor's unserved term of office, that is, two years. This has led to rounds of heated debates in society. In order to ensure that the election can proceed as scheduled, the Government, after studying various legal justifications and the legislative intent of the Basic Law, has decided to put forward an amendment to the Chief

Executive Election Ordinance in the Legislative Council, so as to clarify that the term of office of the new Chief Executive to be selected should be two years, that is, the remainder of the unserved term. However, some people have already decided to apply for a judicial review of the Government's decision. This will add uncertainties to the election of the new Chief Executive or even defer the scheduled date of the election, thus affecting the functioning of the Government. The consequences will be extremely serious. For this reason, the Government's request for an interpretation of the Basic Law through the Central Government has become the only way of ensuring that the Chief Executive election can be held as scheduled on 10 July.

Admittedly, the Standing Committee of the National People's Congress (NPCSC) has given two interpretations of the Basic Law since the reunification, and some people are dissatisfied with this, arguing that the rule of law in Hong Kong will sustain damage as a result. But the Basic Law already provides that the power of interpretation shall be vested with the NPCSC, so it simply cannot be argued that the interpretation of the Basic Law by the National People's Congress (NPC) will impair the rule of law.

Some people also argue that the seeking of interpretations from the NPC will reduce the Basic Law to tatters. But I must point out that the constitutions of many other countries have likewise been undergoing amendments and improvements to keep abreast of the times. The previous two interpretations of the Basic Law were one-off, problem-specific in nature. But this time around, the intention is to clarify the mechanism concerned. The clarification of the mechanism governing the selection of a new Chief Executive when a vacancy arises will provide a legal basis for similar incidents in the future. For this reason, the request for Basic Law interpretation this time around is an act of positive significance, something that will serve to perfect the Basic Law.

Frankly speaking, to members of the public, the term of office of the new Chief Executive, be it two years or five years, is not a matter of so much importance. Their greatest hope is to select a new Chief Executive as scheduled. They all hope that the Government can continue to function smoothly, society can become stable and harmonious, the economy can recover steadily and they can all live and work happily. Besides, if the new Chief Executive serves only the remaining two years of the unserved term of office, there will be two advantages. First, this will mean a separate five-year term of office for each Chief Executive, thus facilitating the making of historical records

in the future. Second, the Government can continue with its current constitutional review, and the election of the Chief Executive in 2007 and that of the Legislative Council in 2008 can be held as originally scheduled, thus fostering the progress of democratization. Finally, I wish to point out that the law is formulated by the people to regulate the operation of the government at different levels and also to regulate their own behaviour, with the aim of maintaining social stability. When any laws affect the achievement of this aim, their amendments should be considered a progressive act. Therefore, the Government is certainly right in considering the well-being of society as a whole and submitting a Report to the Central Government to request an interpretation from the NPC for the avoidance of political risks. This is the safest and most appropriate approach, an act which is legal, sensible and reasonable. That is why it is supported by Hong Kong people.

Madam President, on behalf of The Alliance, I so submit. Thank you.

MR TAM YIU-CHUNG (in Cantonese): Madam President, there has been a great deal of discussions over the past few weeks on the subject of today's debate. I have been listening carefully to the speeches delivered by a number of Members. I have been trying to figure out what better solution there is to the difficulties we are facing. However, on listening to the arguments put forward by a number of Members, we cannot but have doubts on them, including on matters relating to the amendment of the Basic Law or seeking a judicial review, which have been mentioned by some Members. Therefore, I also wish to reiterate some of my views.

However, I also found that in the debate today, as Mr KWONG Chi-kin has said, the emotions of some people have run very high and they have become very emotionally charged. Moreover, some people are no longer speaking rationally and some are even saying negative things like the rule of law has been replaced the rule by people, "one country, two systems" exists only in name but not in substance, requests can be made to interpret every Article of the Basic Law, the rules of the game are not being followed, no one would trust our legal system, and so on. What was even more extreme is that a certain Honourable colleague has torn up a copy of the Basic Law. I do not know if this can be considered to be the rule of law but I just think that such behaviour is inadvisable. As Members of the Legislative Council, according to Article 104 of the Basic Law, it is necessary to uphold the Basic Law and we have already

sworn to do so when attending a meeting of the Council for the first time. I think displaying such behaviour runs counter to our Oath.

Furthermore, some people are suspicious of the reason for setting the term of office of the Chief Executive at two years, believing that the ulterior motive is that the Central Authorities want to put the Chief Secretary Donald TSANG on probation and saying that this is the result of a compromise with the pro-Beijing and leftist camp, and so on. Such claims have totally ignored the discussions in society and that the majority of members of the public support a two-year term. They have totally ignored such views. Some Members have attached great importance to public opinions some of the times, however, under today's circumstances, they have not paid any attention to the views of the public at all.

On the other hand, I think that in submitting a Report to the State Council and requesting it to seek interpretation of the Basic Law by the NPCSC, the Government of the SAR wants to clarify the term of office of the Chief Executive selected in the by-election. I totally support such a move. This is because I believe this move is conducive to the smooth selection of the Chief Executive in the by-election, thus avoiding political turmoil in Hong Kong and promoting social stability. Why do I say so? Some people said that seeking a judicial review would not have an impact and they appeared to be very convinced. Although I am no lawyer, I have seen past occurrences from which I have learned a lesson. That incident is none other than The Link REIT incident. In that incident, I think the Housing Authority hired a large group of what were in the past referred to as Queen's Counsels but are now called Senior Counsels, as legal experts to offer advice, saying that nothing would not go amiss and The Link REIT would definitely be listed smoothly. However, as things now stand, according to the news reports on television, it is not sure how long we will have to go on waiting. From this incident, we can find that judicial reviews are not really that simple because once a judicial procedure is involved, we have no idea how the Court will rule. It is not a Justice LEUNG, a Justice NG nor a Justice EU who sits in the Court. We cannot tell Judges to hurry in giving its decisions and delivering its judgements. They have their own arrangements and this is why the judicial system in Hong Kong is independent. For this reason, the Government must draw on past experience and lessons and proceed carefully, so as to ensure that nothing will go amiss. Even though The Link REIT cannot be listed, I believe this will not be fatal in any way and at most, everybody will just feel disappointed, wondering why officials are so careless when handling this matter. However, should problems occur in the by-election of the Chief

Executive, this will really become a serious matter and some people even believe that this will have an impact on the constitution and a crisis will occur in this area.

On the other hand, some Honourable colleagues have proposed amending the Basic Law. The most notable person is Mr Martin LEE. He believes that there will be no problems in amending the Basic Law. It is only necessary for those 3 000 people to head for Beijing and convene a meeting of the NPC for the issue of amending the Basic Law to be resolved. If there is a shortage of funds in dealing with this matter, we may as well dip into our pocket. Such a mentality of "money is everything" is in fact disregarding the solemnity of the body at the highest level, that is, the NPC, believing that it is always possible to use money to ask the NPC to amend the Basic Law. It is this sort of attitude that has trampled on the Basic Law and the rule of law.

Some people think that to ask the NPCSC to interpret the Basic Law is tantamount to relinquishing the high degree of autonomy enjoyed by the SAR, impairing the rule of law and even subjecting oneself to manipulation by the Central Authorities. I certainly cannot subscribe to such a view.

According to Article 158 of the Basic Law, the power of interpretation of the Basic Law shall be vested in the NPCSC and some Honourable colleagues have already cited this provision. However, when the first paragraph was mentioned, I was reminded of the process of drafting the Basic Law back in those years, in which I participated. At that time, we were also of the view that the power of interpretation of the Basic Law should be vested in the NPCSC. This is stipulated by the Constitution and not a matter of personal preference. Such a power is conferred on the NPCSC by the Constitution. In fact, in the drafting process, we also discussed if it was possible to empower us to interpret some of the provisions in the Basic Law. Consequently, the second paragraph states that we have such a power. The NPC has not imposed any restriction on it. In fact, this provision gives Hong Kong some of the power to interpret the Basic Law, including provisions that are within the limits of the autonomy of the SAR. When the Court deals with cases involving such provisions, it also has the power to make interpretations on them. This point is clearly stated in the second paragraph.

Concerning the third paragraph, in fact, a certain barrister has omitted one word when citing it but this word is very important: before the CFA makes final

judgements which are not appealable, it shall — the word "shall" is very important here — seek an interpretation on the relevant provisions from the NPCSC if they have to do with affairs which are the responsibility of the Central People's Government or involve the relationship between the Central Authorities and the SAR. That is, it "shall" request an interpretation before making a final judgement. I believe that should it be necessary for the CFA to make an interpretation on the issue of the term of office one of these days, it "shall" seek interpretation from the NPCSC according to the third paragraph of Article 158 of the Basic Law. Therefore, under such circumstances, ultimately, such a course of action has to be taken. Therefore, I do not think that there will be any impact on the rule of law.

The interpretation of the Basic Law by the NPCSC will not impinge on judicial independence and the power of final adjudication of Hong Kong because firstly, the Constitution stipulated in black and white that interpreting the law is the power and function of the NPCSC and the Basic Law, being a fundamental law under the Constitution, is subject to the power of interpretation of the NPCSC according to Article 67 of the Constitution. Secondly, the NPCSC makes interpretations on the Basic Law when it is necessary to give further and clearer definitions or to give explanations by way of supplementary provisions, not to make interpretations on the applicability of the law to cases that are being heard. Therefore, the interpretations made by the NPCSC will not affect the power of the CFA to deliver final judgements in cases within its jurisdiction.

Here, I wish to quote two provisions in the Resolution of the Standing Committee of the National People's Congress Providing an Improved Interpretation of the Law (1981), namely: (1) In cases where the limits of articles of laws and decrees need to be further defined or additional stipulations need to be made, the Standing Committee of the National People's Congress shall provide interpretations or make stipulations by means of decrees; (2) Interpretation of questions involving the specific applications of laws and decrees in court trials shall be provided by the Supreme People's Court. The NPCSC will only provide interpretations on the limits and contents of articles of laws, not on how specific cases should be dealt with. Therefore, judicial independence in Hong Kong is not affected.

Madam President, since the reunification, the NPCSC has made interpretations on the Basic Law on two occasions, with the result that these

moves have won wide acceptance in Hong Kong society. This shows that the interpretations on the Basic Law does not affect the rule of law in Hong Kong. Here, I wish to quote the remarks of Mr Justice Henry LITTON, a retired CFA Judge, who said, "The rule of law in Hong Kong has not been in any way diminished because of the interpretation made by the National People's Congress. The essence of the rule of law is realized in our courts everyday." Mr Justice Brian KEITH also said, "The interpretation of the Standing Committee has not in any way undermined either the rule of law or the independence of the Judiciary if one remembers that it is indeed the Basic Law that confers on the Standing Committee the final power of interpretation." Here I have quoted the remarks made by two CFA Judges. I also hope that friends in the legal sector will gain a better understanding of the Constitution of our country or the operation of its law, since I also understand that a lot of problems may occur when implementing the "one country, two systems" principle in two different jurisdictions and there may even be many vague areas. It is necessary to constantly show mutual respect, learn from each other, emulate other people's strengths in addressing our weaknesses and dispel unwarranted misgivings. If we just make emotional remarks, I think this will not do Hong Kong society or ourselves any good, since given that "one country, two systems" is highly advantageous to Hong Kong, Members in fact all have the responsibility to implement it successfully together. I believe all of us should strive towards this direction.

Having said all of the foregoing, I now conclude my speech.

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

MR ALBERT CHENG (in Cantonese): Madam President, many Honourable colleagues have spoken before my turn to speak and some of them have showed some outburst of emotions. This may due to the fact that this is an adjournment debate and everyone is allowed 15 minutes to speak. So some of the arguments just repeat on and on. Actually, the arguments put forward by Members from the democratic camp before I speak have presented some views, be they professional or otherwise, on legal issues.

It is true that Article 104 of the Basic Law provides: "When assuming office, the Chief Executive, principal officials, Members of the Executive

Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China." A while ago, Mr LEUNG Kwok-hung displayed some outburst of emotion and this may be his way of expressing his protest against the interpretation of the Basic Law on this occasion and so he tore some pages from the Basic Law containing some provisions. The President made a ruling later that it would be considered a disorderly conduct starting from the following day for anyone to tear any instrument of Hong Kong laws, including the Basic Law, in this Council.

All these outbursts of emotion and acts like tearing up the Basic Law will do no harm to the Basic Law. But if the Basic Law is twisted and distorted to facilitate the selection of a new Chief Executive on 10 July, this would indeed be inflicting a gravest damage to the Basic Law. What we have sworn allegiance to uphold is the spirit of the Basic Law and the tearing of the text of the Basic Law will not create any impact on the Basic Law itself.

There have been many Honourable colleagues who have expressed their views to explain the right of the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law. Both views for and against the right are advanced. I would think that this right is not to be challenged. Under the Basic Law, the NPCSC does have such a right to interpret the Basic Law. The question we have to ask is with respect to this attempt to be made by the Government to request the NPCSC to interpret the Basic Law, putting aside the procedural considerations, the most important concern is the result. Despite the fact that the credit rating institutions have not done anything yet to downgrade the rating of Hong Kong in the light of the present interpretation incident, these institutions are expressing their worries and some negative assessments are made of the situation. This has done damage to Hong Kong already.

Actually, the Basic Law is a very simple document. It has a total of 66 pages. There will not be any need to resort to calling in authorities, legal experts, senior counsels and so on to say anything. It can be understood by any person. I have read the entire Basic Law three times, in both the Chinese and English versions. I find that irrespective of the Chinese or English version, the

term of office and method of selecting the Chief Executive are clearly provided and it is stated that the term of office of every Chief Executive shall be five years. The Basic Law is silent on by-elections. If an attempt is made to seek an interpretation of the Basic Law by the NPCSC, we all know what the ulterior motive is and that is to achieve a certain result. Irrespective of what the motive behind is, the result is to specify that the term of office to be continued is two years. This is shocking and something is wrong. The Government wants to seek an interpretation of the Basic Law. The NPCSC does have such a right to interpret the Basic Law. But how this request to interpret the Basic Law is made would be another matter. The question is how can this idea of a two-year term of office come about after reading the Basic Law? Where are by-elections specified? How are we going to explain this to our young people or to our next generation? This will also do injustice to the NPCSC.

As for the polls and surveys, it is only when a government is populist that its policies are directed by the findings of polls and surveys. If it is said that public opinion is not right, especially when mention is made just now of the stipulations found in Article 104 of the Basic Law that we have all sworn allegiance to and for which we should uphold, we cannot do anything to sacrifice the rule of law in Hong Kong just because it is the hope of each and every one of us, including me, to see a new Chief Executive selected on 10 July. This cannot be done because of this reason and it is a very important point. The reason why Hong Kong is different from other cities in China and the reason why it ranks as a world-class city and an international financial hub is because we are so proud of being a Hong Kong person and because we have laws. We know very well that if only we do everything according to the law and if only we abide by the law, there is no cause for us to fear anything.

It is unfortunate that in order that the selection can proceed smoothly on 10 July, many officials, scholars and Members of the Executive Council whom we used to respect so much are now saying that a constitutional crisis will ensue if a judicial review is applied. They are saying that this is exploiting judicial procedures and they liken the present situation to The Link REIT case and poke fun at it. They say that if no interpretation is made and if challenges to the selection are permitted, then it would be a big joke. But there is no joke about it, not at all, for we cannot laugh at the matter. So how can there be any joke? The rating institutions are telling us that this is disgraceful. This is actually a word used by a rating institution. No one is laughing because there is no cause for doing so.

With respect to the selection of a new Chief Executive, it is of course a very important thing that a new Chief Executive can be selected smoothly. Most of us here and most of the people in Hong Kong will want to see a selection held smoothly on 10 July and a new Chief Executive can be selected. But we simply cannot distort the law for the sake that we want to select a new Chief Executive. How shall I explain this point? I am not arguing about the issue of the interpretation of the Basic Law. The NPCSC has the right to interpret the Basic Law. It has certainly the right to do so and there is no doubt about it. What is wrong? Let it interpret the Basic Law. But the question is how this is to be done. Now this flag of the Hong Kong SAR is red, if one of these days we do not feel like it, can we interpret the law and turn it into green? No, not at all. Many Honourable colleagues, especially those from the democratic camp, have explained why we are against this attempt to interpret the Basic Law. We share the same position: We all hope that the SAR Government will not do anything to destroy the rule of law in Hong Kong and "one country, two systems" just to facilitate the selection on 10 July. I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, this is the end of speeches made by Members. I now call upon the Secretary for Justice to speak on the motion.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, a good number of Members spoke to express their view that there was no legal ground for the proposition that the term of office of the new Chief Executive selected to fill a vacancy in accordance with Article 53 para 2 of the Basic law should be the remainder of his predecessor's unexpired term. They considered it merely a product of political expediency on the Government's part. They maintained that the Government has violated the common law principles of statutory interpretation and has twisted the law, by choosing to listen only to views of the two mainland legal experts and introducing the Mainland's legal system into Hong Kong's system. They also criticized the Government's request for the State Council to seek an interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) as an unnecessary move

that interferes with judicial proceedings, damages the rule of law and undermines the "one country, two systems" principle. I would like to respond from a legal perspective.

On 12 and 15 March, I made a statement at a press conference and gave a speech at a meeting of the House Committee of the Legislative Council respectively to explain the stance and the justifications of the Government on the term of office of the new Chief Executive. To put it briefly, the term of office of a new Chief Executive selected to fill a vacancy arising prematurely is prescribed by the provisions in Article 45 of the Basic Law on the specific method for selecting the Chief Executive and not the normal five-year term as stated in Article 46. The specific method as referred to in Article 45 of the Basic Law is prescribed by Annex I to the Basic Law. The design of our whole political structure laid down in the Basic Law aims at achieving prosperity and stability. If the office of Chief Executive falls vacant during the five-year term of office of an election committee, a new Chief Executive will be selected by the same election committee. If the term of office of a new Chief Executive should run afresh, the total length of the terms of office of the Chief Executive selected by the election committee will go beyond the period in which the committee can exercise its power. This explanation is consistent with the interpretation of the provisions of the Basic Law as a whole, the discussions held in the course of drafting the Basic Law and the legislative intent of the Basic Law. Moreover, it is confirmed by members of the drafting committee who participated in drafting the provisions and the legal experts, and supported by documents compiled in the course of discussing the draft of the Basic Law. On 12 March, a spokesman of the Legislative Affairs Commission of the NPCSC issued a public statement endorsing the stance of the Hong Kong Special Administrative Region (SAR) Government. Though, in practice, there has been some time lag between the term of office of an election committee and that of the Chief Executive, the original design is consistent with the legislative intent. It is also consistent with the reference to the election of the Chief Executive for the third term to be held in 2007 in the Decision of the NPCSC on 26 April 2004.

Some Members pointed out that the stance of the Government was for political expediency. The stance of the Government is in full conformity with the provisions of the Basic Law. What will the SAR Government gain from a shorter term of office? If it were for political expediency, by adopting the stance in favour of five years, the Government would have been able to save the effort of amending the method for the selection of the Chief Executive in 2007,

postponing the more democratic and open election of the Chief Executive for the third term. That is also the so-called "conspiracy theory" many Members referred to at the outset, including Mr Martin LEE and Mr Ronny TONG. In fact, the Government has no "conspiracy", nor will it interpret Article 53 para 2 of the Basic Law according to any conspiracy plot.

Some Members said that by doing so we have introduced into Hong Kong the law and system of the Mainland and that although the election to fill a vacancy shall return an office bearer to fill the remainder of an unexpired term according to the practice in the Mainland, this is not the system practised in Hong Kong and we should not consult the opinions of the legal experts in the Mainland. I would like to thank Ms Miriam LAU, who has just explained in her speech that the Basic Law could not be interpreted entirely according to the common law principles. As a matter of fact, the common law is currently practised under the Basic Law in our new constitutional order. It shall evolve in the light of the introduction of the Basic Law. The Basic Law is a national law adopted by the Nation People's Congress, which shall be upheld not only by Hong Kong, but also by the Central Authorities and the provinces and municipalities of the Mainland (for example Article 22). The legislative intent of its provisions, obviously, cannot be discovered in Hong Kong, nor can we rely on the legal experts in Hong Kong, who had not participated in the drafting of the Basic Law.

Under the common law principles, the duty of the Courts is to ascertain what is meant by the language used in the Basic Law, and to give effect to the legislative intent as expressed in the language. However, as the Court of Final Appeal said in the case of *Director of Immigration v Chong Fung-yuen*, whilst the Courts must avoid a literal, technical, narrow or rigid approach, they cannot give the language a meaning which the language cannot bear. Thus, to assist in the task of interpretation of the provision in question, the Courts will consider what is within the Basic Law, including provisions in the Basic Law other than the provision in question.

In other words, to interpret Article 53 para 2 of the Basic Law, we shall not merely refer to Article 46 of the Basic Law. It is more important for us to refer to Article 45 and Annex I as mentioned in Article 53 para 2. Besides, Article 46 of the Basic Law is irrelevant to the issue we are debating. Several Members have said that Article 46 is so clearly expressed that we need not consider other materials. However, Article 53 para 2 refers to Article 45 and

Annex I, not Article 46. No express provision is found in Article 53 para 2 that stipulates the term of office of a new Chief Executive returned to fill a vacancy. However, such meaning can be found in Annex I. It should mean the remainder of the unexpired term, which is in conformity with its legislative intent. Therefore, this interpretation is fully consistent with the common law, and there is no twisting of the meaning of the law.

Some people are of the view that our requesting the State Council to seek an interpretation of the Basic Law by the NPCSC will undermine the rule of law and damage "one country, two systems". Article 158 of the Basic Law stipulates that the power of interpretation of the Basic Law shall be vested in the NPCSC. This power is conferred by Article 67(4) of the Constitution and reiterated in Article 158 of the Basic Law. The NPCSC shall authorize the Courts of the SAR to interpret the provisions of the Basic Law in adjudicating cases. However, this power is not unrestricted in that, where the provisions concern affairs which are the responsibility of the Central Authorities or concern the relationship between the Central Authorities and the SAR, and if such interpretation will have affected the judgements, the Courts of the SAR shall, before making their final judgements, seek an interpretation of the relevant provisions from the NPCSC. Under Article 43 of the Basic Law, the Chief Executive shall be accountable to the State Council (that is, the Central Government) as well as the SAR. Under Article 48(2) of the Basic Law, the Chief Executive is responsible for the implementation of the Basic Law. Where the SAR encounters difficulties in the course of implementing the Basic Law and cannot guarantee that a new Chief Executive will be smoothly selected on 10 July, it has a duty to submit a report to the State Council and recommend that an interpretation of the Basic Law be made by the NPCSC. Therefore, whether it is the NPCSC that decides to interpret the Basic Law or the SAR Government that requests the NPCSC via the State Council to interpret the Basic Law, the interpretation is made in accordance with law without contravening any provision of the law. Besides, as the interpretation is made by the NPCSC itself, will it rule that the term of office shall be five years when the Court seeks an interpretation from it but that the term shall be two years when the interpretation is sought by the SAR Government? I do not think so. If it is the same authority that makes a legal interpretation, the result will be the same, whether it is the NPCSC that decides to interpret the Basic Law or the SAR Government that requests the NPCSC via the State Council to interpret the Basic Law. It will not make any difference even if it is the Court that seeks an interpretation from the NPCSC. These three approaches are lawful procedures

stipulated in the Basic Law. Therefore, the exercise of the power to interpret the Basic Law cannot undermine the rule of law. In *Lau Kong Yung v Director of Immigration*, the Court clearly points out that the power to interpret the Basic Law is not restricted in any way by Article 158 para 3, that is, the Court's power to interpret the Basic Law and Article 158 para 2. In other words, it is not that the NPCSC can interpret the Basic Law only upon the request of the Court. You may recall that the legal interpretation examined in the case was exactly an interpretation made by the NPCSC as sought by the Chief Executive under Article 43 and Article 48(2) of the Basic Law by submitting a report to the State Council. As this legal interpretation is part of the design of the "one country, two systems", it cannot be regarded as damaging "one country, two systems".

Now I would like to turn to the need to seek an interpretation of the Basic Law. Some Members are of the opinion that as an application has been made for judicial review, the Government should simply allow the dispute to be settled by the Court, rather than seeking an interpretation of the Basic Law that would interfere with the judicial proceedings. The Chief Secretary for Administration has earlier explained to Members the pressing need for an interpretation of the Basic Law and I do not wish to repeat it. The fact is that, while judicial review is one of the solutions to the matter we have in hand, we are faced with a pressing schedule and judicial review was designed originally as a means to make up for the inadequacy arising from the rigidity of the requirements for legal litigation. And the Court has a great degree of discretion in deciding whether to exercise its power to tender assistance to the applicant. I understand that two applications for judicial review have already been filed with the Court. I have no intention to express any views on the current litigation, but I only wish to refer to the legal principles and explain why the following variables exist in regard to the judicial review prior to the making of any legally binding interpretation of the Basic Law by the NPCSC:

- (1) It is entirely for the Court to decide whether it has jurisdiction over the case. If it is of the view that it has no jurisdiction, no jurisdiction can be conferred on it even though both parties agree that it has. Therefore, the Court may not decide on the term of office of the new Chief Executive.
- (2) The applicant must have sufficient interest in the case before he can request the Court to make a decision on it. The Court may reject the applicant's application on the ground that he does not have

sufficient interest and will not decide on the term of the new Chief Executive. There are very clear precedents on this. Therefore, judicial review may not necessary offer a solution to the dispute.

- (3) The Court may also hold the view that, as the right to scrutinize a bill is vested in the legislature, it may decline to hear the case before the passage of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill. As shown in the cases I have provided to the members of the Article 45 Concern Group, similar decisions have been made before. I have cited those three cases merely to illustrate that under certain circumstances, the Court may dismiss the applications by not giving any ruling on the issues under dispute. It is also unknown as to when another application for judicial review will come up and the Court will truly deal with the issues currently under dispute.
- (4) Candidates running in the Chief Executive election have the right to know whether a successful candidate's term of office will be two years or five years. More importantly, the election must be conducted in accordance with the law. The Legislative Affairs Commission of the NPCSC has already indicated that the term of office of the new Chief Executive should be the remainder of his predecessor's unexpired term. If we conduct the election under the existing legislation, will the Chief Executive thus selected be appointed? Alternatively, if our legislation is amended, but later declared null and void by the Court which decides that the term of office should be five years, can SAR Government conduct an election to select a Chief Executive whose term of office is the remainder of his predecessor's unexpired term in disregard of the Court's decision before there is a final ruling from the Court of Final Appeal? If we go ahead and conduct the election, failure to comply with the Court's decision means that we will be acting in a manner equally inconsistent with the rule of law.
- (5) Although I fully trust that the Courts will expedite the handling of the case as soon as they can, for the sake of justice, they still have to allow enough time for both sides to collect and present the evidence to the Court by way of affidavits or in other forms. And yet, not all witnesses or exhibits are readily available. Besides, no Court

has ever given a ruling on the term of the Chief Executive before. Hence, the leapfrogging procedure cannot be invoked for an appeal to be made directly to the Court of Final Appeal from the Court of First Instance.

- (6) before a final ruling given, the Court will have to seek an interpretation of the Basic Law by the NPCSC in accordance with Article 158 para 3 of the Basic Law. At least this is what I think. As the Court of Final Appeal has not exercised this power before, we cannot tell whether the procedures are already in place and ready for use. Neither can we tell if the procedures meet the requirements of the Mainland. Even if the Court can have this done within a short time, the interpretation process itself will take at least three to four weeks. It would be difficult to guarantee that the whole legal proceedings can be completed on time. During this period, the preparation work for the election of Chief Executive will be shrouded in an atmosphere of uncertainty. This is not conducive to a smooth election and will give rise to such consequences as the Chief Secretary of Administration has already detailed.

Hence, if the NPCSC gives a binding interpretation, the legality of the election of Chief Executive can be ensured, and the Chief Executive can be selected smoothly on 10 July. With a binding interpretation, no matter when an application for judicial review is made to the Court, the issue can be settled quickly.

Madam President, I understand that, for any move to seek an interpretation of the Basic Law, there is very strong resistance in the community, in particular from the legal professionals who are familiar with the common law. Even today, may Members have proposed that the Court should be left to decide whether it is necessary to seek an interpretation under Article 158 para 3 of the Basic Law. However, a couple of weeks ago, the question of whether this issue should be handled by the Court or whether the NPCSC should take the initiative or be requested to make an interpretation was regarded as a "dilemma". Some Members do not want to let the Court decide on political issues. However, interpretation of the Basic Law by the NPCSC is part of our system. It should be exercised when there is a need. To consider it a scourge means rejection of the Basic Law and opposition to the constitutional power of the NPCSC. How

can we say that it is the rule of law? How can we say that it is "one country, two systems"?

I hope Honourable Members will support the Government's submission of a report to the State Council to seek an interpretation of Article 53 para 2 of the Basic Law by the NPCSC, so as to resolve the dispute and to pave way for the smooth election of the new Chief Executive.

Thank you, Madam President.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, first of all, I would like to thank the 20-odd Honourable Members who have expressed their views in great detail on this topic this evening. I have also noticed that Members have, after careful consideration, clearly and precisely expressed their personal views and the views of their political parties. The Secretary for Justice has responded to their opinions from a legal point of view. Madam President, I hope to further respond from the constitutional angle and the angle of the implementation of the Basic Law.

The Government of the Hong Kong Special Administrative Region (SAR) is duty-bound to elect a new Chief Executive on 10 July in accordance with the constitutional structure and our law. We must comply with the relevant requirements to make such arrangements. Should the SAR fail to elect the new Chief Executive in time on 10 July according to the law, the formulation of government policies, our governance and the normal operation of the SAR might be affected. A constitutional crisis might even be triggered as well. In order to maintain the confidence of the SAR residents and international community in the determination and ability of the territory in implementing the Basic Law and prevent them from casting doubt on that, we have decided to submit a Report to the State Council, proposing that the State Council consider making a request to the Standing Committee of the National People's Congress (NPCSC) to interpret the Basic Law.

We have decided to do so because we have noticed difficulties in two aspects. On the one hand, despite our prolonged discussion, there is still divergence in the community. While some agree that the term of office of the newly elected Chief Executive shall be five years, some agree that it should be the remainder of the previous term. We have also seen that the divergence in

the community will continue and our legislative work will thus be affected. On the other hand, the disputes over judicial review will be affected too. In the light of the difficulties in the legislative and judicial aspects, we have decided to submit a Report to the State Council, proposing that the State Council consider making a request to the NPCSC to interpret Article 53 of the Basic Law. This will provide our future work with a clear constitution basis, which we believe will help us in our legislation and deal with this judicial review case.

Madam President, actually, during certain periods in the past, we have attached great attention and listened very carefully to the views expressed by various quarters in the community. In this Council, we have once attended the House Committee. Earlier, we joined Honourable Members in an adjournment debate and conducted relevant discussions in the Panel on Constitutional Affairs. Last week, we met with Honourable Members in groups and listened carefully to Members' views before making this decision today. Before submitting the Report to the State Council, we offered Honourable Members and this Council an explanation through the Statement made in this Council today.

Today, some Honourable Members, particularly those of the pan-democratic camp, reiterated that they consider amending the Basic Law to be the most appropriate solution to this issue. However, the Legislative Affairs Commission of the NPCSC has stated earlier that the Basic Law already has a clear design regarding the term of office of the new Chief Executive to fill the vacancy in the office of the Chief Executive. The legislative intent is clear. Under such circumstances, we do not believe there could be a basis on which a motion to amend the Basic Law can be proposed. It would be most appropriate to make clear the legislative intent of the relevant provisions of the Basic Law by an interpretation. It would thus be inappropriate to propose amending the Basic Law.

Furthermore, the authority to amend the Basic Law is vested in the NPC. Given that the next session of the NPC would not be convened until March 2006, it would be impossible to amend the relevant provisions of the Basic Law before 10 July this year when we have to deal with the selection of the new Chief Executive.

Whenever the interpretation of the Basic Law is mentioned, Members of the pan-democratic camp would engage in alarmist talk, saying that the rule of law would be undermined and that the rule of law is already dead and so on.

Actually, these remarks are not only unfounded, but also out of touch with our constitutional basis. Under the design of "one country, two systems", the NPCSC has the ultimate authority to interpret the Basic Law. This is precisely part of our constitution system.

Actually, in February 1999, the Court of Final Appeal (CFA) made it clear that it would follow any interpretation made by the NPCSC regarding the provisions of the Basic Law. The CFA could not, and would not, cast any doubt. This judgement of the CFA has precisely reflected our constitutional order. Given that even the Chief Justice of the CFA respects this constitutional order, may I ask Members of the pan-democratic camp or Members of the Article 45 Concern Group why they find it so unacceptable when even their most revered Chief Justice will respect this constitutional order?

Next, I would like to put forward my arguments from two aspects. First, Hong Kong's common law system would continue to have scope for development; second, it would be impossible to simply start from the common law principles to interpret the Basic Law.

First, under the framework of the Basic Law, Hong Kong's common law system is actually in an ongoing process of development and reinforcement. My statement is based on three justifications. First, since the reunification of Hong Kong, that is, since the establishment of the SAR, Hong Kong's CFA has been put in place according to the Basic Law. The CFA has also taken over the power of final adjudication over cases in Hong Kong from the Privy Council previously. Before 1997, it was impossible for Hong Kong Courts to play this role. It was only after the reunification of Hong Kong in 1997 that the Courts were given such authority. As such, regardless of whatever positions held by Members on the authority of interpreting the Basic Law, it must be recognized clearly that the CFA has indeed strengthened and widened its role since the reunification.

As such, the argument put forward by Mr Ronny TONG that Hong Kong was formerly a British colony and today a colony of China is unclear and unfounded. First of all, Hong Kong is merely a special administrative region. It cannot be interpreted as a colony. Second, Hong Kong is part of China. The current role played by the CFA is part of the authority conferred upon the SAR by the Central Authorities, subsequent to the formulation of the Basic Law by the NPC. It is precisely according to such authorization that the CFA is able to play a more important role after the reunification than before.

Second, the CFA's power of final adjudication over cases and the ultimate authority of the NPCSC to interpret the Basic Law can co-exist and there is no conflict at all between the two. Back in January 1999, the CFA made a judgement and later, the NPCSC made an interpretation in June regarding the right of abode (ROA) incident. The purpose of the interpretation was to provide a clear basis and interpretation for us to deal with relevant cases in future. According to the original judgement made in January 1999, we have allowed thousands of ROA applicants to remain in Hong Kong as permanent residents. Later, after some time, we have allowed even more people to become Hong Kong's permanent residents in accordance with this decision. Therefore, even from the 1999 case alone, we can see clearly that the NPCSC's final power of interpretation is not in conflict with the CFA's power of final adjudication over Hong Kong cases. The two powers can co-exist and there is no conflict between them.

Third, in simpler terms, according to the provisions of the Basic Law, Hong Kong has been able to continue the common law system after the reunification and the CFA is given a wider and more comprehensive role. Vested with the ultimate power of final adjudication over the laws of Hong Kong and common law as practised in the territory, the CFA has, in accordance with the exercise of the power of final adjudication, continued to develop common law in Hong Kong. Every decision made by the CFA has also become a precedent of Hong Kong's common law. Every day, we can thus see that Hong Kong's CFA and the Courts of the SAR handle such cases involving the arbitration of contracts, the adjudication of wills, the determination of liability in accidents, marriages and divorces, and so on. Hong Kong's common law system is in a constant process of development. According to the provisions of the Basic Law itself, Hong Kong's common law system can continue to thrive. This will not, in any way, be affected by the exercise of the NPCSC's authority to interpret the Basic Law.

A key point of the second argument is it must be understood that the Basic Law has, after the reunification, served as the base, foundation and momentum to propel and perpetuate Hong Kong's common law to enable it to continue developing. If not for the Basic Law, common law would not have been able to perpetuate in Hong Kong after 1997. Hong Kong's common law can therefore not override the Basic Law, or else the cart would be put before the horse. We must not insist on interpreting the Basic Law merely with common law principles. I am aware that Members of the democratic camp cherish Hong Kong's common law and court systems very much. So do our colleagues of the

SAR Government. This explains why before 1997, we strived hard to enact legislation for the establishment of the CFA to ensure that this could be done as scheduled. This system, now established, is operating every day. However, it must be understood that the Basic Law is a unique constitutional document. It is a set of national law, enacted and adopted on the Mainland, and it is also a constitutional law specially formulated for the establishment of the SAR. The Basic Law is in itself an interface between "one country" and "two systems". We must put our experience into practice before we can fully grasp and practise the Basic Law principles. The interpretation of the Basic Law by the NPCSC cannot possibly damage Hong Kong's rule of law. Right from the beginning, Hong Kong's CFA has never been conferred the ultimate power of interpreting the Basic Law. Such authority has always been vested in the NPCSC of the Central Authorities. We cannot say that seeking an interpretation from the NPCSC would undermine Hong Kong's rule of law.

Actually, if we look back at our previous requests for the NPCSC to interpret the Basic Law, we will find that every such request was intended to resolve major and substantial problems confronting Hong Kong. In 1996, in tackling the issue of implementing the Chinese Nationality Law in Hong Kong, the NPCSC succeeded in addressing, before the reunification, the concern of many people who had resided in overseas countries for a period of time before returning to Hong Kong. They were uncertain as to whether they could retain their Chinese nationality and apply for SAR passports while using their foreign passports. The interpretation made at that time has enabled this group of Hong Kong people to continue using their foreign passports as travel documents. This decision and interpretation was welcomed by Hong Kong people and accepted by the community.

I remember it clearly that when we submitted a Report to the State Council in 1999 proposing that the NPC interpret Article 24 of the Basic Law, the community of Hong Kong clearly understood that we were seeking to resolve a major issue perplexing Hong Kong. All the related opinion polls conducted at that time indicated and reflected that the community and the people of Hong Kong were supportive of this move. In the debates conducted in this Council, most Members also lent us their support. Today, we can see that the interpretation made in 1999 has brought stability to Hong Kong and resolved the problem.

Madam President, the decision and interpretation made by the NPCSC last year with respect to Hong Kong's constitutional development has pointed the

territory to a clearer direction. Therefore, since more than one and a half years ago, we could begin the next public consultation exercise in relation to this issue. We expect to continue discussing this mainstream proposal in the second half of this year and with Members' support, we hope to introduce relevant amendments to Annexes I and II to the Basic Law.

We believe our submission of a Report to the State Council requesting it to consider seeking an interpretation from the NPCSC can help the territory resolve a major issue at the moment to enable us to elect a new Chief Executive lawfully and in time on 10 July so that Hong Kong's governance can continue.

Next, Madam President, I would like to say a few words on the issue relating to the vacuum period of the Election Committee (EC). Both Ms Audrey EU, Mr LEE Cheuk-yan and Ms Emily LAU have questioned why we have failed to avoid the vacuum period by electing a new EC immediately so that it can start work on 14 July. Actually, when the Chief Executive Election Ordinance was enacted in 2001, we already anticipated a vacuum period lasting approximately 18 months, would occur from July 2005 to end 2006. This problem is something not newly created by us; it is left over by Annexes I and II to the Basic Law. This is because Annex II deals with matters starting from 2000. According to the provisions of Annex II, a EC must be formed in 2000, whereas Annex I sets out that a 800-strong EC must be established which is the same as the one referred to in Annex II, for the election of the Chief Executive of the second term. The arrangements and design of the Basic Law *per se* has therefore directly led to the occurrence of the vacuum period. Notwithstanding this vacuum period, we have all along maintained that a new EC will not be elected indiscreetly. Our considerations are made from the following four major aspects:

First, we should focus our attention on dealing with the election on 10 July to enable the new Chief Executive to be smoothly returned in time. As the term of the existing EC will not expire until 13 July 2005, it should be allowed to elect the new Chief Executive on 10 July. We should therefore focus our attention on dealing with this issue and arrangement.

Second, we have anticipated the occurrence of this vacuum period a long time ago. However, it has always been hoped that we can pass this period smoothly before a new EC is formed in another exercise in end 2006, or early 2007. In other words, a new EC will be formed in tandem with the election of

the Chief Executive of the third term so that the formation of the new EC will match the timing of the election of the Chief Executive of the third term. From then on, the terms of office of the EC and the Chief Executive will match perfectly as both will last five years for each term.

Third, the SAR Government will not form a new EC hastily to deal with scenarios that might not arise. It is possible, if a new EC is formed immediately, that our review of the method of returning the Chief Executive of the third term in 2007 would be impeded. This is because we might have to revise the arrangements for the 800-strong EC. Therefore, if it is not absolutely necessary, a new EC will not be formed for the time being.

Fourth, it will cost a lot of public money if preparations are made at this moment to form a new EC on 14 July. Furthermore, the new EC, after being formed, does not necessarily have to operate. It is not in Hong Kong's paramount interest because the new EC might not serve any purpose.

Madam President, in the past month or so, we noticed a great deal of diverse views in the community on the term of the new Chief Executive. At the very beginning, Members of the pan-democratic camp stated that the 2007 review of the constitutional development would be stifled should a term last five years. Then, on hearing that the term might last two years, they began saying that the SAR Government had failed to act according to the Basic Law. During the previous adjournment debate, I asked Members of the pan-democratic camp whether they would not allow us to make any move. This time, we will be submitting a Report to the State Council, proposing that the State Council make a request to the NPCSC for an interpretation. Members of the pan-democratic camp then vaguely said that the rule of law would thus be affected. Therefore, today I see that Members do not only want us not to make any move in either way, they even want us to stay where we are or find it difficult to move one inch forward. This is not going to work. Given that the SAR Government has noticed a problem, we must resolve or deal with it in any case. It would be irresponsible for us to ignore or act indifferently to the problem. The decision to submit a Report to the State Council is not an indiscreet or easy decision. However, we believe this decision is in the most fundamental interest of Hong Kong.

The Basic Law is an innovative constitutional document. It has been put into practice for less than 10 years, or seven years and a half to be exact. In the course of putting this unprecedented "one country, two systems" arrangement

into practice, we have to constantly explore and sum up our experience. In practice, we inevitably have to resolve some contentious issues, such as the one relating to the term of office which we are dealing with today. However, it is precisely because of the difference in the legal systems of the Mainland and Hong Kong that we have to be willing to explore together and put aside our established views. All of us, including my colleagues in the Government, Honourable Members and legal professionals, must examine and explore the pros and cons of these issues before we can find the way forward and map out the future for Hong Kong.

Madam President, to sum up, I am convinced that, with the passage of time, these two legal systems of ours can ultimately run in with and tolerate each other. After the run-in, however, as I said earlier, I am convinced that Hong Kong's common law system can perpetuate and thrive.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That this Council do adjourn. I wish to remind Members that if the motion is passed, I will adjourn the Council according to Rule 16(3) of the Rules of Procedure. In such case, this Council meeting cannot proceed further to consider the remaining agenda items.

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

(No hands raised)

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

(Members raised their hands)

PRESIDENT (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion negatived.

MEMBERS' BILLS**First Reading of Members' Bills**

PRESIDENT (in Cantonese): Members' Bill: First Reading.

CITIBANK (HONG KONG) LIMITED (MERGER) BILL

CLERK (in Cantonese): Citibank (Hong Kong) Limited (Merger) Bill.

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

PRESIDENT (in Cantonese): As the Citibank (Hong Kong) Limited (Merger) Bill presented by Dr David LI relates to government policies, in accordance with Rule 54(1) of the Rules of Procedure, the signification by a designated public officer of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bill.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I confirm that the Acting Chief Executive has given his written consent for the Citibank (Hong Kong) Limited (Merger) Bill to be introduced into the Legislative Council.

Second Reading of Members' Bills

PRESIDENT (in Cantonese): Members' Bill: Second Reading.

Dr David LI, you may now move the Second Reading of your Bill.

CITIBANK (HONG KONG) LIMITED (MERGER) BILL

DR DAVID LI: Madam President, I move that the Citibank (Hong Kong) Limited (Merger) Bill be read the Second time.

The need for this Bill follows a decision by Citigroup to combine its Hong Kong retail business into a single subsidiary incorporated in Hong Kong, named Citibank (Hong Kong) Limited.

At present, the retail banking business is operated as a branch of the United States bank, while the credit card and mutual fund businesses are carried on by Citibank (Hong Kong) Limited. The Bill will create a simpler and more rational structure for the local consumer operation.

In anticipation of the merger, Citibank (Hong Kong) Limited applied for a full banking licence last year. The application was approved on 28 October 2004.

This Bill was discussed at the meeting of the Financial Affairs Panel on 1 November 2004. At that time, members raised a number of questions regarding the intent of the merger.

I have responded in full to these questions in a letter to the Financial Affairs Panel dated 23 November 2004, pointing out that Citibank plans to have substantial new investments in Hong Kong in the coming years.

The merger provides a tax-efficient way for Citibank to expand its local business, as it will allow Citibank to defer United States tax obligations at the Group level.

Furthermore, as a locally incorporated bank, Citibank stands to benefit from any new initiatives related to the banking sector under the Closer Economic Partnership Arrangement.

This shows that Citibank has recognized that Hong Kong must be part of its larger China strategy, as it seeks to grow and expand its business.

The proposed merger is a vote of confidence in Hong Kong, and can only benefit both Citibank's own customers, and the Hong Kong economy in general.

I therefore take great pleasure in recommending the Citibank (Hong Kong) Limited (Merger) Bill to the Council.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Citibank (Hong Kong) Limited (Merger) Bill be read the Second time.

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

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now 9.27 pm, I think it is an appropriate juncture to suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at twenty-eight minutes past Nine o'clock.

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By adding "to revise the scope of the functions, taking into account the performance of functions outside Hong Kong;" after "Hong Kong;".
4	<p>(a) By renumbering the clause as clause 4(2).</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(1) Section 6(2) is amended -</p> <p style="padding-left: 80px;">(a) in paragraph (v), by repealing "and";</p> <p style="padding-left: 80px;">(b) in paragraph (w), by repealing the full stop and substituting a semicolon;</p> <p style="padding-left: 80px;">(c) by adding -</p> <p style="padding-left: 120px;">"(x) enter into a partnership or other form of joint venture with other persons;</p> <p style="padding-left: 120px;">(y) acquire, hold and dispose of interests</p>

in other corporate
bodies and form or
take part in forming
corporate bodies;

(z) provide for profit
or otherwise
training or
educational
programmes,
advisory,
consultancy,
research or other
related services;
and

(za) make a loan to any
person on such terms
as it considers
appropriate in
furtherance of its
objects or the
exercise of its
functions."."

- 4(2) (a) In the proposed section 6(3), by adding
"through an agent or" after "own or".
- (b) By deleting the proposed section 6(4) and
substituting -

"(4) If the Council performs any of its functions outside Hong Kong for the training or education of a person (other than an eligible person), no subsidy shall be made available by the Government towards the performance of such functions and no subsidy provided by the Government to the Council shall be used to subsidize the performance of such functions."

- (c) In the proposed section 6(5), by deleting
"Hong Kong person" (香港人) and
substituting "eligible person" (合資格的人) .

Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for the Environment, Transport and Works requested the following post-meeting amendments in respect of supplementary questions to Question 5

Line 2, fifth paragraph, page 47 of the Confirmed version

To amend "among a yearly ridership of 300 000-odd passengers, only 50 000-odd have been prosecuted which represented only 0.4% of the total number" as "among a daily ridership of 300 000-odd passengers, only 50 000-odd have been prosecuted over the past three years which represented only 0.4% of the total number^(note)" (Translation)

Note: In 2004, among the 3.5 million LR passengers who had been requested to produce tickets for inspection, about 16 000 were imposed a surcharge on the ground that they could not produce a valid ticket. Therefore, the relevant percentage is around 0.4%.

(Please refer to lines 3 and 4, third paragraph, page 5720 of this Translated version)

Line 2, third paragraph, page 49 of the Confirmed version

To amend "The use of monthly tickets was introduced this year" as "The use of monthly tickets was introduced last year" (Translation)

(Please refer to lines 3 and 4, second paragraph, page 5723 of this Translated version)

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Security to Ms Emily LAU's supplementary question to Question 1**

As regards the number of spouses taking up jobs before the introduction of the revised policy governing the employment of dependants on 1 July 2003, as dependants were not required to seek permission from the Director of Immigration to work before the introduction of the said policy, we do not have any information on the number of spouses who took up jobs before July 2003.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Ms LI Fung-ying's supplementary question to Question 2**

As regards equal pay for work of equal value (EPEV), the Equal Opportunities Commission (EOC) is conducting a research on EPEV which covers three phases. Phase I of the research covered a study on public sector jobs and implementation of public education programmes. The study of private sector jobs and implementing public education programmes will be covered in phases II and III.

The EOC is now in the process of mapping out a strategy to take this complex subject forward.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Dr Fernando CHEUNG's supplementary question to Question 2**

As regards age discrimination, legislation against age discrimination in employment would have potentially far-reaching implications for the local economy and could increase business cost, especially for small and medium sized enterprises, which constitute some 98% of all enterprises in Hong Kong. As compared to other anti-discrimination legislation, we are of the view that age discrimination in employment is of a different nature. Hence, enacting legislation in this connection would have a greater impact on business. Whilst, for instance, sex can only be divided into two distinct categories and the category for protection is very clear-cut, age discrimination entails a concept of comparative grading which renders distinction in protection coverage difficult.

Many corporations are currently employing certain age-related attributes, including number of years of experience and physical fitness, as qualifying criteria for recruitment, promotion, wage/benefit adjustment, training and retirement. To abandon the use of these attributes, which are generally considered to be clear and objective, it is necessary to develop a comprehensive skill-based valuation mechanism which would no doubt add cost to doing business. Moreover, to avoid breaching the anti-age discrimination law, businesses would be required to maintain additional comprehensive records of all aforesaid employment-related arrangements.

Appendix IV

WRITTEN ANSWER**Written answer by the Secretary for Home Affairs to Mr LEUNG Kwok-hung's supplementary question to Question 2**

As regards the repeal of labour-related ordinances and protection of the rights of employees, on the repeal of ordinances, the Provisional Legislative Council in October 1997 passed the Employment and Labour Relations (Miscellaneous Amendments) Bill 1997 which, among other things, repealed two labour-related ordinances. This was the result of a thorough review conducted by the Administration in close consultation with the Labour Advisory Board, a tripartite body made up of employer, employee and government representatives. The decision represented a reasonable balance between the interests of employers and employees and was in the overall interest of the community.

On collective bargaining, it is the belief of the Administration that for collective bargaining to be effective, it should assume a voluntary character. We do not support the introduction of compulsory collective bargaining through legislation. The Labour Department (LD) has taken measures to promote voluntary and direct negotiation between employers and employees and their respective organizations. At the enterprise level, the LD actively encourages employers to maintain effective communication with employees or their unions and to consult them on matters pertaining to employment. At the industry level, there are nine tripartite committees comprising representatives of employees, employers, and the LD. They serve as useful forums for discussing industry-specific problems.

As stated in the main reply, the Employment Ordinance confers on employees a comprehensive set of employment rights and benefits which already include protection against anti-union discrimination. Specifically, the Ordinance provides for the rights of all employees to trade union membership and to participate in trade union activities, and protects them against acts of anti-union discrimination in employment. It also entitles employees to claim remedies, including compensation and reinstatement/re-engagement subject to

WRITTEN ANSWER — *Continued*

mutual consent, against their employers for unreasonable and unlawful dismissals, including dismissals on the ground of anti-union discrimination. To give greater protection to employees, a draft amendment bill is under preparation to empower the Labour Tribunal to make a reinstatement/re-engagement order without the need to secure the employer's consent in unreasonable and unlawful dismissals.

Appendix V**WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Mr CHEUNG Hok-ming's supplementary question to Question 5**

As regards the fare evasion figures for East Rail and West Rail, according to the Kowloon-Canton Railway Corporation, the fare evasion rate for East Rail and West Rail in 2004 is 0.03 % and 0.05 % respectively.

Appendix VI**WRITTEN ANSWER****Written answer by the Secretary for the Environment, Transport and Works to Ms Miriam LAU's supplementary question to Question 5**

As regards whether the Kowloon-Canton Railway Corporation (KCRC) has calculated the annual revenue loss due to fare evasion of Light Rail, according to the KCRC, the annual revenue loss due to fare evasion can only be calculated when fare evaders' travelling pattern (for example, distance travelled) is established. The KCRC points out that as there is no basis to establish individual Light Rail fare evaders' travelling pattern, it is difficult to give an accurate estimate of the associated revenue loss. The KCRC is therefore unable to provide the requested information.