

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 11 May 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 CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

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

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H.

DR THE HONOURABLE JOSEPH LEE KOK-LONG

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

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

THE HONOURABLE MA LIK, J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

**PUBLIC OFFICERS ATTENDING:**

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

THE HONOURABLE 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

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

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

**CLERKS IN ATTENDANCE:**

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**TABLING OF PAPERS**

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
International Organizations (Privileges and Immunities) (World Trade Organization) Order .....	62/2005
Country Parks and Special Areas (Amendment) Regulation 2005.....	63/2005
Hong Kong Wetland Park (Special Area) Order 2005.....	64/2005
Road Traffic (Safety Equipment) (Amendment) Regulation 2005.....	65/2005
Road Traffic (Traffic Control) (Amendment) Regulation 2005.....	66/2005
Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005 .....	67/2005
Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2005 .....	68/2005
Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) Rules 2005 .....	69/2005
Banking (Specification of Class of Exempted Charges) Notice .....	70/2005

**Other Papers**

- No. 87 — Early Retirement Ex-gratia Payment Fund
- No. 88 — Securities and Futures Commission  
Annual Report 2004-05

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. A supplementary should only contain one question and should be as concise as possible. Also, Members should not make statements when asking supplementaries, as this contravenes Rule 26(5) of the Rules of Procedure. First question.

### Promoting Creative Industries

1. **MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in June 2003, the Government informed Members of this Council that it was considering the idea of renovating vacated factory buildings of the Housing Authority (HA) for development into creative arts village(s) in order to promote development of creative industries. In this connection, will the Government inform this Council of:*

- (a) the departments involved in the factory building renovation project, the progress of the project and when the project details will be announced;*
- (b) the criteria adopted for selecting the site(s) of the creative arts village(s), how the relevant sectors will be consulted on the site selection, and of the sites being considered; and*
- (c) the modes of operation and management proposed for the creative arts village(s), for how long it(they) will operate, and whether the relevant sectors will be consulted in this regard?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the Government's overall policy on the promotion of creative industries in Hong Kong is to improve the business environment, safeguard free economy, encourage investments from local and foreign business sectors, and bring about partnerships between creative talents and entrepreneurs. We will not make direct investments in any particular industry or provide special concessions to any particular sector. The Government is responsible for providing a business environment that is essential and conducive to fair competition. The major elements of our policy are:

- (i) providing an enabling environment to nurture creative talents and to promote closer ties between the cultural and creative sector and corporate investors so that the business sector and the public will appreciate the importance of creative industries, thereby bringing in new ideas in business operation and providing an innovating force to all sectors of the economy of Hong Kong;
- (ii) promoting cultural network with the Pearl River Delta Region, Asian economies as well as the international community, establishing a mechanism for exchanges and showcasing local creative talents overseas;
- (iii) promoting creative industries of Hong Kong to local and foreign business communities in order to stimulate investments; and
- (iv) conducting researches on the development of creative industries in order to provide the best-fitted support for the industries.

The idea of creative arts villages that Miss CHAN Yuen-han mentioned is in fact a policy initiative to provide an enabling environment as stated above. We hope that, through this initiative, we can draw together creative talents, entrepreneurs and management agents to interact with local cultural sectors and communities, thereby fostering the clustering of cultural enterprises and bringing about economic and cultural benefits. As regards economic benefits, creative arts villages would promote the exchange of information between cultural creativity and cultural capital, leading to a strategic alliance of the industries. As for cultural benefits, such villages would help nurture a cultural sector with broader perspective, one that is more cohesive and co-operative. Under favourable conditions, they may help bring about urban regeneration. There are many such examples in the United Kingdom. The above is a summary of the experience of promoting creative arts villages in other countries from which Hong Kong may be able to draw reference. Specifically, creative arts villages can bring together creative talents from various sectors so that creativity can be engendered through mutual exchanges and interactions. Exhibition and performing venues in creative arts villages would allow creative talents to display their creativity, thus enabling the business community to hunt new ideas that have commercial value. Partnerships between creative talents and investors may then be forged. The development of creative arts villages would also help enhance interest in, appreciation of and participation in creative arts among the

general public, in particular the younger generation, thereby enriching our culture. The communities and shop owners in the vicinity may likewise be inspired to bring in new ideas in their operation. We believe that, with the support of the cultural and creative sector, the establishment of creative arts villages in Hong Kong will promote the development of cultural and creative industries.

My reply to Miss CHAN Yuen-han's question is as follows:

- (a) It is a brand-new pilot project in converting factory buildings under the HA for development into creative arts villages. The Home Affairs Bureau (the Bureau) will work with the Commerce, Industry and Technology Bureau, the Housing, Planning and Lands Bureau and the departments under their purview to take forward this project. We are studying the feasibility of developing vacated factory buildings under the HA, which are to be returned to the Government, into creative arts villages, and we are actively consulting members of the cultural and creative sector. Issues to be thoroughly studied include selection of factory buildings, their lifespan, conversion, renovation and future maintenance as well as the management framework and operation mode of the creative arts villages. We have to be very careful in the use of public resources, especially when changes to land use and to the structure of buildings are involved. If the planning is not well thought out, the consequences may sometimes be difficult to reverse. It takes time to complete the study because a wide range of issues are involved and the funds needed are substantial. The Bureau intends to set up a pilot scheme to develop factory buildings in the Sham Shui Po District into creative arts villages. We will start work and discuss the details with interested organizations and groups in the community shortly.
- (b) Overseas experience indicates that successful creative arts villages are invariably those that have been developed from vacated or disused factory buildings. Our pilot scheme is to convert into creative arts villages the vacated factory buildings to be returned to the Government by the HA. The factory buildings we are considering are located in the Sham Shui Po District. They are situated along the Mass Transit Railway line and thus are easily accessible. Initial views from a number of cultural groups and

individuals are that these factory buildings are suitable for development into creative arts villages.

- (c) According to our preliminary thinking, the facilities and services of these creative arts villages should be versatile for use as workshops, showrooms, training and exhibition venues and for arts educational purposes by artists, creative workers, arts agents or managing bodies and arts groups. Under suitable arrangements, creative arts villages may be opened to local entrepreneurs, members of the public and tourists. We hope that, in line with the community-driven strategy, creative arts villages should be managed and operated by organizations in the community so as to generate greater creativity and vitality. I believe that, to make the development of creative arts villages a success, there must be a variety of tenants in the villages to complement each other and to achieve synergy. Therefore, the management of creative arts villages must draw up a set of rental guidelines to accommodate a wide range of tenants, from those solely providing arts promotion services to those who are purely commercial operators. Adjustments should also be made to the rents where appropriate, so that both subsidized (in exchange for free cultural and arts services for the public) and full market value rents are allowed. It is hoped that the creative arts villages can be operated in a self-financing mode without recurrent subvention from the Government. Creative arts villages are a novel idea on which we must widely solicit comment from the relevant sectors for the best mode of management and operation to ensure that the villages can operate on their own to achieve commercial viability and sustainable development.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, in reply to the three parts of the question just now, the Secretary mentioned the role of the Government, the community and the business sector. According to overseas experience, the role of the Government is very crucial when promoting such arts villages in the beginning. With regard to part (a) of the main reply, the Government mentioned that the Bureau will co-ordinate and lead different government departments to take forward this project. In the initial phase when the Bureau works with other departments in kicking off this project, will the*

*Bureau or the community be responsible for issues concerning land and maintenance and repairs? If the community should take charge of such issues, what conditions will the Government provide to them in handling such issues? Madam President, no matter what business is involved, the seed capital is very important, so may I ask the Secretary who will co-ordinate work in this regard?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, first of all, when this concept begins to materialize and take shape, we will certainly discuss it with major community groups and organizations with the potential to operate and manage creative arts villages, so that we can agree on a mode of co-operation which takes into account the extensive opinions of the public while catering for the majority needs of the creative industry. We will adopt this as our basis and see what sorts of community or government resources we can mobilize for the development and growth of the creative arts villages. In this regard, we hope the creative arts villages can be self-financing without the need to use public recurrent expenditure as the resources. However, as to the land or the resources needed for the conversion or renovation in the beginning, we can explore it with the community groups and organizations and we can also tap community resources. We hope to reach a consensus with the community in this regard.

**MR ABRAHAM SHEK** (in Cantonese): *Madam President, I wonder if the Secretary has read the recent Auditor's report on these factory buildings in which a substantial amount of money has been spent on their maintenance and repairs. If these factory buildings are converted into creative arts villages, has he considered how much money the conversion may incur as cost?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, these factory buildings were indeed built many years ago, some can date back to the '60s or '70s with 30 to 40 years of history. Some of them are old building structures with years of dilapidation, while some have not been given adequate maintenance and repairs because they are either vacated or utilized at a rate below 50%. When these buildings are vacated and returned to the Government, they usually require an enormous amount of resources on maintenance and repairs before they can be used for other purposes. For example, the HA plans

to return a building in the San Po Kong District to the Government after it is vacated. However, as far as we know, because of problems with its building structure, the HA erected more than 100 struts between the storeys to support the ceilings and the roof tank cannot hold water to more than half of its capacity, for fear that it may overload the building. It thus will require an enormous amount of money to renovate the building in order to make it compliant with the general standards of fire prevention or those as required for current building structure safety. To meet the safety requirements, I believe the cost will be in tens of millions of dollars.

**MR JASPER TSANG** (in Cantonese): *Madam President, the Secretary mentioned that the Bureau will set up a pilot scheme to develop factory buildings in the Sham Shui Po District into creative arts villages, and that they will start work shortly and discuss the details with interested cultural organizations and individuals. The Secretary also mentioned in the preceding paragraph that the development of creative arts villages would bring about economic benefits including urban regeneration. As the creative arts villages can inspire shop owners in the vicinity to bring in new ideas in their operation, will the Secretary please tell us, apart from consulting cultural organizations and individuals on the pilot scheme, if the Government will consult the opinions of the community including the shop owners and people in the vicinity, so that they can understand the aims and purposes of the creative arts villages in advance and thus actively participate in the scheme and support it?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I would like to thank Mr Jasper TSANG for his suggestion. Apart from consulting cultural organizations with the potential to operate creative arts villages, we will certainly consult local opinions for we know that without local support, the creative arts villages cannot be a success. We also attach great importance to the surrounding environment. One of the reasons for selecting Sham Shui Po as the site for the creative arts villages is that there are many of this type of factory buildings in the district, while another reason is that we hope the concept of creative arts villages can revitalize and modernize this old district and thereby inject new impetus into the area. It is thus very important to secure local support. We will not only consult the opinions of shop owners, neighbours and district representatives in the vicinity, but also the opinions of the Area Committee or even the District Council.

**MR DANIEL LAM** (in Cantonese): *Madam President, will the Secretary inform this Council whether the creative arts village project will be extended to the new estates such as the vacant flats in Tung Chung in order to tie in with development of the local community economy?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, although there are no such factory buildings in the new estates which can be used for this purpose, instead of using old factory buildings, we can introduce the concept of creative arts villages in a new mode which can equally bring in new impetus, vitality and culture into the area and thereby foster a clustering effect and introduce a new culture. We can certainly take this into consideration.

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

**MR PATRICK LAU** (in Cantonese): *Madam President, I am glad that the Secretary has proposed this creative arts village project. As the Secretary said just now that many factors needed to be taken in consideration, will he consider carrying out the project in the form of a public-private partnership and holding an open competition beforehand? As the project involves creative arts, I hope more people can participate in and provide better opinions about the project. I also hope that the Government can expedite the implementation and provide a more accurate timetable of the project. This is my opinion as well as my supplementary question to the Secretary.*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we will decide on the development mode of this project after we have held discussions with potential organizations in the community which are capable of managing or taking up such project. Of course, in terms of promoting creativity and vitality, the community will be more versatile and offers greater vigor than the Government in carrying out this work. I thus hope that we can tap the creativity of the community in this regard.

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

**MR PATRICK LAU** (in Cantonese): *I want to follow up. Will an open competition be held?*

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, we can certainly consider holding an open competition. However, sometimes an open competition may not be the best way to initiate this project as it may delay or even postpone the development of the entire project.

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

### **Amendments to Legal Aid in Criminal Cases Rules**

2. **MS MARGARET NG**: *Madam President, there is no provision in the Legal Aid in Criminal Cases Rules which authorizes the Director of Legal Aid to pay fee, other than a fixed brief fee, to the counsel in criminal cases for his work in preparing for a trial or an appeal, irrespective of how much work he has done. In his speech at the Opening of the Legal Year 2005, the Chairman of the Hong Kong Bar Association (the Bar) pointed out that the rules governing counsel fees in criminal legal aid cases were outmoded and would not attract enough barristers to practise criminal law. As thorough preparation may save a great deal of court time and is in the public interest, will the Government inform this Council whether it plans to amend existing legislation to make provisions for appropriate payment for preparation work undertaken by counsel in criminal legal aid cases; if so, of the details of the plan; if not, the reasons for this?*

**CHIEF SECRETARY FOR ADMINISTRATION**: Madam President, at present, the Legal Aid in Criminal Cases Rules prescribe the maximum fees payable to counsel and solicitors for undertaking criminal litigation work for the Legal Aid Department (LAD). It has long been the Administration's policy to review the fees on a biennial basis, to take account of changes in consumer prices and other related factors. We last adjusted the fees in the middle of 2003

following approval by the Finance Committee and a resolution passed by the Legislative Council.

The Honourable Member refers in her question to remuneration for preparation work undertaken by the defence counsel in particular. Before I address the specific question, let me briefly explain the criminal legal aid fee system enshrined in the Legal Aid in Criminal Cases Rules, as applied to both defence counsel and defence solicitors.

According to the Rules, the Director of Legal Aid pays to an assigned defence counsel, and solicitor for that matter, a "brief fee", generally equivalent to two days' court fee, to cover the preparation work undertaken by the counsel and his attendance for the first day of trial of the criminal case. From the second day of trial onwards, the assigned counsel receives a *per diem* court fee or "refresher fee", calculated as a fixed rate at half the brief fee.

Notwithstanding the prescription of the brief fee in the Rules, if the counsel considers that the assigned criminal case is exceptionally long or complex, he may, in accordance with the Rules, apply to the Court and the Court may so certify. With the certificate issued by the Court, the Director of Legal Aid is empowered to increase the fees payable to the counsel by such amount which the Director considers proper in the circumstances.

The Administration keeps an open mind to proposals which may further improve the cost-effectiveness of the criminal legal aid fee system. Indeed, in the context of the Finance Committee's approval of the last fee adjustments in mid-2003, the Bar and The Law Society of Hong Kong (The Law Society) stated that they would study the fee system and put forward a joint submission with improvement proposals. The Administration undertook to consider the joint submission when it is available. In the event, the Bar wrote to the Administration last month on a number of matters, including its views on the remuneration for the preparation work undertaken by the defence counsel. We will examine these views together with those which The Law Society will provide us, as part of the Administration's comprehensive review of the criminal legal aid fee system.

**MS MARGARET NG** (in Cantonese): *Madam President, the adjustment mentioned by the Chief Secretary for Administration is in fact made according to*

*the consumer price index, the rate of which is very small, only a few percentage points, and it can also be increased or decreased. It was said in the fourth paragraph of the main reply that if the case was exceptional, the counsel would have to make his own application. According to existing legislation, the normal fee ceiling is only \$13,600. No matter how many case-related documents the counsel has to read, he cannot charge additional fees. As regards service of notice for appeal, even though the counsel may have read a lot of documents, summarized everything and saved court time, the normal fee ceiling is only \$2,710 — even if the Director of Legal Aid wishes to give the counsel more, this normal ceiling cannot be altered. My supplementary question is: Has the Government considered revising these normal ceilings? My question is really about time spent. Would the Chief Secretary for Administration revise the normal fees for legal aid with the same efficiency as he is presently trying to boost the remuneration of the Chief Executive? Would he accomplish this task with the same efficiency, before his term as the Chief Executive for Administration expires?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): At present, fees payable to counsels are approved by the Legislative Council and the Finance Committee. In arriving at the amounts, we have applied the fees charged by counsels with the same experience in handling such cases for the general public as the standard. In addition, we have also applied the principle of prudent financial management. Just as I said earlier, we would make adjustments according to market condition on a biennial basis. Of course, these adjustments must be compatible with market changes and cannot deviate from them completely. Besides, we also have to consider a number of other factors. If such fees cannot attract sufficient counsels to join the list of counsels of the LAD, we then would have to review but for the time being, we have not discovered any problem. Notwithstanding this, I have made it very clear in the main reply earlier that we would keep an open mind. If the Bar or The Law Society considers that there are specific problems which we must handle, we should of course critically examine if there are any problems with the system.

I have also said earlier that if a certain case requires a long preparation period, or requires the counsel to read a lot of documents, I think the Court would make special arrangements. Just as I said earlier, if the counsel tells the Court that he has to spend much time on preparation and do a lot of preparation work, there should be special treatment under such circumstances. If the Court

is also convinced that much time is needed and the case is complicated, the LAD would make special arrangements and pay additional fees.

I believe the Government has to strike a balance between deploying resources of the LAD and encouraging counsels to participate in this scheme. With regard to the present system, I think it is feasible. However, just as I said earlier, we would keep an open mind. Besides, I can assure Ms Margaret NG that if the Bar and The Law Society think that there are particular problems in this respect and give us their opinions, we would handle them as soon as possible. I said earlier that I had received the opinions of the Bar one month ago, and I also hope to have the opinions of The Law Society so that we could address this issue soon.

**MS AUDREY EU** (in Cantonese): *Madam President, may I ask the Chief Secretary if he agrees that the better and more thoroughly we do our preparation, the shorter the hearing time will be? Ms Margaret NG earlier asked about appeal. Most of the times, before lodging an appeal, a counsel has to refer to trial records — this may mean the records for 20 or 30 days. Even if he is only talking about obtaining the faired records of the hearings, several hundred thousand dollars have to be spent — this sum is paid to the Court and not charged by the counsel. Having studied all the documents, the counsel understands the reason for appeal and he has to write it on the notice for appeal. This process may take the counsel several days, but the fee for preparing the appeal notice is only \$2,710. Therefore, may I ask the Chief Secretary if he agrees that this is not a matter of making adjustments in accordance with consumer prices, but rather a matter of the structure itself? That is, does he agree that there is a shortcoming with the formula stipulated by existing legislation: regardless of how much effort we have put into the preparation, everything has been provided by law, thus the cart is put before the horse which is not cost-effective?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): I think Ms Audrey EU has a point there. We would examine if the system has to be refined. If this can shorten the Court's hearing time and save government spending in this respect, I am sure we can consider this. I would pay special attention to this, and study the issue further with colleagues of the LAD.

**MR RONNY TONG** (in Cantonese): *Madam President, I would like to raise a supplementary question on the fourth paragraph of the main reply. In the fourth paragraph, the Chief Secretary said that the Court is empowered to increase the fee payable, but does the Chief Secretary in fact know that upon receiving a case, there is no way for the counsel to be sure that the Court will definitely accept his application? Besides, even if the Court approves the application, it is only asking the Director of Legal Aid to handle the application; it is still unknown as to how the application will be handled. On the contrary, if the counsel is working for the prosecution, these shackles would not exist. Therefore, we can see that the prosecution and the defence may be receiving different treatment, and this may have a direct impact on quality. May I ask the Chief Secretary here if he would consider lifting these rigid stipulations and fee ceilings which are out of touch with the reality, and switch to using the time spent as the criterion in determining the fees payable to counsels? I hope the Chief Secretary can say whether he would consider changing this criterion, unlike the present practice where, regardless of the complexity of the cases, a rigid amount is prescribed as fee payable to the counsel no matter he has to work for three weeks or two days. I hope the Chief Secretary can consider using the time spent as the criterion for calculating fees.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): This argument has been put forward many times. Just as I said earlier, the present brief fee is calculated on the basis of two working days. Generally speaking, everybody seems to be happy with it. Granting special circumstances and the counsel feels that the fee is not enough, I have said that the Court can issue certificates to handle it with flexibility, and the LAD will adjust the fee for the preparation period in accordance with the certificate. Judging from the records I have seen, if the LAD receives such certificates issued by the Court, approval will be given under normal circumstances, and the LAD also has clear guidelines on this.

If counsels with the LAD consider that preparation work will really take a long time, they should point it out to the Court. However, in order to safeguard the expenditure of taxpayers in legal aid, the authorities will lay down some criteria on the premise that discretion would not be exercised too frequently. I think there are advantages to this. At present, generally speaking, our criterion is to calculate the initial brief fee on the basis of two working days. I have said

earlier that if for a certain case, the difference is too big, I hope individual counsel would point it out. I think this is also a fair way to handle the matter. However, if we have to handle it in another way, I believe we have to take a look at the relevant expenses and whether this would result in higher administrative cost. This is a matter with the system. In this regard, I said earlier that the Bar had given us some opinions a month ago. Although I have not read those opinions and do not know whether this point is included, I very much believe that they have included it. If so, we will study this further to see if adjustments can be made.

**MR LI KWOK-YING** (in Cantonese): *Madam President, I am very glad to hear the Chief Secretary say earlier that he would keep an open mind in handling this and I welcome him saying so. Ms Margaret NG's main question is mainly about fees for counsels but the few colleagues who have asked supplementary questions earlier seem to have made a mistake, thinking that it is only looking at counsel fees. However, we all know that at present, the judicial system is made up of barristers and solicitors, and the philosophy behind this is when the two different kinds of lawyers are handling the same case, it is hoped that the objective factor will not come in, so that the lawyers can accurately grasp the information and enforce the law impartially. If this is the reason, we all know that when barristers handle complicated cases and have relatively spent more time, the same applies to solicitors. Therefore, if barristers can charge according to the time they have spent on the cases, may I ask the Chief Secretary if the same applies to solicitors too?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): *Madam President, I have said that we are waiting for solicitors to give us their opinions in this regard. If The Law Society considers that adjustments are necessary, I would consider them. However, we do have a common goal with the Legislative Council, that is, to ensure the proper spending of public money. If there is a way which is fair, and which can improve the entire legal aid system to the satisfaction of every party, I will definitely strike a balance.*

**MR CHIM PUI-CHUNG** (in Cantonese): *Madam President, may I ask the Chief Secretary if it is required by law that barristers or solicitors must take up*

*cases of the LAD? If not, this is something which they take upon themselves voluntarily. The reason for lawyers to serve society in this way is perhaps they have made more than enough money from the fees they charge in handling other cases. Therefore, may I ask the Chief Secretary if barristers are required to take up cases of the LAD? If not, this is a matter of free will.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): There is no mandatory obligation.

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

### **Tenants Purchase Scheme Phase 6B**

3. **MR WONG KWOK-HING** (in Cantonese): *Madam President, regarding the Tenants Purchase Scheme (TPS) Phase 6B, will the Government inform this Council if it knows:*

- (a) the reasons for re-introducing the TPS this year, whether it has assessed the impact of the TPS on the property market before re-introducing the TPS concerned, and considered extending the TPS phase to other public housing estates or introducing a new TPS phase in the light of market changes;*
- (b) as the public areas adjacent to TPS estates will be designated as public areas and subject to the Deed of Mutual Covenant (DMC) for TPS estates, the criteria for delineating the areas to be included; and whether the authorities will consult the residents of TPS estates before making the relevant DMC; if so, of the details of such consultation; if not, the reasons for that; and*
- (c) given that the Housing Department (HD), in response to the outbreak of Severe Acute Respiratory Syndrome (SARS) in the community in 2003, decided to defer the sale of flats under the TPS Phase 6B pending the inspection and maintenance of sewage systems of the estates concerned, the reasons for the authorities' repeated refusal to carry out comprehensive replacement works to the sewer*

*pipes of Cheung Fat Estate in Tsing Yi, which is under the TPS concerned, before putting up the flats of the estate for sale, and whether the maintenance plans for TPS estates will only proceed upon the completion of those for non-TPS estates?*

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

- (a) The Housing Authority (HA) decided in November 2002 that the TPS should be terminated after sale of the estates under Phase 6, which were included in the Scheme some time ago.

Phase 6 of the TPS was originally scheduled for sale in 2003. With outbreak of SARS, there was widespread public concern about sewage systems. The HA had therefore decided to inspect and repair the sewage systems of all public rental housing estates and announced in May 2003 that flat sale under Phase 6 of the TPS would only be launched after completion of drainage inspections and necessary repairs.

Upon completion of the inspections and repairs in 2004, the four estates under Phase 6A of the TPS have been offered for sale one by one since last June. Inspections for the five estates under Phase 6B have largely been completed and repairs are now under way. The estates concerned will be offered for sale after completion of repair works. The exact launch date is yet to be determined.

Flat sale under Phase 6 of the TPS was announced some time ago and the market should have digested the news. Hence, the sale should not have any impact on the property market. Phase 6 is the last phase of the TPS, which will not be extended to other estates.

- (b) Generally speaking, public housing estates are planned in a comprehensive and integrated manner. The aim is to provide residents with adequate ancillary facilities, such as shopping centres, car parks, sitting-out areas, and recreational and transport facilities. The boundary and the DMC for a TPS estate are drawn up on the basis of the Vesting Order so as to maintain the integrity

of the estate. Slopes formed for the development of the estate and roads and facilities for residents' use are usually included in the estate boundary and reflected in the DMC.

In approving the DMC for TPS estates, the Lands Department will balance the interests of various parties and ensure that the terms are fair and reasonable. For both private and public housing developments, no consultation is conducted in the process of drawing up the DMC. Notwithstanding, to help tenants understand their rights and obligations after becoming flat owners, since Phase 5 of the Scheme, Estate Management Advisory Committees are provided with bilingual versions of standard DMC terms, the estate boundary and guidelines issued by the Legal Advisory and Conveyancing Office of the Lands Department about six months prior to flat sale for residents' reference. In addition, upon sale of the estates, tenants are given a set of information on the salient points of land lease, the DMC and major rights and obligations of owners to help tenants to make an informed decision as to whether to purchase under the TPS or not.

- (c) Cheung Fat Estate is one of the five estates included under Phase 6B of the TPS. The sewage system was replumbed in 1999. The inspection conducted in 2003 confirmed that conditions of the pipes are generally satisfactory. The system as a whole is functioning properly with only a small number of pipes inside individual flats requiring minor repairs. The necessary repair works had been completed. There is no need to replace the entire sewage system at present.

All sewage system repair works for TPS estates are carried out immediately after inspection and will not be postponed until completion of the works for public rental estates outside the Scheme.

**MR WONG KWOK-HING** (in Cantonese): *Madam President, I would like to follow up the Cheung Fat Estate case. Though the Government has undertaken not to include the waterfront promenade and the walking path in the DMC, and the residents are glad about this, there are many problems in respect of the*

*repairs of drainage system, metal gates and wooden doors. May I ask the Government via the President how it can prevent the maintenance work under the TPS from increasing the burden of residents? How can the Government do better?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, as I explained in the main reply, we will repair all items that required repairs. During the outbreak of SARS, we repaired all the sewage pipes in the territory. Regarding the case in Cheung Fat Estate, as I said earlier, the sewage system of the estate was replumbed in 1999. During the inspection conducted last year, a few cases that required follow-up action were discovered and the relevant follow-up work has been completed. As for wooden doors and other items, we have already asked residents to provide information on items they found repairs necessary, so that the repairs work can be carried out together. Actually, these are only minor works. After we have collected all the information, we will carry out the repair works altogether and there will absolutely be no problem.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, has your supplementary question not been answered?

**MR WONG KWOK-HING** (in Cantonese): *Madam President, though the Government has indicated that the relevant sewage pipes have been properly repaired, what can the residents do if they still discover problems?*

**PRESIDENT** (in Cantonese): I think the Secretary has already answered your supplementary question. You will understand it if you think about the answer he has just given. Eight Members are now waiting for their turns to ask supplementary questions, I therefore urge Members not to make comments when they ask supplementary questions. Members should keep their questions as concise as possible to give other Members a chance to raise supplementary questions.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, in part (b) of the main reply, the Secretary mentioned that in the delineation of the DMC, consideration would be given to the availability of facilities in the estate, and that facilities would be included for the use of estate residents to balance the interest of various parties. However, I find the value on which the delineation is based problematic. For example, items like slopes and roads which usually cost money for maintenance and repairs are included in the DMC of public housing estates. However, facilities like shopping arcades and car parks that may generate income are not included in the DMC. May I ask the Secretary why the Government holds back items that may generate income but assigns items that may incur loss and expenditure to residents of public housing estate?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, I have already explained it in the main reply. The main consideration used in drawing up the boundary is to maintain the integrity of the overall planning of the housing estate. When we start planning a housing estate, site formation, slope cutting and road finishing works are often required, and these are done to maintain the integrity of the estate and provide facilities and services. Since some estates can only be built after slope cutting works are done, so the item has to be included in the scope of the DMC. As to whether shopping arcades and recreational facilities will be included in the DMC, indeed, some of them are. However, we will not sell these facilities altogether to residents and these facilities are still managed by the HD. Surely, upon the successful listing of The Link REIT, the management of these facilities will be handled by The Link REIT. At present, the relevant expenses are shared between the HD and the prospective purchasers (future buyers) according to the ratio stated in the DMC.

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

**MR FREDERICK FUNG** (in Cantonese): *Madam President, my supplementary question is: Why should the boundary drawn be based on certain values which specify that parking facilities cannot be sold to residents? Car parks are also estate facilities; indeed, parking spaces are provided in proportion to the number of units of an estate. Why is it that only roads but not car parks are included in*

*the DMC? The Secretary actually has not answered why car parks and shopping arcades are not included in the DMC.*

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

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, only residential units are sold to tenants. Other items like shopping arcades will be sold by The Link REIT in another manner. Actually, car parks will also be sold by this method.

**DR YEUNG SUM** (in Cantonese): *Madam President, the termination of the TPS is indeed one of the nine measures introduced by Secretary Michael Suen in stabilizing the property market. However, in general, residents have shown good response to this scheme, for over 70% of the residents concerned have purchased housing units in these estates. Though the sale of Home Ownership Scheme (HOS) flats has been ceased by the Government, given that the property market has started to revive or even picked up, will the Government consider re-introducing the TPS?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, the case regarding the above decision is not the same as that cited by Dr YEUNG Sum. Indeed, it was one of the measures adopted in 2002 under the re-engineering of housing policy. The main purpose of doing so, Madam President, is that these are already all the public housing flats suitable for sale under the scheme. For housing flats older than these flats, residents are not so keen on purchasing them owing to the ramshackle and decrepit condition of the flats. As for the Harmony blocks which are relatively new, since the design of these flats is similar to that of TPS flats or private flats, if these flats are sold by this method and at this price level, it would seem particularly unfair in comparison. After considering these practical factors, quality of flats and price level, we think that estates under Phase 6 can be put on sale now, while those estates not under Phase 6, in particular Harmony-type flats, are not suitable for sale.

**MR ALBERT CHAN** (in Cantonese): *Madam President, regarding Cheung Fat Estate, in the last couple of years, residents of Cheung Fat Estate, mutual aid committees and District Council members of the district have held a number of resident meetings and conducted surveys. I have also taken part in them. Most of the residents hope that the sewage pipes can be relocated out of the flats. Since the sewage pipes are now installed indoor, residents have become more concerned about the possible impact of sewage on environmental hygiene after the SARS outbreak. However, their requests have been repeatedly turned down by the HD. The refusal of the HD to address the problem has rendered many residents unwilling to purchase their public housing flats. Since the report on SARS made a recommendation on the location of these sewage systems, and that the relocation of these sewage pipes may promote the sales of these flats, will the Secretary inspect the situation in person or reconsider the opinions of the residents?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): *Madam President, actually, I have personally inspected the location of the sewage pipes of these estates. With the implementation of the inspection project and improvement measures, these sewage pipes are basically compliant with higher hygiene standard. It does not mean that all the sewage pipes must be located outside the flats in order to meet the hygiene standard. This conclusion is reached after we have conducted detailed studies and discussions with the relevant health care workers.*

As to whether residents will purchase these flats, I think this is a rather complicated issue which is not simply related to sewage pipes. Certainly, individual residents may consider this a very important factor, but as far as we understand it, residents will also consider other factors before deciding whether they will buy a flat or not.

**MR CHAN KAM-LAM** (in Cantonese): *Madam President, the Secretary stated that the sale of public housing flats would not cause great impact on the market and thus decided to put on sale the last public housing estate. As the Secretary stated just now that it was not suitable to sell public housing flats, in particular Harmony-type flats, by this method and at this price level, does the Secretary consider the construction cost for that type of public housing blocks too expensive? Has the formula for calculating the sale of housing estate been*

*fixed? What are the reasons for not selling these flats? Has he tried to understand the preference of the residents?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, in fact, we all know that we do not set the price of these flats according to their cost but mainly the affordability of the residents. Actually, a standard regarding the monthly instalment to be made by the buyer has been set, which specifies that the monthly instalment payable should not exceed twice the amount of the rent. Since such a criterion has been set regarding the price level, if HOS flats of the Harmony type are to be sold, the price for those flats may not meet such criterion. This can only be done unless we consider selling these flats by other methods. If so, we may have to consider many other factors, such as re-estimating the impact on the property market. The HA so far has no plan to consider this.

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

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, in his reply to Mr Frederick FUNG's follow-up question, the Secretary said that since the Government was only selling residential flats presently, car parks would not be included in the DMC. However, the Government does give the slope opposite to the estate to the residents of the estate by including it in the DMC, provoking strong reactions from the residents. The Secretary stated in the main reply that it was out of the consideration of maintaining the integrity of the overall planning of the estate, but the estate was initially used as public housing, so when these flats are sold to residents by the Government, those hills and slopes are totally unconnected with the estate and those slopes are all along not intended for use by the residents. If these parts are included in the DMC, will it be unfair and arouse great controversy?*

**SECRETARY FOR HOUSING, PLANNING AND LANDS** (in Cantonese): Madam President, indeed, according to our criteria, be it for public housing, HOS estate or private housing, we have to define the scope of responsibility in the DMC. It is stated in the main reply that slopes had to be cut before site

formation for project development could be carried out and for the planning of the overall development of the estate. Therefore, this criterion has to be followed no matter we are discussing HOS estates or private housing at the moment. By the same token, we sometimes have to repair slopes in the vicinity of our residences. We therefore do not consider there is any unfair element in this.

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

### **Vehicular Volume of Cross-harbour Road Tunnels**

4. **MR FRED LI** (in Cantonese): *Madam President, today is the 11th day since the hefty toll increase of the Eastern Harbour Crossing (EHC) came into effect on 1 May. Regarding the vehicular volume of the three cross-harbour road tunnels, will the Government inform this Council:*

- (a) *how the respective vehicular volumes of the three cross-harbour road tunnels since 1 May compare to those before the toll increase, and whether there is any discrepancy between the actual figures and those predicted by the Administration; if so, of the extent of discrepancy;*
- (b) *of the effectiveness of the short-term measures implemented by the Administration to relieve the traffic congestion at the Cross-Harbour Tunnel (CHT); and*
- (c) *of the progress of the Government's negotiation with the commercial group holding a portion of the interests in the EHC and the Western Harbour Crossing (WHC) on the ways to address the problem of uneven distribution of traffic among the three tunnels?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, the average daily vehicular volume of the EHC between 1 May when the toll increase came into effect and this Monday is 53 000 vehicles/day, which is 26% less than the daily average of 72 100 vehicles/day in the month before the toll increase. The average daily vehicular volume of the CHT is 121 000 vehicles/day, which is 2.2% less than the daily

average of 123 700 vehicles/day in the month before the increase. The average daily vehicular volume of the WHC is 39 000 vehicles/day, which represents a decrease of about 1% when compared with the daily average of 39 300 vehicles/day in the month before the increase.

The average daily vehicular volume flow at the CHT, the WHC and the EHC in 2004 were 121 700 vehicles/day, 39 200 vehicles/day and 73 500 vehicles/day respectively. We estimate that the toll increase at the EHC would reduce the vehicular volume of the EHC by 17% (12 500 vehicles/day), increase the throughput at the WHC by 21% (8 400 vehicles/day) and that at the CHT by 3% (3 800 vehicles/day). Our estimate is mainly based on the following:

- (i) When the EHC last raised its tolls in 1998, its daily vehicular volume decreased by 15 000 vehicles/day.
- (ii) The throughput at the CHT has actually reached its practical maximum, and there is little scope for the CHT to take up more traffic especially during the peak hours. The increase of 3 800 vehicles/day would mean longer vehicle queues, an extension of the peak period and an increase in vehicular volume at the off-peak period.
- (iii) Some motorists from the EHC (for example, those to/from the New Territories) might be diverted to the WHC instead of the CHT due to the longer journey time at the CHT. Separately, traffic diverted from the EHC to the CHT might also displace those motorists originally using the CHT, and some of them might be diverted to WHC. When the EHC last raised its tolls in 1998, over 70% of the traffic diverted from the EHC went to the WHC. This is the basis of our current estimate.
- (iv) The EHC's toll increase might suppress overall cross-harbour traffic because some motorists might change to public transport or even cancel the vehicular trips.

It should be noted that since human behaviour cannot be predicted in very accurate terms, this estimate is no more than a rough projection in broad terms of the likely reaction to the toll increase. Besides, since the new tolls have just come into effect, some of the factors which might affect the vehicular flow in

real terms are not yet fully reflected. Driving behaviour of the motorists would also take more time to adjust. We therefore cannot make any meaningful comparison between the above projection and the actual figures gathered in just a few days after the toll increase.

In order to cope with the increased congestion which might occur after the toll increase at the EHC, we have formulated a series of contingency and publicity measures which mainly include the following:

- (i) The Transport Department (TD) has activated the Emergency Transport Coordination Centre (the Centre) in the first few days after the EHC toll increase to closely monitor traffic via closed circuit television and where necessary, the TD will adjust signal phasings to ease traffic queues on the key approach roads to the CHT. The Centre has also liaised closely with the police, bus operators and tunnel operators to handle traffic disruptions on roads and will adjust traffic plans as necessary.
- (ii) All non-emergency road works on the key approach roads to the CHT and the WHC are suspended to minimize disturbance to traffic flow.
- (iii) Tunnel operators have been alerted to prepare for likely increase in traffic through their tunnels and to remove any obstructions in the tunnel area quickly.
- (iv) Franchised bus operators have been advised to closely monitor passenger demand for cross-harbour bus services, especially at the cross harbour tunnel portal bus stop, and to provide additional buses if necessary.
- (v) The MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation have been requested to provide additional services if such need arises.
- (vi) The police has deployed more officers to key junctions and roads (especially approach roads to the tunnels) on Hong Kong Island and Kowloon, to direct traffic and handle any incidents which may occur.

- (vii) The TD has closely monitored the traffic situation and updated the media on the latest traffic information.

Over the past few days, we particularly have the following major observations which show that such measures have been effective:

- (i) Motorists using the CHT have generally started their trips earlier. During peak hours, traffic at the CHT has been smooth. This is attributable to the co-operation and patience of citizens and has also proved the usefulness of our co-ordination and publicity measures to a certain extent.
- (ii) The number of passengers using the Mass Transit Railway (MTR) increased on average by about 50 000 per day. On average, about 600 more passengers interchanged at the Kowloon-Canton Railway East Tsim Sha Tsui Station for the MTR for cross-harbour trips.
- (iii) Franchised bus operators have deployed two extra buses for cross-harbour trips each day on average to handle additional demand.
- (iv) Many passengers checked traffic conditions and planned their routing before starting their journeys. The TD's hotline received an average of 120 enquires per day, and the hit rate at its website was 6 000 times per day.

We will continue to monitor the traffic situation and take the necessary corresponding actions.

To address the uneven distribution of traffic among the three road harbour crossings, we have commenced preliminary discussions with the major shareholders of the EHC and the WHC, and will continue to discuss and carry out detailed studies. We will keep an open mind and uphold the key principles of safeguarding public interests and ensuring fairness to taxpayers when discussing with the franchisees.

**MR FRED LI** (in Cantonese): *Madam President, according to the Government's reply, it activated the Centre to handle possible congestion at the CHT.*

*However, on 9 May, there was a serious traffic hold-up in Kowloon East from morning till night, causing enormous public grievances. May I ask the Government if it was because it had to focus its attention on co-ordinating traffic conditions at the three tunnels that it had no time to take account of the accident in Kowloon East, resulting in its failure to address the unexpected congestion in Kowloon East?*

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

(in Cantonese): Madam President, we activated the Centre because of the toll increase by the EHC, and for the past two weeks, we had a special team to take care of co-ordination work. The accident on 9 May happened unexpectedly, and the Centre of course did its best to co-ordinate the series of incidents which happened simultaneously in Kowloon East, at Waterloo Road and Argyle Street. The accidents took place very suddenly and at the same time on three roads — I have brought along maps but I cannot let everybody see clearly — we can see that roads to the east, west, south and north were all congested, and one of the trunk roads — Waterloo Road — was completely closed. Prince Edward Road East was also completely closed. Therefore, from afternoon onwards, the entire congestion was beyond easing. The situation lasted until late afternoon and well into the evening when it turned particularly serious. Thus, I hope Members can understand that we did not neglect the others while taking care of traffic management in one respect. It is because the accidents on 9 May happened so unexpectedly and we were of course not prepared for them. This afternoon, I am holding a press conference and will, together with the other departments, explain clearly to everybody. I will give an account on the entire co-ordination and how we will handle such incidents.

**PRESIDENT** (in Cantonese): Honourable Members, a total of nine Members are waiting to raise supplementary questions. Would Members please refrain from expressing their opinions and put their supplementary questions direct.

**MR ANDREW CHENG** (in Cantonese): *Madam President, to Hong Kong people, time means money. Based on the calculation by some academics, as a result of traffic congestion which happens every day, the public and society may have to bear a loss of up to a hundred million dollars. My supplementary*

*question is: The Secretary is asking the people to start their trips early, could she take some concessionary measures? Some Honourable colleagues hope that the CHT can reduce its toll. Since the five tunnels and one bridge belong to the Government, would the Secretary introduce some concessions while asking the people to start their trips early, for example, could the tolls of the five tunnels and one bridge at least be reduced by 10% before 7.30 am so that the people will have an incentive to follow the Secretary's request and start their trips early?*

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

(in Cantonese): Madam President, I have appealed to the people to make proper arrangements for their transport, and one of the ways is to consider leaving home early. However, I have not made such a request. I definitely dare not ask Mr CHENG, for example, to leave home early. Nonetheless, I think he has a point. Every day, we offer concessions during non-peak hours and these measures are not new; in the past, the MTRCL once implemented such measures which were quite effective. When considering how diversions of tunnel traffic can be improved, we have to consider the overall picture and this is also one of our considerations. Whether it is offering non-peak-hour concessions, imposing peak-hour surcharges or resuming the concessionary measures, we will consider them altogether.

**MS MIRIAM LAU** (in Cantonese): *Madam President, over the last 10 days, the TD, the police and even the various public transport operators have been on high alert and have taken numerous measures to cope with the possible traffic problems which may be triggered by the EHT toll increase. Madam President, my supplementary question is: How long is the Government prepared to maintain the relevant measures? Before solving the problem of uneven utilization of the three tunnels, will the Government maintain some of the measures for a long period?*

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

(in Cantonese): Madam President, as I said earlier, this time, we have involved many police officers and colleagues of the TD to design a plan for improving traffic volume. Some of the measures can be adopted in many places. In fact, I think some measures can ease traffic in the long term. For example, locations where minor traffic accidents have occurred should be cleared as soon as

possible. This is rather critical to the overall smooth flow of traffic because accidents would lead to traffic congestion. If the location can be cleared in three minutes, this makes a lot of difference when compared with the 15 minutes normally required. Since our traffic volume has always been near saturation, once a hold-up occurs, the accumulated traffic volume may not be eased for the whole day. Therefore, expediting the clearing of the location will be beneficial to the overall traffic flow. Apart from the proposal made by Ms LAU earlier, we will continue to introduce these measures depending on the actual situation. Moreover, we will also study how these measures can be applied to the other roads to better enhance the smooth flow of road traffic.

**MR LEE WING-TAT** (in Cantonese): *Madam President, one of the paragraphs of the main reply reads "It should be noted that since human behaviour cannot be predicted in very accurate terms, this estimate is no more than a rough projection in broad terms of the likely reaction to the toll increase." Madam President, may I ask the Secretary if the allusion to "human behaviour cannot be predicted in very accurate terms" includes the peculiar human behaviour similar to that of the officials of the Centre of the TD who failed to announce contingency measures some five to six hours after the major traffic hold-up the day before? Would the Secretary apologize to the public for the hold-up?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I hope Mr LEE can first understand the situation. Our colleagues in the TD are really very industrious. In dealing with the unexpected cases, I believe they have all done their best. I do not think this is a bad side of human behaviour. We might have shortcomings in performing our job, and we will surely apologize for causing public inconvenience as a result of our shortcomings, but this does not mean that our colleagues mishandled the incident intentionally or did the job badly. I do not think the comment is fair to them.

**DR KWOK KA-KI** (in Cantonese): *Madam President, in the Secretary's reply to part (c) of Mr LI's main question on long-term measures and discussions with the franchisees of the several tunnels, she said nothing on the progress apart from mentioning that preliminary discussions had commenced. What initial*

*options, if I may know, have been arrived at and how are we going to address the long-term problem?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we have discussed with the two tunnel companies the business plans concerned. Since our discussion counterparts are business organizations, it is very difficult for us to make known to the public every detail of the discussion process because much of their private data may be involved. Moreover, if we make any announcements when the time is not yet ripe, it will prejudice the discussion in many aspects. However, I can say a few years ago, we began some discussions with the franchisees of the EHC and the WHC on the "co-ownership" option. In such discussions, we have to make projections on data for the next one or two decades, for example, we have to assume the traffic volume in a decade's time, and so on. In these respects, our differences are great. We have to think of ways to reconcile the differences so as to achieve consensus and balance the interests of both parties. This however is not an easy task. I can only provide these information for the time being.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, in the major traffic hold-up, it is obvious that the Centre has failed to give an accurate and comprehensive account of the incident. Regarding the clearing of the location, it has also revealed a lack of co-ordination among the departments. Does the Secretary not admit that in handling and responding to the incident, there are in fact shortcomings? In what areas can the Centre make improvement?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I would like to repeat that we are holding an open press conference this afternoon, and the officers-in-charge of the departments concerned will all attend. We have to understand that in face of such unexpected accidents, the Centre will only handle some of the very specific situations and will not take care of everything, such as the clearing of the location. According to our existing mechanism, we have the so-called ICC. This afternoon, I shall explain in detail how the other departments exercise command in various aspects, hoping to give the public a detailed explanation. As for the roles of the traffic policemen, the police and the TD, I would also give a clear explanation, for example, who the chief commander is; how the various

departments co-operate and co-ordinate to deal with the overall situation; what steps are taken; what the priorities are. From the police's point of view, safety comes first, to be followed by traffic direction to slightly ease the traffic. Thereafter, depending on the situation, the TD would decide what longer-term measures to take. Let me reiterate, as three major roads were congested, two of which were even completely closed, a considerable volume of traffic had been accumulated. When it came to the peak in the afternoon which was the time when people finished work, traffic was already beyond easing. No matter how traffic was streamed or diverted, our efforts came to no avail. At that time, there was actually no way for the vehicles to go. As far as the situation is concerned, I need to explain in detail again this afternoon.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I feel sorry because I do not have time to attend the Secretary's press conference. (Laughter)*

**PRESIDENT** (in Cantonese): Mr LAU, what did you say?

**MR LAU KONG-WAH** (in Cantonese): *I do not have time to attend the Secretary's press conference this afternoon.*

**PRESIDENT** (in Cantonese): This is not part of your supplementary question earlier.

**MR LAU KONG-WAH** (in Cantonese): *I know. I would like to ask .....*

**PRESIDENT** (in Cantonese): You need only state that part of your supplementary which was not answered.

**MR LAU KONG-WAH** (in Cantonese): *What the Secretary has not answered is: Does the Secretary not admit that the contingency measures were not adequate, and what areas are there for improvement? Would the Secretary please give*

*her answer this morning? This is my supplementary question. I cannot make it to her press conference.*

**PRESIDENT** (in Cantonese): Secretary, part of Mr LAU's earlier supplementary is about whether there were inadequacies and what could be improved.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, we can of course do a better job in handling such unexpected incidents. Regarding this incident, we will conduct a detailed analysis and give a report to explain fully. I do not want to draw conclusion at this moment on an individual case.

**MR LAU KONG-WAH** (in Cantonese): *Madam President, I would like you to make a ruling. My supplementary question is very clear, but the Secretary evaded by saying that she would give a reply this afternoon. Why can she not do so this morning? Madam President, she has completely failed to answer my supplementary question.*

**PRESIDENT** (in Cantonese): Mr LAU Kong-wah, you asked the Secretary to answer your supplementary question which in fact had two parts: first, whether there were inadequacies; second, how improvements could be made. Regarding inadequacies, the Secretary has admitted that there were inadequacies.

**MR LAU KONG-WAH** (in Cantonese): *Pardon?*

**PRESIDENT** (in Cantonese): Regarding inadequacies, I heard the Secretary admit that there were inadequacies. Regarding how improvement, you said earlier that the Secretary would give a reply this afternoon, but I heard the Secretary say that she had to take time to study and investigate before there could be an answer, rather than giving a reply this afternoon. Anyway, I should not

have answered on the Secretary's behalf. So, would the Secretary please clarify. Mr LAU, please take your seat.

Secretary, please reply.

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, I have in fact replied. We need to study and investigate before we can give an accurate reply.

**PRESIDENT** (in Cantonese): We have spent more than 22 minutes on this question. Last supplementary question now.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, part (b) of the main question mentions short-term measures of the CHT. May I ask whether the short-term measures include those which will enable taxi drivers or drivers of private vehicles to make up their minds which tunnel to choose when they are far away from the tunnels? For example, when they are driving to Yuen Long, they can decide whether to use the EHT, the WHT or the CHT, or they can decide whether to use the EHT or the CHT when driving to Sai Kung. In other words, are there short-term measures to enable the drivers to decide instantly which way to take when they are still far away from the tunnels?*

**SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS** (in Cantonese): Madam President, in order to achieve this, drivers must be equipped with a Blackberry for them to go online at any time. Then, they can receive our messages through the Internet. We will broadcast snapshots, that is, we will release a photograph showing the traffic condition at the entrance to the CHT every two minutes. Of course, this is not very convenient to the drivers while they are driving. However, in the long run, we have to keep on researching the whole information system to examine how services can be enhanced to let the public know when the major roads are congested, how long it takes to get to a certain destination, and so on. We are studying how we can do better.

**PRESIDENT** (in Cantonese): Last oral question.

**School-based After-school Learning and Support Programmes**

5. **MR FREDERICK FUNG** (in Cantonese): *Madam President, the School-Based After-School Learning and Support Programmes (hereinafter referred to as "the programmes") introduced by the Government will cater for Primary One to Secondary Seven students who are receiving Comprehensive Social Security Assistance (CSSA) payments or full grant under the Student Financial Assistance (SFA) Scheme, or such students who cannot take part in fee-charging learning activities because their families are poor. In particular, the programmes will also target at students who do not have adequate parental support and guidance, because their parents are too busy earning a living or are themselves not competent enough to provide support. The grant under the programmes should not be used for providing material assistance to students, such as school uniform, musical instruments and so forth. Moreover, the Government has earmarked a recurrent provision of \$75 million per annum to implement the programmes. In this connection, will the Government inform this Council:*

- (a) *of the criteria for identifying those students who cannot take part in fee-charging learning activities because their families are poor, and the criteria for identifying those students who do not qualify; apart from encouraging schools to open up the programmes to all students, how the authorities can avoid labelling poor students in the process of receiving applications from students and their participation in the activities of the programmes;*
- (b) *of the measures to encourage poor students to take part in such activities, whether they include assisting poor students who are not provided with material assistance for participating in such activities, as well as the specific measures adopted by the authorities to facilitate co-operation between schools and non-governmental organizations in implementing the programmes; and*
- (c) *how the provision of \$75 million, the maximum amount of grant which can be applied for each activity and the cap on the maximum subsidy per eligible student are determined?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):  
Madam President, with regard to the three questions raised by Mr Frederick FUNG, my answers are as follow:

- (a) The programmes will cater for Primary One to Secondary Seven students who are receiving CSSA or full grant under the SFA Scheme. They are economically deprived and their families do not have the means to let them take part in fee-charging learning activities. Besides, schools are given discretion to select other needy students for the programmes, for example, students who are poor but their families refuse to receive CSSA and SFA.

Identification of the target group in schools is not as difficult as one perceives. Besides staying at home, students spend most of their time in schools. Teachers, especially class teachers, counselling teachers and school social workers and so forth, not only know about students' academic performance, they also have a general understanding of the family background of their students. Through observations of students' behaviour and contacts with students' parents, many teachers in fact know which students are coming from disadvantaged families.

To avoid labelling students from disadvantaged families, we encourage schools to open up the programmes to all students. We will also remind schools to pay special care in processing students' applications in order not to disclose the personal information of students in receipt of subsidy.

- (b) As mentioned above, schools generally know the family situation of their students quite well. In this regard, programmes that cater for the genuine needs of students, coupled with proactiveness in showing concern and making invitation by teachers, are effective in encouraging disadvantaged students to actively participate in activities.

We understand that disadvantaged students have different needs in different areas. Apart from providing material support, we believe that helping needy students to build up their self-esteem, develop their self-directed learning capacity and improve their self-reliance

is essential. If a school thinks there is a need to provide material support for disadvantaged students in order to encourage them to participate in certain after-school programmes, it should deploy other funding or seek sponsorship as appropriate for these purposes. Schools should also consider adopting the mode of resources sharing and developing a system for lending resources (such as musical instruments) to students in need.

We have consulted school councils and non-governmental organizations (NGOs) on the arrangements for the programmes. The *modus operandi* described above is the outcome of the discussion with relevant parties. In fact, schools and NGOs have been co-operating closely in providing student counselling services. The Education and Manpower Bureau will continue to maintain close ties with the social service sector. Regional Education Offices will also provide information and sharing opportunities in the local communities to facilitate matching and co-operation between schools and NGOs at different levels.

- (c) In estimating the amount for the grant, we have considered factors such as the estimated number of needy students (students who do not have adequate parental support and guidance, either because their parents are too busy earning a living or are themselves not competent enough to provide support), the resources required to provide focused support to the target group, the services which can be provided and the workload which can be borne by schools and NGOs and so forth.

To cater for the overall learning experiences of students, we require schools to consider the students' needs and school's development strategies in planning the programmes for the whole school year. With reference to the existing resources required by schools and NGOs in organizing similar programmes, we have set the maximum subsidy per eligible student to \$3,600 per annum. Since the number of disadvantaged students differs from school to school, we have not set a cap on the subsidy for each programme. However, the cash grant given to schools will be determined by the nature of the programmes and the number of students in the target group. Since schools should not replace any similar existing services with

the programmes to be supported by the grant, the resources currently deployed by schools for similar services will be one of the considerations in determining the amount of grant disbursed.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, I wish to follow up the issue regarding the ties and co-operation between schools and NGOs mentioned by the Secretary in the third paragraph of part (b) of the Secretary's main reply. Since the Secretary gave no further details about how NGOs would be encouraged or supported to promote the programmes, may I therefore ask the Secretary, first, if the Government will give subsidy or grant to NGOs in the provision of programmes for students' participation?*

*Second, can NGOs provide the same service as schools do by selecting needy students to participate in their programmes free of charge? If yes, what would the relationship and allocation mechanism be?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): *Madam President, the programmes are school-based programmes, that is, they are after-school programmes arranged by schools. The Education and Manpower Bureau only has ties with schools, not NGOs. Nevertheless, we encourage schools to contact NGOs and work out joint programmes before submitting them to us for approval. Nevertheless, if NGOs wish to launch certain programmes, they may take the initiative to contact schools and launch the programmes in schools. Nevertheless, the programmes are school-based.*

**MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, I know the Secretary attaches importance to the surveys conducted by the Hong Kong Professional Teachers' Union (HKPTU). Recently, the HKPTU conducted a survey on the number of students owning personal computers in Hong Kong. It was found that 5% of Primary Four to Secondary Seven students from economically deprived families had no personal computers or could not afford the fees for Internet access. With regard to the programmes, will the Government consider providing subsidy to schools which have the need to employ part-time employees to operate computer rooms after school, and extend the opening hours of computer rooms to evening, night time and holidays, so that*

*those economically deprived students may do the learning by using free computers and Internet facilities?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, we respect accurate surveys, hence I hope I can answer Mr CHEUNG Man-kwong's supplementary. With regard to the issue of opening up computer rooms, we have already provided a series of grants in respect of computers, such as the Composite Information Technology Grant (CITG), which included an incentive grant for extending the opening hours of school's computer facilities.

**MR LEE CHEUK-YAN** (in Cantonese): *Madam President, I was so worried that the Secretary might mislead us by hiding the truth about the programmes due to the survey of the HKPTU, fortunately, the Secretary did not say so.*

*The Secretary stated in part (c) that "In estimating the amount for the grant, we have considered factors such as the estimated number of needy students..... the resources required ..... the services which can be provided and the workload which can be borne by schools and NGOs and so forth." According to my own calculation, more than 20 000 students can be benefited at present, but the number of economically deprived students in Hong Kong is definitely more than 20 000. According to the accurate survey conducted by the Census and Statistics Department, there are 200 000 to 300 000 impoverished children in Hong Kong. May I ask the Secretary whether it is a result of insufficient grant? Moreover, among the three factors, will the ultimate consideration be the resources required instead of the number of economically deprived students?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I wish to thank Mr LEE Cheuk-yan for his supplementary because we do not want to mislead the public.

The programmes are supplementary, and they seek to supplement other programmes which have already been established, thus they are not the only programmes. Perhaps let me mention in passing here that we have in fact a lot

of other programmes and grants for schools and students, such as the Capacity Enhancement Grant (CEG), Student Guidance Service Grant (SGS Grant), Programme Funds for Whole-school Approach to Guidance and Discipline, Understanding Adolescent Project (Primary) Grant, the Induction Programme for Newly Arrived Children (NAC), Full Time Initiation Programme, School-based Support Scheme for Newly Arrived Children, and Composite Information Technology (IT) Grant which also includes the Incentive Grant for extending the opening hours of school's computer facilities. Furthermore, we also provide laptop computers to secondary school students who do not have computers at home through the "Digital Bridge" project which is funded by the Quality Education Fund, the uniform group grants, the Jockey Club Life-wide Learning Fund, and various means-tested student financial assistance schemes managed by the University Grants Committee ("UGC"), including travel subsidy, textbooks assistance and remission of public examination fees, and so on.

Therefore, we have a series of schemes in place to help our students, and they are especially for the economically deprived students which give them an opportunity to participate in after-school learning and tutorial programmes, with a view to helping them build up self-esteem.

**MR LEE CHEUK-YAN** (in Cantonese): *The Secretary has not answered my supplementary. Of course I know there are lots of subsidized programmes. The estimated number of students is just one of the three factors listed by the Secretary for consideration in estimating the amount of the grant, May I ask the Secretary, on the basis of which factor he came up with the conclusion that the \$75 million grant is adequate? For example, does he consider that only 20 000 to 30 000 students have the need, so I reckon the estimated number is the major factor for consideration. Which factor is the most important one in consideration?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, all of the three factors are equally important. The most important thing is whether we can help students from disadvantaged families. This is a starting point of the utmost importance, and the other consideration is

how we should help them. As to the question of whether the resources are adequate, I believe the resources are never adequate, certainly the more the better. But we think that if every student receiving CSSA payments or full grant under the SFA Scheme is allowed to apply for the subsidy, the grant each student receives would possibly be very small and it would not be cost-effective. For that reason, we consider that the programmes should target at a certain group of students.

**DR FERNANDO CHEUNG** (in Cantonese): *In reply to Mr Frederick FUNG's question, the Secretary mentioned that since the Government was of the view that schools should not replace any similar existing services with the programmes to be supported by the grant, the cash grant given to schools would be determined by the nature of the programmes and the number of students in the target group. At present, schools are providing abundant activities for students' participation, but a lot of students could not do so due to the financial condition of their families. According to the Secretary's reply, it seems that it is not a good idea to subsidize the economically deprived students so that they may take part in some of the programmes, that is, schools should not replace any similar existing services with the programmes. May I ask the Secretary, in the mind of the Secretary, what activities he wishes schools to organize with these \$75 million? Will he consider that since the current programmes organized by schools are not good enough, therefore some other programmes should be organized for those economically deprived students? Or is it because we have been urging all along that at present that such students cannot take part in most of the extra-curricular activities, thus the money would be used to subsidize them and facilitate their participation? If it is the latter, then I find it quite hard to understand the meaning of the Secretary's main reply.*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, it is rather simple as to the reason why I said schools should not replace any similar existing services with the programmes. Since many sponsoring bodies have their own grant or assistance schemes, thus we do not wish schools which have their own assistance schemes to use the allocation for their original schemes in other areas after the grant was disbursed. I hope they

can keep on launching the schemes that they are promoting currently. If schools wish to upgrade or expand the scope of these schemes, we can give consideration to such proposal, and that would be the only way to help students.

The programmes may take various forms, including but not limited to the following: Academically-oriented tutorial service, including the development of study skills; programmes that focus on personal development and life skills, including the psychological well-being; after-school care, including extra-curricular activities, for unsupervised children.

**PRESIDENT** (in Cantonese): We have spent more than 16 minutes on this question. Last supplementary question now.

**MR JASPER TSANG** (in Cantonese): *Madam President, insofar as I am aware, if schools wish to launch the programmes, they have to submit an annual report, and the requirements of such report are rather demanding. Besides reporting the participation rate and completion rate, it has to reflect the views of parents and students and carry an assessment of the academic and extra-curricular achievement of students after participation in these programmes. Of course, I understand that the Government, in order to ensure the appropriate use of additional resources, must exercise a certain degree of supervision. Nevertheless, has the Government considered that the submission of these reports, which are similar to requiring teachers to submit reports whenever schools launch new measures, would give rise to a new burden and impede active participation of teachers in the programmes?*

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as we do not want the programmes to add pressure on teachers, we therefore encourage co-operation between schools and NGOs. If the programmes are well-planned, I believe school principals will not consider that it is unreasonable or inappropriate to submit such reports. For that reason, we encourage schools to give us responses. If a good programme gains good results in one particular school, we also hope that it can be implemented in other schools with a view to expanding the good programmes.

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

**WRITTEN ANSWERS TO QUESTIONS****History and National Education in Schools**

6. **MR CHIM PUI-CHUNG** (in Chinese): *Madam President, the recent approval by the Japanese Government of the history textbooks for secondary schools written by a right-wing group, which distort the historical facts of Japan's invasion of its neighbouring countries, including China, during the Second World War, has aroused objections by residents in Hong Kong and in the Mainland. Regarding history and national education in Hong Kong, will the Government inform this Council:*

- (a) *how it enhances history and national education in primary and secondary schools; and*
- (b) *how the authorities will continuously promote and enhance history and national education in primary and secondary schools after implementing the "3+ 3+ 4" schooling structure?*

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

- (a) The Education and Manpower Bureau (the Bureau) attaches great importance to history and national education in primary and secondary schools. Regarding history education, the measures taken include:
  - Chinese History as an essential element of learning in basic education has been highlighted in the various documents promulgated over the past few years on curriculum reform, including *Learning to Learn* (2001), *Basic Education Curriculum Guide, Volume 1* (2002) and *Personal, Social and Humanities Education Key Learning Area Curriculum Guide (Primary 1 - Secondary 3)* (2002), all prepared by the Curriculum Development Council.
  - A new module on National Identity and Chinese Culture has been included in the curriculum for General Studies in

primary schools since 2002 to assist students in understanding Chinese history and culture.

- Curriculum documents have stated clearly that at junior secondary levels, not less than 25% of the total curriculum time for the Key Learning Area on Personal, Social and Humanities Education should be allocated to learning and teaching of Chinese History, regardless of the approach adopted by the school in planning the curriculum concerned. In other words, all junior secondary students are required to study Chinese History.
- History education provides studies on the development of the country and the nation. Apart from fostering understanding, interest and reflection in this aspect, it aims at training students to develop a broad-based approach and a critical mind in dealing with historical materials, to pursue truth through verification, to discern facts with sound evaluations, and to build up balanced viewpoints. Students are expected to have a deeper understanding of the national history from a broad-based global perspective.

To enhance students' understanding of the Motherland and strengthen their sense of belonging to it, the Bureau has been taking the following measures:

- *New Curriculum*: With the return of Hong Kong to the Motherland, there is a consensus in the community that we have to develop students' national identity. It is one of the seven curriculum goals under the curriculum reform. The aim is to assist students to "understand their national identity and be committed to contributing to the nation and society", that is, to enhance students' national consciousness through different Key Learning Areas and by providing them with various learning experiences. Moral and civic education is one of the four key tasks advocated in the curriculum reform of which national identity is one of the priority values schools have to develop among students.

- *Existing curriculum to enhance students' understanding of the country:*
  - (i) Schools cultivate students' sense of national identity through various subjects, including General Studies, Chinese Language and Putonghua at the primary level, and Civic Education, Chinese Language, Chinese History, Social Studies, Economic and Public Affairs, Government and Public Affairs, Geography, Liberal Studies, and so on, at the secondary level.
  - (ii) From September 2004, a strand of National Identity and Chinese Culture has been added to the primary school curriculum of General Studies.
  - (iii) Additional topics to enhance students' understanding of the Motherland are incorporated into the Personal, Social and Humanities Education curriculum at different key stages.
  - (iv) In the proposed new senior secondary curriculum, elements of national education are also found in Liberal Studies. Two compulsory units, namely Hong Kong Today and Modern China are included in the learning area of Society and Culture.
- *Teacher development programmes:* Teacher development programmes for primary and secondary school teachers have been organized by the Bureau in the form of seminar with themes on Chinese culture, national symbols, history, geography, politics, and so on. The Bureau has also commissioned local tertiary institutions to organize moral and civic education curriculum modules with themes on Interaction between Contemporary China and the International Society, Traditional Chinese Culture, National Education, and so on.
- *Subsidies for national education activities:* The Bureau has assisted schools to promote national education under various subsidy schemes, including:

- (i) the Moral and Civic Education grant which may be used by schools for organizing co-curricular activities on national education and procuring related teaching and learning resources, and
  - (ii) the Chinese Cultural Project Incentive Award Scheme implemented since 1997, which was renamed Study Trip to the Mainland of China Programme in 2005.
- *Producing and publishing learning and teaching materials:*  
To facilitate schools to promote national education, the Bureau has produced and published various kinds of learning and teaching materials in the form of teaching kits, CD ROMs, video tapes, wall charts, web-based materials, ETV programmes, and so on, to help teachers enhance students' understanding of the country in a lively and diversified way.
- *Others:*
- (i) Nine groups, each of 187 Secondary Six and post-secondary students and 17 group leaders, will be arranged for a 10-day National Education Course to be held in Beijing in the next three years. Students returning from the course are required to help teachers to promote national education in schools.
  - (ii) From end-April 2005, mainland scholars and officials have been invited to give talks under the programme of Understanding Contemporary China — Talk Series by scholars and experts from the Mainland. Target participants are Secondary Four to Secondary Seven students and teachers of primary and secondary schools. At present, the programme has attracted over 1 100 enrolments.
  - (iii) In July 2005, a Military Summer Camp for Hong Kong Youth will be jointly organized with the Chinese People's Liberation Army Forces Hong Kong, People's Liberation Army Camp Visiting Committee Hong Kong and Moral Education Concern Group. About

- 100 Secondary Three or Secondary Four male students will be selected to participate in the 12-day training programme to strengthen their national identity and to cultivate proper perception of national defence.
- (iv) Various activities such as flag-raising training, museum learning activities, exhibitions, garrison visits, essay competitions, and so on, will be co-organized with other government departments and non-government organizations.
  - (v) Educational activities will also be organized by the Bureau to strengthen teachers' and students' sense of belonging towards the country during National Day celebration each year.
- (b) History and national education will continuously be promoted in primary and secondary schools after implementing the "3+ 3+ 4" schooling structure. Measures include:
- The reformed senior secondary curriculum builds on the basic education. One of the learning goals is to help each student to be an informed and responsible citizen with a sense of global and national identity.
  - Under the proposed new Senior Secondary academic structure, the student programme is composed of three components: core subjects, elective subjects and other learning experiences. Liberal Studies, one of the core subjects, develops positive values and attitudes including civic responsibility and national identity in the context of Hong Kong. For those students with special interest in History may choose elective subjects such as History and Chinese History. Moreover, other learning experiences also include moral and civic education.
  - To sum up, diversified learning, teaching and assessment are used to suit the different needs, interests and abilities of students. More opportunities are provided for students to gain experience in moral and civic areas. All these measures can enhance history and national education.

**Regional Air Quality Monitoring Network**

7. **DR KWOK KA-KI** (in Chinese): *Madam President, one of the measures under the Pearl River Delta Regional Air Quality Management Plan is to set up a regional air quality monitoring network, but details of the network have not been provided by the Government of the Hong Kong Special Administrative Region (SAR). In this connection, will the Government inform this Council:*

- (a) of the specific locations of and site selection criteria (such as the altitude, nature of land use and environment of the site) for the 16 monitoring stations of the regional air quality monitoring network in the Pearl River Delta (PRD);*
- (b) whether it has drawn up any technical memorandum on the construction of the air quality monitoring stations; if so, whether the memorandum will be made public;*
- (c) of the timeframe for releasing details of the monitoring network concerned; and*
- (d) how the authorities will disseminate air quality information collected by the above monitoring network after it has been commissioned, and whether such information will include air pollution index and health tips?*

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

(in Chinese): Madam President,

- (a) The Pearl River Delta Regional Air Quality Monitoring Network (the Monitoring Network) has been set up by the SAR Government and Guangdong Provincial Government in accordance with the Pearl River Delta Regional Air Quality Management Plan agreed in 2003. The Monitoring Network comprises 16 monitoring stations, 13 of which are modified from suitable existing stations to cater for the requirements of the Monitoring Network. These monitoring

stations are located at Shenzhen, Dongguan, Guangzhou, Foshan, Shunde, Zhaoqing, Jiangmen, Zhongshan, Zhuhai and Huizhou as well as Tap Mun, Tsuen Wan and Tung Chung of Hong Kong. The other three new monitoring stations are located on suitable sites at Conghua, Panyu and Huiyang. In drawing up the Monitoring Network, the environmental monitoring departments of both sides have mainly made reference to the recommendations of the Study on Air Quality in the Pearl River Delta Region jointly completed by the Hong Kong Environmental Protection Department (EPD) and Guangdong Environmental Protection Bureau in 2002, for selecting sites in the urban and rural areas of the PRD that can best reflect the characteristics of regional air pollution. The report of the Study on Air Quality in the Pearl River Delta Region is available at the EPD's website;

- (b) The environmental monitoring departments of the two sides have compiled a set of quality control and assurance manuals for the Monitoring Network with reference to international standards. The manuals contain technical and operational guidelines for setting up the monitoring stations. Subject to the examination and confirmation of experts from both sides, the manuals can be made available to the Legislative Council and the public in the latter half of the year for reference;
- (c) The Monitoring Network is now on trial. It is estimated that in the latter half of the year, when the technical performance of the Monitoring Network meets the relevant requirements of the experts of both sides, more details can be made available to the public; and
- (d) The Hong Kong-Guangdong Joint Working Group on Sustainable Development and Environmental Protection agreed at its meeting in December 2004 that monitoring results would be announced to the public as soon as possible according to the operating condition of the Monitoring Network. Both sides are now studying details such as the content, format and channels so that the agreed arrangement will be adopted for announcing the monitoring results.

### **Third Generation Communication and Mobilizing System in Fire Services Communication Centre**

8. **MR KWONG CHI-KIN** (in Chinese): *Madam President, the Third Generation Communication and Mobilizing System in the Fire Services Communication Centre started operation first in the New Territories Fire Command (NTFC) on 1 March. In this connection, will the Government inform this Council:*

- (a) *since the commissioning of the new System;*
  - (i) *of the percentage of times for which fire engines of the NTFC reached the scenes within six minutes (that is, target arrival time) from the time building fire calls in built-up areas were received;*
  - (ii) *of the percentage of times for which ambulances arrived at the addresses calling for ambulances within 12 minutes (that is, target arrival time) from receiving emergency ambulance calls;*
  - (iii) *how the above percentages compare to the relevant percentages for the 12 months prior to the operation of the new System; and*
  - (iv) *of the average time taken for ambulances of the NTFC to depart for action (the deployment time), after the Fire Services Communication Centre has received emergency ambulance calls, the difference between this average time and that in the 12 months prior to the operation of the new System, and the causes of the difference;*
- (b) *whether it has assessed, with the commissioning of the new System, if the target deployment time for emergency ambulance services may be shortened from two minutes to one minute, thereby reducing the overall target arrival time from 12 minutes to 11 minutes after; and*
- (c) *the reasons for delaying the full operation of the new System and the extra expenses incurred as a result of the delay?*

**SECRETARY FOR SECURITY** (in Chinese): Madam President, before we provide the statistics as requested, we have to point out that it is not appropriate to assess the efficacy of the Third Generation Mobilizing System (TGMS) on the basis of data obtained since its commissioning in the NTFC in March this year as compared to those pertaining to the previous 12 months. Such comparison would lead to various problems, including:

- (1) the new system has been in operation in the NTFC for less than three months. Statistics from such a short period may not be able to reflect the long-term situation;
- (2) the demand for and performance of emergency ambulance and fire services are affected by seasonal factors. The comparison of statistics covering a few months with those of a whole year would not be appropriate; and
- (3) we expect that for a new system such as the TGMS which is both large-scale and high-tech, it is inevitable that some fine-tuning of the system as well as staff adjustment would be needed at the initial stage. Such problems would prevent the system from fully yielding its intended performance.

Our reply to the specific questions is:

- (a) Since the commissioning of TGMS in the NTFC on 1 March:
  - (i) there were 1 029 and 829 building fire calls in built-up areas of the New Territories in March and April respectively. Fire-fighters were able to reach the scenes of incident within the six-minute target response time in 826 and 695 calls respectively, representing 80.3% and 83.8% of the total number of calls;
  - (ii) there were 21 098 and 20 043 emergency ambulance calls in the New Territories in March and April respectively. Ambulance crews were able to arrive at the scenes within the 12-minute target response time in 17 022 and 17 393 calls respectively, representing 80.7% and 86.8% of the total number of calls;

- (iii) the corresponding percentages in the 12 months prior to the commissioning of the new system are 94.3% (for building fire calls) and 89.7% (for emergency ambulance calls) respectively; and
- (iv) the average time taken for dispatching ambulances was 4.7 minutes and 2.3 minutes in March and April respectively. The Fire Services Department (FSD) has not kept statistics on the average time taken for dispatching ambulances in the 12 months prior to the commissioning of the new system.

The dispatch time of the new system in March and April was short of being satisfactory. This was because some software and hardware of the system did not perform fully as expected in the initial stage of operation, and the relevant staff were not fully familiarized with the operation of the new system. The FSD has been working closely with the contractor to fine-tune the system. Given this, and as relevant staff gained more operational experience, substantial improvement to the situation has been made. We expect that there will be further improvement to the operation of the new system in the future.

- (b) The new system is designed primarily to handle the forecast growth in emergency calls until 2013 without the need to increase the number of staff in the Fire Services Communication Centre. In addition, under certain circumstances, the new system could shorten the time for dispatching vehicles to the scenes of incident. However, it is difficult to quantify the amount of time saved in advance and thus no target has been set to reduce the dispatch time for ambulances from two to one minute. It is premature to assess how much time the new system could save. We expect that such assessment could only be made after the new system has been fully implemented and operational for some time.
- (c) It was our plan in designing the TGMS that the new and old systems would operate in parallel during the initial commissioning of the new system, so that in case the new system encountered any insurmountable problems, emergency dispatch could still be

undertaken by the old system. This is to ensure that the provision of emergency rescue service would not be affected.

The new system has started operation in the NTFC first. If the operation continues to run smoothly, the FSD anticipates that the new system would be implemented in the Hong Kong Island and Kowloon Fire Commands by the middle of this year.

Given that the old and new systems handle emergency calls in Hong Kong/Kowloon and the New Territories respectively and the two systems are installed on different floors of the Fire Services Headquarters, the FSD can no longer flexibly deploy manpower resources between the two Communication Centres in cases where there is a sudden surge in the number of calls in any one of the Centres. Therefore, additional manpower is needed to address this situation. The expenditure involved was \$1.53 million as of end April 2005.

### **Work Injuries of Public Hospital Staff**

9. **DR JOSEPH LEE** (in Chinese): *Madam President, it was reported that during the four-and-a-half years since 2000, there were a total of over 5 000 cases of injuries sustained by public hospital staff while they were conducting manual handling operations (MHOs), representing 25% of the overall figure of work injury in public hospitals in the same period. Moreover, 64% and 30% of the staff injured were front-line support services staff and nurses respectively. In this connection, will the Government inform this Council if it knows:*

- (a) *the number of work injuries in public hospitals in each of the past five years, with a breakdown by the relevant causes and conditions of the injured;*
- (b) *the respective numbers of various types of technical aids for MHOs procured in the past five years for various public hospitals and the existing numbers of such aids, their utilization rates, as well as the ratios of the number of staff required to operate such aids to the number of such aids;*

- (c) *whether the Hospital Authority (HA) has assessed the impact of work injury cases on the workload of front-line staff, the quality of public medical services and the injured staff; if it has, of the assessment results;*
- (d) *whether the HA has assessed the effectiveness of its Manual Handling Accidents Prevention Campaign launched last year and the introduction of the relevant safety guidelines on the reduction in such work accidents; if it has, of the assessment results;*
- (e) *whether the HA has set a target number of reduction in work injury cases for the coming three years; if it has, of that number; and*
- (f) *whether the HA has assessed if the shortage in nursing manpower is one of the causes for nurses getting injured at work; if it has and the results are affirmative, of the short-term or long-term measures to be adopted by the authorities to relieve the shortage?*

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

- (a) The number of "injury while on duty (or IOD)" cases resulting from MHOs, which have been reported for employees' compensation purposes, in the past five years are provided in the table below:

<i>Year</i>	<i>Numbers of IOD Cases</i>
2000	1 096
2001	1 120
2002	1 130
2003	1 115
2004	1 192

The injuries suffered by staff members in these cases are mostly sprains and strains and back injuries. The HA does not have a consolidated record of detailed case breakdown by individual causes or by the severity of injuries sustained.

- (b) Since its establishment in 1990, the HA has been improving the provision of appropriate manual handling tools and equipment in public hospitals. These improvements included a massive replacement of non-height-adjustable hospital beds by height-adjustable ones and the purchase of various manual handling devices like hoists, lifting/transfer aids, and so on. Between January 2000 and March 2005, the HA purchased a total of 15 138 pieces of MHO equipment. A breakdown of these purchases by hospital cluster is given in the table below:

<i>Clusters</i>	<i>Quantity of MHO equipment purchased between January 2000 and March 2005</i>
Hong Kong East Cluster	2 153
Hong Kong West Cluster	969
Kowloon Central Cluster	2 759
Kowloon East Cluster	2 326
Kowloon West Cluster	1 302
New Territories East Cluster	3 106
New Territories West Cluster	2 541
Total:	15 138

The provision and utilization of essential MHO equipment/appliance in an HA workplace depends on a number of factors, which include the nature of its daily operation, the specialty of the ward concerned and the level of dependency of its patients. The transfer/lifting devices will be used frequently in a busy medical ward, but the HA does not routinely collate information on the utilization of such equipment. In addition, the "staff-to-equipment" ratio is not a factor of consideration in determining the provision of MHO equipment/appliance. Such ratios are not routinely collated by the HA.

- (c) The HA has all along adopted a "Caring for the Carers" approach in delivering its services. Continuous efforts have been made to provide the front-line staff with the necessary support and to ensure that there is effective communication between them and the management. Each HA hospital conducts risk assessment and case analysis periodically to monitor the trend of IOD cases and has

strengthened through the years management efforts in investigating the causes and improving the work design, processes and related workplace environment where appropriate. The HA does not have any evidence suggesting that the existing trend of IOD cases has an adverse effect on the quality of patient care.

- (d) While the relevant planning work started in 2004, the Manual Handling Injury Prevention Programme was not officially launched until April this year. In preparation for the launching of this programme, the HA reviewed its MHOs management practices in late 2004. A number of enhancement initiatives have been launched under the Prevention Programme in early 2005, with a view to minimizing the occurrence of IOD incidents arising from MHOs in public hospitals. These enhancement measures include:
- (i) establishment of a multi-disciplinary working group to steer the design and implementation of enhancement measures under the Prevention Programme;
  - (ii) implementation of a promotion programme to foster a behavioural-based safety culture in MHOs;
  - (iii) redevelopment of the Manual Handling Operations Guidelines and Protocols and the relevant risk assessment tools;
  - (iv) launching of training and education programmes on back to basics and advanced courses in MHOs; and
  - (v) conducting pre- and post-improvement surveys on staff members' knowledge, perception and attitude of MHOs. The post-implementation survey, which will be conducted in June 2006, will assist the HA in evaluating the overall effectiveness of the Prevention Programme.
- (e) The HA aims to reduce IOD incidents arising from MHOs as far as possible. The HA has a tentative target of reducing the number of such incidents by 10% to 20% within the next three years.

- (f) A review of the HA's IOD incidents revealed that the leading causes of injuries are the inaccurate perception of risks by the injured staff, insufficient safety awareness by them, and their non-compliance with the relevant work procedures. To reduce the number of IOD incidents, the HA has implemented a behavioural-based safety management programme in all HA hospitals. The HA has also put in place a mechanism in its hospitals for the deployment/redeployment of the necessary nursing manpower to meet service needs.

### **Assistance Provided to Hong Kong Residents on the Mainland**

10. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, in regard to the assistance provided by the authorities concerned to Hong Kong residents in the Mainland, will the Government inform this Council:*

- (a) *of the total number of requests for assistance received in the past three years by the Hong Kong Government's offices in the Mainland from Hong Kong residents in the Mainland or their family members, together with a breakdown by the nature of such requests;*
- (b) *of the concrete assistance currently provided by the authorities concerned to Hong Kong residents in the Mainland who encounter:*
- (i) *disputes with local commercial or government organizations;*
  - (ii) *legal problems; and*
  - (iii) *personal safety problems; and*
- (c) *with the increase in economic and trading activities between Hong Kong and the Mainland, whether the authorities concerned will expand the functions of the Government's offices in the Mainland so as to provide more comprehensive support to Hong Kong residents in the Mainland; if they will, of the details; if not, the reasons for that?*

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

(a) *The Immigration Section of the Beijing Office (BJO)*

In the past three years, the number of requests for assistance from Hong Kong residents in distress in the Mainland received by the Immigration Section of the BJO is as follows:

	<i>2002</i>	<i>2003</i>	<i>2004</i>
Loss of travel documents or monies	59	54	82
Hong Kong residents in danger, involved in traffic accidents, injured or passed away in the Mainland	42	69	126
Hong Kong residents detained in the Mainland	108	96	89
<b>Total</b>	<b>209</b>	<b>219</b>	<b>297</b>

*The Economic Affairs, Trade and Liaison Section of the BJO*

The number of requests for assistance (other than those relating to personal safety) that the Economic Affairs, Trade and Liaison Section of the BJO handled and followed up in the past three years, broken down by nature of request, is as follows:

<i>Nature</i>	<i>Number of requests</i>		
	<i>2002</i>	<i>2003</i>	<i>2004</i>
Business and trade disputes	78	64	42
Complaints relating to real property in the Mainland	82	50	35
Complaints against administrative, law enforcement and judicial agencies in the Mainland	150	139	93
Other cases	83	68	44
<b>Total</b>	<b>393</b>	<b>321</b>	<b>214</b>

*The Hong Kong Economic and Trade Office in Guangdong (GDETO)*

During the past three years, the GDETO received a total of 81 cases of complaint/request for assistance from Hong Kong residents. Breakdown is as follows:

Real estate disputes	9
Private commercial disputes	23
Complaints against mainland government departments	14
Accidents/loss of identity cards and travel documents	23
Complaints against trade and commercial polices or related legislation	12
Total	81

(b)(i) *The BJO*

The BJO processes and follows up the cases having regard to their nature and circumstances, as well as the wish of the person seeking assistance. The actions taken include:

- making referrals to the relevant mainland authorities and asking them to contact the person in need of assistance directly. Under the principle of "one country, two systems", persons seeking assistance should follow the relevant mainland procedures or regulations when dealing with their cases or problems. The BJO cannot and should not interfere with the relevant mainland administrative and legal procedures.
- making referrals to the relevant authorities in the Government of Hong Kong Special Administrative Region (SAR), and asking them to give a substantial reply directly, or through the BJO, to the person requesting assistance;

- making referrals to the relevant non-official bodies in the SAR and asking them to contact the person requesting assistance directly; and
- mediating and following up the case directly with the relevant authorities in the Mainland and SAR.

At present, the Constitutional Affairs Bureau and the BJO will assist Hong Kong residents having commercial disputes with mainland organizations by referring their requests for assistance to the relevant mainland authorities or providing them with information on the redress channel in the Mainland. The BJO will follow up individual cases according to their circumstances.

*The GDETO*

Upon receipt of a complaint/request for assistance, the GDETO will directly liaise with the relevant Guangdong authorities and take follow-up action if the case concerns economic and trade matters between Hong Kong and Guangdong. For other cases which fall under the purview of government departments of the SAR or Guangdong authorities, the GDETO will refer them to the relevant departments/authorities for action as appropriate. If necessary, the GDETO will provide Hong Kong residents with contacts of the Assistance to Hong Kong Residents Unit (AHU) of the Immigration Department (ImmD) and help them to get in touch with their relatives in Hong Kong.

- (ii) Only legal practitioners qualified to practise in the Mainland can provide legal advice and assistance to Hong Kong residents encountering legal problem in the Mainland. Where necessary, the BJO will, following the list provided by "All China Lawyers Association", provide Hong Kong residents with information on the lawyers associations in the relevant provinces or municipalities. The person seeking assistance can then contact the respective lawyers association direct to get appropriate legal representation.
- (iii) Hong Kong residents who are victims of crimes in the Mainland should report the incident to the public security authorities of the

Mainland as soon as possible. Investigation and law enforcement work in relation to crimes that took place in the Mainland are the responsibility of the mainland authorities. If the Hong Kong police receive reports of crimes encountered by Hong Kong residents in the Mainland and that such crimes have not been reported to the mainland authorities, the Hong Kong police will encourage the persons concerned to make reports to the public security authorities of the Mainland. This will enable the mainland authorities to take appropriate actions to follow up and investigate such cases. The police will seek detailed information from the persons concerned as far as possible. With their consent or at their request, the information so gathered will be conveyed to the public security authorities of the Mainland.

To deal with requests for assistance from Hong Kong residents which arose from crimes and other incidents near the boundary (especially in areas near the land boundary control points), the police of Hong Kong and the public security authorities in Shenzhen have strengthened their liaison at these control points so as to combat crimes more effectively and to facilitate the seeking of assistance by affected persons. Hong Kong and Shenzhen authorities implemented the "Shenzhen-Hong Kong Land Boundary Police Co-operation Scheme" on 19 January 2003. When reports of crimes or emergencies near the boundary are received by one side, the other side will be informed forthwith. This enables both parties to have an early grasp of the situation and to make timely responses. Facilities to receive reports and requests for assistance have been set up by the law enforcement authorities of both sides at the following places:

<i>Hong Kong</i>	<i>Shenzhen</i>
Lok Ma Chau Control Point Report Centre	Huanggang Port Division
Man Kam To Control Point Report Room	Nanhu Police Station
Sha Tau Kok Police Station	Shatoujiao Police Station
Lo Wu Station Report Room	Luohu Transport Building

For Hong Kong residents who are subject to compulsory measures in the Mainland, they may request assistance from the BJO or the AHU of the ImmD. The BJO/ImmD will gather details of the case from the persons seeking assistance and offer practicable assistance having regard to their requests and circumstances, and remind them of the possibility for mainland lawyers to be engaged as their legal representatives. The BJO/ImmD will also maintain close contact with the persons seeking assistance and take appropriate follow-up actions.

The ImmD has published a leaflet entitled "Guide to Assistance Services to Hong Kong Residents in the Mainland" to set out the assistance available to Hong Kong residents in distress in the Mainland and provide other relevant information. Moreover, to enhance Hong Kong residents' understanding of the legal system in the Mainland, the Security Bureau and the BJO have published booklets entitled "Criminal Procedure Law in the Mainland" and "Criminal Law and Application of Regulations in the Mainland Relating to Detention and Arrest". The aforesaid leaflet and booklets may be obtained from the ImmD, Home Affairs Department and the BJO. They are also available on the relevant departments' websites.

- (c) The BJO has accumulated considerable experience in providing assistance to Hong Kong residents in distress in the Mainland. It has also established good liaison and strengthened communications and co-operation with relevant mainland authorities to enable a better understanding of each other's policies and administrative measures. The BJO will continue its best endeavour to assist Hong Kong residents through the established mechanism by maintaining and expanding its liaison network with the mainland authorities at the Central and local levels. We have at this stage no plan to change the functions of the BJO in this regard.

The GDETO is established with the aim of enhancing economic co-operation between Hong Kong and Guangdong Province, strengthening business and trade links between the two places, assisting businessmen to obtain business and trade information about Hong Kong and Guangdong Province, promoting investments to

Hong Kong or through Hong Kong to the world, and providing better support for Hong Kong businessmen with operations in Guangdong. The GDETO will, depending on the circumstances of individual cases, continue to offer assistance to Hong Kong businessmen with operations in Guangdong and offer appropriate support to Hong Kong residents in need of assistance. At present, we do not have plans to expand the functions of the GDETO.

### **Employers Requiring Job Applicants to Disclose Information on Debts**

11. **MR ALBERT CHAN** (in Chinese): *Madam President, recently I have received complaints from many members of the public that many companies (such as telecommunications companies and small and medium-sized enterprises) not only require their employees and job applicants to declare whether they have criminal or bankruptcy records, but also require job applicants to disclose information about their debts. In this connection, will the Government inform this Council:*

- (a) whether the above companies have acted in breach of the law or government guidelines;*
- (b) of the measures to stop employers from requiring their employees and job applicants to provide the above information; and*
- (c) whether it will discuss with the employers concerned and request them to stop requiring their employees and job applicants to provide the relevant information (including bankruptcy records and particulars of their debts); if so, of the details; if not, the reasons for that?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President, my reply to Mr Albert CHAN's question is as follows:

- (a) Solicitation of personal data from job applicants in recorded form must comply with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486). The data protection principle 1(1) of the Ordinance stipulates that personal data shall not be collected unless:

- (i) the collection is for a lawful purpose directly related to a function or activity of the data user;
- (ii) collection of the data is necessary for or directly related to that purpose; and
- (iii) the data are adequate but not excessive in relation to that purpose.

As a data user, a prospective employer is required by the data protection principle 1(3) to notify a job applicant of the purpose of collecting the relevant personal data, and to advise the applicant whether provision of the requested data is obligatory or voluntary, and the consequences for the applicant if he/she fails to provide the data that are obligatory.

If a prospective employer is unable to justify the collection of personal data or has failed to give the aforementioned notification, he/she has contravened data protection principle 1.

- (b) The Privacy Commissioner for Personal Data has been taking both corrective and preventive measures to address malpractices in the handling of personal data. Where appropriate, the Commissioner will take enforcement action against a data user who has contravened any requirement of the Ordinance. Enforcement actions include warning and serving of enforcement notices. Contravention of an enforcement notice is a criminal offence. On the preventive side, the Commissioner has been publishing guidance materials and organizing publicity activities to strengthen the community's understanding of the Ordinance. The Code of Practice on Human Resource Management issued in September 2000 is an example of the Commissioner's efforts in giving practicable guidance specifically on the handling of personal data in employment context.
- (c) Whether or not the personal data about a job applicant requested by a prospective employer are excessive may only be judged with reference to the need for the data in the employer's selection process. Such need varies in the light of the job nature and responsibilities of

the specific position to be filled. It is not appropriate to request prospective employers to stop collecting any particular category of personal data irrespective of the actual circumstances. That said, the Commissioner will keep in view the situation and take appropriate measures whenever necessary.

### **Tree Conservation**

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

- (a) *of the respective numbers of trees which match the following descriptions and their locations:*
  - (i) *with a trunk diameter of or over 0.8 m, or a girth of or over 2.5 m, or a height of or over 15 m;*
  - (ii) *of special ecological or scientific research value; and*
  - (iii) *banyan trees growing on walls;*
- (b) *of the current health conditions of the trees mentioned above;*
- (c) *whether it carries out regular inspections of the trees mentioned above; and*
- (d) *whether it has formulated special measures to conserve the trees mentioned above; if it has, of the details; if not, the reasons for that?*

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

(a) to (d)

The Government does not possess detailed information on the numbers and locations of trees in Hong Kong that match the descriptions in part (a) of the question. However, according to a

rough estimate by the Leisure and Cultural Services Department (LCSD), at least 3 000 trees on government land in the metro and new town areas and along major highways may fall into the category described in part (a)(i) of the question.

Nevertheless, the Government currently keeps a Register of Old and Valuable Trees, which enlists the trees (mainly on government land in the metro and new town areas) that have been assessed as satisfying one or more of the following criteria:

- (i) large size (for example, with a trunk diameter of 1 000 mm or above; a height of 25 m or above; or a canopy spread of 25 m or above);
- (ii) precious or rare species;
- (iii) particularly old age (for example, over 100 years old);
- (iv) outstanding form; or
- (v) having cultural, historical or memorable significance.

The Register, which includes 527 trees at present, has been uploaded to the website of the LCSD for public inspection.

All the trees on the Register (or "registered trees") are in good condition. The government departments concerned conduct regular inspections to monitor their condition. In addition, the LCSD and the Agriculture, Fisheries and Conservation Department regularly appraise the condition of the registered trees and advise the tree maintenance departments to take follow-up action as appropriate.

The Government has already put in place a series of administrative and legislative measures to protect trees in Hong Kong. Special conservation measures have also been designed for the registered trees. For instance, felling or transplanting a registered tree is strictly prohibited unless with very special reasons. In addition, the area surrounding a registered tree is designated as a tree

protection zone, in which construction works cannot be carried out without the prior approval of the Lands Department. If a registered tree exists on a piece of government land to be leased to a private developer, the Lands Department will include appropriate clauses in the lease to restrict the use of the protection zone.

### **Discrimination Against Students with Disabilities**

13. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that 30% of the children born with the congenital defect "hare-lip and cleft palate" have experienced rejection and discrimination, and schools are even the most common places where they are discriminated against. In this connection, will the Government inform this Council:*

- (a) of the average number of complaints about the above situation received by the Education and Manpower Bureau in each of the past three years, and the major areas of discrimination involved;*
- (b) whether any schools or teachers have been admonished or prosecuted for discriminating against students with disabilities in the past three years; if so, of the relevant details; and*
- (c) whether it has reviewed the effectiveness of the existing measures in preventing schools from discriminating against students with disabilities; if it has, of the review results?*

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

(a) and (b)

Nil.

(c) We are providing various support measures to schools and organizing public education for preventing students with disabilities from being discriminated. They include the issue of circulars and

leaflets to schools, production of an e-learning programme for teachers on the Disability Discrimination Ordinance and its Code of Practice on Education, as well as perennial launching of TV and radio Announcements of Public Interest on equal opportunities in education. Besides, we also organize related courses, seminars and workshops for school heads and teachers every year. We note that the principles and values of equal opportunity and anti-discrimination are effectively disseminated. We will continue to monitor and improve our support to schools, and to strengthen the public education.

### **Hong Kong Residents Buying Lottery Tickets on the Mainland**

14. **MR LAU KONG-WAH** (in Chinese): *Madam President, it was reported that a Hong Kong resident who had bought an unlawful Mark Six lottery ticket in the Mainland and won the lottery was, instead of being awarded the prize money, detained by the bookmaker for more than three months to extort money from his family. In this connection, will the Government inform this Council:*

- (a) *of the number of reported cases in which Hong Kong residents who had won lotteries were detained in the Mainland when they collected the prize money from bookmakers over the past three years, and the actions taken by the authorities upon receipt of such reports;*
- (b) *of any measures to assist Hong Kong residents in ascertaining whether lottery tickets sold in the Mainland are lawful ones; and*
- (c) *whether there is evidence indicating that Hong Kong residents are involved in operating unlawful lotteries in the Mainland; if so, of the specific cases?*

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

- (a) From time to time, the Hong Kong police receive reports from Hong Kong residents claiming to have lost money through extortion

or deception on the Mainland. However, no separate statistics on "detention during collection of prize money" are kept.

Hong Kong and the Mainland are two different jurisdictions. For this reason, in relation to crimes that take place in the Mainland, the Hong Kong police will advise the victims to report such crimes to the public security authorities of the Mainland, in order to enable the mainland authorities to determine whether and how to follow up. With the request or consent of the victims or the persons reporting the crime, the Hong Kong police will forward the information concerning the cases to the mainland authorities for follow-up. In urgent cases, the police will immediately notify the relevant public security authorities of the Mainland, so that the latter may take appropriate actions quickly. The Hong Kong police will also assist the investigations of mainland public security authorities as far as possible, such as by encouraging Hong Kong residents to participate in the investigation procedures in the Mainland, including the identification of the suspects or the claiming of lost properties.

(b) and (c)

The Government is not in a position to advise on the legality of various gambling activities in the Mainland, or whether Hong Kong residents are involved in operating such activities.

### **District-based Advisory Committees**

15. **MS EMILY LAU** (in Chinese): *Madam President, regarding the various district-based advisory committees, such as Area Committees (ACs), District Fight Crime Committees (DFCCs) and District Fire Safety Committees (DFSCs), whose members are appointed by the Director of Home Affairs, will the executive authorities inform this Council:*

- (a) *of the political affiliation, gender, occupation and professional background of each member of these committees;*
- (b) *of the criteria adopted by the Director of Home Affairs for appointing and reappointing these members, and how these criteria*

*ensure that people from different sectors of the community have equal opportunities to participate in these committees;*

- (c) whether they have compiled statistics on these members' attendance rates at meetings; if so, whether their attendance rates will affect their chances of being reappointed; if not, the reasons for that;*
- (d) whether they will invite the elected District Council members and the public to nominate people from different sectors of the community to serve as members of these committees; if so, when this will be implemented; if not, the reasons for that; and*
- (e) whether channels exist for the public to have access to the agendas, documents and minutes of meetings of these committees as well as the attendance rates of their members; if so, of the details of such channels; if not, the reasons for that, and how the authorities safeguard the public's right to know and allow the public to monitor the operation of these committees?*

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

- (a) The major district advisory committees appointed by the Director of Home Affairs include 70 ACs, 18 DFCCs and 18 DFSCs. There are at present a total of 1 922 AC members, 524 DFCC members and 426 DFSC members. Information on the political affiliation, profession and professional qualifications of individual committee members constitutes personal information and cannot be released to other parties without their consent. In the circumstances, we have compiled and consolidated the information on the basis of each committee in the form of a table (copies attached) for Members' reference.
- (b) In considering an individual for appointment to a district advisory committee, the Director of Home Affairs takes into account the

candidate's integrity, ability, public service record, experience in district affairs, knowledge of the work of the district advisory committee in question and commitment to serve the community.

As regards reappointment, the Director of Home Affairs also considers the relevant member's participation in and contribution to the work of the respective committee.

The Director of Home Affairs will appoint talents from various different sectors of the community who meet the above criteria to district advisory committees.

- (c) The committee secretariats compile statistics on members' attendance rates on a regular basis. When considering the reappointment of an existing member for another term, the Director of Home Affairs also takes into account the member's participation in the work of the respective committee by making reference to his attendance record.
- (d) The Home Affairs Department is always open to suggestions for nominations for appointment to district advisory committees.
- (e) Members of the public may make enquiries about the agenda and schedule of meetings of these committees with the public enquiry service centres of the respective District Offices or the secretariats of the respective committees. They may also make arrangements with the respective public enquiry service centres or the respective secretariats to inspect members' attendance records and minutes of meetings. Meetings of these committees are in general open to members of the public and the press unless the Committee Chairman concerned, after consulting Committee members, decides during or before a meeting that discussion on certain items should be a closed-door one. Members of the public may arrange with the respective public enquiry service centres or the secretariats of the respective committees to attend these meetings as observers.

## Analysis of AC Members

<i>District:</i>	<i>Central and Western</i>			
<i>AC</i>	<i>1. Chung Wan and Mid-Levels</i>	<i>2. Sheung Wan and Sai Ying Pun</i>	<i>3. Shek Tong Tsui and Kennedy Town</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>				
Association for Democracy and People's Livelihood		1		1
Civil Force				0
Democratic Alliance for the Betterment and Progress of Hong Kong	4	4	4	12
Democratic Party	2	2		4
Frontier			1	1
Liberal Party	2		1	3
Matrix of Democracy and Civil Liberty				0
New Century Forum				0
The Neighbourhood and Workers Service Centre				0
Independent	24	26	22	72
Others			1	1
<b>Sex</b>				
Male	29	30	22	81
Female	3	3	7	13
<b>Total No.</b>	<b>32</b>	<b>33</b>	<b>29</b>	<b>94</b>
<b>Occupation by Sector</b>				
Medical and Health Services	2		2	4
Architectural, Engineering and Surveying	2		1	3
Legal	4	3		7
Accountancy, Insurance and Financial Services	2	3	4	9
Building Management		1		1
Information Technology				0

<i>District:</i>	<i>Central and Western</i>			
<i>AC</i>	<i>1. Chung Wan and Mid-Levels</i>	<i>2. Sheung Wan and Sai Ying Pun</i>	<i>3. Shek Tong Tsui and Kennedy Town</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Education	3	3	2	8
Social Welfare	3	4	3	10
Public Relations and Marketing				0
Arts, Culture, Sports and Publication		1	1	2
Service Industry	1	2		3
Design and Creative Industry				0
Transport and Logistics		1		1
Commercial, Wholesale and Retail	12	11	11	34
Full-time Legislative Council/District Council Member	1		1	2
Assistant of Legislative Council/District Council Member			1	1
Religious		1		1
Labour and Trade Unions				0
Real Estate				0
Civil Service				0
Others	2	3	3	8
<b>Total No.</b>	<b>32</b>	<b>33</b>	<b>29</b>	<b>94</b>
<b>Professional Qualification by Sector</b>				
Accountancy	2	1		3
Medical and Health Services	2		1	3
Architectural, Engineering and Surveying	2		1	3
Legal	4	3		7
<b>Total No.</b>	<b>10</b>	<b>4</b>	<b>2</b>	<b>16</b>

## Analysis of AC Members

<i>District:</i>	<i>Eastern</i>						
<i>AC</i>	<i>1. North Point (E)</i>	<i>2. North Point (W)</i>	<i>3. Hong Shing</i>	<i>4. Aldrich</i>	<i>5. Yee Wan</i>	<i>6. Wan Tai</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>							
Association for Democracy and People's Livelihood	1						1
Civil Force							0
Democratic Alliance for the Betterment and Progress of Hong Kong	4	3	1	5	3	6	22
Democratic Party			1	2	2	1	6
Frontier							0
Liberal Party		1			1		2
Matrix of Democracy and Civil Liberty							0
New Century Forum							0
The Neighbourhood and Workers Service Centre							0
Independent	21	26	27	23	24	25	146
Others							0
<b>Sex</b>							
Male	20	23	21	18	24	24	130
Female	6	7	8	12	6	8	47
<b>Total No.</b>	<b>26</b>	<b>30</b>	<b>29</b>	<b>30</b>	<b>30</b>	<b>32</b>	<b>177</b>
<b>Occupation by Sector</b>							
Medical and Health Services			3	1			4
Architectural, Engineering and Surveying	1	1			1	1	4
Legal	1	1					2
Accountancy, Insurance and Financial Services	3	3	4	2	2		14

<i>District:</i>	<i>Eastern</i>						
<i>AC</i>	<i>1. North Point (E)</i>	<i>2. North Point (W)</i>	<i>3. Hong Shing</i>	<i>4. Aldrich</i>	<i>5. Yee Wan</i>	<i>6. Wan Tai</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Building Management	1		2	1	1		5
Information Technology							0
Education	4	3	4	3	4	5	23
Social Welfare	2		1	2	2	2	9
Public Relations and Marketing							0
Arts, Culture, Sports and Publication					2	1	3
Service Industry	1		1		2	1	5
Design and Creative Industry		1		1	1	2	5
Transport and Logistics				1	2	2	5
Commercial, Wholesale and Retail	7	11	8	5	1	7	39
Full-time Legislative Council/District Council Member		2	2	2	4	2	12
Assistant of Legislative Council/District Council Member							0
Religious				1			1
Labour and Trade Unions							0
Real Estate						1	1
Civil Service		1		1			2
Others	6	7	4	10	8	8	43
<b>Total No.</b>	<b>26</b>	<b>30</b>	<b>29</b>	<b>30</b>	<b>30</b>	<b>32</b>	<b>177</b>
<b>Professional Qualification by Sector</b>							
Accountancy	1	2					3
Medical and Health Services			1				1
Architectural, Engineering and Surveying		1				1	2

<i>District:</i>	<i>Eastern</i>						
<i>AC</i>	<i>1. North Point (E)</i>	<i>2. North Point (W)</i>	<i>3. Hong Shing</i>	<i>4. Aldrich</i>	<i>5. Yee Wan</i>	<i>6. Wan Tai</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Legal</b>	1	1					2
<b>Total No.</b>	2	4	1	0	0	1	8

## Analysis of AC Members

<i>District:</i>	<i>Kowloon City</i>				
<i>AC</i>	<i>1. Hung Hom</i>	<i>2. Lung Tong</i>	<i>3. Ho Man Tin</i>	<i>4. To Kwa Wan</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood		2		1	3
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	6	1	1	3	11
Democratic Party	3		1	3	7
Frontier					0
Liberal Party		2	1		3
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	12	14	17	16	59
Others			1		1
<b>Sex</b>					
Male	16	14	14	16	60
Female	5	5	7	7	24
<b>Total No.</b>	21	19	21	23	84
<b>Occupation by Sector</b>					
Medical and Health Services		1			1
Architectural, Engineering and Surveying				2	2
Legal		1		2	3
Accountancy, Insurance and Financial Services				2	2

<i>District:</i>	<i>Kowloon City</i>				
<i>AC</i>	<i>1. Hung Hom</i>	<i>2. Lung Tong</i>	<i>3. Ho Man Tin</i>	<i>4. To Kwa Wan</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Building Management					0
Information Technology	1				1
Education	2	2	3	2	9
Social Welfare	1	1	3	4	9
Public Relations and Marketing					0
Arts, Culture, Sports and Publication					0
Service Industry					0
Design and Creative Industry					0
Transport and Logistics	2	1		1	4
Commercial, Wholesale and Retail	8	8	8	4	28
Full-time Legislative Council/District Council Member	4	2	2	2	10
Assistant of Legislative Council/District Council Member			2		2
Religious		1			1
Labour and Trade Unions	1				1
Real Estate	1				1
Civil Service	1			1	2
Others		2	3	3	8
<b>Total No.</b>	<b>21</b>	<b>19</b>	<b>21</b>	<b>23</b>	<b>84</b>
<b>Professional Qualification by Sector</b>					
Accountancy				2	2
Medical and Health Services		1			1
Architectural, Engineering and Surveying				2	2
Legal		1		2	3
<b>Total No.</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>8</b>

## Analysis of AC Members

<i>District:</i>	<i>Kwun Tong (KT)</i>						
<i>AC</i>	<i>1. KT Central</i>	<i>2. KT West</i>	<i>3. Sau Mau Ping</i>	<i>4. KT South</i>	<i>5. Sze Shun</i>	<i>6. Lam Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>							
Association for Democracy and People's Livelihood							0
Civil Force							0
Democratic Alliance for the Betterment and Progress of Hong Kong	1	3	3		1	2	10
Democratic Party	1	2		1	1	1	6
Frontier							0
Liberal Party							0
Matrix of Democracy and Civil Liberty							0
New Century Forum				1			1
The Neighbourhood and Workers Service Centre							0
Independent	29	32	17	27	26	24	155
Others							0
<b>Sex</b>							
Male	24	25	13	22	19	20	123
Female	7	12	7	7	9	7	49
<b>Total No.</b>	<b>31</b>	<b>37</b>	<b>20</b>	<b>29</b>	<b>28</b>	<b>27</b>	<b>172</b>
<b>Occupation by Sector</b>							
Medical and Health Services			1			1	2
Architectural, Engineering and Surveying		1			1	1	3
Legal	1						1
Accountancy, Insurance and Financial Services			1	1	2	3	7
Building Management		2		1		1	4
Information Technology					1	1	2
Education	5	4	2	2	3	2	18
Social Welfare	3	4	2	2	4	5	20
Public Relations and Marketing							0
Arts, Culture, Sports and Publication							0

<i>District:</i>	<i>Kwun Tong (KT)</i>						
<i>AC</i>	<i>1. KT Central</i>	<i>2. KT West</i>	<i>3. Sau Mau Ping</i>	<i>4. KT South</i>	<i>5. Sze Shun</i>	<i>6. Lam Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Service Industry			1	1		1	3
Design and Creative Industry							0
Transport and Logistics		3	1	1	1	4	10
Commercial, Wholesale and Retail	10	9	2	11	4	3	39
Full-time Legislative Council/District Council Member	4	3	2	4	2	2	17
Assistant of Legislative Council/District Council Member		1					1
Religious							0
Labour and Trade Unions					1		1
Real Estate							0
Civil Service	2				1		3
Others	6	10	8	6	8	3	41
<b>Total No.</b>	<b>31</b>	<b>37</b>	<b>20</b>	<b>29</b>	<b>28</b>	<b>27</b>	<b>172</b>
<b>Professional Qualification by Sector</b>							
Accountancy						1	1
Medical and Health Services						1	1
Architectural, Engineering and Surveying						1	1
Legal	1						1
<b>Total No.</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>4</b>

## Analysis of AC Members

<i>District:</i>	<i>Sham Shui Po</i>			
<i>AC</i>	<i>1. East</i>	<i>2. Central and Southern</i>	<i>3. West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>				
Association for Democracy and People's Livelihood	6	3	2	11

<i>District:</i>	<i>Sham Shui Po</i>			
<i>AC</i>	<i>1. East</i>	<i>2. Central and Southern</i>	<i>3. West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Civil Force				0
Democratic Alliance for the Betterment and Progress of Hong Kong	1	1	5	7
Democratic Party			3	3
Frontier				0
Liberal Party				0
Matrix of Democracy and Civil Liberty				0
New Century Forum	2			2
The Neighbourhood and Workers Service Centre				0
Independent	27	32	27	86
Others				0
<b>Sex</b>				
Male	26	27	30	83
Female	10	9	7	26
<b>Total No.</b>	<b>36</b>	<b>36</b>	<b>37</b>	<b>109</b>
<b>Occupation by Sector</b>				
Medical and Health Services	1	1		2
Architectural, Engineering and Surveying	1	1	2	4
Legal		1	1	2
Accountancy, Insurance and Financial Services	2			2
Building Management				0
Information Technology				0
Education	4	2	4	10
Social Welfare	2	2	1	5
Public Relations and Marketing				0
Arts, Culture, Sports and Publication			1	1
Service Industry		1	1	2
Design and Creative Industry		1		1

<i>District:</i>	<i>Sham Shui Po</i>			
<i>AC</i>	<i>1. East</i>	<i>2. Central and Southern</i>	<i>3. West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Transport and Logistics		1		1
Commercial, Wholesale and Retail	12	15	14	41
Full-time Legislative Council/District Council Member	5	5	5	15
Assistant of Legislative Council/District Council Member			1	1
Religious	1	1		2
Labour and Trade Unions				0
Real Estate				0
Civil Service				0
Others	8	5	7	20
<b>Total No.</b>	<b>36</b>	<b>36</b>	<b>37</b>	<b>109</b>
<b>Professional Qualification by Sector</b>				
Accountancy	2			2
Medical and Health Services	1			1
Architectural, Engineering and Surveying	1	1	1	3
Legal		1	1	2
<b>Total No.</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>8</b>

## Analysis of AC Members

<i>District:</i>	<i>Southern</i>				
<i>AC</i>	<i>1. Wong Chuk Hang and Stanley</i>	<i>2. Ap Lei Chau</i>	<i>3. Aberdeen, Tin Wan and Shek Pai Wan</i>	<i>4. Wah Fu and Pok Fu Lam</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood					0

<i>District:</i>	<i>Southern</i>				
<i>AC</i>	<i>1. Wong Chuk Hang and Stanley</i>	<i>2. Ap Lei Chau</i>	<i>3. Aberdeen, Tin Wan and Shek Pai Wan</i>	<i>4. Wah Fu and Pok Fu Lam</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	1		1	1	3
Democratic Party			1	1	2
Frontier					0
Liberal Party	1		1	1	3
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	23	24	20	17	84
Others					0
Sex					
Male	17	14	17	12	60
Female	8	10	6	8	32
<b>Total No.</b>	25	24	23	20	92
<b>Occupation by Sector</b>					
Medical and Health Services		1			1
Architectural, Engineering and Surveying		2			2
Legal			1		1
Accountancy, Insurance and Financial Services			2	1	3
Building Management				2	2
Information Technology					0
Education	6	1	3	4	14

<i>District:</i>	<i>Southern</i>				
<i>AC</i>	<i>1. Wong Chuk Hang and Stanley</i>	<i>2. Ap Lei Chau</i>	<i>3. Aberdeen, Tin Wan and Shek Pai Wan</i>	<i>4. Wah Fu and Pok Fu Lam</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Social Welfare	2	4	3	2	11
Public Relations and Marketing					0
Arts, Culture, Sports and Publication					0
Service Industry		1	1		2
Design and Creative Industry		1			1
Transport and Logistics	3	1			4
Commercial, Wholesale and Retail	9	5	9	4	27
Full-time Legislative Council/District Council Member		2	1	2	5
Assistant of Legislative Council/District Council Member					0
Religious					0
Labour and Trade Unions			1		1
Real Estate					0
Civil Service					0
Others	5	6	2	5	18
<b>Total No.</b>	<b>25</b>	<b>24</b>	<b>23</b>	<b>20</b>	<b>92</b>
<b>Professional Qualification by Sector</b>					
Accountancy			2		2
Medical and Health Services					0
Architectural, Engineering and Surveying		2			2
Legal			1		1
<b>Total No.</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>5</b>

## Analysis of AC Members

<i>District:</i>	<i>Wan Chai</i>				
<i>AC</i>	<i>1. Wan Chai</i>	<i>2. Wan Chai Mid-Levels</i>	<i>3. Wong Nai Chung</i>	<i>4. Causeway Bay</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood					0
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	2	1	1	4	8
Democratic Party			1	1	2
Frontier					0
Liberal Party					0
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	24	24	25	21	94
Others	1	1			2
<b>Sex</b>					
Male	22	19	21	19	81
Female	5	7	6	7	25
<b>Total No.</b>	<b>27</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>106</b>
<b>Occupation by Sector</b>					
Medical and Health Services		1	2	2	5
Architectural, Engineering and Surveying		2		3	5
Legal	1	2	2		5
Accountancy, Insurance and Financial Services	5	4	6	3	18
Building Management	2			3	5

<i>District:</i>	<i>Wan Chai</i>				
<i>AC</i>	<i>1. Wan Chai</i>	<i>2. Wan Chai Mid-Levels</i>	<i>3. Wong Nai Chung</i>	<i>4. Causeway Bay</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Information Technology					0
Education		3	4	2	9
Social Welfare	4		1		5
Public Relations and Marketing		1		1	2
Arts, Culture, Sports and Publication	1			2	3
Service Industry	2	1		4	7
Design and Creative Industry					0
Transport and Logistics				1	1
Commercial, Wholesale and Retail	6	8	10	2	26
Full-time Legislative Council/District Council Member	3				3
Assistant of Legislative Council/District Council Member					0
Religious					0
Labour and Trade Unions					0
Real Estate		1	1		2
Civil Service					0
Others	3	3	1	3	10
<b>Total No.</b>	<b>27</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>106</b>
<b>Professional Qualification by Sector</b>					
Accountancy	1	3	2	1	7
Medical and Health Services		1			1
Architectural, Engineering and Surveying		2		3	5
Legal	1	2	2		5
<b>Total No.</b>	<b>2</b>	<b>8</b>	<b>4</b>	<b>4</b>	<b>18</b>

## Analysis of AC Members

<i>District:</i>	<i>Wong Tai Sin</i>						
<i>AC</i>	<i>1. Chuk Yuen</i>	<i>2. Wong Tai Sin West</i>	<i>3. Choi Ngau</i>	<i>4. San Tsuen</i>	<i>5. Tsz Wan Shan</i>	<i>6. Wong Tai Sin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>							
Association for Democracy and People's Livelihood	1	1					2
Civil Force							0
Democratic Alliance for the Betterment and Progress of Hong Kong		1	1	1	1	1	5
Democratic Party			1	2	2		5
Frontier	1		1				2
Liberal Party		1	1	1	1		4
Matrix of Democracy and Civil Liberty							0
New Century Forum							0
The Neighbourhood and Workers Service Centre							0
Independent	15	23	22	21	22	17	120
Others							0
<b>Sex</b>							
Male	10	21	17	19	18	14	99
Female	7	5	9	5	8	4	38
<b>Total No.</b>	17	26	26	24	26	18	137
<b>Occupation by Sector</b>							
Medical and Health Services	1	2		1	1		5
Architectural, Engineering and Surveying		2	2	1	1		6
Legal			1		1		2

<i>District:</i>	<i>Wong Tai Sin</i>						
<i>AC</i>	<i>1. Chuk Yuen</i>	<i>2. Wong Tai Sin West</i>	<i>3. Choi Ngau</i>	<i>4. San Tsuen</i>	<i>5. Tsz Wan Shan</i>	<i>6. Wong Tai Sin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Accountancy, Insurance and Financial Services		1	1	1	1		4
Building Management				1			1
Information Technology		2		1			3
Education	1				4		5
Social Welfare	3	3	2	2	3	3	16
Public Relations and Marketing			1				1
Arts, Culture, Sports and Publication				1	1	1	3
Service Industry				1			1
Design and Creative Industry					1		1
Transport and Logistics	1	2	1	2	1	1	8
Commercial, Wholesale and Retail	2	3	4	8	3	3	23
Full-time Legislative Council/District Council Member	4	1	1	2	4	2	14
Assistant of Legislative Council/District Council Member							0
Religious							0
Labour and Trade Unions							0
Real Estate							0
Civil Service				1			1
Others	5	10	13	2	5	8	43
<b>Total No.</b>	<b>17</b>	<b>26</b>	<b>26</b>	<b>24</b>	<b>26</b>	<b>18</b>	<b>137</b>
<b>Professional Qualification by Sector</b>							
Accountancy				1	1		2
Medical and Health Services							0

<i>District:</i>	<i>Wong Tai Sin</i>						
<i>AC</i>	<i>1. Chuk Yuen</i>	<i>2. Wong Tai Sin West</i>	<i>3. Choi Ngau</i>	<i>4. San Tsuen</i>	<i>5. Tsz Wan Shan</i>	<i>6. Wong Tai Sin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Architectural, Engineering and Surveying		1	1		1		3
Legal			1		1		2
<b>Total No.</b>	0	1	2	1	3	0	7

## Analysis of AC Members

<i>District:</i>	<i>Yau Tsim Mong</i>				
<i>AC</i>	<i>1. East</i>	<i>2. South</i>	<i>3. West</i>	<i>4. North</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood	2		1		3
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	3	6	1	1	11
Democratic Party	1		2	1	4
Frontier					0
Liberal Party				1	1
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	27	27	29	30	113
Others					0
<b>Sex</b>					
Male	23	26	28	28	105
Female	10	7	5	5	27
<b>Total No.</b>	33	33	33	33	132

<i>District:</i>	<i>Yau Tsim Mong</i>				
<i>AC</i>	<i>1. East</i>	<i>2. South</i>	<i>3. West</i>	<i>4. North</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Occupation by Sector</b>					
Medical and Health Services			1	1	2
Architectural, Engineering and Surveying					0
Legal	1	1	1	1	4
Accountancy, Insurance and Financial Services		2	1	1	4
Building Management		1	2		3
Information Technology			1		1
Education	3	3	3	3	12
Social Welfare	2		5	1	8
Public Relations and Marketing				1	1
Arts, Culture, Sports and Publication	1	1		1	3
Service Industry			1	1	2
Design and Creative Industry					0
Transport and Logistics					0
Commercial, Wholesale and Retail	15	21	12	13	61
Full-time Legislative Council/District Council Member	2		1	1	4
Assistant of Legislative Council/District Council Member					0
Religious		1			1
Labour and Trade Unions			1		1
Real Estate					0
Civil Service					0
Others	9	3	4	9	25
<b>Total No.</b>	<b>33</b>	<b>33</b>	<b>33</b>	<b>33</b>	<b>132</b>
<b>Professional Qualification by Sector</b>					
Accountancy		1			1

<i>District:</i>	<i>Yau Tsim Mong</i>				
<i>AC</i>	<i>1. East</i>	<i>2. South</i>	<i>3. West</i>	<i>4. North</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Medical and Health Services					0
Architectural, Engineering and Surveying					0
Legal	1	1	1	1	4
<b>Total No.</b>	1	2	1	1	5

## Analysis of AC Members

<i>District:</i>	<i>Islands</i>				
<i>AC</i>	<i>1. Cheung Chau</i>	<i>2. Lamma</i>	<i>3. Lantau</i>	<i>4. Peng Chau/ Discovery Bay</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood					0
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	1	1	2		4
Democratic Party					0
Frontier					0
Liberal Party					0
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	21	14	19	22	76
Others					0
<b>Sex</b>					
Male	20	14	18	13	65
Female	2	1	3	9	15
<b>Total No.</b>	22	15	21	22	80

<i>District:</i>	<i>Islands</i>				
<i>AC</i>	<i>1. Cheung Chau</i>	<i>2. Lamma</i>	<i>3. Lantau</i>	<i>4. Peng Chau/Discovery Bay</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Occupation by Sector</b>					
Medical and Health Services					0
Architectural, Engineering and Surveying	1		2	1	4
Legal					0
Accountancy, Insurance and Financial Services				2	2
Building Management				1	1
Information Technology					0
Education	1		2	1	4
Social Welfare	2		1	1	4
Public Relations and Marketing					0
Arts, Culture, Sports and Publication					0
Service Industry		2			2
Design and Creative Industry					0
Transport and Logistics		1			1
Commercial, Wholesale and Retail	10	8	9	8	35
Full-time Legislative Council/District Council Member	3	2	2	2	9
Assistant of Legislative Council/District Council Member					0
Religious			1		1
Labour and Trade Unions					0
Real Estate				1	1
Civil Service					0
Others	5	2	4	5	16
<b>Total No.</b>	<b>22</b>	<b>15</b>	<b>21</b>	<b>22</b>	<b>80</b>

<i>District:</i>	<i>Islands</i>				
<i>AC</i>	<i>1. Cheung Chau</i>	<i>2. Lamma</i>	<i>3. Lantau</i>	<i>4. Peng Chau/Discovery Bay</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Professional Qualification by Sector</b>					
Accountancy				1	1
Medical and Health Services					0
Architectural, Engineering and Surveying				1	1
Legal					0
<b>Total No.</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>

## Analysis of AC Members

<i>District:</i>	<i>Kwai Tsing</i>					
<i>AC</i>	<i>1. Kwai Chung (NE)</i>	<i>2. Kwai Chung (C&amp;S)</i>	<i>3. Kwai Chung (W)</i>	<i>4. Tsing Yi (SW)</i>	<i>5. Tsing Yi (NE)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood						0
Civil Force						0
Democratic Alliance for the Betterment and Progress of Hong Kong	2		1	3	2	8
Democratic Party	2	3	6	2	1	14
Frontier						0
Liberal Party	1	1			1	3
Matrix of Democracy and Civil Liberty						0
New Century Forum						0
The Neighbourhood and Workers Service Centre	2	1				3
Independent	29	29	28	27	31	144
Others						0

<i>District:</i>	<i>Kwai Tsing</i>					
<i>AC</i>	<i>1. Kwai Chung (NE)</i>	<i>2. Kwai Chung (C&amp;S)</i>	<i>3. Kwai Chung (W)</i>	<i>4. Tsing Yi (SW)</i>	<i>5. Tsing Yi (NE)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Sex</b>						
Male	26	28	30	21	23	128
Female	10	6	5	11	12	44
<b>Total No.</b>	36	34	35	32	35	172
<b>Occupation by Sector</b>						
Medical and Health Services	2			3		5
Architectural, Engineering and Surveying		1		1	2	4
Legal			1			1
Accountancy, Insurance and Financial Services	1		3	2	2	8
Building Management		1	3			4
Information Technology		1	1	2	1	5
Education	4	5	2	3	3	17
Social Welfare	5	1	3		2	11
Public Relations and Marketing				1		1
Arts, Culture, Sports and Publication	2	1				3
Service Industry	2	1				3
Design and Creative Industry						0
Transport and Logistics		5	3	1	4	13
Commercial, Wholesale and Retail	8	4	6	3	3	24
Full-time Legislative Council/District Council Member	3	3	3	4	4	17
Assistant of Legislative Council/District Council Member				1	2	3
Religious						0
Labour and Trade Unions					1	1

<i>District:</i>	<i>Kwai Tsing</i>					
<i>AC</i>	<i>1. Kwai Chung (NE)</i>	<i>2. Kwai Chung (C&amp;S)</i>	<i>3. Kwai Chung (W)</i>	<i>4. Tsing Yi (SW)</i>	<i>5. Tsing Yi (NE)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Real Estate						0
Civil Service		2			1	3
Others	9	9	10	11	10	49
<b>Total No.</b>	36	34	35	32	35	172
<b>Professional Qualification by Sector</b>						
Accountancy			1	1	2	4
Medical and Health Services	1					1
Architectural, Engineering and Surveying				1		1
Legal			1			1
<b>Total No.</b>	1	0	2	2	2	7

## Analysis of AC Members

<i>District:</i>	<i>Sai Kung</i>			
<i>AC</i>	<i>1. Sai Kung</i>	<i>2. Tseung Kwan O (North)</i>	<i>3. Tseung Kwan O (South)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>				
Association for Democracy and People's Livelihood				0
Civil Force			2	4
Democratic Alliance for the Betterment and Progress of Hong Kong	5	6	1	12
Democratic Party		2	1	3
Frontier			1	1
Liberal Party			1	1
Matrix of Democracy and Civil Liberty				0
New Century Forum				0
The Neighbourhood and Workers Service Centre				0

<i>District:</i>	<i>Sai Kung</i>			
<i>AC</i>	<i>1. Sai Kung</i>	<i>2. Tseung Kwan O (North)</i>	<i>3. Tseung Kwan O (South)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Independent</b>	24	16	18	58
<b>Others</b>				0
<b>Sex</b>				
Male	27	21	19	67
Female	2	5	5	12
<b>Total No.</b>	29	26	24	79
<b>Occupation by Sector</b>				
Medical and Health Services				0
Architectural, Engineering and Surveying	3	3		6
Legal				0
Accountancy, Insurance and Financial Services	2			2
Building Management		2		2
Information Technology	1			1
Education		3	5	8
Social Welfare	1	1		2
Public Relations and Marketing				0
Arts, Culture, Sports and Publication	1			1
Service Industry		1	1	2
Design and Creative Industry				0
Transport and Logistics	2	1	1	4
Commercial, Wholesale and Retail	11	7	4	22
Full-time Legislative Council/District Council Member	2	4	3	9
Assistant of Legislative Council/District Council Member	1			1
Religious				0
Labour and Trade Unions		1		1

<i>District:</i>	<i>Sai Kung</i>			
<i>AC</i>	<i>1. Sai Kung</i>	<i>2. Tseung Kwan O (North)</i>	<i>3. Tseung Kwan O (South)</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Real Estate			2	2
Civil Service	1		3	4
Others	4	3	5	12
<b>Total No.</b>	29	26	24	79
<b>Professional Qualification by Sector</b>				
Accountancy				0
Medical and Health Services				0
Architectural, Engineering and Surveying	1	1		2
Legal				0
<b>Total No.</b>	1	1	0	2

## Analysis of AC Members

<i>District:</i>	<i>Sha Tin</i>						
<i>AC</i>	<i>1. West One</i>	<i>2. West Two</i>	<i>3. West Three</i>	<i>4. East One</i>	<i>5. East Two</i>	<i>6. East Three</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>							
Association for Democracy and People's Livelihood							0
Civil Force		3	4	3	6	4	20
Democratic Alliance for the Betterment and Progress of Hong Kong	2		1	1	1		5
Democratic Party		1	1	2	3		7
Frontier		1		2			3
Liberal Party	1					1	2
Matrix of Democracy and Civil Liberty							0
New Century Forum							0
The Neighbourhood and Workers Service Centre							0

<i>District:</i>	<i>Sha Tin</i>						
<i>AC</i>	<i>1. West One</i>	<i>2. West Two</i>	<i>3. West Three</i>	<i>4. East One</i>	<i>5. East Two</i>	<i>6. East Three</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Independent	20	21	15	25	15	21	117
Others	1						1
Sex							
Male	21	21	16	29	19	18	124
Female	4	5	5	4	6	8	32
<b>Total No.</b>	25	26	21	33	25	26	156
<b>Occupation by Sector</b>							
Medical and Health Services	1	2		1	2		6
Architectural, Engineering and Surveying		1				1	2
Legal	1						1
Accountancy, Insurance and Financial Services	3	3				1	7
Building Management	1			2	1		4
Information Technology	1		1				2
Education	4	2	3	3	4	1	17
Social Welfare	2	1	2	4	2	3	14
Public Relations and Marketing							0
Arts, Culture, Sports and Publication	1						1
Service Industry	1				1		2
Design and Creative Industry	1			1			2
Transport and Logistics		2	1		1		4
Commercial, Wholesale and Retail	5	4	3	13	3	5	33
Full-time Legislative Council/District Council Member	1	2	2	5	5	4	19
Assistant of Legislative Council/District Council Member							0
Religious							0
Labour and Trade Unions		1					1

<i>District:</i>	<i>Sha Tin</i>						
<i>AC</i>	<i>1. West One</i>	<i>2. West Two</i>	<i>3. West Three</i>	<i>4. East One</i>	<i>5. East Two</i>	<i>6. East Three</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Real Estate							0
Civil Service		1				1	2
Others	3	7	9	4	6	10	39
<b>Total No.</b>	25	26	21	33	25	26	156
<b>Professional Qualification by Sector</b>							
Accountancy	1						1
Medical and Health Services	1	1					2
Architectural, Engineering and Surveying		1				1	2
Legal	1						1
<b>Total No.</b>	3	2	0	0	0	1	6

## Analysis of AC Members

<i>District:</i>	<i>Tsuen Wan</i>				
<i>AC</i>	<i>1. East</i>	<i>2. West</i>	<i>3. Central</i>	<i>4. Rural</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood					0
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong			5		5
Democratic Party	2	2	1		5
Frontier					0
Liberal Party		1			1
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	23	22	20	26	91
Others					0

<i>District:</i>	<i>Tsuen Wan</i>				
<i>AC</i>	<i>1. East</i>	<i>2. West</i>	<i>3. Central</i>	<i>4. Rural</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Sex</b>					
Male	21	19	20	23	83
Female	4	6	6	3	19
<b>Total No.</b>	25	25	26	26	102
<b>Occupation by Sector</b>					
Medical and Health Services		1	1		2
Architectural, Engineering and Surveying			1		1
Legal		2		2	4
Accountancy, Insurance and Financial Services	1	1	3		5
Building Management	1				1
Information Technology					0
Education	2	6		1	9
Social Welfare	2	1	1	2	6
Public Relations and Marketing					0
Arts, Culture, Sports and Publication					0
Service Industry				1	1
Design and Creative Industry					0
Transport and Logistics	1				1
Commercial, Wholesale and Retail	8	9	11	9	37
Full-time Legislative Council/District Council Member	2	1	2		5
Assistant of Legislative Council/District Council Member			1		1
Religious					0
Labour and Trade Unions					0
Real Estate					0
Civil Service				4	4
Others	8	4	6	7	25
<b>Total No.</b>	25	25	26	26	102

<i>District:</i>	<i>Tsuen Wan</i>				
<i>AC</i>	<i>1. East</i>	<i>2. West</i>	<i>3. Central</i>	<i>4. Rural</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Professional Qualification by Sector</b>					
Accountancy		1			1
Medical and Health Services					0
Architectural, Engineering and Surveying			1		1
Legal		2		2	4
<b>Total No.</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>6</b>

## Analysis of AC Members

<i>District:</i>	<i>Tuen Mun</i>					
<i>AC</i>	<i>1. South West</i>	<i>2. South East</i>	<i>3. North East</i>	<i>4. Tai Hing and Shan King</i>	<i>5. North West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood	2	1				3
Civil Force						0
Democratic Alliance for the Betterment and Progress of Hong Kong	4	1	1	3	9	18
Democratic Party	1	2	3		4	10
Frontier						0
Liberal Party						0
Matrix of Democracy and Civil Liberty						0
New Century Forum						0
The Neighbourhood and Workers Service Centre						0
Independent	20	26	18	23	17	104
Others	1		7	3		11

<i>District:</i>	<i>Tuen Mun</i>					
<i>AC</i>	<i>1. South West</i>	<i>2. South East</i>	<i>3. North East</i>	<i>4. Tai Hing and Shan King</i>	<i>5. North West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Sex</b>						
Male	16	22	23	18	15	94
Female	12	8	6	11	15	52
<b>Total No.</b>	28	30	29	29	30	146
<b>Occupation by Sector</b>						
Medical and Health Services			1			1
Architectural, Engineering and Surveying	1		2			3
Legal	1					1
Accountancy, Insurance and Financial Services		1	1		1	3
Building Management	2	2	1		1	6
Information Technology	1					1
Education	3	3	4	5	6	21
Social Welfare	3	1	3	3	8	18
Public Relations and Marketing						0
Arts, Culture, Sports and Publication						0
Service Industry		1				1
Design and Creative Industry						0
Transport and Logistics	1	2	1	3	2	9
Commercial, Wholesale and Retail	6	9	10	7	3	35
Full-time Legislative Council/District Council Member	2	6	1	3	3	15
Assistant of Legislative Council/District Council Member				1		1
Religious						0
Labour and Trade Unions				2	1	3

<i>District:</i>	<i>Tuen Mun</i>					
<i>AC</i>	<i>1. South West</i>	<i>2. South East</i>	<i>3. North East</i>	<i>4. Tai Hing and Shan King</i>	<i>5. North West</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Real Estate			1			1
Civil Service			2	1		3
Others	8	5	2	4	5	24
<b>Total No.</b>	<b>28</b>	<b>30</b>	<b>29</b>	<b>29</b>	<b>30</b>	<b>146</b>
<b>Professional Qualification by Sector</b>						
Accountancy						0
Medical and Health Services						0
Architectural, Engineering and Surveying			1			1
Legal	1					1
<b>Total No.</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>

## Analysis of AC Members

<i>District:</i>	<i>Yuen Long</i>			
<i>AC</i>	<i>1. Tin Shui Wai South</i>	<i>2. Tin Shui Wai North</i>	<i>3. Yuen Long Town</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>				
Association for Democracy and People's Livelihood				0
Civil Force				0
Democratic Alliance for the Betterment and Progress of Hong Kong	5	1	2	8
Democratic Party		1	1	2
Frontier			1	1
Liberal Party		1	1	2
Matrix of Democracy and Civil Liberty				0

<i>District:</i>	<i>Yuen Long</i>			
<i>AC</i>	<i>1. Tin Shui Wai South</i>	<i>2. Tin Shui Wai North</i>	<i>3. Yuen Long Town</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
New Century Forum				0
The Neighbourhood and Workers Service Centre				0
Independent	27	15	28	70
Others	1			1
<b>Sex</b>				
Male	23	12	24	59
Female	10	6	9	25
<b>Total No.</b>	<b>33</b>	<b>18</b>	<b>33</b>	<b>84</b>
<b>Occupation by Sector</b>				
Medical and Health Services			2	2
Architectural, Engineering and Surveying				0
Legal			2	2
Accountancy, Insurance and Financial Services	2		2	4
Building Management	1	2		3
Information Technology				0
Education	5	7	3	15
Social Welfare	3	2	2	7
Public Relations and Marketing			1	1
Arts, Culture, Sports and Publication	1			1
Service Industry				0
Design and Creative Industry				0
Transport and Logistics		1	1	2
Commercial, Wholesale and Retail	4	1	11	16
Full-time Legislative Council/District Council Member	6	4	4	14
Assistant of Legislative Council/District Council Member	2			2

<i>District:</i>	<i>Yuen Long</i>			
<i>AC</i>	<i>1. Tin Shui Wai South</i>	<i>2. Tin Shui Wai North</i>	<i>3. Yuen Long Town</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Religious				0
Labour and Trade Unions				0
Real Estate				0
Civil Service	2		1	3
Others	7	1	4	12
<b>Total No.</b>	33	18	33	84
<b>Professional Qualification by Sector</b>				
Accountancy				0
Medical and Health Services			1	1
Architectural, Engineering and Surveying				0
Legal			2	2
<b>Total No.</b>	0	0	3	3

### Analysis of DFCC Members

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood			1		9	10
Civil Force						0
Democratic Alliance for the Betterment and Progress of Hong Kong	4		7	2	2	15
Democratic Party		7	4	2	2	15
Frontier	1					1
Liberal Party	1	3	2	1		7
Matrix of Democracy and Civil Liberty						0
New Century Forum						0

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
The Neighbourhood and Workers Service Centre						0
Independent	22	21	11	16	28	98
Others	1				1	2
Sex						0
Male	22	22	17	16	31	108
Female	7	9	8	6	11	41
<b>Total No.</b>	<b>29</b>	<b>31</b>	<b>25</b>	<b>22</b>	<b>42</b>	<b>149</b>
<b>Occupation by Sector</b>						
Medical and Health Services	2		1		1	4
Architectural, Engineering and Surveying	1	2		1	2	6
Legal	4	1	1		2	8
Accountancy, Insurance and Financial Services		4		1		5
Building Management		1				1
Information Technology		7		1		8
Education	2	1	3	2	6	14
Social Welfare	3		3	1	3	10
Public Relations and Marketing						0
Arts, Culture, Sports and Publication	1					1
Service Industry		3				3
Design and Creative Industry					1	1
Transport and Logistics						0
Commercial, Wholesale and Retail	11	5	11	8	14	49
Full-time Legislative Council/District Council Member	1	3	5	6	13	28
Assistant of Legislative Council/District Council Member	1					1

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Religious		1				1
Labour and Trade Unions		1	1			2
Real Estate						0
Civil Service						0
Others	3	2		2		7
<b>Total No.</b>	29	31	25	22	42	149
<b>Professional Qualification by Sector</b>						
Accountancy		2				2
Medical and Health Services	1		1		1	3
Architectural, Engineering and Surveying	1	1		1	2	5
Legal		1	1		2	4
<b>Total No.</b>	2	4	2	1	5	14

### Analysis of DFCC Members

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood			1	3	4
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	1	3	4	5	13
Democratic Party	1	2	2	4	9
Frontier					0
Liberal Party	1		1		2
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Independent	17	21	21	27	86
Others		1			1
Sex					0
Male	14	19	20	33	86
Female	6	8	9	6	29
<b>Total No.</b>	20	27	29	39	115
<b>Occupation by Sector</b>					
Medical and Health Services		3			3
Architectural, Engineering and Surveying		1	1		2
Legal	1	4	1	4	10
Accountancy, Insurance and Financial Services		3	1	1	5
Building Management				1	1
Information Technology				1	1
Education	7	2	3	3	15
Social Welfare	2	2	4	6	14
Public Relations and Marketing					0
Arts, Culture, Sports and Publication				2	2
Service Industry		2		2	4
Design and Creative Industry					0
Transport and Logistics					0
Commercial, Wholesale and Retail	6	2	13	12	33
Full-time Legislative Council/District Council Member	2	4	3	4	13
Assistant of Legislative Council/District Council Member					0
Religious					0
Labour and Trade Unions		1			1
Real Estate		1			1
Civil Service					0

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Others	2	2	3	3	10
<b>Total No.</b>	20	27	29	39	115
<b>Professional Qualification by Sector</b>					
Accountancy		1			1
Medical and Health Services		2			2
Architectural, Engineering and Surveying		1	1		2
Legal	1	4	1	4	10
<b>Total No.</b>	1	8	2	4	15

### Analysis of DFCC Members

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood						0
Civil Force					7	7
Democratic Alliance for the Betterment and Progress of Hong Kong	2	2	3	6	8	21
Democratic Party		2	4	2	2	10
Frontier		1		1	1	3
Liberal Party		1				1
Matrix of Democracy and Civil Liberty						0
New Century Forum						0
The Neighbourhood and Workers Service Centre		1				1
Independent	18	26	18	8	21	91
Others				3		3
<b>Sex</b>						0
Male	14	24	19	14	29	100
Female	6	9	6	6	10	37
<b>Total No.</b>	20	33	25	20	39	137

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Occupation by Sector</b>						
Medical and Health Services						0
Architectural, Engineering and Surveying	1	2		2		5
Legal			2		2	4
Accountancy, Insurance and Financial Services		1			1	2
Building Management		1				1
Information Technology			1		2	3
Education	4	4	3	3	6	20
Social Welfare	1	1	3	3	5	13
Public Relations and Marketing						0
Arts, Culture, Sports and Publication						0
Service Industry	1				1	2
Design and Creative Industry			1			1
Transport and Logistics		1				1
Commercial, Wholesale and Retail	7	12	8	5	15	47
Full-time Legislative Council/District Council Member	5	7	3	5	2	22
Assistant of Legislative Council/District Council Member						0
Religious						0
Labour and Trade Unions			1		1	2
Real Estate						0
Civil Service			2			2
Others	1	4	1	2	4	12
<b>Total No.</b>	<b>20</b>	<b>33</b>	<b>25</b>	<b>20</b>	<b>39</b>	<b>137</b>
<b>Professional Qualification by Sector</b>						
Accountancy		1				1
Medical and Health Services						0

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Architectural, Engineering and Surveying						0
Legal			2		2	4
<b>Total No.</b>	0	1	2	0	2	5

### Analysis of DFCC Members

<i>District:</i>	<i>Tai Po</i>	<i>Tsuen Wan</i>	<i>Tuen Mun</i>	<i>Yuen Long</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood					0
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	7	3	5	3	18
Democratic Party	3	4	5	1	13
Frontier					0
Liberal Party	2	1			3
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	20	23	14	22	79
Others			3		3
<b>Sex</b>					0
Male	24	25	18	19	86
Female	8	6	9	7	30
<b>Total No.</b>	32	31	27	26	116
<b>Occupation by Sector</b>					
Medical and Health Services	1				1
Architectural, Engineering and Surveying		1			1

<i>District:</i>	<i>Tai Po</i>	<i>Tsuen Wan</i>	<i>Tuen Mun</i>	<i>Yuen Long</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Legal	2	2		2	6
Accountancy, Insurance and Financial Services	2	2		1	5
Building Management					0
Information Technology					0
Education	2	3	4	5	14
Social Welfare	4	4	3	3	14
Public Relations and Marketing					0
Arts, Culture, Sports and Publication					0
Service Industry					0
Design and Creative Industry	1		1		2
Transport and Logistics					0
Commercial, Wholesale and Retail	14	13	6	6	39
Full-time Legislative Council/District Council Member	4	4	9	9	26
Assistant of Legislative Council/District Council Member	1				1
Religious					0
Labour and Trade Unions			1		1
Real Estate					0
Civil Service					0
Others	1	2	3		6
<b>Total No.</b>	<b>32</b>	<b>31</b>	<b>27</b>	<b>26</b>	<b>116</b>
<b>Professional Qualification by Sector</b>					
Accountancy	1				1
Medical and Health Services					0

<i>District:</i>	<i>Tai Po</i>	<i>Tsuen Wan</i>	<i>Tuen Mun</i>	<i>Yuen Long</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Architectural, Engineering and Surveying		1			1
Legal	2	2		2	6
<b>Total No.</b>	3	3	0	2	8

### Analysis of DFSC Members

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood			1		2	3
Civil Force						0
Democratic Alliance for the Betterment and Progress of Hong Kong	3	5	3	1	1	13
Democratic Party	1	2	3	1		7
Frontier						0
Liberal Party		1	2			3
Matrix of Democracy and Civil Liberty						0
New Century Forum						0
The Neighbourhood and Workers Service Centre						0
Independent	13	17	14	20	26	90
Others		1	1			2
<b>Sex</b>						
Male	11	17	18	14	21	81
Female	6	9	6	8	8	37
<b>Total No.</b>	17	26	24	22	29	118
<b>Occupation by Sector</b>						
Medical and Health Services						0

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Architectural, Engineering and Surveying	1		4	1	1	7
Legal	1		1		1	3
Accountancy, Insurance and Financial Services	2	2				4
Building Management	1		1		3	5
Information Technology						0
Education	1	3	1	1	4	10
Social Welfare	1	2	1		4	8
Public Relations and Marketing	1			2		3
Arts, Culture, Sports and Publication						0
Service Industry		1				1
Design and Creative Industry						0
Transport and Logistics			2			2
Commercial, Wholesale and Retail	6	8	5	7	10	36
Full-time Legislative Council/District Council Member		5	4	4	3	16
Assistant of Legislative Council/District Council Member						0
Religious						0
Labour and Trade Unions						0
Real Estate						0
Civil Service						0
Others	3	5	5	7	3	23
<b>Total No.</b>	17	26	24	22	29	118
<b>Professional Qualification by Sector</b>						
Accountancy	1	1				2

<i>District:</i>	<i>Central and Western</i>	<i>Eastern</i>	<i>Kowloon City</i>	<i>Kwun Tong</i>	<i>Sham Shui Po</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Medical and Health Services						0
Architectural, Engineering and Surveying	1		4	1	1	7
Legal	1		1		1	3
<b>Total No.</b>	3	1	5	1	2	12

### Analysis of DFSC Members

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood			1	2	3
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	1	5	3	3	12
Democratic Party			1	1	2
Frontier					0
Liberal Party	1		1		2
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	21	19	22	24	86
Others		2			2
<b>Sex</b>					
Male	17	18	21	22	78
Female	6	8	7	8	29
<b>Total No.</b>	23	26	28	30	107

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Occupation by Sector</b>					
Medical and Health Services		3	1		4
Architectural, Engineering and Surveying	3	1	1		5
Legal			1	2	3
Accountancy, Insurance and Financial Services		1		1	2
Building Management			1		1
Information Technology					0
Education	2	1	4	4	11
Social Welfare			2	2	4
Public Relations and Marketing		2			2
Arts, Culture, Sports and Publication				2	2
Service Industry			1		1
Design and Creative Industry					0
Transport and Logistics	1		1		2
Commercial, Wholesale and Retail	8	10	6	13	37
Full-time Legislative Council/District Council Member	3	2	5		10
Assistant of Legislative Council/District Council Member					0
Religious				1	1
Labour and Trade Unions				1	1
Real Estate					0
Civil Service					0
Others	6	6	5	4	21
<b>Total No.</b>	<b>23</b>	<b>26</b>	<b>28</b>	<b>30</b>	<b>107</b>

<i>District:</i>	<i>Southern</i>	<i>Wan Chai</i>	<i>Wong Tai Sin</i>	<i>Yau Tsim Mong</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Professional Qualification by Sector</b>					
Accountancy				1	1
Medical and Health Services		3	1		4
Architectural, Engineering and Surveying	3	1	1		5
Legal			1	2	3
<b>Total No.</b>	3	4	3	3	13

### Analysis of DFSC Members

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>						
Association for Democracy and People's Livelihood						0
Civil Force				1	3	4
Democratic Alliance for the Betterment and Progress of Hong Kong	4	2	3	3	3	15
Democratic Party		2	1		1	4
Frontier					1	1
Liberal Party		1		1		2
Matrix of Democracy and Civil Liberty						0
New Century Forum						0
The Neighbourhood and Workers Service Centre		2				2
Independent	20	18	16	10	16	80
Others		2		3	1	6
<b>Sex</b>						
Male	16	19	15	14	20	84
Female	8	8	5	4	6	31
<b>Total No.</b>	24	27	20	18	26	115

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Occupation by Sector</b>						
Medical and Health Services						0
Architectural, Engineering and Surveying				1	1	2
Legal		1		1		2
Accountancy, Insurance and Financial Services	2		1		2	5
Building Management	1	2		2	2	7
Information Technology						0
Education	2	4	2	2	5	15
Social Welfare		1				1
Public Relations and Marketing					1	1
Arts, Culture, Sports and Publication						0
Service Industry		2				2
Design and Creative Industry						0
Transport and Logistics		1				1
Commercial, Wholesale and Retail	14	4	9	7	7	41
Full-time Legislative Council/District Council Member	5	6	1	2	3	17
Assistant of Legislative Council/District Council Member						0
Religious						0
Labour and Trade Unions						0
Real Estate						0
Civil Service					1	1
Others	0	6	7	3	4	20
<b>Total No.</b>	24	27	20	18	26	115
<b>Professional Qualification by Sector</b>						
Accountancy	1					1

<i>District:</i>	<i>Islands</i>	<i>Kwai Tsing</i>	<i>North</i>	<i>Sai Kung</i>	<i>Sha Tin</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Medical and Health Services						0
Architectural, Engineering and Surveying				1	1	2
Legal		1		1		2
<b>Total No.</b>	1	1	0	2	1	5

### Analysis of DFSC Members

<i>District:</i>	<i>Tai Po</i>	<i>Tsuen Wan</i>	<i>Tuen Mun</i>	<i>Yuen Long</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
<b>Political Affiliation</b>					
Association for Democracy and People's Livelihood			1		1
Civil Force					0
Democratic Alliance for the Betterment and Progress of Hong Kong	5	3	5	2	15
Democratic Party	3		1		4
Frontier	1			1	2
Liberal Party	3				3
Matrix of Democracy and Civil Liberty					0
New Century Forum					0
The Neighbourhood and Workers Service Centre					0
Independent	10	16	13	17	56
Others	1	1			2
<b>Sex</b>					
Male	17	15	15	15	62
Female	6	5	8	5	24
<b>Total No.</b>	23	20	23	20	86
<b>Occupation by Sector</b>					
Medical and Health Services	1				1
Architectural, Engineering and Surveying				1	1

<i>District:</i>	<i>Tai Po</i>	<i>Tsuen Wan</i>	<i>Tuen Mun</i>	<i>Yuen Long</i>	<i>Total</i>
	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>	<i>No.</i>
Legal	1	1		1	3
Accountancy, Insurance and Financial Services	2	1	1	1	5
Building Management			4		4
Information Technology					0
Education	3	2	1	2	8
Social Welfare	1	1			2
Public Relations and Marketing				1	1
Arts, Culture, Sports and Publication					0
Service Industry				1	1
Design and Creative Industry					0
Transport and Logistics				2	2
Commercial, Wholesale and Retail	6	10	7	8	31
Full-time Legislative Council/District Council Member	4		8	3	15
Assistant of Legislative Council/District Council Member					0
Religious					0
Labour and Trade Unions					0
Real Estate					0
Civil Service					0
Others	5	5	2		12
<b>Total No.</b>	<b>23</b>	<b>20</b>	<b>23</b>	<b>20</b>	<b>86</b>
<b>Professional Qualification by Sector</b>					
Accountancy					0
Medical and Health Services	1				1
Architectural, Engineering and Surveying				1	1
Legal	1	1		1	3
<b>Total No.</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>5</b>

**Flexible Public Housing Production Strategy**

16. **MR FREDERICK FUNG** (in Chinese): *Madam President, in 2000, the Housing Authority endorsed a more flexible production strategy, including the wider use of non-standard blocks and site-specific designs to meet housing demand, and the provision of more diversified designs of public housing to enrich the cityscape. In this connection, will the Government inform this Council:*

- (a) *of the number of public housing units produced under the above strategy and the names of the housing estates concerned;*
- (b) *whether, apart from the use of site-specific designs, the strategy has regard for the need for harmony with local community characteristics, which include the styles, appearances and heights of the surrounding buildings, the nearby natural environment, and the population structure of the community concerned and the residents' living patterns, and so on; and;*
- (c) *whether it has assessed if the above strategy can achieve the desired effect; if it has, of the assessment results, and whether it has collected the views of the community or the residents on the housing designs; if it has, of the details of these views; if it has not collected such views, the reasons for that?*

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

- (a) In November 2000, the Housing Authority decided that non-standard designs taking into account site characteristics should be used more widely in the construction of public housing estates so as to optimize the development potential of the sites, highlight the identity of the estates and introduce variety into public housing designs. Since then, 15 public housing developments have adopted non-standard designs, which include the use of modified standard block design. These developments will provide some 28 000 flats in total. Details are at Annex.

- (b) In planning and designing new public housing estates, the Housing Department takes into consideration a number of factors such as the physical environment, the characteristics of the neighbourhood and residents' needs. The building design will seek to integrate as far as possible the natural environment, the landscape and neighbourhood features by, for example, using building design of varying heights or cascading profiles to align with the outlook of nearby buildings and terrains, or through estate open space designs to capture the surrounding vista or scenery. In addition, through micro-climate studies and greening, the lighting and ventilation of the buildings will be enhanced and the natural environments can be optimized. Besides, to ensure that the new estates meet the needs of the local population and cater for their lifestyle, consultations are carried out at the planning stage. For new estates earmarked to be reception estates for redevelopment projects, the affected tenants are also consulted so that the design and facilities of the estates dovetail with the characteristics of the community.
- (c) Through surveys and interviews, the Housing Department gauges the views of tenants of newly completed estates on issues like estate planning, design, and landscaping in order to assess their satisfaction with the new living environment. Of the 15 public housing developments using non-standard design, two have been completed and residents have moved in. We will collect tenants' feedback to assist us in evaluating public housing design and making any necessary improvements in pursuit of excellence.

Annex

**Public Housing Developments Adopting Non-standard Design**  
(As at end of April 2005)

<i>Name of Projects</i>	<i>No. of Blocks</i>	<i>No. of Flats</i> <sup>Note</sup>
<i>Completed Projects</i>		
1. Tin Shui Wai Area 101 Phase 1 (Tin Yan Estate)	4	3 528
2. Tin Shui Wai Area 101 Phase 2 (Tin Yan Estate)	4	2 112

<i>Name of Projects</i>	<i>No. of Blocks</i>	<i>No. of Flats</i> <sup>Note</sup>
<i>Projects under Construction</i>		
3. North West Kowloon Reclamation Site 10 Phase 4	1	588
4. Shek Kip Mei Redevelopment Phase 1	2	2 033
5. Sha Tin Area 4C/38A Phase 3 (Mei Tin Estate)	3	2 333
6. Aldrich Bay Phase 5	1	716
7. Tin Shui Wai Area 103 Phase 1	2	1 918
8. Tin Shui Wai Area 103 Phase 2	2	1 918
9. Upper Ngau Tau Kok Estate Redevelopment Phase 2	3	2 250
10. Upper Ngau Tau Kok Estate Redevelopment Phase 3	3	2 334
11. Tin Shui Wai Area 104	3	2 557
12. Lam Tin Estate Phase 7	3	2 317
13. Lam Tin Estate Phase 8	1	799
14. Yau Lai Estate Phase 4	2	1 600
15. Upper Wong Tai Sin Estate Redevelopment Phase 3	1	712
Total:	35	27 715

Note Apart from Tin Shui Wai Area 101 Phases 1 and 2 (that is, Tin Yan Estate), the remaining 13 projects are still in design or construction state. The number of flats to be constructed is based on the latest design.

## **Global Warming**

17. **DR KWOK KA-KI** (in Chinese): *Madam President, it has been reported that the Hong Kong Observatory (HKO) has advised that Hong Kong and other regions around the globe have been affected by warming, and it is projected that the annual mean in Hong Kong in the last decade of this century will be 26.5 degrees Centigrade, 3.5 degrees higher than the average recorded between 1961 and 1990. In this connection, will the Government inform this Council whether:*

- (a) *it has conducted researches on the relationship between global warming and infectious diseases;*

- (b) *it has conducted researches on the causes of the increase in the number of infectious disease (such as dengue fever) patients, and on the relationship between such increase and global warming;*
- (c) *it has assessed the impact of the infectious diseases caused by global warming on the local health care system (for instance, whether health care costs have risen); and*
- (d) *it has maintained liaison and regular exchange with the World Health Organization (WHO) and mainland health authorities regarding the relationship between global warming and infectious diseases; if not, whether it has plans to establish a relevant research and exchange mechanism with the international medical and health authorities and the mainland health authorities?*

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

(a), (b) and (c)

The Department of Health (DH) has been closely monitoring researches and studies undertaken by international health authorities such as the WHO which has recognized that, globally speaking, climatic effects associated with global warming like temperature changes and rainfall may increase the transmission potential for some vector and water-borne diseases by affecting the life cycle dynamics of relevant vectors, for example, mosquitoes and pathogenic organisms, and by contaminating drinking water, recreational water or food.

Government departments have also conducted or participated in researches and studies on the relationship between climatic factors and infectious diseases in the local context. For example, the Scientific Committees set up under the DH's Centre for Health Protection (CHP), with the assistance from the HKO, have examined the relationship between climatic variables, including temperature and humidity, and selected local infectious diseases of public concern such as Japanese encephalitis. Dengue fever is

another infectious disease which the CHP has been studying and watching closely. Moreover, the HKO has recently performed a literature review on the possible link between Severe Acute Respiratory Syndrome and climate as well as that between Avian Influenza and climate in their past outbreaks for the Commission of Climatology of the World Meteorological Organization (WMO)<sup>1</sup>.

In the above studies and review, it was noted that seasonality or climatic factors may be one of the contributing factors to the transmission potential of these diseases although whether it is a major or a direct link remains to be confirmed.

As far as dengue fever is concerned, overseas studies reveal that warmer temperature may facilitate its spread by favouring the growth of mosquitoes (the vector for the transmission of the disease), making them more active, extending their range of movements and habitats and lengthening the transmission season for the disease. Nonetheless, in Hong Kong, it is also noted that the majority of the reported dengue fever cases in recent years, which are on a rising trend, were actually imported cases. The rising trend may be attributable to an interplay of various factors including enhanced awareness of infectious diseases among health care professional and the public, more frequent international travelling, increased disease activity in neighbouring places and our enhanced disease surveillance system, and so on.

The DH and the Food and Environmental Hygiene Department (FEHD) will closely monitor the developments and take note of the results of international and local studies on the relationship between climatic factors and infectious diseases when they formulate and update their public health control strategies and contingency plans for infectious disease outbreaks. In this connection, the DH has put in place disease surveillance and public health control mechanisms in collaboration with other departments to prevent and

<sup>1</sup> The WMO is an intergovernmental organization with a membership of 187 Member States and Territories. It is the specialized agency of the United Nations for meteorology (weather and climate), operational hydrology and related geophysical sciences. The WMO Commission of Climatology is responsible for promoting and facilitating activities relating to climate and its relationship with human well-being, human activities, natural ecosystems and sustainable development.

control the spread of infectious diseases having regard to seasonality and climatic factors. Apart from launching annual interdepartmental territory-wide anti-mosquito campaigns to raise public awareness, the FEHD would conduct thematic operations in sustaining the efforts on mosquito control.

- (d) The DH has established effective disease information exchange mechanisms with the WHO as well as health authorities in the Mainland and other places. These mechanisms cover infectious diseases which may be affected by global warming. The DH would also take into account climatic factors in its studies on infectious diseases as appropriate. In this connection, it will seek relevant inputs and co-operation from the HKO, which maintains regular liaison with the WMO and China Meteorological Administration, and so on, on matters relating to global climate change.

### **Crackdowns on Illegal Workers**

18. **MS EMILY LAU** (in Chinese): *Madam President, regarding crackdowns on illegal workers, will the executive authorities inform this Council:*

- (a) *of the number of operations against illegal workers and the number of employers convicted last year of employing illegal workers, with a breakdown of such employers by trade; and how these figures compare to those of the previous two years;*
- (b) *whether they have detected cases in which arrangements were made by lawless elements for illegal workers to arrive in groups for employment in Hong Kong; if so, of the numbers of such cases in the past three years;*
- (c) *whether they have assessed the effectiveness of operations against illegal workers in protecting the employment opportunities of local workers; if so, of the assessment results; and*
- (d) *whether they plan to impose heavier penalties for employing illegal workers and taking up employment illegally so as to enhance the*

*deterrent effect; if so, of the details of the plan; if not, the reasons for that?*

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

- (a) The number of operations against illegal workers and the number of employers convicted in the past three years are as follows:

<i>Year</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005 (January to March)</i>
Number of Operations	3 580 (73)	5 739 (98)	7 659 (85)	1 817 (25)
Number of Employers Convicted	303	365	369	74

( ) number of joint operations conducted by concerned departments included.

We do not have a breakdown of the convicted employers by trade. Our observation is that arrested illegal workers and employers are mainly involved in businesses such as interior renovation, food and beverages and in the recycling industry.

- (b) At present, most of the arrested illegal workers come to Hong Kong on an individual basis to try their luck in looking for employment, though occasionally a small number of persons may have been introduced or arranged to take up illegal employment by their clansmen or friends who are sub-contractors. There is no evidence to show that illegal syndicates making arrangements for persons from outside Hong Kong to come here in groups for illegal employment has become a trend. However, we will closely monitor the situation and will spare no efforts in enhancing the collection of intelligence and combating operations. Any person who aides or abets a visitor to Hong Kong to breach his condition of stay commits an offence and is liable on conviction to a fine of \$50,000 and to imprisonment for two years.
- (c) Anti-illegal employment operations certainly contribute towards the protection of employment opportunities for the local workforce.

The number of anti-illegal employment operations conducted by law enforcement agencies in 2004 went up by 30% over 2003, resulting in the arrest of more than 5 000 suspected illegal workers. Furthermore, more than 200 employers were sentenced to immediate imprisonment on conviction, which nearly doubled the number in 2003. We will continue to enhance law enforcement, publicity and public education to combat against illegal employment.

- (d) The maximum penalty under the Immigration Ordinance for working illegally is \$50,000 fine and two years' imprisonment, whilst that for employing a person who is not lawfully employable stands at \$350,000 fine and three years' imprisonment.

In September 2004, the Court of Appeal laid down a sentencing guideline for the offence of employing a person who is not lawfully employable. Under the guideline, even a first-time offender employing an illegal worker on a casual basis should be sentenced to three months' immediate imprisonment upon conviction. The sentence should be increased if there are aggravating factors such as employing a number of such persons or having previously committed the offence in question. The Court of Appeal also reiterated that the fact that the persons employed were relatives or clansmen did not constitute mitigating factors.

Furthermore, to combat the use by illegal workers of identity cards belonging to other persons or which are forged, the Court of Appeal handed down a sentencing guideline in March 2005 under which a 12-month imprisonment should be imposed even if the offender's stay in Hong Kong is legal. The sentencing benchmark should be set at 15-month imprisonment if the offender has presented or used an identity card belonging to another person or which is forged as a cover up for his working illegally in Hong Kong.

We believe that the maximum penalties and sentencing guidelines laid down by the Court sufficiently reflect the gravity of the related offences and provide effective deterrent.

We will continue to pay attention to cases in which the sentences imposed might be inadequate. Where appropriate, we will seek

legal advice on whether an application for a sentence review or for leave to appeal against the sentence should be made.

### **Services of Hongkong Post**

19. **MR LAU KONG-WAH** (in Chinese): *Madam President, with respect to the services provided by the Hongkong Post, will the Government inform this Council:*

- (a) *of the respective numbers of persons who visited post offices for mailing and bill payment in the past two years, and the existing manning ratios for post office counters providing these two types of services;*
- (b) *whether it has reviewed if the queueing time for mailing at counters has become longer in recent years due to an increasing number of people using the bill payment services;*
- (c) *of the basis on which the Hongkong Post determines the daily number of mail collections and the daily collection times for posting boxes, as well as the locations of new posting boxes; and*
- (d) *whether the Hongkong Post will instruct its front-line staff to heed the mail volumes when collecting mails from posting boxes, so that more mail collections can be arranged where necessary?*

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

- (a) The Post Office does not have separate statistics on the number of persons who visit its post offices for mailing and bill payment services. The statistics on the number of mail items and bills handled at the counters of the post offices are:

	<i>2003-04</i>	<i>2004-05</i>
No. of mail items	11.2 million	11.2 million
No. of bills	21.3 million	22.7 million

On staffing, out of 131 post offices (excluding two mobile post offices):

- 72 post offices are manned by two counter staff: the public join the same queue for both mailing and bill payment services; and
  - the remaining 59 post offices are manned by between three to 25 counter staff. The Post Office deploys its manpower flexibly to meet public demand for these two types of services.
- (b) The Post Office regularly conducts surveys on its counter service to see whether they meet the performance targets. The results of the surveys show that after the introduction of the bill payment service, the Post Office continues to meet its performance target, that is, at least 98% of customers for all types of counter services are served within 10 minutes during non-peak hours and within 25 minutes during peak hours and peak periods (for example, on the first few days of issue of philatelic products, Christmas and Chinese New Year seasons and government bills payment peak time, and so on). The Post Office regularly reviews the operation of its counters and deploys additional staff as necessary to ensure that the above performance targets are met.
- (c) In business districts, the posting boxes are cleared between two to five times per day depending on the mail volume of individual posting boxes. The collection time spreads between 10.30 am and 6 pm. In other districts, all the posting boxes are cleared once every day, and the collection time is usually between 4 pm and 5 pm. In remote areas, the collection time is earlier so that letters can reach the mail processing centres in time for sorting and delivery by the next working day.

On the location of posting boxes, the distance between any two posting boxes generally should not be less than 400 m in urban areas and 800 m in other areas. The Post Office takes into account other factors, such as the availability of post offices in the vicinity and the

mail volume in the area when considering the location of posting boxes.

- (d) When collecting mail, the front-line staff are instructed to note the volume of mail so that more collections can be arranged if necessary. In addition, the Post Office records the mail volume of the posting boxes in the business districts every day to monitor their usage and decide whether more collections should be arranged.

## **BILLS**

### **First Reading of Bills**

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

### **REVENUE (ABOLITION OF ESTATE DUTY) BILL 2005**

### **SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005**

**CLERK** (in Cantonese): Revenue (Abolition of Estate Duty) Bill 2005  
Smoking (Public Health) (Amendment) Bill 2005.

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

### **Second Reading of Bills**

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

### **REVENUE (ABOLITION OF ESTATE DUTY) BILL 2005**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I move the Second Reading of the Revenue (Abolition of Estate Duty) Bill 2005 (the Bill).

The Bill seeks to introduce amendments to the Estate Duty Ordinance (Cap. 111), so as to implement the proposal to abolish estate duty in the 2005-06 Budget.

To promote the development of the asset management business, the Government consulted interested parties and the public at large last year on the abolition of estate duty. On the whole, the majority view tends to support abolition. Those in support of abolition take the view that, although the duty is originally targeted at the better-off, in practice the latter may avoid it through various legal means. They point out that, in other places, estate duty avoidance is also very common and it is no easy task to plug these loopholes. There is some unfairness in the duty in the sense that most people paying the duty do not belong to the wealthiest class of the community. Others think that, as the assessment of estate duty takes considerable time, and the assets of citizens, particularly operators of small and medium enterprises (SMEs), may be frozen during the assessment period, this causes them cash flow problems. In settling estate duty, some enterprises may have to sell their assets to raise cash and as a result encounter operation difficulties. The adverse impact of estate duty on SMEs is one of the reasons for some countries to abolish the duty.

We also hold the view that abolition of estate duty can bring about the advantages above. Moreover, with its abolition, Hong Kong will become a more important asset management centre. We believe that the abolition will make Hong Kong a more attractive place to investors and thereby encouraging more people, including overseas investors, to hold assets in Hong Kong through a Hong Kong corporate vehicle or trust; and it will encourage people who currently invest in foreign assets in order to avoid the tax to transfer their overseas investments back to Hong Kong. This will attract more overseas companies and professionals to come here, and facilitate the further development of our asset management business, create more employment opportunities, and in turn strengthen Hong Kong's competitiveness as an international financial centre.

Upon implementation of the abolition of estate duty, the time required for heirs to an estate to go through the whole process will be greatly reduced because there is no longer any need for estate duty assessment before applying to the Court for the granting of probate or letters of administration. This will help ease any cash flow problems that heirs to an estate may face.

With its direct economic contribution accounting for 13% of our Gross Domestic Product, the financial industry is one of the economic pillars in Hong Kong, and asset management is an important business within the industry. Hong Kong is a key asset management centre in Asia. In 2003, the total assets in fund management business in Hong Kong amounted to \$2,950 billion, of which \$1,860 billion or 63% originated from overseas investors. Favourable conditions such as the high savings rate in Asia, good economic prospects in the region, the enormous amount of pension capital managed under banks, fund managers and insurance companies in the region as well as the mainland policies towards gradually broadening of the scope of investment all encourage further development of the asset management business.

Other countries in the Asia Pacific Region including India, Malaysia, New Zealand and Australia have one after another abolished estate duty in the past 20 years. Europe, Italy and Sweden have also abolished the tax. The House of Representatives of the United States passed a bill on 13 April 2005 to scrap estate duty once and for all and the bill has been submitted to their Senate for scrutiny. If we do not adopt decisive measures to counteract such pressure of competition, Hong Kong's financial market may shrink in size and share in the world and in the region. The abolition will remove a major obstacle in and thereby provide better conditions for the further development of the asset management business.

As asset management business can foster growth in a number of professional services, other industries will also indirectly benefit from it. We expect that it will bring many economic benefits to society as well as the general public.

As regards the proposal that instead of abolishing estate duty, the exemption threshold of the duty should be adjusted and the levying procedures simplified in order to reduce its impact on SMEs, I wish to stress here that the abolition works not only as a tax concession, but also as a measure to further promote the development of Hong Kong into an international financial centre and international asset management centre, which is the principal aim of the abolition. Such aims and benefits mentioned by me just now cannot be achieved by other proposals.

Although the abolition will lead to a reduction of government revenue of around \$1.5 billion per annum, we expect that it will encourage investments in

Hong Kong's financial and property markets, thereby bringing additional revenue from stamp duty and other taxes.

"If one does not forge ahead, one will lag behind", as the saying goes. We in the face of global competition have to be far-sighted and be brave enough to take proactive reform measures, so as to strengthen Hong Kong's edge as an international financial centre. I urge Members to support abolition of estate duty in the interest of the long-term development of Hong Kong.

We propose that the abolition will take effect upon commencement of the Revenue (Abolition of Estate Duty) Ordinance 2005. Estates of persons passing away after midnight of the day when the Ordinance is gazetted will not be subject to estate duty. Many members of the public have indicated their wish to me to abolish estate duty as soon as possible. I hope this Council can expedite the scrutiny and passage of the Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Revenue (Abolition of Estate Duty) 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.

### **SMOKING (PUBLIC HEALTH) (AMENDMENT) BILL 2005**

**SECRETARY FOR HEALTH, WELFARE AND FOOD** (in Cantonese): Madam President, I move the Second Reading of the Smoking (Public Health) (Amendment) Bill 2005 (the Bill).

The principle aims of the Bill are to protect the public against secondhand smoking in indoor workplaces and public places and to tighten control over the advertisement and promotion of tobacco products.

I believe Members would agree with me that "prevention is better than cure" and smoking control has been proven medically as one of the most effective ways to prevent diseases. I also believe Members are well aware of the harmful effects of secondhand smoking to health and the economic loss that

secondhand smoking will cost. As a responsible government, we must adopt measures to protect public health.

In the Bill, we propose extending the statutory no smoking areas to cover restaurants, bars, karaoke establishments, mahjong premises and universities/post secondary schools; as well as indoor areas of workplaces such as offices, factories, private clubs and individual shops. Some people worry that they may break the law if the definitions adopted in the legislation to determine whether a workplace is "indoor" are different from the understanding of the law enforcement departments. It is impossible for us to list all indoor workplaces in the Bill, but the Department of Health is very willing to work with different industries to formulate guidelines and to clarify any questions they may have.

We understand that some people, in particular employers or employees of the catering industry, worry that a total smoking ban in restaurants may have negative impacts on their business. However, judging from the number of "smoke-free restaurants" reaching over 800 in Hong Kong and making reference to experience in Europe and the United States, the smoking ban may not necessarily bring negative impacts to restaurants. In particular, when the total smoking ban comes into effect, the catering industry will be able to operate in a level playing field and more people will be dining in restaurants because they are "smoke-free". We will continue to work with the catering and hospitality industries to allay their outstanding concerns about the smoking ban legislation.

I have already requested the Department of Health to expeditiously form a working group with the related industries to help their understanding of and compliance with the new requirements of the legislation. We hope to clarify their queries and concerns before the Bill comes into effect.

Some members of the catering industry are of the view that we are making reference to selective overseas experience without citing examples that are seriously affected by the smoking ban. Others pointed out that the foreign lifestyle and social environment are different from those of Hong Kong and should not be used as the standard for comparison. I hope persons voicing these criticisms can note that we have made reference not only to a lot of overseas experience, but also the experience of over 800 "smoke-free restaurants" in Hong Kong. The fact that the number of smoke-free restaurants has been on the increase in recent years is strong proof that a total smoking ban in restaurants will not affect their business.

Some members of the industry have proposed to us that places (for example, entertainment establishments) which have a higher ratio of smokers in the customers can be exempted from the smoking ban or that smoking can be allowed in designated areas and during a specific time (for example, in a smoking chamber or during non-peak hours). As exemption will lead to unfair competition by attracting smoking customers to these exempted places and it will not assure protection of the health of employees and customers, we thus will not consider these exemption arrangements, but we agree with the need to establish transitional arrangements to allow time for the industry to cope with the new requirements.

We propose providing a 90-day adaptation period for premises affected by the expanded scope of the statutory smoking ban. As regards requests from the catering and hospitality industries to extend this transitional period, we can slightly extend it if the industry has practical difficulties in, for example, carrying out structural changes to their business premises. However, we hope the industry will first find ways to adapt to the changes and seek extension of the transitional period only when necessary. With regard to the proposal of extending the transitional period in terms of years, we cannot find any grounds to support it.

In regard to the advertisement of tobacco products, we propose revoking the current exemption on display of tobacco advertisements at licensed hawker stalls and retail outlets employing not more than two employees, and restrictions will be imposed on the size of price boards and price markers. We also propose prohibiting the sale of tobacco product and non-tobacco merchandise as a single item in order to minimize the undesirable effect of inducing purchase of tobacco products by smokers and non-smokers.

To further reduce the incentive for people to smoke and enhance the visual impact and deterrent effect of the health warnings, we propose requiring the packets or retail containers of tobacco products to bear the statutory health warnings with pictorial and graphic contents; and increasing the prescribed area of the health warnings to at least 50% of the principal surface area of the packet or container.

In regard to law enforcement, we propose conferring powers on the staff of the Tobacco Control Office of the Department of Health to take enforcement actions. We recommend managers of new statutory no smoking areas should be conferred with the same enforcement powers as that of the managers of existing

statutory no smoking areas, so that they can take immediate remedial actions upon detecting or being notified of a smoking act.

It is government policy to discourage smoking by a step-by-step approach. No matter from the public consultation exercise in June 2001, the motion debate of the Legislative Council meeting in October 2004 or the deliberations on the proposed amendments by the Panel on Health Services early this year, we note that Members and the community generally support most of the proposed measures. Internationally, the adoption of the Framework Convention on Tobacco Control by the World Health Organization in May 2003 has heightened the momentum for tightening tobacco control laws worldwide. Indeed, tobacco control has become a new trend in the world.

Hong Kong is a densely populated international city. The passage of the Bill will help improve the health of the community at large and will be a big stride forward for Hong Kong towards a smoke-free city. I thus urge Members to support the Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Smoking (Public Health) (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.

## **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: the movers of these motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on the amendments; the movers of amendments will each have up to 10 minutes to speak; other Members will each have up to seven minutes for their speeches. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: Regretting interpretation of the Basic Law by the Standing Committee of the National People's Congress.

Mr LEUNG Kwok-hung is the mover of this motion, but he is not in the Chamber at the moment. Thus, I now have to suspend the meeting, so that we can look for him and bring him back to move this motion.

**MS MARGARET NG** (in Cantonese): Madam President, we know that the petitioners downstairs are having a clash. Insofar as we understand it, Mr LEUNG Kwok-hung is now dealing with the situation. Madam President, I think his absence in this Chamber at this stage is not deliberate.

**PRESIDENT** (in Cantonese): This is not related to this Council. It is the Member's own choice if he goes outside to deal with other matters in the course of the meeting. However, if the mover of the motion is not present in the Chamber, he should explain to this Council himself. Therefore, I now suspend the meeting.

12.54 pm

Meeting suspended.

1.00 pm

Council then resumed.

## **REGRETTING INTERPRETATION OF THE BASIC LAW BY THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS**

**MR LEUNG KWOK-HUNG** (in Cantonese): First of all, I have to apologize to Members. As I had to assist some petitioners to look for Secretary Michael

SUEN earlier on, I was unable to come back on time. Therefore, first of all, my apologies to all of you, including the President.

**PRESIDENT** (in Cantonese): Please move your motion.

**MR LEUNG KWOK-HUNG** (in Cantonese): Madam President, I move that the motion as printed on the Agenda, that is, regretting interpretation of the Basic Law by the Standing Committee of the National People's Congress, be passed.

I thank Members for their indulgence. In fact, when I indicated my wish to move this motion, controversy had already been aroused, and I would like to explain this briefly. Originally, it was my wish that Members would not accept the decisions made in the two interpretations made by the Standing Committee of the National People's Congress (NPCSC), and that they would also not accept the decision made in the third (that is, the latest) interpretation. However, due to the Rules of Procedure, the President held that such content was inappropriate. Therefore, the content of the existing motion has now changed to regret the decisions in the abovementioned two interpretations and request the NPCSC to withdraw its decisions.

The decisions in the two interpretations were made in 1999 and 2005. My opinion is that the first function of a parliamentary assembly is to discuss politics. If such an assembly has lost its freedom in discussing politics, it will be very difficult for it to reflect people's views. Within such an assembly, there are different kinds of Members and different kinds of views. However, if you tell me that it is not possible to express views in a parliamentary assembly, then frankly, this is an unheard-of situation. Thus, in today's debate, I could only reiterate my views.

Indeed, the last two interpretations made by the NPCSC, namely the interpretation in 1999 and the latest in 2005, are inappropriate. The Government of the Special Administrative Region (SAR) has disregarded the provisions in Article 158 of the Basic Law. For the sake of political preference and for the political preference of the Communist Government, the SAR Government did not scruple to breach the provisions in Article 158 of the Basic

Law by flagrantly submitting its application to the Communist Government for interpretation of the Basic Law. That is against the Basic Law.

Members may think that this is not the case, as the NPCSC is vested with the power to interpret and amend the Basic Law, and this is indisputable. However, the problem is: Who can initiate the power to interpret and amend the Basic Law? From my point of view, the initiation of the power to interpret the Basic Law is clearly stated in Article 158. When the Courts of Hong Kong are adjudicating cases, if the Judges of the Court of Final Appeal (CFA) opine that before making the final judgements in respect of cases — two types of cases are involved: those concerning affairs which are the responsibility of the Central Authorities, and those concerning the relationship between the Central Authorities and the Hong Kong — they can seek an interpretation of the relevant provisions from the NPC in order to solve the problems, if they so wish. However, the first interpretation of the Basic Law (which is conducted in 1999) is very unreasonable. Despite the very strong views of the NPC at that time, the Judges of the CFA still exercised the independent judicial power to give expression to the autonomy of Hong Kong. However, the Central Authorities and the Hong Kong Government (namely the Government under Mr TUNG, which no longer exists now) came to a private agreement on seeking an interpretation of the Basic Law from the NPC on its own accord. This obviously destroyed the activation mechanism prescribed in Article 158 of the Basic Law completely.

At that time, it was surprising that this Council failed to present any fair views on this unconstitutional incident. At that time, this unconstitutional incident of interpretation of the Basic Law by the NPC, which was so disgusting, could surprisingly gain majority support in this Chamber. The interpretation of the Basic Law in 1999 was very ugly. During that period of time when Honourable colleagues went to work in the morning, they could see some people fighting for their right of abode. It is noted that there are still 8 000 people fighting for this right. This Government could have free access in this interpretation exercise because it lied. We also know that. The government officials were sitting over there — there are only two government officials today, possibly because there are not going to be any big events — they were just sitting there to tell Members that the Government had got some very scientific data, showing that if the judgement of the CFA on the right of abode (that is, the result of interpretation of Article 24 of the Basic Law) were implemented, more than 1.6 million people would flock to Hong Kong.

Today, I do not know how Secretary for Justice Elsie LEUNG, who participated in the defence of the case that day, will feel. It has now been proved that the data are fake. This is not proved by me, but by the Acting Chief Executive cum Chief Secretary for Administration. He said that Hong Kong had no future, as there was not sufficient population and thus he asked every household to rear three children. In fact, the quota for mainland compatriots to settle in Hong Kong is far from being used up. Just show our conscience to heaven and earth. As the saying goes, "after taking pig's blood, one will discharge black excrement". This is instant retribution. Five years after the incident, this Council can see clearly that the Government was lying at that time.

Under the instigation and alarmist talk of the royalist party and the Government, the Hong Kong people betrayed their own right for the first time by agreeing with the interpretation of the Basic Law. The lesson learned this time is that whenever the Government and the political power say that the consequence will be very serious if certain things cannot be done and ask for a break to do it, do not believe them. This case is just like an Arabian camel. When an Arabian camel walks into the tent, and if you think that it is not occupying space and let it stay, it will finally kick you out of the tent. In the interpretation exercise in 1999, the Government and the royalist party elaborately planned to cheat Hong Kong people. They created an atmosphere in which Hong Kong people would rather give up their own right. And even our colleagues were also subject to very great pressure and forced to make a choice, as it was saying that Hong Kong was about to subside. Nevertheless, has Hong Kong subsided yet? What is the moral of this story?

How is the interpretation exercise in 2005? The Government said that the term of two years or five years is not a problem (I also agree that this is not a problem). However, the Government said that if the issue of the term of two years or five years could not be solved and had to resort to a judgement by the CFA or other Courts, and if the arrangements laid down in Article 158 of the Basic Law were followed, things would not work as the Chief Executive would not be elected in time. This is again a lie. As many colleagues said, according to Article 46 of the Basic Law, if there is a vacancy in the post of Chief Executive, a new Chief Executive has to be elected within six months. No one can change this, and even the Acting Chief Executive or Chief Secretary for Administration cannot change this — unless the NPC is again requested to interpret the Basic Law — this situation cannot be changed even if they go to the Court, as this is a hard and fast rule. May I ask, if someone says that when a

person seeks judicial review on the term of office of the Chief Executive — just like what my colleague, Mr Albert CHAN, has done — the result will be that the Chief Executive cannot be elected, that will be another lie? I think that Secretary for Justice Elsie LEUNG has not answered this question. She only said, could that be more witless? As a Member to whom I refer as a member of the royalist party also asked, had anyone heard of a Chief Executive Election with an undecided term of office? Nevertheless, no one can complain about that, as when the law was firstly drafted, there were loopholes. In the interpretation of the legislation, there were loopholes. Although the substance involved in the second interpretation exercise (namely the interpretation exercise in 2005) was not considered to be fatal, once again, it showed that the Government was shameless.

Some people think: Why should we argue over these trivial matters? In fact, do Members understand what is going on? In the first interpretation, it was said that Hong Kong was about to subside, as 1.67 million people would flock into Hong Kong, and we would soon meet our doom. The second time when an interpretation of the Basic Law was sought, the Government did not say this, but only said that according to their view, it was not necessary to consult the Courts. In the event that there was an application for a judicial review, a Chief Executive would not be elected in time. It only gave these remarks and that was it, and Mr Donald TSANG was then given the responsibility to deal with this matter — he is not here today. I wonder if he is listening to my speech outside the Chamber. He told us he would not seek an interpretation of the Basic Law from the NPCSC. Of course, he will not be that stupid. He will not do so. He will not copy Mr TUNG's way of administration. However, he will submit reports to the State Council. Mr TSANG is a very smart person. He really knows how to be an official, as in the Mainland, making "snitch reports" is now very popular. Mr TSANG can instruct his subordinates to submit such reports to the State Council, and he can thus achieve his purpose. He can also say that he has not requested for an interpretation of the Basic Law. In fact, his move is tantamount to burying his head in the sand.

In my opinion, the two interpretation exercises in 1999 and 2005 are inconsistent with the procedures, unconstitutional, unnecessary and cheating the Hong Kong people. Therefore, I have to express my regret. I think that this Council should not accept the interpretations of the Basic Law. In regard to the interpretation made on 26 April 2004 which ruled out the implementation of election by universal suffrage in 2007 and 2008, it is absolutely unbelievable: it

was an interpretation conducted without being requested. It is tantamount to obviating any accomplice but to do that on its own, and even a middleman can be saved in the process. The Central Authorities came forth and said that they did not like Hong Kong implementing election by universal suffrage. Even though it was the people's wish, it was still no use. In the meeting held in Beijing, they won a landslide victory. That was the interpretation of the Basic Law on 26 April 2004, which was only window-dressing — oppression of a majority of 6 million people by a few hundred who represent 1.3 billion people.

Today, we are still suffering from this injustice and savage treatment because according to the resolution of the NPCSC, Hong Kong cannot implement universal suffrage in 2007 and 2008. May I ask Honourable Members if we should accept this resolution? Early this morning, I read from the newspaper that many colleagues had criticized me of showing no goodwill towards the Central Authorities. Honourable Members, a person is humiliated when he humiliates himself. It is impossible to ask a person who has been assaulted three straight times to seek reconciliation and say that he is happy to be assaulted and that the assailant has done a good job. It is also impossible to ask a woman who has been raped thrice to say that what has been done to her is right and that she feels good about it. I think it is very simple: we should say it is right when it is, and say it is wrong when it is. This is the responsibility of a parliamentary assembly. We are definitely not wasting our time today. Honourable colleagues, a regime can correct its own mistakes. If it cannot, the others have to help it rectify them. Let me tell Members, the decision of the NPCSC can be overturned by the NPCSC; the NPC can also overturn it. Why can it not? In the history of the Communist Party of China, 10 out of 10 general secretaries have committed mistakes. Most of the times, they would correct themselves, and this is what the communists claim a display of vitality.

Honourable Members, today, some of us here said that we should not call for corrections, and said that corrections would be fatal. If corrections were made, "Grandpa" would feel that he has lost face. How do you feel then? I wish to ask Honourable Members, in particular those who claim themselves to be patriots, from the anti-rightist movement, Cultural Revolution, the resurgence of DENG Xiaoping to the continuation of criticism and denouncement, which of these did not see the communist Central Authorities correct their mistakes under the pressure of the people? I think the SAR Legislative Council should contribute in this respect. I implore Members to support my motion.

**Mr LEUNG Kwok-hung moved the following motion: (Translation)**

"That this Council regrets that the HKSAR Government has twice requested the Standing Committee of the National People's Congress (NPCSC) to interpret the provisions of the Basic Law in 1999 and 2005 respectively and requests the NPCSC to withdraw its decisions in the last two interpretation exercises, and demands the SAR Government to apologize to the people of Hong Kong for having done so and undertake not to further request the NPCSC to interpret the Basic Law; furthermore, this Council also urges the NPCSC to rescind its decision made on 26 April 2004 to rule out the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively in Hong Kong which throttles the rights of the people of Hong Kong to the full implementation of election by universal suffrage in 2007 and 2008, as well as demands the Chief Secretary for Administration, Hon Donald TSANG Yam-kuen, to rescind the four constitutional development reports, so as to give a true account of the facts."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed.

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, this motion goes over old ground. The government position in respect of the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) has been explained publicly on numerous occasions. I do not propose to repeat all that has been said before. But I wish to speak from the legal perspective. My colleague, the Secretary for Constitutional Affairs, will fully respond to the motion later on.

As from 1 July 1997, a new constitutional order has applied in Hong Kong, as set out in the Basic Law. Our mini-constitution provides for the continuity of the legal system, but subject always to the Basic Law itself.

The Basic Law prescribes the systems to be practised in Hong Kong, in order to ensure the implementation of the basic policies of the People's Republic

of China (PRC) regarding Hong Kong. It is a national law, adopted by the National People's Congress and promulgated by the President of our country.

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

Given that it is a national law, and that some of its provisions concern affairs which are the responsibility of the Central People's Government, or concern the relationship between the Central Authorities and the Hong Kong Special Administrative Region (SAR), it is natural that the ultimate authority for interpreting the Basic Law should be vested in a national institution. If that authority were vested in a Hong Kong institution, a situation could arise in which a Basic Law provision concerning affairs which are the responsibility of the Central People's Government is interpreted in one way in Hong Kong, and in a different way in the Mainland. That would be a recipe for constitutional crisis.

Article 158(1) of the Basic Law, therefore, states that the power of interpretation of the Basic Law shall be vested in the NPCSC. This reflects the system for interpreting national laws set out in Article 67(4) of the PRC Constitution.

By virtue of Article 158(2) and (3) of the Basic Law, the NPCSC authorizes Hong Kong Courts to interpret the Basic Law in adjudicating cases although, in certain situations, the Courts must seek an interpretation from the NPCSC before making their final judgements. The NPCSC interpretation will be the most authoritative and binding.

In the past, some people argued that the NPCSC could only interpret the Basic Law if it is asked to do so by Hong Kong Courts, or if the provision in question concerns affairs which are the responsibility of the Central People's Government, or concerns the relationship between the Central Authorities and the SAR.

Following the Court of Final Appeal's decisions in *Lau Kong-yung v Director of Immigration* and in *Director of Immigration v Chong Fong-yuen*, in 1999 and 2001 respectively, those arguments are no longer tenable. The NPCSC's power of interpretation extends to every provision in the Basic Law, and is not dependent on there being any request for an interpretation made by the Courts.

However, some people still contend that it is unconstitutional for the Chief Executive to seek an interpretation from the NPCSC. It is my considered opinion that this contention is wrong. The Administration recently submitted two responses on this point to the Bills Committee considering the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill. The one submitted through the Secretary for Constitutional Affairs on 6 May was the most detailed.

I will not repeat all that is in those responses. But I wish to deal with the fact that only the Hong Kong Courts are expressly given the power to seek an interpretation from the NPCSC. Based on this fact, it is argued that the Chief Executive cannot and should not seek such an interpretation. That argument has a superficial attraction. But a more detailed analysis reveals its flaws.

The reference to a judicial request in Article 158(3) of the Basic Law must be understood in its context. As the Court of Final Appeal pointed out in the case of LAU Kong-yung, it is directed to limiting the Court's power of interpretation, by requiring a judicial reference to the NPCSC in certain circumstances.

The Chief Executive has no similar power to interpret the Basic Law and so there is no need for similar limitation and requirement. The absence of such a requirement in respect of the Chief Executive does not mean that the Chief Executive is prohibited from seeking an interpretation from the NPCSC.

On the contrary, the Chief Executive's constitutional powers and functions under Articles 43 and 48(2) of the Basic Law are not subject to any express limitation in that respect. He is responsible for implementing the Basic Law, and is accountable to the Central People's Government. Therefore, if he considers that an interpretation from the NPCSC is necessary for the effective implementation of the Basic Law, it is perfectly lawful and constitutional for him to make a report to the State Council, recommending that such an interpretation be requested.

Since the two requests for an interpretation, made in 1999 and 2005, were lawful and constitutional, there is no ground for this motion to question them. They both had widespread public support; they both resolved serious problems that could not otherwise be resolved; and they both allowed Hong Kong to escape from potential crises. I do not accept that the requests in any way undermined the rule of law or the independence of the Judiciary.

There is, therefore, no reason why the first half of this motion should be supported.

The second half of the motion relates to the NPCSC decision of 26 April 2004 (which was not an interpretation), and the four constitutional development reports issued by the Task Force. It seeks to perpetuate the myth that, prior to the NPCSC decision, Hong Kong people had the right to elections by universal suffrage in 2007 and 2008. That myth is based on a distortion of the Basic Law.

Annexes I and II of the Basic Law provide for the possibility of amendments to the electoral arrangements in those years. And Articles 45 and 68 provide for the ultimate aim of universal suffrage. But both sets of provisions are qualified by other requirements. In particular, Articles 45 and 68 provide that the methods shall be specified in the light of the actual situation in the SAR and in accordance with the principle of gradual and orderly progress.

The NPCSC decision of 26 April 2004 was entirely consistent with those requirements and did not, therefore, diminish Hong Kong people's constitutional rights.

With regard to the four constitutional development reports, I am, of course, a member of the Task Force and I stand by all that is said in them. I believe that they do give a true account of the facts, and there is no reason to rescind them.

Madam Deputy, in conclusion I would urge all Members to reject this motion.

**DR FERNANDO CHEUNG** (in Cantonese): Madam Deputy, at the end of last month, the Government of the Special Administrative Region (SAR) requested the State Council to seek, on its behalf, interpretation of the Basic Law from the Standing Committee of the National People's Congress (NPCSC) on the election of the Chief Executive upon the resignation of Mr TUNG Chee-hwa. As a result, this dispute over the length of term, that is, two years or five years, came to an end as a result of the decision of the NPCSC, leaving no room of discussion for the community. Some people think that the term of the Chief Executive is not a very important or sensitive political issue. Instead of engaging in any unnecessary dispute, it would be better that the dispute be quickly settled by the

NPCSC. To these people, an interpretation of the Basic Law is no big deal. This attitude reminds me of a remark made by Mr DENG Xiaoping, "No matter it is a black cat or white cat, as long as it catches mice, it is a good cat."

The SAR Government has actually adopted this logic of "instrumental reasoning" when it requested the NPC or the Central Authorities to make an interpretation of the Basic Law this time. In other words, it finds it unnecessary to discuss any issue relating to values, but only seeks to attain the goal with the most effective means.

The article recently written by Ms Elsie LEUNG, Secretary for Justice, in the newspaper has clearly reflected this point. Ms Elsie LEUNG pointed out, "The Government cannot take that risk and let the matter runs in its own course. The Government has the responsibility to try its best to ensure that the new Chief Executive will be smoothly elected on 10 July 2005."

However, the Basic Law has already clearly stipulated that the term of the Chief Executive is five years, and it carries no provisions for the so-called by-election. If the community has any dispute over the term of the Chief Executive to be returned by by-election, we can actually conduct a public discussion and amend the Basic Law eventually. Nevertheless, the SAR Government, deliberately misrepresented by saying that it would be against the law if the term of the new Chief Executive was five years. Besides, in order to avoid "taking a risk" and ensure everything could proceed smoothly, it took the short-cut and chose the most convenient and speediest way to solve the problem.

Under the circumstances, we have to ask the Government: Does the SAR Government understand the meaning of the rule of law? The crux of the rule of law is our respect for legal provisions and legal procedures. Even though the people in authority have power and influence, they still have to respect the rule of law, be willing to be bound by law and to ensure that individual rights are safeguarded. Efficiency has never been the value pursued by the rule of law, and thus some lawsuits can take years to conclude. If the Government forcibly puts the logic of "black cat, white cat", "instrumental reasoning", "efficiency" and the rule of law together, then the "rule of law" from the mouth of the Government will no longer be the rule of law. What they say is only the rule of law for the sake of "expressing the wish of the authority", which is also the "rule of law" being used as the political instrument of the people in power.

It is undeniable that the Basic Law clearly provides that the NPCSC has the power to interpret the Basic Law. Hence, the Government and the Central Authorities state plausibly that the interpretation of the Basic Law is both reasonable and constitutional. Unfortunately, what is lacking now is a mechanism to monitor the power of interpretation. While it is also not stated in the Basic Law that the SAR Government can request interpretations of the Basic Law, the Government can make infinite interpretations of this and say that the Government has the power to do so. Thus, when exercising the power, the NPC and the SAR Government seem to have been highly arbitrary, turning the power of interpreting the Basic Law into an "imperial sword". Whenever the situation is unfavourable to them, they will wield the sword to stabilize the situation. Last year, when the Central Authorities saw that Hong Kong people strongly requested universal suffrage in two elections, they interpreted the Basic Law again by adding some extra restrictions which have never appeared in the Basic Law into the political reforms for 2007 and 2008, brutally suppressing the aspiration of Hong Kong people for democracy.

Interpretation of the provisions is the constitutional arrangement of the Basic Law. But any abuse of this power is also a violation of the spirit of the rule of law. The rule of law requires that the power of the ruler be subject to checks and balances. It does not disallow him from using the power, but he has to use the power within a defined scope, with a view to preventing the power from being abused and preventing the civil rights from being infringed. We all know that in Singapore, if dissidents criticize the Government, the Government will oppress them with law and sue them for libel, so that they will be heavily punished. These moves of the Singapore Government can also be called legal, but are they compatible with the spirit of the rule of law in protecting civil rights? Or is it only the rule of people with law, turning the law into their own instrument?

The rule of law in Hong Kong has yet to collapse. I am also glad to see that the Court of Final Appeal made a judgement earlier that the appeal by Falun Gong followers was allowed. This has confirmed the civil right of demonstration and expression of opinions. However, there is a very grave hidden worry in the rule of law in Hong Kong presently. It is because whenever there is any sensitive issue relating to the relationship between the Central Authorities and the SAR, we can no longer find a definite answer from provisions in the law. But rather, we have to observe the political measures of the person in power, and we also have to note his preferences. In other words, under these circumstances, the rule of law has already turned into the rule of

man. If this continues to spread, even to some social aspects other than politics, Hong Kong will have to face a very deplorable situation.

Madam Deputy, I speak in support of the motion of Mr LEUNG Kwok-hung.

**MR LAU CHIN-SHEK** (in Cantonese): Madam Deputy, earlier on some people, from legal experts in the Mainland to Central Government officials have, openly expressed that the Standing Committee of the National People's Congress (NPCSC) was cautious of whether interpretation of the Basic Law should be conducted, and the interpretation of the Basic Law was a major decision. Simply because of this, I think that all parties should have a consensus of avoiding interpreting the Basic Law by all means. In the event that the Government of the Special Administrative Region and the Central Government think that it is indeed necessary to interpret the Basic Law, then before making such a major decision, the Central Government and the SAR Government should conduct a comprehensive consultation among Hong Kong people and listen to their views, before deciding on the method of dealing with similar controversies.

Madam Deputy, law is authoritative. In regard to the understanding of legal provisions, under different legal systems, there are different authoritative means to interpret the law and different authoritative institutions to exercise the function of interpreting the law. Therefore, the authoritative understanding of legal provisions is absolute rather than arbitrary. Certainly, we have to admit that the legal systems in the Mainland and Hong Kong are different, so that legal professionals of the two places have some discrepancies in their understanding of certain legal provisions. However, the law must be thoroughly enforced. There should not be a situation when the understanding of certain provisions today is different from that of yesterday.

Therefore, I think that it is necessary for both the Mainland and Hong Kong to appoint legal experts respectively to review the entire Basic Law together, in order to find out the possible differences between both parties' understanding of the provisions, and to propose an option acceptable to both parties as well as to conduct consultation. I believe this is necessary and urgently needed. This can even avoid triggering off further disputes.

Madam Deputy, I expressed the above views last month when I attended a seminar on the interpretation of the Basic Law held in Shenzhen. But I think that it is necessary to reiterate my views in this Council. Under the general political atmosphere of the world, of China and Taiwan, and even China and Hong Kong at present, the mainstream is to enhance communication and broaden mutual trust. Doubtless, China and Hong Kong need to broaden the foundation of mutual trust, and even more, need to establish a standing mechanism to strengthen communication and avoid making belated efforts to cope with unexpected situations. Madam Deputy, I believe we should also take this as our common goal, and that is, seeking common ground while preserving differences, and working hard for the well-being of Hong Kong people.

Thank you.

**MR ALBERT HO** (in Cantonese): Madam Deputy, on the interpretation of the Basic Law by the NPCSC, those colleagues insisting on the rule of law have already voiced their various arguments, either major or minor, in this Chamber. For those colleagues who are anxious to safeguard the law, their tears have already been shed; and there was even a protest by walking out of the Chamber. I thought and thought. What else can be further mentioned as supplement? After thinking about it, I would like to share with Members a story in my speech today.

It is said that during the early years of the Republic of China, warlords were very dominating. They did not observe any law and did all kinds of mischief, but the masses just dared not say anything, even though they were very angry. At that time, there was this general who kept an army and held himself in a sense of dominance. He liked playing mahjong very much. As he was very ill-tempered and could not bear to lose, his mahjong partners were all very scared when playing with him. One day, he was playing a mahjong game as usual. However, fortune was not on his side, and he still could not win after four rounds of the game. When it came to the fifth round, fortune suddenly turned his way. Shortly after the round started, the general was already holding 12 tiles of Bamboo in sequence of match. At that time, he had got a number one Bamboo left, but no one discarded any Bamboo tiles since then. After a while, when it nearly came to the end of the game, the general was getting very anxious and his patience exhausted. Suddenly, when a player discarded a

number one Circle, the general was over-excited and said, "Pong, I win the game, it is purity!" All the other players were very astonished and asked, "General, how can a number one Bamboo and a number one Circle make a Pong?" The general opened his eyes wide and said, "This is called a little bird eating a cake. When it is hungry, it will eat. That is it." The other players dared not negotiate anymore, as he was the general and they just paid the money. *(Laughter)* After a few rounds, one of the players was again waiting for a number one Bamboo. He thought that it would be his turn to have the little bird eating a cake, so he shouted, "Pong!" The general asked what the matter was, and that player replied that it was the little bird eating a cake. The general then said, "I am sorry, the little bird is already full, it can eat no more." *(Laughter)* The other players were all very puzzled and asked the general, "When could the little bird eat the cake?" The general said while smiling, "When I know that the little bird feels hungry, I will tell you!"

Madam Deputy, the story that I have told Members can truly reflect our feeling to the latest interpretation of the Basic Law by the NPCSC — in fact, not only this time, but also those in the past. We really find it similar to "the little bird eating a cake", as no one knows when the little bird feels hungry and when it can eat, and only the NPCSC knows. Our Hong Kong Government, and even the many so-called patriots in political and legal circles, regard the interpretation of the Basic Law by the NPCSC as the order of the general. Even though it is "the little bird eating a cake" situation, they still dare not fight against it with reasons, nor do they dare to show their anger or say a word. Some people even say, "The little bird is eating very nicely." If our country wants to establish a tradition of the rule of law, I think it definitely has to give up this warlord type of power politics.

Madam Deputy, according to the Constitution, the NPCSC is the highest authority to explain or make supplement to national laws. However, is it absolutely right to exercise this power? If the power is not being challenged, does it mean that it is being exercised appropriately? We can clearly say that when the power is exercised legally, it does not mean that it is consistent with the rule of law or with legal principles. On many occasions, no matter what the answer will be, the most frightening are those arguments. The arguments offered by them are similar to "the little bird eating a cake" argument advanced by the general.

After I told this story today, some people may say that we are despising the NPCSC, regarding it as the warlord or the general. Madam Deputy, I would like to quote a few sentences of an article here, and I will tell the source of the passage later. It is written by an academic. The title is "Legislation by the Standing Committee of the National People's Congress", and the subtitle of one paragraph is "Changing the *ultra vires* situation of legislation". The content is, "First, the Constitution provides that the NPCSC can, during the adjournment of the NPC, make partial supplements and amendments to the laws of the latter, which however should not be contrary to the basic principles of the laws. However, practically speaking, it happened occasionally that the supplements and amendments ran against the basic principles of the laws." Then, the author quoted a lot of examples, and said, "Second, the Constitution clearly provides that the NPCSC could exercise the right to legislate and amend laws other than those within the ambit of the NPC. But in practice, sometimes the NPCSC would pass laws that should have been passed by the NPC." The author said that actually the NPCSC always makes some *ultra vires* moves. He quoted a lot of examples to point out that the main principles and enforcement details of laws cannot be separated. When they can be supplemented, interpreted or amended, it is also inseparable.

Madam Deputy, the source of this passage is chinanet of xinhuanet. The author is an authority. I hope that Members can (*The buzzer sounded*).....

**DEPUTY PRESIDENT** (in Cantonese): Mr HO, your speaking time is up.

**MR ALBERT HO** (in Cantonese): Thank you.

**MS EMILY LAU** (in Cantonese): Madam Deputy, I rise to speak in support of Mr LEUNG Kwok-hung's motion. I also strongly support the opinions expressed by Dr Fernando CHEUNG and Mr Albert HO in their speeches.

Mr Albert HO's story, "The Bird Eating a Cake", is really a very vivid analogy. I believe that when the Government of the Hong Kong Special Administrative (SAR) feels hungry, it will certainly want to eat the cake. However, as disclosed by the Chief Secretary for Administration in the statement

he announced in the Legislative Council some time ago, Madam Deputy, the Government had in fact struggled mentally for a very long time before it decided to eat the cake. I suppose this mental struggle of the SAR Government should be an indication of its unwillingness to eat the cake. But then, as the arguments continued, the Government began to sound as if there was nothing wrong with its action. I am therefore rather puzzled sometimes. At one time, it said, "Basically, we should not do something like this. But since there are no alternatives, we have to go ahead." But as time passes, it has started to justify its action as "lawful, constitutional and compatible with the interests of Hong Kong". But had this really been the case, there would have been no need for any mental struggle in the very first place.

Madam Deputy, late last month, I went to a United Nations hearing in Geneva because the SAR Government was going to submit its report on the implementation of the International Covenant on Economic, Social and Cultural Rights. Many other people from the SAR also went to this hearing, including Permanent Secretary Stephen FISHER from the Home Affairs Bureau and Solicitor-General, Mr Robert ALLCOCK, from the Department of Justice. At the hearing, two members raised the issue of interpretation of the Basic Law by the National People's Congress. Madam Deputy, this means that the interpretation of the Basic Law has become an issue of concern in the international community, including the United Nations.

At the hearing, a member questioned why the SAR Government still wanted to seek an interpretation of the Basic Law despite the clear and unambiguous provisions contained therein on the term of office of the Chief Executive. He was of the view that such an action would produce adverse effects on the rule of law, judicial independence and governance of Hong Kong. He went so far as to say, to this effect, "I hope that my worries can be relayed to the Chinese Government."

Another member wondered why a political institution should be vested with the power of interpreting a constitutional document. He asked this question because he thought that in Hong Kong, a place practising the common law, the power of interpreting laws should be vested with the Court. He wondered why a political institution like the NPCSC should be vested with such a power.

Madam Deputy, a couple of days later, the United Nations Committee on Economic, Social and Cultural Rights will publish its concluding observations. We will then be able to know how the United Nations looks at the situation in Hong Kong. I very much welcome the continued monitoring of Hong Kong's record by the various United Nations Committees on human rights.

Here, I think I should also praise the SAR Government because it really attaches very great importance to this issue, as evidenced by its ever thickening reports and the huge team of delegates it sends to the United Nations on each occasion. Madam Deputy, I must praise the SAR Government for its performance this time around. During the recent hearing, the SAR Government was given only three hours, but its delegates did not behave like Daniel FUNG, who spoke so long last time that members of the Committee did not even have the time to ask any questions. This time around, the delegates all gave very clear answers and never tried to dodge any questions. Even some Committee members thus praised them for the clarity of their answers and the efforts they had put in. But it was a great pity that they failed to explain why such an action had been taken.

Therefore, Madam Deputy, I support Mr LEUNG Kwok-hung's motion because I do not think that the SAR Government should take such an action. There have been several interpretations of the Basic Law. The first two were made at the request of the SAR Government itself, and the other was made by the Central Authorities with no opposition from the SAR Government. The SAR Government should really examine its own conscience and tell the people of Hong Kong why it had such a mental struggle. It should explain why it thinks this is not too good to Hong Kong. If people say that under Article 43 and Article 48(2) of the Basic Law, the executive authorities of the SAR Government are empowered to seek interpretation of the Basic Law, I must say that their argument is hardly convincing.

Therefore, if they really want any interpretation of the Basic Law, what should they do? Madam Deputy, in that case, the Basic Law should be amended. It is clearly stipulated therein that the executive authorities of the SAR are empowered to do so. But before actually amending the Basic Law, there must be an extensive debate in society to find out what provisions should be included in the Basic Law. Afterwards, we can proceed according to the proper procedure. This is far better than having so many people refusing to approve of

the Government's action. This will do no good to society anyway. Therefore, I entirely disapprove of the action of the Government this time around. In the past, the SAR Government might still say: We are forced to do so because we have no alternatives. But it has regressed by now, almost to the extent of "whenever I feel like it". What is meant by "feel like it"? If the Chief Executive decides to seek an interpretation of the Basic Law whenever he considers that there are difficulties in its implementation, then there will be no end to such requests. This is not desirable, particularly in a common law jurisdiction, because people are simply not used to such practices. The SAR Government should understand the thinking of Hong Kong people because they really think that the Government will damage the rule of law by taking such an action.

Just now, the Secretary for Justice talked about the extensive support of the people. I simply do not know how extensive the support is. In any case, I must point out that if an act is in itself unlawful, then people's support will not make it any less unlawful. Sometimes, there is a need to protect the minority. For example, when the majority support infringing upon the rights of the minority, are we supposed to follow the majority view? The cases of ethnic minorities and people with special sexual inclinations are fine examples. We can therefore see that sometimes, figures are no solutions. What is more, if they talk about figures with us, we can also talk about figures with them. Madam Deputy, twice in the past two years, more than 500 000 people took to the streets to demand the implementation of universal suffrage in 2007 and 2008. Why did they not talk about figures at that time? How can the Government be so selective, quoting only those figures that are favourable to it? And, although it is claimed that a certain number of people support the present request for interpretation of the Basic Law, we honestly do not know anything about the Government's basis of computation. What is more, many people have expressed support for the demand that the National People's Congress should not amend or interpret the Basic Law, and that we should be allowed to introduce universal suffrage. But why is it that nothing has ever been said about the number of these people?

We can hence see that the Fourth Report is totally unable to reflect the mainstream opinions in Hong Kong. I hope that the SAR authorities can consider the views of Hong Kong people and stand on our side, so as to

safeguard "a high degree of autonomy", "one country, two systems" and "Hong Kong people ruling Hong Kong". I also hope that the Government can pluck up the courage and manifest the dignity required for defending the core values treasured so much by the people of Hong Kong.

With these remarks, I support the motion.

**MR JAMES TIEN** (in Cantonese): Madam Deputy, all people in Hong Kong were either born during the time when Hong Kong was still a British colony or shortly after the reunification and the establishment of the Special Administrative Region (SAR). We are thus more used to the ways of doing things during the colonial days. In the past, while Britain was bound by its own constitution, Hong Kong as a British colony could still enact local legislation on various policy areas such as education and housing. After the reunification, as Members are all aware, the concept of "one country, two systems" is adopted as the basis of governing Hong Kong. This concept is not found anywhere else in the whole world. This means that experts in foreign countries such as Britain, Europe and the United States have never really seen what "one country, two systems" is all about. In other words, one can ask, "Is there any socialist special administrative region in the capitalistic society of the United States?" The answer is no, which is why the governance of the United States is much easier in that sense.

Under the present situation, the Liberal Party thinks that it is most important for us to ask, "Has the everyday life of the ordinary people been significantly affected? Do they really feel the same way as many of our friends did back in 1995 or 1996, who feared that after the reunification, they would be barred from doing many things, that many people would be thrown into prison, and that the rule of law would die (I mean the rule of the common law, a legacy of the British Hong Kong era)?" We do understand that common law is entirely different from the system of laws in the Mainland. However, under the concept of "one country, two systems", there is still a safeguard in the Basic Law, and we are still permitted to enact local legislation on our own.

I notice that these several requests for interpretation of the Basic Law have indeed led to many disputes. But we must also realize that all the Basic Law provisions connected with these requests are about the relationship between the

Central Authorities and Hong Kong as a SAR. And, it was for this precise reason that the SAR Government was compelled to make requests for interpretation. The scope of interpretation is certainly not as wide as some Members have claimed, and it must not be perceived as covering all policy areas such as health care, education and housing. Frankly speaking, the Central Government will not have so much time to interfere so deeply with Hong Kong's internal affairs. Likewise, the NPC or the NPCSC will not understand the welfare policy in the capitalistic society of Hong Kong. For example, when it comes to issues like eligibility for Comprehensive Social Security Assistance, the fees charged by the Hospital Authority, the charging of fees for drugs and the banning of smoking, all regulation is enforced through the enactment of local legislation.

The SAR Government twice requested an interpretation of the Basic Law by the NPC, but it had actually been forced to do so because the two issues involved were both about the relationship of the SAR with the Central Authorities. In foreign countries, there will not be cases like these. In the United States, for example, the many different States simply do not need to seek any interpretation of laws from Washington because the laws of the States and the Federal Government are just the same. Therefore, I do not think that it is fair to compare our case with those of other countries. It is instead most important for us to ask, "It is now so many years after the reunification, but can we understand the Central Authorities, especially their rule of law? Is their rule of law the same as ours?" There are of course many differences, but if we do not try to understand the Central Authorities (while they do not seek to understand us either), we will always think that ours is the only kind of rule of law, forgetting all about "one country, two systems". Ideally, of course, we should always remember both "one country" and "two systems" and seek to draw on the strengths of both systems.

I can cite one example here. In 1999, the Hong Kong Government requested the NPC to interpret the Basic Law provisions on the right of abode relating to mainland children born to Hong Kong residents. Before this, the Court of Final Appeal had already ruled that mainland children born to Hong Kong residents could still enjoy the right of abode in Hong Kong even though their parents were not yet permanent residents of Hong Kong at the time of their birth. This would mean a huge number of people, estimated at that time by the Government to be more than a million. As a result, many people queried the Government's estimation, wondering whether the number could be as large. It

was really very difficult to tell. But we must remember one thing. There were all those who were already 70 years old, and even their children were as old as 40 or so. These elderly people were not yet permanent residents of Hong Kong when their children were born but somehow managed to become permanent residents sometime later. If their children all came to Hong Kong at the same time, our schools and facilities for children, and so on would be put under very great pressure. And, the employment market would also be affected. Members representing the labour sector would be worried, right? As a matter of fact, the influx of so many people searching for jobs would instead be something good to the business sector because there would be a huge supply of cheap labour. But how was society going to handle the ensuing housing problem? The SAR Government's request for interpretation of the Basic Law was therefore based purely on its estimation that immigrants from the Mainland would exert immense pressure on our economy and the people's livelihood, and so on.

We of course know that the interpretation of the Basic Law in 2004 on the implementation of universal suffrage in 2007 and 2008 and the issue of constitutional reform was initiated by the NPCSC of its own accord. The action of the NPCSC was prompted by a number of reasons — concrete aspirations were expressed in society on the elections to be held in 2007 and 2008, and divergent views were expressed in society on whether the Basic Law could be amended, and if yes, whether we should necessarily amend it.

We can of course see that the recent request for interpretation of the Basic Law was also filed by the SAR Government. On this recent request, the Liberal Party reiterates that it is well aware of the people's worry. It is of the view that the Government should not frequently ask for interpretation unless absolutely necessary. However, we also note that since the term of the present Election Committee will end on 13 July, a "four-month" problem will emerge if the election cannot be held on 10 July. And, there will also be a "six-month" problem in regard to the Acting Chief Executive. If we fail to hold a by-election to select a new Chief Executive on or before 10 July, the international community and even Hong Kong itself will challenge the SAR Government for failing to do so.

The Liberal Party agrees that it is open to question whether the term of office of the new Chief Executive should be two years, or should be five years,

because while the Basic Law provides that the term of office of the Chief Executive shall be five years, it does not state clearly the term of office of a Chief Executive returned by a by-election — whether it should be two years, or five years. Initially, the Government also thought that it should be five years. However, it failed to persuade the legal experts of the Central Authorities and was persuaded by them instead. It eventually agreed that the term of office should be two years. The development of the whole incident is marked by lessons that we can learn, but it has also created many internal conflicts in Hong Kong. The Liberal Party is of the view that the Government's actions in these cases were the result of the lack of any alternatives.

I must of course also say a few words in response to the other request of Mr LEUNG Kwok-hung, the request that the SAR Government should undertake not to seek any more interpretation of the Basic Law in the future. I think it is very difficult for us to ask the SAR Government to make this undertaking. But we do maintain our long-standing position that the Government must as far as possible refrain from doing so lightly. Thank you, Madam Deputy.

**MR RONNY TONG** (in Cantonese): Madam Deputy, one must always be faithful to one's principles, must never think that when one finds a certain outcome acceptable, one may as well bend one's principles a little bit. If one believes in the law or cares about the law at all, or if one claims to uphold the rule of law, one must never think in such a self-deceiving manner.

Having listened to Mr James TIEN's remarks, I have the impression that he seems to be saying that the "two systems" under "one country" are bound to interpret the rule of law differently. The Secretary for Justice also seems to suggest that the rule of law is perceived differently under the continental law system of the Mainland and the common law system of Hong Kong. I must say that it will be most deplorable if they really believe in what they say.

Here, I wish to cite some words from Prof F.A. HAYEK, an Austrian legist and also the 1974 Nobel Laureate in Economics. I believe Members are also aware of the insight he put forward on "the rule of law" in his famous book *Road to Serfdom*. In this book, he writes, "Stripped of technicalities, this (the rule of law) means that government in all its actions is bound by rules fixed and

announced beforehand — rules that make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge." Madam President, I shall not read out the original text in English here<sup>1</sup>.

HAYEK was a renowned legist of continental law, not common law. He was an economist, but his works on jurisprudence also won the acclaim of the world. Applying his words to the requests for interpretation of the Basic Law, we will see that the "rules fixed and announced beforehand" should refer to the mechanism provided for under Article 158 para 3 of the Basic Law. This mechanism prescribes the circumstances under which the specified authorities shall be empowered to seek an interpretation of the Basic Law by the NPCSC.

The aim of this mechanism is to manifest the principle of "Hong Kong people ruling Hong Kong" under "one country, two systems".

This mechanism also establishes that although the power of interpreting the Basic Law shall be vested with the NPCSC, the latter shall interpret some specific provisions of the Basic Law only in response to requests made by the Court of Final Appeal (CFA) of the SAR under some restricted specific circumstances. However, in most cases, the Courts of the SAR shall interpret laws, including the provisions of the Basic Law, in accordance with common law. And, with the authorization of the NPCSC, the CFA may interpret on its own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the SAR.

Why is the CFA, instead of the Chief Executive, authorized to file requests for interpretation of the Basic Law? The reason is simple indeed. The CFA is a neutral arbiter, and as such, its requests for interpretation are just intended as a means of enabling it to discharge its judicial and constitutional function of adjudicating cases. It does not have any interest at stake in the cases under its adjudication. In contrast, the executive authorities headed by the Chief Executive are often one of the parties in a litigation or legal dispute. Empowering the Chief Executive to seek interpretation will be tantamount to giving the Government a privilege in litigations and legal disputes. It may thus appeal to the NPCSC even after the Court has passed a final verdict, or it may

<sup>1</sup> The Honourable Member, who was delivering his speech in Cantonese, read out the Chinese translation of the quotation during the meeting.

also exercise this privilege before the commencement of hearing and prevent the Court from adjudicating a certain case.

It is most important to bear in mind that the function of the Court is to offer equal opportunities for both parties to state their grounds before any interpretation of the Basic Law is sought. If, in the course of litigations or legal disputes, only the SAR Government can unilaterally seek interpretation from the NPC, then the law will always be on the side of the Government. This will violate the principle of "equality for all before the law", a fundamental principle known even to children.

What is so regrettable is that although just eight years have passed since the reunification, the SAR Government, whose adherence to the rule of law is so flimsy, has twice failed to resist the temptation of economic and political expediency, ignoring the mechanism set down clearly in the Basic Law and unilaterally seeking interpretation of the Basic Law, thus damaging the rule of law in the SAR and destroying "one country, two systems".

The SAR Government has so far refused to undertake not to seek any further interpretation of the Basic Law. It is also unwilling to enact any legislation on the criteria or preconditions governing further requests for interpretation, nor is it prepared to set out these criteria and preconditions in any form. It has only said unctuously that it will see to it as much as possible that interpretation will be sought only when necessary. In a recent hearing of the CFA involving the Public Order Ordinance, Mr LEUNG Kwok-hung requested the Government to undertake not to seek any further interpretation of the Basic Law, but his request was flatly rejected by the Government.

In 1999, I wrote an article on the interpretation of the Basic Law by the National People's Congress, likening it to the Sword of Damocles. Unfortunately, over the past eight years, in order to ensure that it can remain ever-victorious in lawsuits and legal disputes, the SAR Government has used this Sword to completely dismember the rule of law and judicial independence in Hong Kong by using this Sword. Is it worthwhile to do so? Here, I must .....  
*(The buzzer sounded)*

**DEPUTY PRESIDENT** (in Cantonese): Mr TONG, your speaking time is up.

**DR RAYMOND HO** (in Cantonese): Madam Deputy, Hong Kong has since its reunification twice requested the Standing Committee of the National People's Congress (NPCSC) to interpret the provisions of the Basic Law, causing contention between the supporters and critics on both occasions. Hong Kong is a society with freedom of speech, and we should respect the views of all sectors in the community. This is my basic position.

Hong Kong became a Special Administrative Region of China after the reunification with China in 1997. In spite of this, Hong Kong has its own legislature and Judiciary and enjoys a high degree of autonomy. To ensure the implementation of "one country, two systems" and "Hong Kong people ruling Hong Kong" after the return of sovereignty to China, the Basic Law was formulated in the five years between 1985 and 1990. I was a member of the Basic Law Consultative Committee then. It is stipulated in Article 158 of the Basic Law 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." For this reason, when the SAR Government submitted a report to the State Council requesting an interpretation of the Basic Law from the NPCSC on the right of abode issue before and also on the term of the Chief Executive recently, people questioned why the Government had circumvented the local Courts in seeking an interpretation of the Basic Law. I believe this question is well worth discussing.

I consider that if we have doubts about some provisions in law, particularly provisions of the Basic Law, it is perfectly natural to seek an interpretation. In fact, such interpretation is by no means unique to Hong Kong. In other societies where the rule of law prevails, an interpretation of the law will be sought when similar problems emerge. The difference lies only in how an interpretation is made, what principles are applied as the basis in making such interpretation and by which authority the interpretation will be made. A merit of such interpretation is that unclear provisions can be made more specific. This can then provide an avenue for a consensus to be reached among the public and avoid unnecessary disputes in future.

The office of the Chief Executive has now become vacant. Under Article 53 para 2 of the Basic Law, in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in

accordance with the provisions of Article 45 of the Basic Law. In view of the pressing timeframe and to avoid a crisis in governance, it is indeed understandable for the Hong Kong Government to seek an interpretation from the NPCSC of the relevant provisions. Besides, Article 158 of the Basic Law also provides that "the power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress." So, although this Article gives the local Courts the right to interpret the Basic Law, it does not deprive the NPCSC of the same right.

Under the Basic Law of Hong Kong, the NPCSC shall consult its Committee for the Basic Law of Hong Kong when interpreting the provisions of the Basic Law. Moreover, the mainland organs concerned may organize various seminars to collect views from various sectors of the community on major issues. For example, in respect of the recent issue concerning the term of the Chief Executive, Deputy Secretary-General of the NPCSC, QIAO Xiaoyang, Vice-chairman of the NPCSC's Legislative Affairs Commission, LI Fei, Deputy Director of the Hong Kong and Macao Affairs Office, ZHANG Xiaoming, and Deputy Director of the Liaison Office of the Central People's Government, WANG Fengchao, organized in Shenzhen a seminar for members from various sectors in Hong Kong on 21 April this year. About 200 people attended the seminar, and the participants expressed their views enthusiastically. I also had the opportunity to be the third speaker in the seminar.

The Hong Kong economy is on its way to recovery. What we need is a stable political environment. Otherwise, once there is a political crisis, Hong Kong will definitely become an international laughing stock and investors' confidence in Hong Kong will hence be affected. Since an interpretation by the NPCSC can avoid unnecessary proceedings of judicial review or challenges to the Judiciary and also achieve the objective of political stability, why do we still have to resist it?

Madam Deputy, I so submit.

**DR YEUNG SUM** (in Cantonese): Madam Deputy, I rise to speak in support of Mr LEUNG Kwok-hung's motion. The Government has recently requested the NPC to give an interpretation of the Basic Law, or in the Government's own words, it has filed "a request via the State Council for an interpretation of the Basic Law from the National People's Congress." Whichever the case may be,

the implication is basically the same. Whether the request has been filed directly or indirectly, the fact remains that it is made by the Government of its own accord. I find this action most regrettable because it has dealt a severe blow to our judicial system, staining the rule of law in Hong Kong.

Madam Deputy, under the Basic Law, there is indeed a mechanism for seeking interpretations of its provisions from the NPC. This is provided for under Article 158, especially its third paragraph. I can remember that during our discussions on the Basic Law in the 1980s, we spent a very long time on this mechanism because we had to solve a problem above all else. We had to blend two entirely different systems — the common law system and the system of law in the Mainland — so that we can implement "one country, two systems" and maintain "a high degree of autonomy" for Hong Kong. In other words, apart from ensuring the continuity of the rule of law in Hong Kong, we must additionally ensure that the rule of law can still function efficiently under Chinese sovereignty. Consequently, we designed Article 158, specifying that the NPC shall be vested with the power of interpreting the Basic Law, but at the same time restricting the scope, so that only the Courts are empowered to seek an interpretation of the relevant provisions before the Court of Final Appeal make any final judgements regarding legislation involving the relationship between the Central Authorities and the Special Administrative Region.

It took a long time and huge efforts to design such a mechanism, and it also won the approval of society, the international community and even the Central Authorities. This mechanism is well-designed, able to take account of many of the historical factors at that time. While attaching importance to the differences between the two systems, it also manages to blend them in the unique historical context of Hong Kong. But it is such a great pity that this mechanism has been destroyed not by anybody else but by the Central Government and the SAR Government themselves. All the efforts made 20 years ago — not only by us but also by countless many others — have been spoiled.

The request for an interpretation of the Basic Law this time around has not only shaken the foundation of the rule of law in Hong Kong but has also dealt a heavy blow to our international image. Many rating institutions have formed the view that the Government's repeated requests for interpretations from the NPC — to be precise, the Government itself made two requests, and the NPC gave an interpretation of its own accord on the other occasion — have seriously

affected people's confidence in the rule of law in Hong Kong. Hong Kong is one of the three leading financial centres of the world. Many foreign companies have chosen to go public in Hong Kong largely because of their confidence in the rule of law here. However, if the Government repeatedly tries to damage the rule of law, I believe our international status in the future will be severely undermined.

What is more, the interpretation of the Basic Law by the NPC this time around has also caused me to worry about the future operation of "one country, two systems". The reason is that many mainland legists have told us that we must not look at things purely from the perspective of common law, but must also take account of the conventions and laws of the Mainland. If that should really be the case, I would think that it is better for us to place all the emphasis on "one country, one system" instead of talking about "one country, two systems" anymore. The point is that once the principle of "one country, two systems" is adopted, we must abide by the rules of the game. All is just like a soccer game, in which we are not supposed to move the goalposts at will, or else the whole game will be rendered pointless, ending up in the total elimination of any culture of conventions, regulation and checks and balances.

I am also gravely worried that the Government's present request for interpretation from the NPC may seriously demean the SAR Government. It is good that both Secretary for Justice Elsie LEUNG and Secretary for Constitutional Affairs Stephen LAM are here now. I have gone through the relevant documents, in which it is stated in black and white that there shall be no need for any interpretation of the Basic Law, because it is already provided clearly in the relevant provisions that the term of office of the Chief Executive shall be five years. However, following discussions with mainland legists, Secretary for Justice Elsie LEUNG has openly admitted that her previous understanding was not quite so adequate. This will seriously demean the entire Government. It would be very good if she had really been so courageous as to admit a genuine mistake, just like the Democratic Party. But the truth is that although the Government does have reason on its side this time around, it has still succumbed to the political reality and pressure instead of fighting for the just cause of Hong Kong. Such a government has basically failed in its duties.

Moreover, I also notice that this time around, many Members, political parties and professionals, especially the Hong Kong Bar Association (the Bar),

all seem to have "bowed for just five decalitres of rice". At the beginning, the Bar also opposed seeking an interpretation of the Basic Law, because as clearly provided for under the relevant provisions, even if there is a need for an interpretation of the Basic Law, a request should still be made by the SAR Courts under Article 158 of the Basic Law. However, during a visit to Beijing, the Vice-Chairman of the Bar surprisingly expressed support for the request for interpretation. Fortunately, after his return to Hong Kong, the Bar hastened to issue a statement, saying that since the relevant provisions are already very clear, there should be no need for seeking any interpretation, and that even if there is really such a need, the request should still be made by the SAR Courts in accordance with Article 158 of the Basic Law. This has salvaged the image of the Bar to a certain extent. Had it not issued the statement, I would have said that I really despise the Bar.

Madam Deputy, I wish to say a few words to the various political parties in the Legislative Council. What I want to say is that even if we may hold divergent political views, we are still obligated to fight for the fundamental social institutions in Hong Kong and its core values such as the rule of law, respect for human rights and fair competition in a democratic environment. However, I notice that many professionals in Hong Kong, including Members of this Council belonging to the political parties, all seem to have abandoned this fundamental attitude and principle. They are in fact accomplices in doing all this damage to the legal system of Hong Kong.

The Democratic Party agrees and maintains that we should communicate with the Central Authorities. However, in the course of communication, we must still adhere to a bottomline. To defend the core values of Hong Kong, to foster the development of democracy, human rights and the rule of law in Hong Kong, we will never abandon our position just for the sake of communicating with the Central Authorities. Doing so will strip the Democratic Party of its soul and fundamental principles, reducing it to an opportunist political party. There is no point in making any efforts to expand such a political party. For this reason, I must state categorically here that even though we support communication with the Central Authorities, the Democratic Party will still express its resolute objection, strong protest and utter regret if the Central Authorities and the SAR Government do anything to damage the rule of law in Hong Kong.

At this very time when a new Chief Executive is about to emerge, I hope that he can include two points in his political platform. First, he should state that in order to safeguard the rule of law in Hong Kong, he will act in strict accordance with Article 158 of the Basic Law when seeking any interpretation of its provisions. *(The buzzer sounded) .....*

**DEPUTY PRESIDENT** (in Cantonese): Dr YEUNG Sum, your speaking time is up.

**DR YEUNG SUM** (in Cantonese): Second, he should set down a timetable for implementing universal suffrage.

Thank you, Madam Deputy.

**DR LUI MING-WAH** (in Cantonese): Madam Deputy, it is certainly a great innovation for any country to permit the co-existence of two entirely different systems, or two separate sets of political, economic and legal systems, within its own territories. "One country, two systems" is indeed an ingenious design for the reunification of Hong Kong with the Motherland because, while it can ensure that China can smoothly restore its sovereignty over Hong Kong, it can at the same time maintain the existing political, economic and legal systems of Hong Kong. "Nightclub-going and horse racing as usual" is the best description of Hong Kong after the reunification, something that is welcomed by all Hong Kong people.

Since Hong Kong is a Special Administrative Region of China after the reunification, it is only reasonable for the NPC to formulate the Basic Law of the Hong Kong Special Administrative Region, so as to specify the systems it shall adopt and safeguard the implementation of the State's basic policies in respect of Hong Kong. However, over the past seven years or so, we have also noticed that despite its grand vision, the concept of "two systems within one country" has still encountered many practical problems in the course of implementation. Many of these problems have stemmed from people's understanding of the Basic Law, and others are related to the fact that since the Basic Law is essentially a constitutional document, it does not contain any detailed provisions on the various practical problems that may crop up from time to time. Interpretations must therefore be sought when necessary.

Since the reunification, the Standing Committee of the National People's Congress (NPCSC) has thrice given an interpretation of the Basic Law provisions. The first of these interpretations was given in 1999 to deal with the right of abode issue relating to mainland children born to Hong Kong residents. This interpretation managed to avert a crisis that might result from the influx into Hong Kong of mainland children born to its residents. The second interpretation was given on 26 April last year, when the NPCSC deemed it necessary to set down the directions for the elections in 2007 and 2008 and the political development of Hong Kong in view of the relevant Basic Law provisions and the actual situation in Hong Kong. The third interpretation was given on 26 April this year, when the office of the Chief Executive had become vacant, the aim being to ensure the smooth selection of a new Chief Executive as scheduled. These three interpretations have all managed to reconcile disputes in society, maintain social stability and perfect the Basic Law. It can thus be seen that interpretation of the Basic Law is both essential and proper, serving a very positive purpose.

All the issues necessitating the three interpretations have by now been resolved. But Mr LEUNG Kwok-hung has still sought to revisit all these old issues in the Legislative Council, requesting the NPCSC to withdraw its three interpretations of the Basic Law. To begin with, we must clarify the powers and functions of the Legislative Council and its relationship with the Central Government. Under the Basic Law, the Legislative Council is the legislature of the Special Administrative Region endowed with the main functions of enacting laws, examining and approving budgets, taxation and public expenditure and monitoring the work of the Government. China is the sovereign and Hong Kong is just one of its Special Administrative Regions, meaning that the relationship between the two is one of central to regional. The NPC is the highest organ of power of the State, possessing the unquestionable constitutional authority of interpreting the Basic Law. For this reason, the Legislative Council, as a local legislature, must never act beyond its authority and challenge the authority of the NPC, nor should it ever demand the NPCSC to withdraw its interpretations of the Basic Law. This motion exceeds the powers and functions of the Legislative Council, which is why it is entirely pointless and a waste of time and public money for the Legislative Council and its Members to hold any discussions on it.

Social values and political views will change with the passage of time. With all the political and economic vicissitudes over the past seven years

following the reunification, the political ecology of Hong Kong has started to change. Now that society is in the process of gradual democratization, the people will expect Members to work out positive and constructive proposals that can improve the well-being of society as a whole and foster economic prosperity and social stability and harmony. In foreign countries, both the ruling parties and their opposition will advance policies in the interest of the people, so as to win their confidence and sustain the development of society. It is a pity that in Hong Kong, individual Legislative Council Members are still speaking and behaving like street protesters, clinging to a political attitude of confrontation, opposing just for the sake of opposing. Such an attitude is not conducive to social stability and prosperity, nor can it help improve people's livelihood and the economy, which is why it will be very difficult for them to command people's approval and support. It is hoped that these Members can respect themselves, reflect on their own deeds and take more concrete actions for the benefit of society. This is the only advisable course of action for them. Thank you, Madam Deputy.

**MS MARGARET NG** (in Cantonese): Madam Deputy, the central idea of this motion debate today is that the executive must abide by the laws. For this reason, I must take exception to Dr LUI Ming-wah's comment that it is a waste of time for us to conduct the debate today. Madam Deputy, earlier, the Secretary for Justice referred to the CFA judgement on the case of LAU Kong-yung. But this judgement only mentioned that the NPCSC can initiate interpretation of the Basic Law without being requested by the CFA. This however does not mean that even if the NPCSC seeks to interpret the Basic Law at will, the rule of law in Hong Kong under "one country, two systems" will not be jeopardized. I am sorry that I did not have any time to get a copy of the judgement, but as far as I can remember, the judgement on the LAU Kong-yung case did not contain any ruling on whether the Chief Executive has the power of requesting an interpretation of the Basic Law from the NPCSC. The reason was that it was not the issue to be handled by the Court at that time.

My speech today shall focus on one point: It is unconstitutional, a breach of the spirit of the Basic Law, and even a downright damage of the rule of law in Hong Kong, for the SAR Government to request an interpretation of the Basic Law from the NPCSC. Actually, even Acting Chief Executive Donald TSANG

has already admitted openly in the Legislative Council that the SAR Government does not have the power of requesting the NPCSC to interpret the Basic Law. The provisions invoked by him are Article 43 and Article 48(2) of the Basic Law. But Article 48(2) only provides that the Chief Executive shall be, among other things, "responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region". This means that this particular provision is about the implementation of laws. In other words, if the Government comes across any problems of interpretation in the enforcement of any laws, it must abide by the law, that is, seek interpretations from the Courts of Hong Kong, unless otherwise stipulated in other provisions of the Basic Law. The reason is that according to paragraphs 2 and 3 of Article 158 of the Basic Law, the Court shall be empowered to interpret the provisions of the Basic Law. Mr Ronny TONG has already explained this very clearly, so I shall not make any repetition here.

According to the Acting Chief Executive, he has not really requested any interpretation of the Basic Law from the NPCSC, but has just submitted a report to the State Council, requesting it to file a request with the NPCSC. However, it is clear to everybody that it will not make much difference whether the request is made directly or indirectly. The Government is just trying to deceive itself as well as others. Sometimes, the Government argues that the Chief Executive does not enjoy any privilege in this respect, as any person may file a request with the NPCSC, though, of course, it is up to the NPCSC to decide whether to accede to the request. Such an argument is self-contradictory because the Chief Executive of the SAR is by no means "any person", and he has not requested the State Council to file a request with the NPCSC as "any person" either. Instead, he has done so on the strength of the power conferred on him by Article 43 and Article 48(2) of the Basic Law. And, since he has invoked these provisions, we must examine whether they really confer such a power on him.

Madam Deputy, on many different occasions, I have repeatedly cited the analyses of many law academics, explaining that Article 48(2) does not confer such a power on the Chief Executive. Besides, I have also explained that the Government must not perceive the Chief Executive as being vested with such a function under the entire framework of the Basic Law. I am not going to repeat my points here. I wish to add one point, though. The Government pointed out that following the case of LAU Kong-yung, such a position could no longer be

maintained. But the fact is that even after the LAU Kong-yung case, these law academics have still been writing various analyses, and their position has never changed. They have continued to assert in their analyses that the Government does not enjoy such a power.

Honestly speaking, even without all these academic analyses, it is still clear to all that the first request for interpretation was actually filed with the NPCSC only after the Government had lost the lawsuit, after the CFA had passed a judgement, in other words. Therefore, the request had the practical effect of overturning the judgement of the CFA. As for the second time, it looked highly likely at the beginning that the Government would lose its case in court, so it decided to take the drastic move of seeking an interpretation from the NPCSC. In this way, it managed to turn defeat into victory without even having to go to court. Members have already talked about these cases in detail, so I need not do so anymore. However, as can be seen from these cases, the Government may actually evade the jurisdiction of the Court over some major legal disputes, but the ordinary people cannot do anything about this. I must therefore ask, "What then is the point of suing the Government? Is this not an utter destruction of the rule of law?" I hope that the new Chief Executive can publicly undertake not to do something like this anymore. If not, the rule of law in Hong Kong will continue to be frail, just like Achilles in Greek mythology — strong as the gods, maybe, but still vulnerable to fatal attacks at the heel.

Some have asked, "Since the power of interpreting the Basic Law is vested in the NPCSC, why do we not ask it to exercise its power directly? Why do we have to take such a circuitous route, going via the CFA instead?" Others have commented that whichever way we follow will eventually lead to the same outcome. We cannot agree to such a viewpoint. We can all see very clearly that there is a marked and significant difference between the Court in Hong Kong and the NPCSC in terms of their respective procedures of interpreting laws. The Court in Hong Kong emphasizes legal justifications in the process, giving equal opportunities for both sides to state their cases publicly before making an independent judgement. And, it will also make sure that the legal justifications on which it bases its decision can be applied to future cases in an equally valid manner. In contrast, as we have seen, the NPCSC interpretations are not based

on any legal justifications. The NPCSC decision on the term of office of the Chief Executive demonstrated to us clearly how it may be biased towards one side and how it will draw a conclusion and then listen to those it trusts before the process even begins. We are thus extremely sceptical of the NPCSC's acts of interpretation. Since there is no democracy in Hong Kong, it is very difficult to safeguard the rule of law. It is precisely because of this that we must make extra efforts, or else the rule of law will either vanish altogether or at best exist in name only. Thank you.

**MR TAM YIU-CHUNG** (in Cantonese): Madam Deputy, the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) is part of the rule of law in Hong Kong. In February 1999, the CFA stated (and I quote): "The Court's judgement did not question the authority of the Standing Committee to make an interpretation under Article 158 which would have to be followed by the courts of the Region. The Court accepts that it cannot question that authority. Nor did the Court's judgement question, and the Court accepts that it cannot question, the authority of the National People's Congress or the Standing Committee to do any act which is in accordance with the provisions of the Basic Law and the procedure therein." (End of quote)

Since the reunification, the NPCSC has given three interpretations of Basic Law provisions, each time winning the approval of Hong Kong society without affecting its rule of law. Therefore, in response to some Members' allegation that interpretations of the Basic Law will damage the rule of law, affect the status of Hong Kong as a financial centre and deal a blow to Hong Kong's international status, in brief, the likening of those in support of the rule of law to accomplices, I wish to quote Mr Henry Denis LITTON, a retired Judge of the CFA: "The rule of law in Hong Kong has not been weakened as a result of the interpretation of the Basic Law by the National People's Congress. The spirit of the rule of law is still being implemented everyday in our courts."

I recently met with a veteran media worker, and he told me that interpretations of the Basic Law could in fact consolidate the rule of law, consolidate people's confidence in the Basic Law and our rule of law. He

emphasized the word "consolidate" and hoped that I could use it more often on public occasions.

(THE PRESIDENT resumed the Chair)

An examination of the past three interpretations of the Basic Law will show that we cannot deny the urgency in each case. Recently, for example, there was a need to interpret the Basic Law to clarify the term of office of the new Chief Executive returned by the by-election, because there were controversies on this in society, and this might hold up the election of a new Chief Executive as scheduled, thus leading to a political vacuum. If the uncertainties had been allowed to continue, the effective functioning of the Government and social stability would have been directly affected. As a result, the SAR Government was obligated to remove the uncertainties, so as to avoid any political turmoil and maintain people's confidence.

With the interpretation given on 6 April last year by the NPCSC pertaining to the Basic Law Annexes on the selection of the Chief Executive and the formation of the Legislative Council, and also with the decision it announced on 26 April last year, there is now a clear scope for the political development of Hong Kong. The interpretation and decision are constitutionally binding and can serve the purpose of settling social disputes in Hong Kong. They can provide a clear direction for the future political development of Hong Kong and lay the foundation of a social consensus, to the benefit of the further democratization of Hong Kong's political system.

As for the interpretation of the Basic Law given in 1999 by the NPCSC pertaining to the right of abode of mainland children born to Hong Kong residents, it could clarify the legal basis and justifications for the relevant immigration policy, thus averting the catastrophic consequences of a huge population influx into Hong Kong and preventing any paralysis of our public services due to overloading. Hence, by requesting the State Council to file a request for interpretation of the Basic Law with the NPCSC, the SAR Government was in fact discharging its intrinsic duty of defending the Basic Law and ensuring the social stability of Hong Kong.

The three interpretations of the Basic Law all obtained the majority support of this Council and society as a whole. Any attempts to ignore this fact and overturn the interpretations given by the NPCSC are obviously not constructive in any sense.

As for the demand that the SAR Government should undertake not to request any further interpretation of the Basic Law, I must state my disagreement. In the course of implementing the Basic Law, problems that the SAR cannot resolve on its own may crop up from time to time. The Chief Executive of the SAR is accountable to the Central People's Government and the SAR, and as required by the Basic Law, he must report to the State Council on any such problems and make recommendations. Only this is the responsible approach of discharging his duties. To demand the SAR Government to impose restrictions on itself and refrain from seeking any further interpretation of the Basic Law is just an attempt to achieve a secret purpose in the name of morality, a demand that gives people an impression that the SAR Government does not respect the rule of law. I therefore oppose any such demands.

The implementation of the Basic Law is after all a new experience, and people may not see eye to eye with one another on the interpretation of its provisions. However, I am sure that given patience and practice, it will certainly be possible to resolve the conflicts between the continental law concepts in the Basic Law and the common law system of Hong Kong. One should not be influenced by one's different political position and thus negate the lawful discharge of duties by the Central Government and the SAR Government. One must not lightly condemn the Central Government and the NPCSC, for this kind of behaviour obviously does not command the popular approval of Hong Kong people.

Madam President, "beware of heartbreak with grievance overfull, and range far your eye over long vistas". In the course of implementing "one country, two systems", we must see things not only from our own perspective but also from that of the State. We must not look at common law in isolation, but must look at it in the overall context of "two systems". We must not look only at the present, but must look ahead into the future.

With these remarks, I oppose the motion.

**MR ALAN LEONG** (in Cantonese): Madam President, if the rule of law means that clear legal provisions can be distorted at any time according to the will of the superiors to suit the needs of circumstances or individuals through a so-called legislative interpretation process, then I will certainly agree that the third interpretation of the Basic Law by the National People's Congress (NPC) has indeed consolidated the rule of law. Unfortunately, the time-tested spirit and system of the rule of law in Hong Kong are entirely different from what I have described above. I must point out that we have to regulate the exercise of public powers by means of clear legal provisions.

The Basic Law is supposed to be a legal document clearly recording the Central Authorities' promises on how to allay the worries and anxieties felt by Hong Kong people before 1997. All the provisions should thus be objective and precise, endowed also with predictability. They must not be distorted to suit the need of circumstances and any individuals, for this will pose great threats to the rule of law.

Madam President, the NPC has just made its third interpretation of the Basic Law. Mr Frederick FUNG once questioned the Government whether it would conduct any comprehensive studies on the interpretation and implementation of the Basic Law, so as to forge a consensus between Hong Kong and the Mainland on how the Basic Law should be implemented. In her written reply, Secretary for Justice Elsie LEUNG said that since the Government could not possibly foresee which provisions would cause disputes between the Central Authorities and Hong Kong, we could only rely on the interpretations of the Court or the Standing Committee of the NPC (NPCSC), or rely on accumulated precedents, in order to help us gain a full understanding of the Basic Law.

The Government did not seem to have the intention of initiating any joint studies with the Central Authorities on rationalizing the problematic provisions of the Basic Law. Instead, it continued to indulge in self-satisfaction, intoxicated by the myth about the successful implementation of the Basic Law, and permitting the repeated occurrence of constitutional disputes. And, every time when it could not be sure that the Court would rule in its favour, it would request an interpretation of the Basic Law. The Court is thus prevented from making any fair, open and lawful judgements on the cases concerned, and society would be split apart time after time as a result.

The Government has already made two requests for interpretation of the Basic Law, but so far, it has still failed to produce a concrete mechanism, failed to enumerate the criteria and procedure according to which it may make such requests on its own before the Court determines under Article 158 of the Basic Law whether a certain issue is out of the limits of the autonomy of the SAR.

The Government has all along claimed that it has the constitutional power of making requests of its own accord for Basic Law interpretation. But if its claim is justified, why has it not institutionalized the whole process after such a long time? Why has it not devised a clear mechanism to enhance people's confidence in the legality of such requests? I believe the Government actually knows only too well that the interpretation of the Basic Law is simply not meant to handle any legal issues. Rather, it knows very well that it is just a Sword of Imperial Sanction bestowed on it by the Central Authorities to ensure that it can be ever victorious in all constitutional disputes. In history, was there ever any holder of the Sword of Imperial Sanction who was willing to tell others the circumstances and mechanisms under which he would use this Sword?

The mysterious power of a Sword of Imperial Sanction in the ancient times lied in all the secrecy surrounding when it would be used. It was this precise quality that enabled it to cow all people into submission, with nothing at all to check and prevent its abuse. I therefore cannot help sighing, "What a striking resemblance between it and the interpretation of the Basic Law by the NPC!" We can all remember how Mr TSANG, a Deputy to the NPC, warned Hong Kong people that any further objection would constitute a breach of the law. We can all remember how the Government kept talking about its fear of having to defer the by-election, and how it tried every possible means to defer a trial in our Courts until after the NPC had given its interpretation, just to make sure that the Court would have no alternative but to submit to the interpretation. The plot of this drama of Basic Law interpretation is not fictitious, and its resemblance to a Sword of Imperial Sanction is hardly coincidental.

In theory, if we want such a bigoted Government bestowed with a Sword of Imperial Sanction to listen humbly to the aspirations of the various social sectors and accept the people's check, the key should be to fight for the greater participation of the people in the coming elections, so that the Chief Executive and Legislative Council Members must then respond positively to the people's views. Unfortunately, the interpretation of the Basic Law advanced by the NPCSC on 6 April last year and the "decision" it made on 26 April the same year

overturned the Basic Law commitment in regard to the introduction of political reforms in 2007 and 2008, thus abruptly dampening the people enthusiasm for being masters of their own house. Everybody seemed so helpless before this almighty Government.

Madam President, over the past seven years or so, the repeated actions of the Government to challenge the rule of law and suppress democracy have resulted in widespread sentiments of political helplessness in Hong Kong society. The people are no longer the slightest bit interested in the letter of the Basic Law, and they no longer bother about whether the actions of the Government will distort the law, because they know that despite all its clarity and certainty, the law can still be distorted to suit the will of those in power and political expediency, and that justifications can always be fabricated to describe a deer as a horse. As a result, regarding the recent issue concerning the term of office of a new Chief Executive, the people simply do not bother about the process leading to the advocacy of a "two-year term". They only want to make sure that a new Chief Executive can be selected as soon as possible. In brief, they are concerned only about the end, not the means. But is it worthwhile to damage Hong Kong's long-standing core values and procedural justice just to make sure the term of office of the next Chief Executive can suit political needs? Is it fair to do so?

The interpretation of the Basic Law is already a reality. The damage already done, we can only hope that the rift between the Government and society can be filled, and that the people's confidence in the governing team can be restored. I hope that the new Chief Executive can make the best use of the valuable time in the next two years, adopting a responsible attitude to reopen the road to constitutional reform and achieve genuine democratization for the elections in 2007 and 2008, instead of simply extending the scope of the coterie elections. In particular, the new Chief Executive must demonstrate a genuine commitment to the rule of law, which has come under repeated challenges, and also our infant democracy.

As an admonition to the Central Authorities and the SAR Government, I must put down a sad but unambiguous record in the Chamber. Let us hope that history will not repeat itself and society will never be split up again.

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

**MR FREDERICK FUNG** (in Cantonese): Madam President, at its meeting on 27 April, the NPCSC once again made an interpretation of the Basic Law with all its overwhelming authority, drawing the definitive conclusion that when the office of Chief Executive becomes vacant in a term, the new Chief Executive returned by the ensuing by-election shall only serve out the remaining term of office. With this ruling, the "issue of paramount importance", that is, the smooth selection of a new Chief Executive on 10 July, is thus rid of any obstacles. But the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I find this utterly disappointing and regrettable. The Central Authorities and the SAR Government have completely ignored one core value of Hong Kong, that is, the spirit of the rule of law underpinning its success has depended.

I believe no one will ever query the NPCSC's power of interpreting the Basic Law. It is stated at the very beginning of Article 158 of the Basic Law that "the power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress." I do however query the lack of any restraint and respect for due procedure in the whole interpretation process, for this will only seriously damage our rule of law and the important State policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

I wish to emphasize that in any society upholding the rule of law, constitutional or other legal disputes are just very, very, very, very common and ordinary. And, in the case of Hong Kong, such disputes are invariably brought before an independent judiciary for adjudication. There is an established procedure, whereby both sides are able to present their cases before the Court makes a ruling on the basis of objective legal principles and justifications.

The absurdity of the recent interpretation of the Basic Law is that at the very beginning, the Government and all those in support of seeking an interpretation already started to spread panic by referring to the case of The Link REIT, lying that a judicial review will only drag the Chief Executive Election down a dead alley in the end. This is mere demagoguery, an attempt to rationalize a request for interpretation of the Basic Law.

What is more, on 6 April last year, in the absence of any legal justifications, the SAR Government submitted a report to the State Council, recommending it to file a request with the NPCSC for an interpretation of the

Basic Law provisions on the term of office of the Chief Executive. In doing so, it managed to bypass the judicial process due to begin in our Courts, completely ignoring their authority and bringing forth a pre-emptive ruling it desired. The Government's action amounted to a fusion of executive and judicial powers which completely obliterated the independence of the Judiciary.

What is even more absurd is that in an attempt to justify its change of position regarding the term of office of the Chief Executive, the SAR Government went so far to give a whole list of completely queer reasons, including the recollections of Basic Law drafters and the views of mainland constitutional authorities. It even referred to the consultative draft of the Basic Law, saying that the expression "新的一屆行政長官" in the draft was replaced by "新的行政長官" in the final version, so as to justify the claim that the Chief Executive returned by a by-election should only serve out his predecessor's remaining part of tenure. Following this kind of logic, one can say that all Chief Executives, whether selected before or after 2007 and regardless of the methods of selection, must be bound by Article 53.

But we must also look at the interpretation of the National People's Congress, which reads to this effect: "if the method for the selection of the Chief Executive is amended after 2007, the tenure of the new Chief Executive shall be determined according to the then Chief Executive selection method when the office of Chief Executive becomes vacant". This shows clearly that the interpretation is applicable only to the Chief Executives before 2007. What then is the problem? Has another communication breakdown occurred between the SAR Government and the Central Government? Has the SAR Government once again misinterpreted the opinion of the Central Authorities? Is this an indication that the SAR Government went just too far when fabricating justifications for its change in position, thus plunging itself into such an impasse?

What is said in the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill is different from the content of the interpretation given by the NPCSC. Can we say that the attempt to solve one problem has led to another? First, we now realize that amendments of the method for selecting the Chief executive after 2007 can in fact cover the term of office and by-election arrangements. That being the case, why did the Constitutional Development Task Force not include all these arrangements in its four rounds of consultation? Should we then start the consultation all over again? Second, in that case, some will argue that specifying a five-year term of office for any Chief Executive after 2007 will be in breach of the meaning of

"新的行政長官" in Article 53 of the Basic Law, and that there will also be difficulties in complying with the latest interpretation given by the NPCSC. There are indeed many contradictions. Should we then amend the Basic Law, deleting "新的行政長官" and inserting "新的一屆行政長官" again? Honestly speaking, the interpretation of the Basic Law will lead to many, many other problems, such as the interpretation of "term of office" as it appears elsewhere in the Basic Law, the meaning of "not more than two consecutive terms" for a Chief Executive, and so on. All these problems baffle not only the SAR Government. Even the NPCSC will probably be caught in a constant need for offering one interpretation after another. In the end, more interpretations are to bound result in more ambiguities, thus affecting the Basic Law as a whole. All this can aptly show that acts of interpreting the Basic Law are completely devoid of any legal justifications.

This is in fact the undesirable effect of trying to resolve legal problems by political means, or to be precise, the undesirable effect of using the law as a means of achieving political purposes. But the SAR Government continues to think that it is very clever. In the Chief Executive (Amendment) (Term of Office) Bill, it still specifies that whenever the office of Chief Executive becomes vacant in a term, the successor shall only serve out the remainder of the term of office. It has not followed the latest interpretation of the NPCSC and specified that the requirement will be applicable only to the Chief Executives before 2007. In other words, it is trying to enact a piece of local legislation to prescribe a *fait accompli* for the term of office of any Chief Executive returned by a by-election in the future. This failure to comply with the latest interpretation given by the NPCSC will only sow the seeds of judicial reviews and pave the way for more interpretations of the Basic Law by the NPCSC in the future.

Finally, I still wish to talk about the Secretary for Justice's written reply to my question last week. In my question, I asked her whether there were still any Basic Law provisions that required clarification, and whether there was a need to find out the opinions of the Central Government and the NPCSC. But in her written reply, she simply said to the effect that she knew nothing at all. This really enrages me. I must stress that the most important element of any laws should be their predictability. It is only with such predictability that people can know how to obey the law, whether he should turn left or turn right, and whether he should walk forward or backward. Unfortunately, what we find in the Basic Law now cannot make us know what to do. There many so many grey areas,

with the result that the Basic Law is open to the interpretation of anyone. I thus cannot help thinking that this is really a failure to consider the political future of Hong Kong and the implementation of "one country, two systems". It must be realized that more grey areas in the Basic Law will only give people more opportunities to make use of them to achieve their political purposes. With these remarks, I support the motion.

**MR ALBERT CHAN** (in Cantonese): Madam President, the Government's request for an interpretation of the Basic Law by the NPCSC this time has once again reflected the ugly side of the Government's governance. Under the principle of the rule of law, no person is above the law, and the provisions of law should also be clearly stipulated. Suppressing dissenting views by high-handed means is absolutely inconsistent with the principle and spirit of the rule of law.

I have filed a petition for judicial review over the term of office of the Chief Executive. My intention or objective is very simple and that is, I hope that the people of Hong Kong can resort to the institutions of Hong Kong to seek a fair and independent ruling on this issue relating to Hong Kong. But much to our regret, our Government has taken a "backdoor" route to seek an interpretation from the NPCSC.

In her earlier explanation, the Secretary for Justice, Elsie LEUNG, said that the Chief Executive has this power because he is responsible for implementing the Basic Law, and that since he has the power to implement the Basic Law, he also has the power to request an interpretation from the NPCSC on issues relating to the Basic Law. In fact, to put it more clearly, and as Chief Secretary Donald TSANG said in this Chamber on the last occasion, he had only submitted a report on the difficulties involved and proposed to request the NPCSC to make an interpretation. However, the Government very often slaps its own face until it is swollen in order to look imposing. It actually has no power. All that it could do was to submit a report but it said repeatedly in this Chamber that it was the Chief Executive requesting the NPCSC to interpret the Basic Law. In fact, the Government should change its tone in future, for it has no power. All that had been done was submitting a report and proposing to request an interpretation from the NPCSC.

If the logic of Secretary for Justice Elsie LEUNG stands, then all civil servants responsible for law enforcement will have great powers. Be it in the case of hawker control officers in enforcing the Hawker Regulation or the police or traffic wardens, all will have a great many powers. If it is said that having the power of enforcement means having the power to request an interpretation or explanation from the relevant parties, the Legislative Council would be very busy in future. For this reason, I absolutely cannot accept the logic advanced.

Regarding the controversy over whether the term should be two years or five years, I always think that it is like some big, roaring waves in calm days. Since the reunification, the Hong Kong Government, for unknown reasons, has often caused big problems over something which is not a problem in the first place and turned big problems into disasters. The art of governance is to turn disasters into small problems, and small problems into no problem. But the SAR Government has not done this. When everybody should be celebrating the stepping down of TUNG Chee-hwa together, the Government has nevertheless stirred up another round of contention, which has further tarnished the international reputation of Hong Kong and dealt yet another heavy blow to the rule of law.

I filed a petition for judicial review on this issue because I think that since Secretary for Justice Elsie LEUNG is so confident with the view that the term of the Chief Executive should be the remainder of the term after she had consulted many legal experts in Beijing, we should leave it to the independent and impartial Judges of Hong Kong to make a judgement after listening to the arguments of all sides. Insofar as the proceedings of this case are concerned, the Government has called two witnesses as the respondent's expert witnesses, and they are LIAN Xisheng and XU Chongde. Having read their interpretation supporting the view that it should be the remaining term of two years, I could not but heave a sigh of sadness. If an interpretation by the NPCSC is justified on the reason given by them and the legal opinions and corroboration made over the years are hence overthrown, what is the point of the legislative process of the Legislative Council or the process of enacting legislation by officials of the Hong Kong Government?

XU Chongde's interpretation is very simple. He only said that during the drafting of the Basic Law, the term of "the Chief Executive of the new term" had already been stipulated and the word "term" was subsequently deleted to mean the remainder of the term. He has explained the logic for many times.

I consider the view of LIAN Xisheng more practical. He said that firstly, with regard to the remainder of the term, it was not discussed as a key issue at the meetings of the Special Group, which means that it was never discussed seriously and might have been mentioned only incidentally. Secondly, he said that members from the Mainland and Hong Kong had different views. Indeed, they held different views, and he is quite candid. Thirdly, his conclusion is that since the term of office of many state leaders in the Mainland is the remainder of the term of their predecessors, on the question of the term of office, it should be the remainder of the term of the preceding Chief Executive, and this is a rule established by common practice.

Since this is so obvious, why did government officials say that it should be five years when drafting the Chief Executive Election Ordinance, and why did "Eunuch Lam" also assert in this Chamber that it must be five years? Do officials of the Hong Kong Government not understand the meaning of mainland officials when they said that this is a rule established by common practice? But regrettably, we do not have the opportunity to debate this issue in a Hong Kong Court.

Nobody will question the NPCSC's power to interpret the Basic Law, but I would like to give this warning: The NPCSC's interpretation of the Basic Law is like the "seven damaging fists", a kind of fisticuffs which is highly domineering. While this is an unparalleled skill in martial arts which can kill many people, the biggest problem of the "seven damaging fists" is that the one who uses it will injure himself before injuring others. He who practices it will invariably inflict injuries on himself first. So, I am warning the Hong Kong Government not to think that it is the most authoritative and the smartest. Although it may finally kill all the people, it may end up killing itself for excessively practising the "seven damaging fists". So, if we do not wish to get killed together, this system must be reviewed. What has been done now is absolutely not the original intention of "one country, two systems" or the formulation of the Basic Law.

There are 50 years to go, and I do not know if we can make it. Madam President, I hope Members can conduct a review.

Madam President, I support the motion. Thank you.

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

**MR MARTIN LEE** (in Cantonese): Madam President, Mr Albert HO's story about "a bird eating a cake" is marvellous. But about the warlord in the story, that is, the one who should get a "number one bamboo" but had used the "number one circle" instead to claim that he had won a hand, there are actually many such warlords in the Mainland. Those who claim to be legal experts or those backstage manipulators during the drafting of the Basic Law are all such warlords. Having listened to the words of these warlords in Beijing, our Secretary for Justice, Elsie LEUNG, then realized when the bird is hungry and so, she can bring this view to Hong Kong and it will turn out that the bird can also eat a big cake in Hong Kong.

This story should unfold like this. But is it good to Hong Kong? Certainly not. In fact, with regard to the way in which Article 158 of the Basic Law is written, I must apologize to Members because I had played a part in it. But that is not the way that I intended it to be. From the beginning to the end, I had wished to bring the common law in Hong Kong into play, and I had striven to convince the mainland members of the drafting committee that only Hong Kong Courts should be given the power to interpret the Basic Law. I had fought for this for a long time but in vain. They told me that it definitely could not be written in this way, for the power of interpretation of the Basic Law must rest with the NPC, because this is provided for in the Constitution of China.

We had, therefore, continued to strive for it progressively. We had consistently striven to provide for this in the second and third paragraphs until the stage when it is not appealable and that is, when the case reaches the CFA. Besides, the case must require an interpretation of the Basic Law, and the relevant provisions must concern those on affairs which are the responsibility of the Central Authorities or those on the relationship between China and Hong Kong. It is only under such circumstances that the CFA cannot make an interpretation and is required to submit the case to the NPC for an interpretation from the NPCSC. In other words, during the preliminary hearing of the case, Hong Kong Courts have the full power of interpretation of any provision of the Basic Law. Even at the appeal stage, the Courts in Hong Kong also have the full power of interpretation. Only that when the case reaches the CFA, the CFA cannot interpret the provisions that fall into these two categories and must seek an interpretation from the NPC.

In fact, as I have mentioned here before, the merit is that when the CFA made a request for interpretation to the NPC, the NPCSC will already have the judgement passed by two Courts in Hong Kong and therefore know the arguments of both sides and the bone of contention. So, it will make an interpretation in full knowledge of the situation in Hong Kong. Moreover, it is not necessarily the case that an appeal will be lodged. I have engaged in court cases for many years. After the Judge has passed a judgement on a case, even though the judgement may not be favourable to the client, no appeal will be lodged if the Judge is considered to have made the right judgement. Even if an appeal is lodged, but if the judgement made by the Court of Appeal is considered correct and if it is really impossible to win, no appeal will be lodged. So, it is not a must that an appeal will be lodged all the way to the CFA.

If the Court of Appeal has already passed a judgement on this case and interpreted the Basic Law, the Secretary for Justice can still decide not to appeal if she considers the judgement sensible and reasonable, even though the Central Government may not like it. Given "a high degree of autonomy", the power is in her hands and she should not be taking instructions from the Central Authorities and invariably lodging an appeal whenever the Central Authorities have expressed their dislike, or lodge an appeal disregarding whether or not the Court of Appeal is correct. If an appeal is lodged, the CFA will have to pass its power of interpretation upward and seek an interpretation from the NPC. The Central Authorities do not have to do this and should not do this.

Although this is what I had ultimately achieved insofar as Article 158 is concerned, I am still not satisfied with it. But if the SAR Government truly acts in accordance with the original intent of Mr DENG Xiaoping and truly gives effect to "a high degree of autonomy", many cases actually need not be brought before the CFA, and it would be unnecessary to request the NPCSC to exercise its power of interpretation.

Regrettably, this is not the case in reality. The most recent interpretation is even more outrageous. It was obvious that the Court had already been prepared to hear the case filed by Mr Albert CHAN and the Judge had said that proceedings could start in the following week, but the Senior Counsel representing the SAR Government said that he was not yet prepared for it. I have actually said here before that we all know only too well whether the Secretary for Justice, Elsie LEUNG, is right or wrong. I think she is wrong.

But if she thinks that she is right, then nobody in Hong Kong would know this issue better than she does. Why should the Government's Senior Counsel need more time when all that the Senior Counsel representing Mr Albert CHAN needs is just one week to prepare for the proceedings? This is downright a stalling tactic. This is primarily meant to seek an interpretation from the NPC and so, they dared not put the case before the Court of first instance and did not wish that the Court of first instance will judge not in favour of the SAR Government. It was done with brute force. So, the disputes here today are meaningless. Now that the bird will eat a big cake, and it eats the cake whenever it feels like it. This cake is, in fact, the common law. The bird is eating it away one bite after another. This is what has been happening.

Dr LUI Ming-wah said that we are wasting our time here. He is right to some extent. But I found it strange that since this is a waste of time, why did he still rise to speak and join us in wasting time? Having listened to his speech, I feel that the Member was not speaking from his mind. But I can only take the person who wrote that speech for him to task. I do not know where this person is. But I hope he is listening to me now. The speech has been written very badly indeed. He does not know the situation in Hong Kong, and what is more, he made Dr LUI to read it out. If we are wasting our time, why did he join us in wasting all of our time? Thank you, Madam President.

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

**MR LEE WING-TAT** (in Cantonese): Madam President, I speak in support of the motion proposed by Mr LEUNG Kwok-hung. As many friends from the Democratic Party and the pro-democracy camp have spoken on issues of jurisprudence, I do not intend to repeat their points. I only wish to make two predictions here.

My first prediction is that in the future, history will be written this way: After the reunification, the Basic Law was interpreted for three times, and then four times and five times in the Hong Kong Special Administrative Region (SAR). In the beginning, many people had, for a short time, supported the Government's request to the Central Government for an interpretation, but they subsequently found out that doing so had not only undermined the rule of law, but also affected the operation of Hong Kong as a whole.

In making this prediction, I actually wish to tell the Government that the people's transient, superficial support for the Government should not be taken as a manifestation of long-term order and stability. I can even predict that if the Government seeks an interpretation of the Basic Law for various reasons, such as a crisis in governance will otherwise emerge, the Government will weaken its own ability to resolve local and internal conflicts by local and internal means. According to my analysis, this is, in fact, somewhat similar to the situation of functional constituencies. Functional constituencies have, in fact, postponed the time when the Liberal Party will be capable of taking part in direct elections for a decade. The reason is that since functional constituencies can protect the interests of small circles, this political party has not worked seriously to play a greater part in direct elections.

As regards the three so-called crises mentioned in our debate today, the first is about seeking the NPCSC's interpretation in 1999 to address the problem of 1.76 million people coming to Hong Kong. The second is about the interpretation of the Basic Law on the constitutional system last year. This year's crisis concerns the election of the Chief Executive. In fact, these are all internal conflicts in Hong Kong. In many cases, these conflicts are a test to the leaders and senior government officials on how they can identify the differences in opinions and come up with a solution through communication. These are actually challenges to the ability of governance, and if they can do a good job with them all, the authority of the Government can then be established. However, the Government has not adopted this approach, as it sought to address the problems not by internal means or with the ability of governance that the Government thinks it has, but by relying on the Central Government or an outside or external force. In fact, this has only weakened the Government's ability to deal with these problems or situations.

Seeking an interpretation of the Basic Law is actually an instance of dependence. Hong Kong is a highly pluralistic and complex society. Problems may arise in every period of time and at every stage. As Dr LUI Ming-wah or Mr TAM Yiu-chung has said, this will put the Government in a dilemma or even precipitate a crisis. In fact, insofar as politics is concerned, there are ways to resolve crisis, but instead of solving the problems in these ways, our Government has sought an interpretation of the Basic Law by an external force. I think that in future, it will be written in history that the authority and governance of the Government had been diminishing. One of the reasons was that it dared not face challenges.

Now, let me turn to my second prediction. Regarding the three interpretation exercises, many of our friends in the pro-democracy camp, particularly friends in the legal profession, sometimes felt indignant because they did not understand why their views were not accepted when they thought that justice is on their side. In fact, we often had this experience in the pro-democracy movement over the past 20 years. However, I think that one should persevere if he considers that justice is on his side. So, in this speech of mine today, I actually do not have any new viewpoint to make. I just wish to give encouragement to friends in the pro-democracy camp and tell them that in history, many things which were said to be right for a short while would subsequently be criticized as wrong.

Throughout the history of China, there had been incidents which were considered right at the time. I am referring to incidents that took place after the Central Government had seized power, such as the Land Reform, the Anti-Rightist Movement, the Great Leap Forward, the Cultural Revolution, the 1976 Tiananmen Square Incident, and so on. Such historical incidents actually did not take place a very long time ago. By some reckoning, they only took place over the past few decades. Looking back at these incidents, we will see that what was done at that time was actually wrong. If Members have read the book, *The Last Nobles*, they will know that during the Anti-Rightist Movement, many intellectuals who had been praised highly by the State and had become famous after the founding of the People's Republic of China did not even enjoy the most basic dignity as human beings at the time. They had been labelled as the rightists by the leadership, and they had acted in a way different from us or the ordinary people. They would feel to be under pressure even when talking to their own families, relatives and their cadre friends. Now, some 20 or 30 years later, the Anti-Rightist Movement is found to be wrong.

I can reassure friends in the pro-democracy camp that although I do not know how many years later — it may be 10 years, or it may be 20 years — I am sure that it will be written in history that it was right for us friends to jointly oppose the interpretation of the Basic Law. Thank you, Madam President.

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

**MR JAMES TO** (in Cantonese): Madam President, I just wish to say a few words and let Members and the Government know that during the recent meeting of the United Nations Committee on Economic, Social and Cultural Rights (the Committee) which we attended in Geneva, Switzerland, its members did express serious concern about the interpretation of the Basic Law in Hong Kong. I should perhaps describe their concern here, because there has not been too much media coverage in Hong Kong, and I do not know whether the reports written by government officials like Permanent Secretary Stephen FISHER after their return are detailed enough, or how much they have told the Government.

In the course of lobbying members of the Committee, we also brought up the interpretation of the Basic Law for discussions. Many of the Committee members were renowned international law experts and legists, and some were even the Chief Judges of their own countries or jurisdictions. Their views therefore merit our consideration. Even from their own perspectives, they could understand Hong Kong's position under "one country, two systems", and they could also see the fact that the Standing Committee of the National People's Congress (NPCSC) is vested with the power of interpreting the Basic Law and the Constitution of China. Committee members could all understand this point. However, although they knew that "one country, two systems" is practised in Hong Kong and for this reason, the implementation of the International Covenant on Economic, Social and Cultural Rights, and the like is safeguarded by Article 39 and other provisions of the Basic Law, they still thought that if the Mainland is given the power of interpreting the Basic Law (which is in fact the case in reality), there may be the possibility of distortion and arbitrary interpretation, thus weakening or even destroying the exercise and protection of economic, social and cultural rights.

The reason for such a worry stems mainly from the fact that the legal system of the Mainland is different from that of Hong Kong. As a matter of fact, the protection of rights under the mainland system is different from what is currently upheld in Hong Kong. Besides, there is also the impression that the Mainland's approach to interpretation of the Basic Law is not open enough and is influenced too much by political factors. Therefore Committee members were of the view that the protection of Hong Kong people's economic, social and cultural rights, or even political and civil rights, might be weakened.

There are two points to note here. First, in terms of the degree of subscription to international covenants such as the International Covenant on

Civil and Political Rights, there is not yet any participation from the Mainland, meaning that this international covenant has not become effective in the Mainland. As for the International Covenant on Economic, Social and Cultural Rights, its implementation in the Mainland is still at the stage of infancy. The international community, particularly the United Nations Commission on Human Rights, will therefore think that there is a big difference between the Mainland and Hong Kong in this respect. The Central Authorities may offer an interpretation of some Basic Law provisions, that is, those "outside the limits of autonomy" of the SAR, but there is no guarantee that the interpretation of these provisions will not involve the protection of rights. Since there is such a big difference between the two places in terms of the implementation of international covenants, if the Mainland finds it necessary to interpret those Basic Law provisions on the International Covenant on Economic, Social and Cultural Rights, the United Nations Commission on Human Rights will necessarily query whether there are any breaches of other provisions, whether this is compatible with other provisions, and whether there is any violations of Hong Kong's local legislation. And, the interpretations offered by the Mainland will at least be regarded by the international community as causing some impacts on Hong Kong's implementation of the various international covenants relating to economic, social and cultural rights.

The second point is that..... Some may of course argue that it is just an extension of the first point. Actually, if the Central Authorities really want to offer an interpretation of those Basic Law provisions on protecting the implementation of the International Covenant on Economic, Social and Cultural Rights, they must first of all satisfy themselves that the provisions concerned are "outside the limits of autonomy" of the SAR. Although there have not been any such cases so far, no one can guarantee that the Central Authorities or the NPCSC will never give any interpretation of some particular provisions, such as those on the protection of rights contained in Chapter 3 of the Basic Law. And, such provisions, irrespective of whether they are within the limits of autonomy of Hong Kong or not, will entail interpretation of Chapter 3 of the Basic Law, that is, the provisions on the protection of rights. There is another possibility. The angles and approaches adopted by the Central Authorities in the interpretation of provisions relating to the International Covenant on Economic, Social and Cultural Rights are different from ours. For example, we have the Basic Law Consultative Committee. And, there is often a lack of sufficient procedural safeguard in the Mainland.

My intention is just to tell everybody something in this record of meeting. I wish to tell members of the public, the SAR Government and Honourable colleagues that although the NPCSC is undoubtedly vested with the power of interpreting the Basic Law, the practical problems will be far more complex than we can possibly imagine when the NPCSC really does so. And, others will think that the rights of Hong Kong people were previously protected by the Basic Law and international covenants, but once the NPCSC makes any interpretation, the lack of any restriction and mechanism to guarantee that it can fully understand and respect the system of Hong Kong — interpretations given in the past or maybe in the future without a mechanism of guarantee, even if they might give a seemingly visionary impression — will necessarily weaken people's confidence.

**MR ALBERT CHENG** (in Cantonese): Madam President, delivering speeches in the Legislative Council is the responsibility of Members, whereas it is one of the functions of the Legislative Council to facilitate the holding of meetings for discussion of various businesses. Therefore, it is by no means a waste of taxpayers' money, nor is it a waste of the time of this Council for Members to deliver speeches and hold meetings in the Legislative Council, even though they know fully well that such motion debates are not binding on the Government at all. As such, I oppose Dr LUI Ming-wah's allegation that Mr LEUNG Kwok-hung was wasting the time and money of the Legislative Council in moving this motion. Mr Martin LEE also asked him why he still rose to speak if he said it was a waste of time. Actually he was wasting our money because he had already left the Chamber now. I just told him that I would respond to his speech, but he still left the Chamber. But I know he is watching the televised broadcast out there, so he should be able to hear the remarks I am making now.

I have not played mahjong with that warlord, but Mr Martin LEE had. You have some standard rules to follow in playing mahjong. If you match "One Bamboo" with "One Circle" to claim a win, then you have made a "mistaken claim of win". If someone has made a "mistaken claim of win", and the other players are still made to pay, then he is obviously blackmailing others. If I am playing mahjong with Mr Martin LEE, I shall tell him not to follow the example of that warlord. He will be misled to go onto some wrong paths.

I think we all support "one country, two systems" and the Basic Law. Why do we need to have "one country, two systems" and the Basic Law? It is because we want to ensure that Hong Kong will maintain its *status quo* for 50 years. Hong Kong can become an international financial centre and an international cosmopolis of China simply because it has the most significant foundation, namely, the rule of law.

Recently, through the Individual Visit Scheme, many mainlanders come to Hong Kong on sight-seeing tours. They go on shopping sprees here to buy gold ornaments, cosmetics and electrical appliances. We all know that. Even if we do not have any direct contact with the grass-roots people, we still know that the recent flourishing business of the retail industry is just limited to these several industries. However, some friends also told me that some other industries had also been doing a roaring trade, which I have no previous knowledge of. I asked him what those industries were, and learned that he was referring to a retail chainstore selling sundry snacks. He said if I did not believe his words, I could go to that chainstore's branch shop at the Kowloon-Canton Railway Stations, and I should be able to see how thriving its business was. Our mainland compatriots buy all sorts of snacks, even peanuts, on their way home from Hong Kong. Why? It is because products in Hong Kong bear their own brands, which is an assurance of quality, and in addition, no fake goods will be sold in Hong Kong. Therefore, even for peanuts and shrimp crispies, they all bear their respective brands. It is important to maintain Hong Kong's brand names, and what we rely on to maintain Hong Kong brand names is the rule of law. We cannot do anything that may jeopardize the rule of law in Hong Kong or anything that may jeopardize the image of judicial independence in Hong Kong. Therefore, no matter how you put it, the first, second and third interpretations of the Basic Law have really jeopardized the rule of law and judicial independence in Hong Kong. In this connection, we will definitely oppose such interpretation exercises.

Just now Mr LEE Wing-tat predicted that there would be interpretation of the Basic Law for the first, second, third, fourth and fifth times, and he even said that history would ultimately prove that he was right in future. I really do not know why Mr LEE Wing-tat thinks that there will ever be a fourth or fifth interpretation of the Basic Law. I cannot support his allegation, and I would like to censure Mr LEE Wing-tat for this here.

As Members of the pro-democracy camp, we.....

**MR LEE WING-TAT** (in Cantonese): I would like to make a clarification.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, at the present stage, you are not allowed to make any clarification. You must let him finish his speech first. In fact, you should know these Rules of Procedure very well. After all these years, why do you still get confused about them?

If you wish to clarify certain parts of the speech you have just delivered, please wait until that particular Member has finished speaking before you make your request for clarification.

Do you want Mr Albert CHENG to answer your question?

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

**PRESIDENT** (in Cantonese): Do you want Mr Albert CHENG to further clarify a certain remark in his speech?

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

**PRESIDENT** (in Cantonese): In that case, please sit down. Mr Albert CHENG, are you willing to let Mr LEE Wing-tat ask you to clarify certain parts of your speech?

**MR ALBERT CHENG** (in Cantonese): I do not think it is necessary.

**PRESIDENT** (in Cantonese): Then, please continue with your speech.

**MR ALBERT CHENG** (in Cantonese): If I have offended Mr LEE Wing-tat, I will withdraw my earlier remarks. But I did hear him mention the first, second, third, fourth and fifth interpretations of the Basic Law. I feel that as Legislative

Council Members who support the rule of law, democracy and human rights, we should resolutely uphold the rule of law in Hong Kong in this Chamber, and prevent a fourth or fifth interpretation of the Basic Law. This is my responsibility in joining the Legislative Council, and I also hope that my brothers in the Democratic Party can, under the leadership of their Chairman LEE Wing-tat, resolutely stop the Government from seeking a fourth or fifth interpretation of the Basic Law from the NPCSC. I hope Mr LEE Wing-tat's prediction will never come true.

Besides, Mr LEE Wing-tat will run for the Chief Executive Election. If he wins the election, is he thinking that he will seek an interpretation of the Basic Law for the fourth and the fifth times? No, he will not. If he runs in the election, he has to win. Of course, I hope that he can win the election. If he wins, then there will not be any fourth and fifth interpretations of the Basic Law.

I absolutely do not intend to offend Mr LEE Wing-tat, who is a good buddy of mine, so it is not necessary to make any clarification. If Mr LEE Wing-tat thinks that my remarks are incorrect, I can withdraw them here. By the same token, I also hope that Mr LEE Wing-tat can withdraw his prediction about a fourth or fifth interpretation.

It is absolutely meaningless for us to engage in endless unnecessary arguments, especially between Mr LEE Wing-tat and me. We should not waste the time of the Council on such unnecessary arguments. Should there be any arguments, we can always settle them outside this Chamber. I resolutely oppose the Government's move in seeking interpretations of the Basic Law because it will damage the judicial independence of Hong Kong. Even if this is not the intended effect, we should not do this lest it will tarnish our image. We must do our best to maintain the brand name of Hong Kong. Hong Kong is very different from other mainland cities because we have the rule of law and judicial independence. Even though I may disagree with Mr LEUNG Kwok-hung's motion, I would still support him in spirit. Therefore, I support this motion, Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, do you wish to clarify certain parts of your earlier speech?

**MR LEE WING-TAT** (in Cantonese): Madam President, thank you for allowing me to make a clarification. It is crystal clear that both the Democratic Party and I oppose the interpretation of the Basic Law by the NPCSC. Maybe Mr Albert CHENG has not listened to my earlier speech clearly. I mean both the Democratic Party and friends of the Democratic Party oppose the three interpretations of the Basic Law by the NPCSC. I feel that the Government has relied too much on interpretation of the Basic Law as a means to settle the internal conflicts of Hong Kong. That is why I predicted that there would be a fourth or fifth interpretation of the Basic Law. However, I will oppose all of them. Therefore, I would like to invite Mr Albert CHENG to listen to my words carefully: I do not agree to such a practice. I predict that the Government will not be able to settle the internal conflicts of Hong Kong. So when it is confronted with some further conflicts, then the fourth and the fifth interpretations of the Basic Law will emerge. However, both the Democratic Party and I resolutely oppose them. Thank you, Madam President.

**MR ALBERT CHENG** (in Cantonese): I wish to clarify my speech. I have never said that the Democratic Party supports the Government's move in seeking interpretations of the Basic Law, nor have I criticized the Democratic Party. I just oppose his prediction. I think the SAR Government will not seek interpretations from NPCSC for the fourth or the fifth time. Should something like that happen, I shall oppose very strongly anyone (including Members from the pro-democracy camp) who supports such interpretations. Thank you, Madam President.

**DR KWOK KA-KI** (in Cantonese): Madam President, the NPCSC has altogether given interpretations of the Basic Law on three separate occasions. In this regard, Prof WANG Zhenmin, Vice Dean of the Law School of Tsinghua University, argues that there are grey areas in any law provisions, no matter how well-written they are. He said, to this effect, "Legal texts are by no means living beings. The meaning of a legal provision is subject to different interpretations, and therefore it is only natural for people to have different understanding of it". So, he said, interpretation of legal provisions by the authority concerned was inevitable. That would not damage the rule of law, he said, and on the contrary, it would eliminate the grey areas that existed in the

legal provisions, thereby enabling the people to tell the right from the wrong, and saving the people from feeling baffled.

Legal texts and provisions certainly are not any living beings. However, it is exactly the interpretations of the Basic Law that have confused the provisions of the Basic Law and turned them from black to grey. As a result, Hong Kong people are now even more baffled and less confident about the rule of law than before. Unfortunately, Hong Kong people have become somewhat numb lately. That is why voices about the interpretations and voices opposing such interpretations are no longer heard. People just do not talk about it anymore. But is that good for Hong Kong?

To many Hong Kong people, the fact that the Basic Law has been the subject of interpretation for three times is disheartening. They may not say it openly, but in their minds they are fully aware of how well the SAR Government and the Central Government have been governing Hong Kong under the principles of "one country, two systems" and "Hong Kong people ruling Hong Kong". What is most worrying to me is that they may feel that the future of Hong Kong is really gloomy, or they may fear that Hong Kong will have problems in realizing the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong". These gloomy pictures will not only damage the confidence of Hong Kong people, what is more, they may undermine the core values of Hong Kong, making Hong Kong people feel that the Basic Law can no longer protect Hong Kong, and that the rule of law is no longer respected.

Mr LEUNG Kwok-hung has moved today's motion with a good intention. However, we all know the chances of his motion being passed in this Council under the current mechanism of separate voting. Yet, in my opinion, regardless of whether this motion is passed, most of the citizens have great reservations about the interpretation of the Basic Law. They are baffled by the moves of the Central Government or the SAR Government in effecting an interpretation of the Basic Law again to settle an issue that could otherwise be explained by the provisions themselves.

Last Wednesday, a candlelight rally was held just outside the Legislative Council Building in commemoration of the May Fourth Movement. Although the number of participants, consisting of democracy fighters and student leaders from different generations, was by no means large, they gathered together to

demonstrate their willingness to continue their fight for the causes of democracy and the rule of law in Hong Kong. I was deeply moved at witnessing the event. I was glad that there were still people in Hong Kong who had not been saddened to the point of giving up all hopes. They were still prepared to fight for democracy in Hong Kong.

Must we accept the idea that democracy and the rule of law have been sentenced to "death" politically by the interpretations of the Basic Law? As I read through Mr LEUNG Kwok-hung's motion, I find him kind of lovely. As a matter of fact, he has made many other demands, which, I am afraid, are all impossible tasks. Apart from expressing regrets at what the NPCSC has done, he also requests the NPCSC to withdraw its decisions in the last two interpretation exercises, demands the SAR Government to apologize to the people of Hong Kong, and also urges the NPCSC to rescind its decision made on 26 April 2004 to rule out the election of the Chief Executive and all Members of the Legislative Council by universal suffrage in 2007 and 2008 respectively. Yet, I very much hope that his motion can be passed. If this motion is passed, it will be a miracle — one that can be compared to a blessing and an endorsement given by the Central Government to the SAR Government, such that the rule of law and the protection given to Hong Kong people by the Basic Law may rise from death. In that case, the Hong Kong spirit may revive, and the morale of Hong Kong people can be restored. However, if the interpretations of the Basic Law will keep on dealing blows to Hong Kong in much the same way as the long-awaited universal suffrage had done to us, I am afraid Hong Kong people will not be able to dispel their anxieties over the prospects of the rule of law and the future of Hong Kong. Instead, we may have to silently put up with such heavy blows which will come our way non-stop.

Hong Kong people still hold fast to their belief in the rule of law, and still hold expectations for the Basic Law and aspirations for democracy in Hong Kong, hoping that under the framework of "one country, two systems" and the Basic Law, the core values of Hong Kong will not be strangled to death. They do not want to see too many grey areas under the rule of law. Most Hong Kong people take Hong Kong as their home. They are willing to accept the ideas of "one country, two systems" and "Hong Kong people ruling Hong Kong". They support Hong Kong's reunification with China, and do not have any intention of clinging to the colonial rule at all. Nobody is asking for Hong Kong to become an independent political entity either. As a matter of fact, so much has taken place and so much has changed nowadays. Even Kuomintang and the People

First Party could have broken their deadlock which had last for 60 years; even hostility was put aside as LEIN Chan was invited to visit the Motherland. If China does not give a tiny bit of blessing to allow Hong Kong people to enjoy greater democracy, it will fail to exemplify the concepts of "one country, two systems" and "Hong Kong people ruling Hong Kong", and I am afraid that would be a blessing to neither Hong Kong people nor the people of China. I hope that after having promulgated an interpretation of the Basic Law for the third time, the Central Authorities can contemplate seriously how Hong Kong should be governed, and whether they should accede to the aspirations of a civil society and take this opportunity to spearhead the democratization process in Hong Kong, a process which could reunite all the Chinese people together, a process which will bring new hope to China as a whole.

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 Constitutional Affairs to speak.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, the motion proposed by Mr LEUNG Kwok-hung today consists of two parts. The first part mentions that the Government of the Hong Kong Special Administrative Region (SAR) submitted reports to the State Council in 1999 and this year requesting an interpretation from the Standing Committee of the National People's Congress (NPCSC). The second part concerns the review of constitutional development after 2007 and 2008. In the beginning of the motion debate, the Secretary for Justice already spoke on the legal issues in general. Now, I will further respond to the main points raised by Members.

First of all, regarding the two interpretation exercises in 1999 and this year, the SAR Government made a request to the State Council for an interpretation of the Basic Law by the NPCSC, and insofar as the submission of a request to the State Council on these two occasions is concerned, there are actually four points

in common. First, the issues dealt with in the two interpretation exercises were unusual, and they were fundamental to any society. What the NPCSC had to deal with in its interpretation back in 1999 was who could be granted permanent resident status in Hong Kong and the right to become a member of Hong Kong society. Apart from enabling all parties concerned to have a correct understanding of the relevant provisions, the interpretation of the Basic Law also substantially reduced the number of mainland residents whom we estimated to be eligible for residency in Hong Kong to 270 000. We had, in a lawful and constitutional manner, solved a problem affecting the long-term interest of Hong Kong people, and also a problem of great concern to various sectors of the community in Hong Kong. The interpretation of the Basic Law this year was to ensure that the election of the new Chief Executive can be held on 10 July as scheduled in accordance with law. This is a constitutional and legal requirement that we must observe, and it also meets the aspiration of Hong Kong people. This we must do. If this election cannot be held as scheduled, it would adversely affect policy formulation by the Government, the administration of policies in Hong Kong and the normal operation of society, and would consequently lead to constitutional crises. The two interpretation exercises have, therefore, solved major problems for Hong Kong.

Second, whether in 1999 or this year, we had submitted a report to the State Council requesting an interpretation from the NPCSC only when there was no better alternative. In 1999, we discussed in detail the possibilities of amending the Basic Law, and many people have also made this suggestion this year. But after detailed studies, our decision and conclusion was that it would be neither appropriate nor feasible to amend the Basic Law. Therefore, making a request to the State Council for an interpretation from the NPCSC was the only option.

The third point that I wish to make is that the provisions of the Basic Law involved in the two interpretation exercises are related to affairs which are the responsibility of the Central Government or the relationship between the Central Authorities and the SAR. The interpretation exercise in 1999 involved two articles of the Basic Law, namely Article 22 para 4 and Article 24 para 2(3) of the Basic Law, which concern the interpretation of some issues of principle in the Basic Law and the handling of mainland residents coming to Hong Kong for settlement. All these involved affairs which are the responsibility of the Central Government. This year's interpretation involved Article 53 para 2 of the Basic Law, which concerns the term of the new Chief Executive to be returned in the by-election. The Central People's Government has the constitutional power to

appoint the Chief Executive and similarly, this article concerns affairs which are the responsibility of the Central People's Government and the relationship between the Central Authorities and the SAR.

Fourth, I wish to point out that the two interpretation exercises have not infringed on the system and spirit of the rule of law on which the success of Hong Kong hinges. Nor have they undermined the judicial independence of Hong Kong or the right of the people to institute legal proceedings. Articles 8 and 18 of the Basic Law have maintained the original legal system of Hong Kong, whereas Articles 19 and 81 have provided for the continuity of the judicial system of Hong Kong.

Why do I disagree with the view that the interpretation of the Basic Law will undermine the rule of law in Hong Kong as often mentioned by pro-democracy Members, or that the rule of law in Hong Kong has even died as some individual Members have claimed? I would like to state three reasons. First, under the framework of the Basic Law, the common law system in Hong Kong has actually been enhanced and developed continuously. The Court of Final Appeal (CFA) was set up in Hong Kong after the reunification to replace the Privy Council which had the power of final adjudication over court cases in Hong Kong before the reunification. This power was not given to any Court in Hong Kong before 1997. After this power is conferred on Hong Kong Courts, the coverage as well as the role of our judicial system have been broadened and enhanced.

Second, the continuity and development of Hong Kong's judicial system and common law system are made possible because the power of final adjudication of the CFA over cases in Hong Kong and the power of final interpretation of the NPCSC can co-exist without any conflict. Madam President, I will recapitulate the experience in 1999 whenever I talk about this issue in this Chamber. In January 1999, the CFA made a judgement, and in June, the NPCSC made an interpretation of the Basic Law. We absolutely respected the power of final adjudication of the CFA over that case back in 1999 and that is why we, in accordance with the original judgement made by the CFA in January 1999, granted permission for thousands of applicants for the right of abode in Hong Kong to stay in Hong Kong. Some time later, we allowed another group of people to stay in Hong Kong and become permanent residents. We did so because the Basic Law has conferred on the CFA the power of final adjudication over cases in Hong Kong, and we had, therefore, consistently

enforced the final judgement made by the CFA on this case. The NPCSC's power of final interpretation of the Basic Law is entirely consistent with the power of final adjudication of the CFA in that case. There is no conflict between them.

Third, as I have said, the role of Hong Kong's judicial system and Courts in Hong Kong has been broadened with a more comprehensive coverage because the Hong Kong CFA has the power of final interpretation over the laws and also the common law in Hong Kong, and this very power of interpretation is not in any way affected by the NPCSC's power of final interpretation of the Basic Law. So, everyday, we still see that Hong Kong Courts perform arbitration on contracts, pass judgement on wills, determine liabilities for accidents, and continuously make judgement and interpretation relating to marriages or cases of divorce. The common law system in Hong Kong will not be affected by the NPCSC's interpretation of the Basic Law. Nor will it be undermined .....

**MR ALBERT HO** (in Cantonese): May I ask the Secretary to elucidate a few remarks that he has just made?

**PRESIDENT** (in Cantonese): Please sit down first. Secretary, do you wish to make an elucidation or continue with your speech? It is all up to you.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): I believe if I can go on with my speech, Mr Albert HO will understand better what I mean.

(Mr SIN Chung-kai raised his hand)

**MR SIN CHUNG-KAI** (in Cantonese): A point of order.

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, please go on.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, in your past rulings, I understand that if we seek elucidation only after a Member or a Director of Bureau has finished his or her speech, you would say that our request was belated and therefore, we could not seek an elucidation. Is it that Mr Albert HO will not have the opportunity to seek elucidation from the Secretary when the Secretary has finished his speech?

**PRESIDENT** (in Cantonese): Correct. This is stipulated in the Rules of Procedure. Both of you have interrupted the Secretary, and in accordance with the Rules of Procedure, a Member who wishes to interrupt should rise to request the speaker to elucidate what he has just said and the Member should raise the matter for elucidation right at that point. But the speaker has the right to say whether he is willing to answer the question or unwilling to give way and will hence choose to continue with his or her speech. So, I have already allowed you to say more than you should. It is because when you rise, you should have said, "Madam President, a point of order.", and then I will ask you if you are seeking elucidation from the speaker. All you need to reply is "Yes", and you do not need to state the question at all. But you have gone further by stating the question. I can only ask the speaker if he is willing to make an elucidation or not. If the speaker is unwilling to do so, then you cannot even state the question. This is provided for in the Rules of Procedure. After you have read and learned the Rules of Procedure well enough, and if you consider amendment necessary, please raise your proposal in the Committee on Rules of Procedure, so that I do not have to always explain this over and over again in the meeting.

**MR ALBERT HO** (in Cantonese): Madam President, you said just now that I had already stated my question but the fact is that I had not. The Secretary does not know what my question was.

**PRESIDENT** (in Cantonese): You said that you would like him to elucidate the remarks that he just made. You did say so. It is not true that you did not state your question.

**MR ALBERT HO** (in Cantonese): But he does not know what my question was.

**PRESIDENT** (in Cantonese): Your question was about the remarks that he had just made. Mr Albert HO, you should not have argued about it in a way as you just did. You did ask the Secretary to elucidate the remarks that he had just made. It is not true that he does not know what your question was. Even I know what your question was. Secretary, please go on.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, I know that Mr Albert HO and other Members are very concerned about the common law system of Hong Kong, as well as whether or not the legal and judicial systems of Hong Kong can continue and whether or not they can be preserved. In fact, what I wished to say earlier was that under the arrangement of the Basic Law, the NPCSC is given the power of final interpretation over the provisions of the Basic Law, and the Basic Law has also devolved powers to the CFA as well as other Courts in Hong Kong in three aspects. First, Hong Kong can exercise the power of final adjudication over cases heard in court, and Courts in Hong Kong can apply the provisions of the Basic Law when adjudicating these cases. For example, in handling the case relating to civil service pay recently, the Court applied and interpreted the provisions of the Basic Law. Second, the CFA has the power of final interpretation over laws in Hong Kong; and third, the CFA has the power of final interpretation and adjudication over the common law as well as precedents in Hong Kong.

Such a separation of powers is actually a manifestation of "one country, two systems". It is because the Central Authorities have sovereignty over Hong Kong and so, it is entirely consistent with the constitutional principle that the NPCSC has the power of final interpretation of the Basic Law. However, in order to enable the continuous development of the common law system and the judicial system in Hong Kong, it is necessary to devolve these powers to the Courts in Hong Kong. So, we must understand clearly how these powers are arranged in a way that the development of the judicial system and legal system of Hong Kong can be further taken forward without being eroded by the NPCSC's power of interpretation of the Basic Law.

Ms Margaret NG mentioned in particular that the SAR Government must act in accordance with law. On this point, I can assure Members that the Chief Executive and the SAR Government will absolutely act in accordance with the

Basic Law and the laws of Hong Kong. In this connection, under Articles 43 and 48 of the Basic Law, the Chief Executive.....

**PRESIDENT** (in Cantonese): Do you wish to raise a point of order?

**MS MARGARET NG** (in Cantonese): It seems that I have to.

**PRESIDENT** (in Cantonese): You wish to seek elucidation? Do you wish to seek elucidation from the government official on his speech?

**MS MARGARET NG** (in Cantonese): No.

**PRESIDENT** (in Cantonese): If you wish to elucidate what you said in your speech, please make this request after he has finished his speech.

**MS MARGARET NG** (in Cantonese): Thank you, Madam President.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): The Chief Executive will submit a report to the State Council under Articles 43 and 48 of the Basic Law when the need arises. He can mention the problems encountered in the implementation of the Basic Law in Hong Kong. Then the State Council can make a request for interpretation of the Basic Law to the NPCSC in accordance with the Constitution of China. So, this arrangement or practice is entirely consistent with the Constitution and the provisions of the Basic Law.

Ms Margaret NG mentioned in particular the case of LAU Kong-yung. I wish to cite a part of the judgement on the LAU Kong-yung case. This part of the judgement was also cited in a paper submitted by us to the Bills Committee. In the judgement, Non-permanent Judge MASON made the following comment: "As in the case with constitutional divisions of power, a link between the courts of the Region and the institutions of the PRC is required. In

a nation-wide common law system, the link would normally be between the regional courts and the national constitutional court or the national supreme court. Here, however, there are not only two different systems, but also two different legal systems. In the context of "one country, two systems", Article 158 of the Basic Law provides a very different link. That is because the Article, in conformity with Article 67(4) of the PRC Constitution, vests the general power of interpretation of the Basic Law not in the People's Supreme Court (sic) or the national courts, but in the NPCSC. Consistently with that vesting of the general power of interpretation in the NPCSC, the NPCSC authorizes the courts of the Region to interpret on their own, in adjudicating cases, the provisions of the Basic Law which are within the limits of the autonomy of the Region. The expression "on their own" stands in contrast to the mandatory reference requirement under Article 158(3) which applies to the Court of Final Appeal in relation to what the Chief Justice calls "the excluded provisions". The expression "in adjudicating cases" is of particular significance. In the common law world, these words would be surplusage. Interpretation of a law, even of a constitution, is the business of the courts, being an incident of the adjudication of cases. In the People's Republic of China, however, under Article 67(4), the NPCSC exercises, as well as other functions and powers, the power to interpret laws, because the PRC Constitution does not provide for a separation of powers that is the same as or similar to the common law doctrine of the separation of powers. Article 57 of the PRC Constitution provides that the NPC is the highest organ of state power and the NPCSC is its permanent body. The NPCSC's power to interpret laws is necessarily exercised from time to time otherwise than in the adjudication of cases. So the expression "in adjudicating cases" makes it clear that the power of interpretation enjoyed by the courts of the Region is limited in that way and differs from the general and free-standing power of interpretation enjoyed by the NPCSC under Article 67(4) of the PRC Constitution and Article 158(1) of the Basic Law. This conclusion may seem strange to a common lawyer but, in my view, it follows inevitably from a consideration of the text and structure of Article 158, viewed in the light of the context of the Basic Law and its character as the constitution for the HKSAR embodied in a national law enacted by the PRC."

Madam President, I have cited this part of the judgement, which is rather long, to share with Members a viewpoint and that is, the NPCSC's power of interpretation of the Basic Law is a power of legislative interpretation, which has supremacy over the power of judicial interpretation conferred on the CFA through devolution of powers. So, the CFA has made a judgement that if the

NPCSC has interpreted any provision of the Basic Law, the Courts of Hong Kong shall refer to its interpretation. I hope that Members will not have any misconception. It is impossible for the common law in Hong Kong to override the Basic Law, or else it will be tantamount to putting the cart before the horse. We must understand that the Basic Law should come before the common law, and only in this way can the common law be continuously applied and developed in Hong Kong after 1997. Therefore, Madam President, we do not see any reason or statutory basis to support or call for the withdrawal of the decisions made by the NPCSC in the two interpretation exercises. It is also impossible for us to undertake not to further request the State Council to seek an interpretation from the NPCSC, because the NPCSC's power of interpretation is a power conferred by our Constitution. Not even the NPCSC can make such an undertaking. However, I can reiterate to Members that although the interpretation of the Basic Law is a constitutional arrangement provided by the Basic Law, we understand that it is not the wish of the community of Hong Kong to see us lightly resorting to this channel to solve problems. So, it has been an established position of the SAR Government that consideration will be given to submitting a report to the State Council to seek an interpretation from the NPCSC only where necessary and under special circumstances.

Madam President, next, I will speak on the issue of constitutional development in 2007 and 2008. Generally speaking, the community and the people of Hong Kong agree and support that universal suffrage is the ultimate goal of the electoral system. Our difference lies only in the speed and pace of reaching the goal of universal suffrage, and also what we should do in order for Hong Kong to achieve the greatest benefits in each stage of development.

On 26 April last year, the decision of the NPCSC set out clearly the parameters within which amendments can be made to the two electoral methods for our substantive discussion and public consultation after April. We can seriously consider how the existing latitude can be put to good use, so as to enhance the representativeness of the two electoral systems and provide more opportunities for public participation.

Under our Constitution and the Basic Law of the SAR, the systems currently in force in Hong Kong (including the political system) are subject to the decision of the NPC. The constitutional development in Hong Kong does not

fall within the autonomy of Hong Kong, but Hong Kong can participate in the process. We can put forward suggestions and proposals, but we must first forge a consensus in Hong Kong, and the support of the Central Authorities is required before we can take forward these two electoral systems in Hong Kong.

In his motion, Mr LEUNG Kwok-hung negated the four reports published by the Constitutional Development Task Force. In fact, the four reports were published in the hope that the Hong Kong community can deal with the issue of constitutional development in a step-by-step manner. Never had we looked into the electoral systems for the election of the Chief Executive and the formation of the Legislative Council so thoroughly before and after the reunification. The first report published by us concerns the procedures for amending the two electoral methods under Annexes I and II of the Basic Law. The second report involves issues of principle relating to constitutional development. The interpretation of the NPCSC in early April last year clarified the procedures for amending the two electoral methods, whereas the decision made on 26 April set out clearly the parameters within which amendments can be considered. So, after April, we published the Third Report in May last year, and in accordance with the NPCSC's decision, we invited the public to give us their views on ways to consider making amendments to the two electoral methods. In December last year, we published the Fourth Report, hoping that public discussion could be more focused, so that conclusions could be drawn on the basis of the opinions received by us earlier.

So far, the community of Hong Kong has suggested three directions of amendment for the consideration of the SAR Government. First, there are quite a number of views that we should consider increasing the number of members of the Election Committee and the number of subsectors. For example, many people have called for enhanced participation of District Council members in the Election Committee.

Second, many people hold that we should broaden the electorate base of the Election Committee and Functional Constituencies. There is the view that consideration should be given to replacing corporate votes by individual votes.

Third, with regard to the formation of the Legislative Council, by 2008, should the number of seats be maintained at 60 as it is now or should the number of seats be increased? There is the view that we should maintain the *status quo*,

and a greater number of people agree that consideration should be given to increasing the number of seats.

Therefore, I hope that Mr LEUNG Kwok-hung and Members in the Chamber will look at the process of consultation on constitutional development with a positive and open attitude. Although universal suffrage cannot be implemented in 2007 and 2008, we hope that improvement can be made to the two electoral systems, so as to provide more room for public participation and explore new room for their participation in politics, thus enabling people who wish to participate in politics to serve the community of Hong Kong and the people of Hong Kong.

Therefore, Madam President, we have no intention to rescind the four reports. After the new Chief Executive assumed office in July, we will report to him on the public views that we have received as soon as possible for him to decide when in the latter half of the year the Fifth Report will be published, in order to put forward to the public a mainstream proposal and then deal with the amendments to Annexes I and II. We are also prepared to work on the amendment of the legislation on the Chief Executive election in the first half of 2006, and in 2007, we will work on the enactment of local legislation on the formation of the fourth Legislative Council.

Before I conclude, Madam President, I will respond to the speeches of a number of Members. Mr Albert HO told us a very touching story today. I did not know before that he can be such a good recounter. However, the era of warlords has vanished following the people's revolution in 1949. The NPCSC's power of interpretation of national laws is premised on the Constitution. There is no warlord in our country anymore and so, the story no longer applies.

Ms Emily LAU raised a point on figures. She asked us whether we had read the results of those opinion polls. Regarding our request to the State Council in 1999 for an interpretation of the Basic Law from the NPCSC on the right of abode issue, we did read the results of many opinion polls at that time, and we had also conducted our own surveys. The findings showed that more than half of the respondents supported that the issue be resolved through an interpretation of the Basic Law by the NPCSC. As regards the interpretation this year (2005) on the election of the new Chief Executive, the new Chief Executive to be returned should only serve out the remaining two years, we have

noted from most opinion polls that the people in general support that the new Chief Executive should serve out the remaining term, instead of a term of five years.

Ms Emily LAU is also very concerned about the international image of Hong Kong, as well as the opinion of the international community on us. I wish to say here that the Standard & Poor's recent rating of Hong Kong has increased, and this is due to many reasons. For example, we are making an effort to tackle the deficit, and our economy has turned the corner. Yet, the recent political problem in Hong Kong was also mentioned, but this has not affected the opinion of international investors on Hong Kong.

Madam President, to conclude, I wish to emphasize that from what Members have said earlier, I feel that although it has been almost seven to eight years since the reunification of Hong Kong, our views have remained different on the constitutional order. I have noticed in particular that there are two points which may not be completely accepted by Members in the pro-democracy camp. First, under the Constitution and the Basic Law, there is no restriction on the NPCSC's power of interpretation of the Basic Law, which means that the NPCSC can interpret any provision of the Basic Law. Second, the Central Authorities have the power to make final decision on the constitutional development in Hong Kong. In fact, these two points have reflected the constitutional reality after the Central Authorities' recovery of sovereignty over Hong Kong.

We must accept and respect this constitutional order. We must take this as the starting point before we can further take forward constitutional development in Hong Kong and further cement the development of Hong Kong's rule of law system. If Members remain resistant to this constitutional order, contentions over these issues will only continue in the community of Hong Kong and finally result in internal depletion.

In fact, politicians must demonstrate a broad and holistic vision. Although not every one of us can make history, we must conform to the trend of history and the development of history in working for the interest of Hong Kong. Since Hong Kong is already reunited with the Motherland, all Members in the Chamber (including Members from the pro-democracy camp) must make continuous efforts to build up channels of communication with the Central Authorities and enhance mutual trust between the Mainland and Hong Kong. Only in this way can we do more for Hong Kong.

Reviewing the past year or so, we have made improvement in this respect. On the Army Day last year and the Labour Day this year, we saw participation by pro-democracy Members in the celebration activities organized by the organs of the Central Authorities in Hong Kong. Last year, Members from various parties and factions, including pro-democracy Members, attended the National Day celebrations in Beijing. Recently, the relevant departments of the Central Government communicated with various political parties and factions before the interpretation of the Basic Law. So, I call on Members to continuously work hard in this direction, with a view to forging consensus and building up mutual trust in the Hong Kong community and also between Hong Kong and the Central Authorities.

With these remarks, Madam President, I implore Members to oppose Mr LEUNG Kwok-hung's motion. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Ms Margaret NG, do you wish to elucidate the part of your speech which has been misunderstood?

**MS MARGARET NG** (in Cantonese): Yes. Madam President, I did not say that the Government must act according to the law. What I said was that the executive must abide by the law. The Secretary must have mixed up the two concepts. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, do you have a point of order?

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes. Madam President, I would like to ask Secretary LAM to clarify a point. I seem to have heard him mention one proverb, which is about an old granny's foot-binding cloth. Did he say that?

**PRESIDENT** (in Cantonese): Please sit down first. Have you finished?

**MR LEUNG KWOK-HUNG** (in Cantonese): I asked him whether he had said it.

**PRESIDENT** (in Cantonese): I asked you whether you had finished. If you have finished, then you may sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes.

(Mr LEUNG Kwok-hung then sat down)

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, although you have been sitting in this Chamber, it seems that you have not understood the remarks I made earlier. Please go back and read Rule 39 of the Rules of Procedure. I do not wish to dwell on this issue anymore.

At this stage, it should be Mr LEUNG Kwok-hung's turn to speak and reply. However, Mr LEUNG Kwok-hung has already used up his 15 minutes of speaking time.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEUNG Kwok-hung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr MA Lik and Mr CHEUNG Hok-ming voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion and 20 against

it; while among the Members returned by geographical constituencies through direct elections, 27 were present, 15 were in favour of the motion and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): Second motion: Comprehensive review of the Inland Revenue Ordinance.

## **COMPREHENSIVE REVIEW OF THE INLAND REVENUE ORDINANCE**

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, a simple tax regime with low tax rates has always been one of the underpinnings of Hong Kong as an international financial centre, and such a renowned tax regime should be founded on taxation legislation which progresses with the times. However, it has been 30 years since the Government conducted a comprehensive review of the Inland Revenue Ordinance (IRO). Can it genuinely meet the needs of the current economic environment and mode of business? Is it now the time to conduct a review? I can tell you that my advocacy of a review of the IRO is not a meaningless personal request which aims to make life difficult for the Inland Revenue Department (IRD). On the contrary, I appreciate very much the work done by the IRD. Nevertheless, many professional bodies, such as the Taxation Institute of Hong Kong, business groups and the British Chamber of Commerce, as well as a number of taxation partners, have expressed their aspirations by means of letters, the press and submissions, urging the authorities to undertake a review of the IRO on different levels. Does the Government need to respond to the views expressed by the various sectors?

In this regard, the Government may tell us that the Government will introduce amendments to the IRO every year in the context of the annual budgeting exercise or for the need of combating tax avoidance. As these amendments are adequate to address the social needs, a comprehensive review is therefore not necessary. Yet, why do I insist on conducting a comprehensive review? It is because it has been 30 years since the Government last conducted

a comprehensive review of the IRO. Nowadays, the structure of our economy has moved on from a secondary industry-led manufacturing industry-dominated economy to a tertiary sector-led service industry-oriented economy. I think it is time we re-examined our taxation legislation.

To some people, "comprehensive review" may suggest radical reforms. They may think that I want the entire legislation to be rewritten. I hope people will understand that I simply want to re-examine each provision in the comprehensive review, to determine if there is any need for rationalization, and in the light of provisions and topics of interest raised by some industries and the business sector, to introduce amendments to the IRO. In other words, it is to review specific areas. I have no intention to change the fundamental concept of Hong Kong's tax regime. I only hope that through a review, the taxation legislation of Hong Kong can be made much more specific and clearer, and its enforcement much more consistent.

In fact, in October last year, in my letter to the Legislative Council Panel on Financial Affairs, I have set out clearly the areas on which the Government should particularly focus in the review of the IRO. These areas and topics are more or less the same as those suggested by the Hong Kong Institute of Certified Public Accountants in relation to review of the IRO, such as the topics relating to the definitions of sources of profits and income. I suggest the Government to give priority to these specific issues in the review.

Let me cite some examples to illustrate the uncertainties posed by the current taxation legislation to our business environment.

First of all, in recent years, our economy has switched to the major direction of becoming a logistics centre. However, our taxation legislation in this area cannot fully tie in with this development. For many trading companies which have back-up offices in Hong Kong, most of their transactions are taken place outside Hong Kong. Their Hong Kong offices simply provide back-up and logistics work, but inadvertently, these companies have been caught by the tax net in Hong Kong. Li & Fung Limited is a case in point. Under the usual practice, as long as a contract is not entered into in Hong Kong, the profits derived from the deal will not be taxable in Hong Kong. However, in the Li & Fung Limited case, the Court employed the concept of "totality of fact", so that apart from the place where the contract is entered into, the management headquarters and even the place where a letter of credit is issued are also taken

into account in the course of assessment. As a result, the Li & Fung Limited was demanded payment of unpaid tax amounting to over \$100 million. For trading companies, will it be a tremendous risk? If Hong Kong is to develop into a logistics centre, we must address the concerns of the business sector in this area.

Madam President, the same case arises in the salaries tax in respect of employees of overseas companies stationed in Hong Kong. According to an article published in the end of 2004 by a taxation partner in the *Asia-Pacific Journal of Taxation*, an authoritative publication, in the past, overseas employees stationed in Hong Kong were not subject to tax for part of their work in Hong Kong provided that it was stipulated in their contracts that their employer was outside Hong Kong and the salaries payment was made outside Hong Kong. Nevertheless, in the course of assessment in recent years, the IRD unnecessarily asked taxpayers to provide extra information in addition to the three considerations mentioned above. The uncertainties created in the method of assessment will definitely cause misgivings on the part of expatriates working in Hong Kong. This is a time when we are greatly in need of talents, should we, instead of scaring these talents away with our taxation legislation, attract them to come to Hong Kong with various initiatives?

Since the reform and opening up of China, many Hong Kong manufacturers have shifted their production lines to the Mainland. Our modes of operation have moved on from processing imported materials to setting up proprietorship companies in the Mainland. However, as the IRD does not have very clear criteria in assessing the profits tax of this kind of companies, local manufacturers who have plants in the Mainland are thus liable to double taxation. If we clarify the definition of sourced profits by means of legislation, we can certainly enhance the clarity of the legislation and attract more investments.

In conducting assessments, the IRD usually works in accordance with the Practice Notes and relevant legislation. Yet, when there is a change in the IRD policy, the assessment criteria will also be changed. This should not be a serious problem, however, as the IRD has the power to recover unpaid taxes up to seven years, coupled with the ambiguity in the taxation legislation, taxpayers may be subject to unanticipated cash payment in case there is any change in the assessment criteria. This would create a tremendous burden on the cash flow and financial situation of enterprises. To investors, while the simple tax regime of Hong Kong is very attractive, at the same time, why should they bear the risks

brought by uncertainties in the taxation legislation? For this reason, some accountants have begun to hold the view that Hong Kong is no longer the first choice for foreign enterprises to set up companies.

According to a senior taxation partner in the United States, he has begun to advise his clients to shift their target of setting up companies to Macao, our neighbouring city, or even Singapore, our strong competitor. Why are these places starting to catch up with Hong Kong in terms of attractiveness? In respect of the taxation arrangement for setting up off-shore companies, for example, our taxation legislation does not make it clear that whether profits arising from the operations of off-shore companies are liable to tax, we can only rely on the Practice Notes. In Macao, on the contrary, the legislation is very clear. It is explicitly stipulated that if off-shore companies only engage in certain operations, they will be exempted from the local profits tax. This is why foreign investors are easily attracted to operate businesses in Macao.

Apart from the uncertainties in the IRO, the inconsistencies in enforcement also arouse worries of investors and taxpayers. As I said earlier, the Practice Notes of the IRD do not have any binding effect. It is entirely up to the assessors to decide whether or not to follow the Practice Notes. It will create inconsistency in assessment. Some taxation practitioners even point out that, in the event of a change of assessors, the new assessors will review a previous assessment on the basis of their own interpretation of the Practice Notes. The variations resulted in the assessment may incur additional tax payment and fines. Is it fair to taxpayers? To investors, as long as the rules of the game are clear, it will be easier for them to accurately work out their operation and investment cost, making them feel more at ease in investment and business operation. As such, the authorities should take this into careful consideration, so as to ensure the clarity and consistency of the taxation legislation.

To conduct a review of the taxation legislation, we do need an effective advisory framework. Though the Government reiterates that it would be sufficient for the review to be conducted by the Joint Liaison Committee on Taxation (JLCT), as one of its members, I find that the JLCT is restricted to offer of advice at the technical level, incapable of providing input at the policy level, such as proposing amendments to the legislation. Besides, as the JLCT comprises only of government representatives and are restricted to major accountancy firms and business associations, the small and medium enterprises, small and medium practitioners, as well as independent persons are excluded. I

propose to modify the existing composition of the advisory framework or set up a new organization by means of legislation to implement the mandate set down by the legislation; and to widen its composition to involve more members from different sectors to take part in the scrutiny. I am not suggesting that the JLCT is good for nothing; on the contrary, I appreciate their work very much.

On the other hand, the presence of government officials in the JLCT has made the independence of their work doubtful. It is just like asking a referee to review the soccer rules. Would the result be the best? For this reason, I urge the Government to set up a statutory taxation advisory framework by way of legislation, to review our taxation legislation and tax regime on various levels. I am not saying that with such a body set up, the decisions taken by that body would be thrust down the Government's throat. I am simply saying that the work can be implemented more effectively through legislation.

Madam President, obviously, the competitiveness of Hong Kong is being threatened by our taxation legislation and the need for a review is urgent. I hope the Government will no longer bury its head in the sand and pretend that the problem is not there. This is not what the Government should do. While the authorities rejoice at the record high tax income, I hope that they should face up to the underlying problems of our taxation legislation. If we continue to follow this unclear, uncertain and inconsistent legislation, it would be tantamount to killing the hen to get the eggs, which may in turn cause losses to the public coffers and the community. I hope that the relevant bureaux can complement the work of the IRD on the policy level, to promote the sustainable development of Hong Kong together. I hope Members will support the motion and urge the Government to do more in our taxation legislation. I so submit. Thank you, Madam President.

**Miss TAM Heung-man moved the following motion: (Translation)**

"That, as it has been nearly 30 years since the Government conducted a comprehensive review of the Inland Revenue Ordinance (IRO) in 1976, in order to further strengthen and expand Hong Kong's edge as an ideal place for investment in the international arena, this Council urges the Government to, under the principle of maintaining a simple tax regime with low tax rates:

- (a) expeditiously conduct a comprehensive review of the IRO, so as to ensure that it meets the needs of the current economic environment and mode of business;
- (b) make the provisions of the IRO more simple and certain, and enhance consistency in its implementation; and
- (c) establish a statutory advisory body on taxation for conducting a policy study on the IRO, and ensure that members of the advisory body come from different sectors,

with a view to enhancing Hong Kong's competitiveness and its attractiveness to international investors."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss TAM Heung-man be passed.

**PRESIDENT** (in Cantonese): Mr Patrick LAU and Mr LEE Cheuk-yan will move amendments to this motion respectively. Their amendments have been printed on the Agenda. The motion and the two amendments will now be debated in a joint debate.

I will call upon Mr Patrick LAU to speak first, to be followed by Mr LEE Cheuk-yan; but no amendments are to be moved at this stage.

**MR PATRICK LAU** (in Cantonese): Madam President, I believe that the review of the Inland Revenue Ordinance (IRO) is a concern to all members of the public in Hong Kong. I support in principle the motion moved by Miss TAM Heung-man of reviewing our taxation policy. However, due to the practical situation, I have reservations about the proposals in the original motion of establishing a statutory advisory body and conducting a comprehensive review of the IRO.

As far as I know, amendments have been made to the IRO almost every year in the past decade. Since 1991, there have been 34 amendments to the IRO.

I agree that taxation matters are of paramount importance to the public. To ensure that Hong Kong will keep up with the ever changing economy and business environment, we must have ongoing reviews of our tax regime and legislation, with a view to bringing our advantage in a simple tax regime into fully play and maintaining its attractiveness to investors and businessmen.

Madam President, to enable our tax regime and legislation to keep abreast of the times, it does not mean that we have to conduct a thorough overhaul of an enormous scale for amending the IRO. On the contrary, I hope we can have a focused review, with clear priorities determined for issues to be addressed. I am aware that professional bodies of taxation and chambers of commerce have already expressed to the Government that they expect reviews of certain taxation issues to be conducted. As mentioned by Miss TAM Heung-man just now, these issues include claims on off-shore profits deduction, exemption for employment outside Hong Kong, relief for group loss, penalty provisions and the application of general anti-avoidance provisions. These are concerns raised by taxation professionals and the business community. While some of the issues touch upon the fundamental principles of the profits tax regime, others require reviews or amendments to the relevant provisions. For this reason, I want to take this opportunity to urge the Government to conduct a timely and detailed review of these issues, so as to maintain the competitiveness of Hong Kong's tax regime in the global market.

There is also one point in the original motion that I do not agree with, that is, the Government should not bypass the existing consultation channel on taxation matters by setting up a brand new statutory committee. The original motion states that the Joint Liaison Committee on Taxation (JLCT) is not representative enough in gauging views despite its long history. The members of the JLCT have a rather wide representation, comprising representatives from accountancy associations, such as the Hong Kong Institute of Certified Public Accountants (HKICPA), which is the largest accountancy association with over 20 000 members, as well as the Taxation Institute of Hong Kong, The Law Society of Hong Kong, chambers of commerce and other related bodies. I feel that the industry should not bypass the established forum and set up another committee which may be doing the same job. They should discuss and review taxation matters by means of this channel, with a view to introducing continuous improvements to our tax regime, thereby facilitating the smoother enforcement of the IRO. In addition, as Miss TAM just mentioned, some people opine that smaller accountancy associations have no representation in the JLCT. Nevertheless, I would suggest suitably enlarging the composition of the JLCT to

extend its representation, instead of setting up a brand new committee with similar or even overlapping duties.

Madam President, on the face of it, it seems there is little harm in conducting a comprehensive review of the tax regime, and thus the public generally do not oppose the proposal. However, from a practical angle, the IRO is several hundred pages long, a clause-by-clause review requires a huge amount of resources and a lot of public money, and it may take at least a few years to complete the work. Despite an upward trend in our economy, we are still facing quite a number of challenges. We should continue to adopt the principle of prudence in our financial management. It will be a waste to spend our limited resources on some purposeless review and it will not be cost-effective. In addition, a comprehensive review will bring long-term uncertainties to our simple and predictable tax regime, thus affecting the confidence of investors and casting doubts on the recovery of our economy as a whole. It is indeed not in the benefit of the community. More importantly, to practical businessmen and investors, they prefer a focused review and practical findings to a comprehensive review of the IRO which is neither focused nor cost-effective. In this regard, the HKICPA has indicated a wish to strive for a review of specified issues, instead of a comprehensive review of the IRO.

Although I do not consider a comprehensive review of the IRO is essential or beneficial to Hong Kong as a whole, I also see the need for a continuous review of areas of public concern. For this reason, I propose amending the original motion, urging the Government to conduct an ongoing review to examine in detail and in a thorough manner the specific issues relating to our tax regime and the IRO, thereby making improvements to important areas, with a view to strengthening our status as a desirable place for business and a global financial centre. Thank you, Madam President.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I would like to thank Miss TAM Heung-man for proposing this motion today. We of course support her focus which is on the Inland Revenue Ordinance (IRO) and the setting up of a statutory body. I also feel that we should give the entire Ordinance greater clarity, so that people doing business in Hong Kong are aware of the rules of the game here, which is very important.

I also hope that she would pardon me for not putting forward so many issues that are of concern to her. I would however like to focus on the most fundamental issue, which is also the question raised here by the former Secretary Dr E. K. YEOH — where is the money going to come from? We all know that money does not fall from the sky or grow on a tree, then where does it come from? It has to come from the Government's tax revenue. The Government is gathering paste to introduce a sales tax, subjecting 7 million people in Hong Kong to the tax. As we are not debating the sales tax today, the President needs not worry that I will talk on this issue, however, it is an issue being considered by the Government currently.

Given the improvements in the present economic situation and the diminishing threat of fiscal deficit, many political parties would ask the Government to ease the burden of the middle class by reducing tax. However, the Government is certainly going to ask a question, "Where does the money come from?" If we reduce tax on the one hand, and ban the introduction of sales tax on the other, how we are going to maintain the government services for the benefit of the public? For this reason, I am going to propose today — Secretary Frederick MA also knows — the introduction of a progressive profits tax to enable the Government to have sufficient revenue for maintaining the presently needed services. As education, health care, security and all these are services related to the well-being of the public, where are we going to get money for them? We feel that the most important measure is to introduce a progressive profits tax. It will be the fairest to the public.

Some people must argue that, while the whole world is moving towards the trend of tax reduction, the introduction of a progressive profits tax may undermine Hong Kong's attractiveness to investors and its competitiveness. Many Members who oppose this proposal will certainly make this point later. As regards the global trend, we may look at the trend of certain countries in the world. Estonia, for instance, one of the Soviet Union States, has currently adopted a flat tax, which is an across-the-board tax rate. In other words, one single rate is adopted and individuals or companies are paying the same rate. If it is so good, why are we not going to follow suit? Yet, we have to bear in mind that we are not trying to engage in vicious competition with others. So are we going to devise a tax regime for such competition? Do we need to go to the extreme by cutting price? Is it true that being slim is beautiful and being fat is no good? Everyone is looking good, do you not agree?

We therefore should not constantly discuss what other people are doing. What we should bear in mind is why those countries have to attract investors by adopting this measure. It is simply because other methods are not working. They are left with no other choices. It is the only way for them to attract investors. However, those countries that are doing well would not adopt the same measure as Estonia does. Otherwise, the whole world will engage in a price cutting battle to attract investors. While Estonia is doing this today, other African countries may do the same tomorrow. We always talk about how to eliminate the problem of global poverty. To address the problem, the governments in the whole world must have sufficient tax revenue in the end. To cut down on taxes is no way out, this we must be aware.

What method are we exactly looking for? We ought to introduce healthy competition. We should not just look back and see what some developing countries are doing to attract investors. Instead, we should be more forward-looking and see how we can upgrade our productivity and attract long-term investment and development by maintaining a stable and harmonious community. Countries or places which adopt healthy competition will invest a lot of resources in education and vocational training, and develop a perfect system in health care and social security. They will maintain ample tax revenue to take forward policies conducive to social and economic development. This is healthy competition. I hope we are not going to consider methods of vicious competition.

I also strongly believe that healthy competition will result in higher productivity. If the return of investment is high in Hong Kong, investors will not give up the opportunity of investment and development simply for a few percentage points of tax.

Under the present tax regime, the rate of profits tax is 17.5%. Madam President, the revenue from profits tax in 2004-05 was \$58.6 billion, barely enough to pay for the expenditure on education. The expenditure on education alone has taken up the entire portion of our revenue from profits tax. When compared with other developed countries, including the United States, the country rated the first in terms of competitiveness — Hong Kong is the second — where the tax rate is on average 30% to 40%, the tax rate in Hong Kong is obviously on the low side.

Some may argue that many countries have adjusted their tax rates downward from over 60 percentage points to 30-odd percentage points under the present global trend. From another perspective, we may come to a conclusion that under the global trend, the tax rate should be over 30 percentage points instead of 10 percentage points or so. As our tax rate has been maintained at 10 percentage points or so, we are already very competitive. As such, I hope people will not ask Hong Kong to follow other countries in tax reduction. As our tax rate is on the low side, we are in fact very competitive.

The profits tax revenue accounts for around 9% to 10% in our total operating surplus. Compare with other European countries, while most of them have an income of 20% to 30% in this area, Hong Kong is lagging far behind. For this reason, if Hong Kong — as I have just said — takes to the path of healthy competition, even if we raise our profits tax rate by one or two percentage points, there should not be any problem.

As for the progressive profits tax which we hope to introduce today, it has in fact been adopted by many countries in Europe and America, including Belgium, Canada, the Netherlands, Spain, the United Kingdom and the United States. The United Kingdom, for instance, Madam President, is marvellous. If a company makes profits of less than £10,000, it is exempted from paying tax. As such, companies are not necessarily subject to tax under the progressive profits tax regime. They may be exempted from tax. For profits below £300,000, the tax rate is 19%, while for profits over £300,000, it is 30%. In the United States, for profits less than US\$50,000, a company will be subject to a federal profits tax rate of 15%, for profits ranging from US\$50,000 to US\$75,000, the tax rate is 25%; for profits ranging from US\$75,000 to US\$10 million, the rate is 34% and beyond that amount, 35%. Some people may argue that the introduction of a progressive profits tax would drag down the economy, if this is the case, the United Kingdom and the United States economies should have already crumpled by now.

Besides, as I have just said, a 0% profits tax is possible in the United Kingdom. The Liberal Party tends to defend the small and medium enterprises (SMEs) when talking about our competitive edge. They always say that the SMEs will suffer most. While opposing the introduction of a progressive profits tax, will the Liberal Party support a tax reduction for the SMEs? If a tax rate is tailor-made for the SMEs, the tax they pay may be less, and not necessarily more. As in the situation of the United Kingdom I have just mentioned, the introduction of a progressive profits tax is in fact a tax

reduction. The Hong Kong Confederation of Trade Unions proposes the introduction of a moderate progressive profits tax. For profits less than \$500,000, the proposed rate is 17%, for profits less than \$5 million, it will be 18%, and in excess of that amount, the rate will be 19%. If this is the case, 80% of Hong Kong enterprises would enjoy a lower tax liability, and at the end of the day, our total tax revenue will increase by \$8 billion to \$10 billion.

If we do have an additional income of \$8 billion to \$10 billion, the small-class teaching dream of Prof Arthur LI — his assistant said it would cost \$3.1 billion — may come true. The \$7.8 billion deficit of the Hospital Authority that is worrying Dr William HO can also be addressed. Many Honourable colleagues have proposed in this Council that the medical fees and charges for the elderly population should be reduced by half. This is agreed by a number of Members and can be realized. Many dreams can also come true in this way. Furthermore, I must stress that these are investments. In paying the profits tax, the companies are not only paying the Government, but also investing in the people. It is also conducive to creating a favourable business environment. If we invest in education, we can upgrade the quality of our people in future and enhance their standard of English. It will benefit the business sector. Is it not true that people in the business sector are always complaining about the poor quality of our education?

It is in fact an investment. For this reason, I hope that the business sector should not look upon the progressive profits tax as some scourges. In the end, it is for the well-being of our community as a whole. I hope they can adopt a more liberal attitude and accept our proposal today.

Thank you, Madam President.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, every legal provision needs to be updated constantly with the times, the tax regime of Hong Kong is no exception. In particular, the political and economical environment surrounding Hong Kong has changed beyond recognition over the last few decades, for various modes of operation derived from China's reform and opening have emerged. For example, the processing and assembly factory business and equity joint ventures, China's accession to the World Trade Organization, and the rise of e-trade have caused changes in the mode of transactions, thus it is rather difficult for the old tax regime to deal with these

new issues. For that reason, we support reviewing the tax laws when the need arises instead of a drastic and comprehensive review.

Although the last review was conducted 30 years ago, the industry would be consulted before the budget is drawn up each year, thus it is not true that the tax laws have not been reviewed for 30 years. Instead, they are regularly reviewed for improvement. Moreover, the review of tax laws from time to time has yielded results. The best proof was the amendment of the Inland Revenue Ordinance (IRO) made by the Inland Revenue Department (IRD) last year in order to plug the loopholes of tax avoidance, as a result of which the Government successfully recovered \$2.8 billion in profits tax payment.

The purpose of reviewing the tax regime is to improve the business environment. The current tax regime is welcomed by the industry over the years, the businesses are happy to make investment in Hong Kong and the Government can receive a stable and considerable amount of revenue. The motion only prattles about a comprehensive review of the IRO, but it seems that the speech of Miss TAM does not answer the wording of the motion. Nevertheless, we are still concerned that the industry will have difficulty in adapting to any dynastic change out of a comprehensive review, and the public are concerned about the potential uncertainties lie in the tax regime. The review, which would take a couple of years to complete, will bring about arguments over the increase or reduction of tax. Given all this, is it worthy for us to rigidly ask for a change simply because some people say that no significant change has been made over the years?

The thriving development of trade and business activities in Hong Kong relies on foreign investors and multinational companies which come to open businesses in Hong Kong. In recent years, Singapore has introduced a series of concessions and Macao offered tax exemptions to offshore companies, both prepared to overtly compete with Hong Kong. Any drastic change in Hong Kong's tax regime now will only give rise to instability in the proven tax regime of Hong Kong, and businesses intent on investing in Hong Kong may hesitate or even move out. In that case, we will only throw ourselves into confusion and really suffer harms before reaping any gains.

Madam President, we consider that we should study ways to enhance Hong Kong's competitive edge through the implementation of the IRO rather than wasting efforts on conducting a comprehensive review. Following the

persistent growth in trade and economic activities between Hong Kong and China, new operation modes which were unheard of have developed, and the number of tax-related disputes encountered by Hong Kong manufacturers in respect of their operations in Hong Kong and the Mainland is rising accordingly. Recently, the emergence of tax-related litigation cases between the Government and enterprises has highlighted the fact that certain existing legal provisions require further clarification, and they include the definition of source of profits, rationalization of the definition of offshore income, and straightening up the taxation arrangements of processing and assembling with customers' materials and processing and assembling with imported materials in the Mainland. Mr WONG Ting-kwong, a member of the DAB who is in charge of industrial and commercial policies, will expound on our proposal to improve the situation in these areas.

Moreover, if we are to make the business environment of Hong Kong more attractive, there is room for the improvement in the tax regime besides the enforcement of legal provisions. The idea of group loss relief is worthy of consideration, which is also an answer to the request made by the Hong Kong Institute of Certified Public Accountants over the years. In fact, the idea is nothing new. In the United Kingdom, France and Germany, parent companies and their subsidiaries are permitted to offset each other's losses and gains; in Austria, Italy and Denmark, they are even permitted to offset each other's losses and gains no matter the gains or losses are incurred locally or in overseas operations. The Mainland, which has close economic ties with Hong Kong, has also proposed relief measures to allow companies to offset each other's tax losses and gains within the same group.

Some senior accountants have also pointed out that if a corporate is not allowed to offset its tax losses by gains, that is, companies under the same group will have to pay the tax separately regardless of whether or not the entire group of companies can have the financial power to afford the expenses in this respect, that would be tantamount to forcing the relevant group to find its own way out by rationing the inadequate means and showing their own special prowess. For that reason, permitting the group loss relief arrangement is the solution to facilitate the healthy development of the tax regime.

Lastly, I wish to mention the issue of the current advisory mechanism once again. The original motion proposed that a statutory advisory body should be established and that efforts should be made to ensure that members of the advisory body come from different sectors. The DAB has consulted the

opinions of senior members of the accountancy sector who are of the view that there is no question of inadequate channels of communication between the IRD and the industry or the business sector. Over the years, the opinions of the Joint Liaison Committee on Taxation (JLCT) would definitely be gauged on tax policy or amendment of the tax laws. The JLCT boasts an extensive composition comprising representatives nominated by chambers of commerce, the Hong Kong Institute of Certified Public Accountants, the Taxation Institute of Hong Kong, The Law Society of Hong Kong and the International Fiscal Association. Miss TAM Heung-man, representative of the accountancy constituency in the Legislative Council, is also one of the members of the JLCT. Given that the current advisory mechanism is running smoothly, is it actually necessary to establish another statutory advisory body at the present stage?

Madam President, because of the factors I have just mentioned, I support the amendment of Mr Patrick LAU. I so submit. Thank you.

**MR JEFFREY LAM** (in Cantonese): Madam President, the simple tax regime with low tax rates that Hong Kong has been upholding all along is the major factor contributing to Hong Kong's success in securing its decisive role as an international financial centre. In the past, the Government had been amending the laws from time to time with a view to complementing economic development and plugging loopholes. Very often, the business and accounting sectors would be consulted beforehand. Although one may not say the current Inland Revenue Ordinance (IRO) is a perfect piece of legislation, I cannot see the need to conduct a comprehensive review. Even representatives from the accounting profession hold the same view.

In particular, the proposal in the original motion concerning establishment of a statutory advisory body and a comprehensive review of hundreds of pages of provisions and subsidiary legislation of the IRO will not only waste a lot of resources and time, but also make one feel that it is a review simply for the sake of review, and it is not necessary that the crux of the matter could be identified and issues of greater importance and urgency addressed. If it has to take months or even years to study, by the time the new policy is implemented, I am afraid the circumstance has already changed and it is likely that we would fail to keep up with the times by then.

Nevertheless, in view of the transformation of the mode of economy, such as the globalization and the increasing economic co-operation between Hong Kong and China, I agree that the Government should keep abreast of the times by reviewing and upgrading the IRO from time to time. For example, since the production activities of most Hong Kong companies are conducted outside Hong Kong, I consider that the Government should streamline the definition of offshore income, clarify the grey areas of source of profit and work on a lucid profit-sharing policy, instead of depending on the IRD's discretion in case both sides hold different views, and that will enable Hong Kong companies which have business operations in the Mainland and overseas to understand better their tax liabilities and help companies to calculate the investment costs and strengthen their investment sentiments in an indirect way.

Nevertheless, I wish to point out that the greatest headache for Hong Kong companies engaging in production operations in the Mainland is the fact that there is no clear definition of the source of profits, which is the basis of the profits tax regime. The past principle of 50:50 of source of profit basis is being challenged as the IRD is no longer acting according to the relevant Practice Notes. Instead, all the profits of sole proprietorship businesses which operate outside Hong Kong are subject to the levy of profits tax. Moreover, a bigger problem is that the IRD will exercise the retrospective power from time to time to recover the uncollected revenue in the past, which is rather disturbing to the industry.

I support proposals on improving our business efficiency. The Financial Secretary's proposed abolition of estate duty earlier this year was a decision which might help Hong Kong to become an assets management centre. With regard to such proposals as the extension of tax relief to initial refurbishing costs for commercial buildings, full tax deduction for business equipment, amortization of capital expenditure on franchise or licence and carryback of tax losses and taxation of offshore funds made by the Taxation Institute of Hong Kong, I consider that they are answers to the mode of business operation in the new era. I hope the authorities will actively discuss and consider these issues following the abolition of estate duty, with a view to introducing them as reforms to individual provisions in the IRO for betterment of the business environment.

I wish to emphasize that the simple tax regime of Hong Kong has been a proven system, which is recognized by Hong Kong as well as the international community. The United States, the Republic of Estonia and France are

implementing different systems, and their systems are not necessarily exactly the same as that of Hong Kong in terms of the tax regime and working hours, but we can see that the maximum working hour policy introduced by the French Government in 1988 is now no longer welcomed by its people, and some people are even trying to have it repealed. Each country is unique in a certain sense, we therefore have to examine which approach benefits Hong Kong most, and we should implement a tax regime provided that every aspect of it will benefit Hong Kong as well as the Mainland. For that reason, we should definitely not complicate the tax regime of Hong Kong and we should not add a redundant advisory structure to the original one, for this will only make the process exceedingly complex and affect the investment environment. I have been to the countries mentioned just now and I have had an in-depth discussion with the local people about the relevant issue. Therefore, I understand very well the pros and cons in their view. This is not empty talk, for I have actually exchanged views with the relevant executives and tax officials, and therefore, my arguments are based on practical facts.

With these remarks, Madam President, I support the amendment of Mr Patrick LAU.

**MR WONG KWOK-HING** (in Cantonese): Madam President, one of the important functions of taxation is the redistribution of wealth. It is rather unexciting for me to say that, but it is rather rare that in recent years, I have heard the Financial Secretary, Mr Henry TANG, make the same remark, which I consider rare and commendable. Nevertheless, whether Financial Secretary Henry TANG will put that into effect is an issue worthy of our concern. Taxation is a means for those people who are far more than self-sufficient to repay society by way of paying tax to the government; whilst the government may make good use of the revenue to provide relief to the orphaned and widowed, the sick and disabled, the old and feeble and those who are virtually impoverished.

Under the unstoppable trend of globalization, the pay trend in Hong Kong is polarized, the high-income group can make more money with the resources they already have while the incomes of the grassroots are becoming more and more meagre, so much so that some cannot even support the household expenses of their families.

The monthly wages of most wage earners are less than \$10,000, while the grassroots are only getting \$4,000 to \$5,000. Those outsourced workers are even getting a little more than \$2,000. As supply of grass-roots workers outgrows demand, their bargaining power is zero; therefore, they will only receive a dwindling income instead of an increasing pay.

With a meagre income like that, they should not be included in the tax net. As a common saying goes, "if the head were full of hair, no one would want to have favus of the scalp on it", thus the reason for their aspiration to be excluded from the tax net is not because they do not wish to repay society, but because their wages are so meagre that they cannot support their own families. If they are required to pay tax, it is tantamount to asking them to pay for something they cannot afford. Honestly speaking, in an advanced society, if a worker cannot even support himself with the wages he earns, the word "advanced" would be a dubious description.

Unfortunately, the Government is preparing to expedite the introduction of sales tax. Since sales tax will cause the biggest impact on the grassroots, especially those who are in working poverty, their income can barely support themselves. But now the Government is requiring them to pay the tax, and that is running counter to the principle of wealth redistribution. Although the Government intends to issue vouchers, after all, they can never cover every aspect of life. Moreover, after the introduction of the sales tax, the overall cost of living will increase, and the life of grass-roots workers and their families will be affected by the retrogressive tax.

In fact, it has been proven that fleecing the grassroots by way of taxation is ineffective. When the Government implemented the first stage of new tax increase measures, it was anticipated that 50 000-odd people would be included in the tax net. Nevertheless, despite the labour force has increased by more than 32 000 people in 2004, the figures of the IRD shows that the number of salaries tax payers has only increased by 4 000, which is a far cry from the estimate of 50 000. Why? The Government should think about it.

It illustrates that although the economy is enjoying a pleasing and gradual recovery, workers have not been benefited. Very often, more people have to go out to work just because their incomes have been significantly slashed; those who needed not to work in the past have to enter the labour market in order to help the family make ends meet. The labour force has increased, but they do

not enjoy a corresponding rise in pay. Due to their limited income, they are not included in the tax net. The deploring situation of workers has shattered the wishful thinking of the Government.

In fact, under the trend of income polarization, the most reasonable and fairest tax regime is a progressive tax regime which would make those who have the capital and those who are making the biggest profit to take up more social responsibility.

Over the years, the Hong Kong Federation of Trade Unions (FTU) has been proposing a progressive profits tax regime for the sake of realizing the principle of vertical equity, in order to allow individuals or businesses who are making a handsome profit to shoulder more social responsibility. The reason for the Government to oppose the introduction of a progressive profits tax regime in the past was that a progressive tax regime was too complex, and that would go against the principle of a simple tax regime.

Nevertheless, now that the Government intends to introduce sales tax, which is far more complex than a progressive tax regime. Since vouchers will have to be issued and a refund system for tourists has to be put in place, all this will involve a non-value-added administrative process and the cost calculation would be more complex than that of a progressive tax regime. Instead of introducing a new sales tax, the Government had better accept the FTU's proposal of introducing a progressive tax regime, for at least there is a ready basis for implementation in the profits tax regime.

In fact, no matter the Government, the public or the private sector, a malignant culture of "fattening the top at the expense of the bottom" has been established. Bosses have been exploiting the biggest profit and senior management has been seeking the biggest interests by fair means or foul, thus those who suffer are the middle and lower-rank and low-income employees. They are forced to work long hours in exchange for a meagre pay. For that reason, the Government should aim at people in the upper class who are making a handsome income by levying on them the relevant tax instead of levying it on the common masses.

I support the motion on reviewing the tax regime comprehensively. The so-called comprehensive review should be based on justice and it should aim at redistributing wealth by way of a tax regime and ultimately taking care of the

needs of the economically deprived. As to Financial Secretary Henry TANG's emphasis on the redistribution of wealth in the past, it seems that the Secretary is dubious about it now. Actually, the Secretary should not have any doubts, as I have heard that directly and I hope the Secretary can hear it.

I so submit. Thank you, Madam President.

**MR RONNY TONG** (in Cantonese): Madam President, the way in which the Government handles matters often leaves us in perplexity. The Government of the Hong Kong Special Administrative Region (SAR) recently released a review of existing arrangement for single-parent recipients under the Comprehensive Social Security Assistance (CSSA) Scheme. It requires more than 20 000 single parents on CSSA with the youngest child aged six or above to find jobs entailing not less than 32 work hours per month, or \$200 will be deducted from the monthly maintenance grant. Although the Government explained that this move is meant to change the CSSA culture, we are well aware that it is intended to reduce the fiscal deficit, save public coffers and cut assistance. However, despite facing the same fiscal deficit, the SAR Government is very generous in abolishing the estate duty which can bring the Treasury \$1.5 billion a year. What exactly is the taxation principle of the SAR Government?

Indeed, there is an anomaly in our tax regime. Simply put, it is "outdated, attending the superficials but neglecting the essentials and robbing the poor to help the rich". As regards the tax regime being outdated, just as Miss TAM Heung-man pointed out, the Inland Revenue Ordinance (IRO) was enacted in 1976 and has not been subject to any comprehensive review in the past 30 years. Despite the many piecemeal amendments to the IRO, our taxation policy as the major government fiscal policy lacks a comprehensive examination and study. Many people have criticized Hong Kong's narrow tax base. While the narrow tax base fits in with the simple taxation principle, it relies too much on salaries tax and profits tax to generate tax revenue. For example, in the year 2004-05, these two types of tax already account for 80% of the total government tax revenue. This percentage implies that our tax revenue is coming mostly from the middle class, the working class and the small and medium enterprises (SMEs). According to the principle of "those who have the means pay more", it is a reasonable principle to tax more on the better-off, but the Government at the same time insists on not increasing the tax burden of high-income large enterprises and the wealthy businessmen, and even goes one step further to

abolish estate duty for the rich and thereby further narrows down the already narrow tax base. How are we to solve the problem of an excessively narrow tax base?

Equally considered as outdated is the method of levying profits tax. The SAR Government holds that profits tax will seriously affect investments by the business sector. This I agree. However, I beg to differ with the Government for it fails to acknowledge the fact that we can balance the tax with other factors in actual enforcement. I am of the view that in order to be fair, the Government should also consider adopting the principle of "those who have the means pay more" in levying profits tax. Indeed, profits tax as the major source of government revenue — accounting for 45% — is a great contribution to the Government's finance. However, if we study carefully how this tax is actually levied, we will find that the way it is levied now is very unfair to the SME employers, because the tax rate is flat regardless of the amount of profit they make, unlike the progressive tax in which the rate is fairer.

In order to foster a truly competitive business environment and at the same time maintain the fair principle of "those who have the means pay more", I am of the view that the existing profits tax should be suitably endowed with some progressive element, and that the profits of tax-paying companies should be classified into several simple groups and the bands of the progressive tax rate slightly broadened, so that the SME employers can pay less profits tax, thereby giving them more room of survival. Meanwhile, large enterprises capable of paying more tax should take up a greater share of the tax burden so that government revenue can be increased. I do not think this is a punishment to those with the means, but rather it is the best way for them to repay the community.

Madam President, lastly, I wish to talk about the issue of levying profits tax on offshore funds. The SAR Government has stressed time and again the need to build up a competitive business environment to attract foreign capital, which is also the reason for abolishing estate duty. However, Hong Kong is the only region in the world that taxes offshore funds. In this regard, we are lagging far behind other regions including our competitor, Singapore, in terms of offering concessions to foreign capital. Not until early last month did the Government put forth a proposal to exempt offshore funds from tax. I support this proposal, but this move by the Government is too conservative as compared with our competitor, Singapore, which already has a designated government

department to provide one-stop services to offshore funds and thereby remove obstacles they encounter and help attract more foreign capital into the country. In this regard, we are still lagging far behind our competitor.

Madam President, I believe as long as we can adjust appropriate taxation measures in a suitable, reasonable and balanced manner, such a fair tax regime will not hinder foreign capital from coming to Hong Kong.

Thank you.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, with regard to this motion debate on a comprehensive review of the Inland Revenue Ordinance (IRO) today, the Hong Kong Federation of Trade Unions (FTU) supports the original motion and the amendments.

In fact, as early as in around the '80s to '90s or in the '90s, we already participated in the discussion on a comprehensive review of the IRO. We had discussed this issue with many academics at various forums at that time, and I had said that I hoped the Government would not go for a "quick-fix" way without having regard to the principles by just adding something here at one time and adding something there at another or doing this at one time and doing that at another. We had, therefore, proposed to the Government that a comprehensive review should be conducted. In fact, a number of prominent economists in Hong Kong had also echoed this view. But much to our regret, the Government has all along turned a deaf ear to us and as a result of much stalling, this issue still remains not addressed.

In my following speech, I wish to point out that the Government does not have any tool for comprehensive assessment of the taxation system. At which level should the tax regime be pitched? What figures should be adopted as the criteria? It is precisely because of the lack of criteria that we often find the Government's argument fallacious. I have just asked my colleagues to find my speech in the last budget debate for me. I had said that our Government often tends to make fallacious remarks. For example, the Financial Secretary (the incumbent and the former Financial Secretary as well) has often said that in Hong Kong, the first 100 000 taxpayers have contributed 61% of the salaries tax, adding that this is undesirable, for the tax base is too narrow. He said that it is

unreasonable that most "wage earners" do not have to pay tax. He raised the point that the majority of tax is borne by a minority of people.

In fact, I think all the Financial Secretaries, be it the former Financial Secretary or the incumbent, or even the immediate predecessor of the former Financial Secretary and Chief Secretary for Administration Donald TSANG as well, hold this view which, I think, is fallacious. As I said in the last debate, would anyone with a head full of hair prefer to have favus on his scalp? The rich people will wish to pay tax — paying tax is so much fun! But how can a poor person afford paying tax?

Let us then look at the Government's statistics. Of all the households in Hong Kong, half make a monthly income of \$15,000, which means that the couple in a family each makes an income of some \$7,000 a month. They cannot afford paying tax even if they wish to, can they? They will tell Members that they very much wish to pay tax. Half of those households with a monthly income below \$15,000 in Hong Kong consist of four family members. If there are elderly and children in the family, these households will be in very straitened circumstances. Worse still, the Government has even consistently targeted actions at this group of people by making them pay tax. In a four-member family consisting of children and elderly, the couple can just barely support the living of the family. Added to this, transport fares and rent are expensive, and prices are also on the rise. Just imagine the living conditions of these people.

Now, the Government is suggesting for no reason at all (although it has mentioned this in recent years or even over the past decade or so) that if no improvement can be made to its finance, it would have to introduce a sales tax — it was called sales tax before and now, it is called the service tax or whatever, and anyway, the name of this proposed tax has been changed for many times since JACOBS was in office — we would debate it with the Government every time it was brought up. We said that if the people can afford it, they would be willing to pay it. The Government has also mentioned the tax base. If these people do have a lot of money and do not pay tax, or if they do not pay tax due to structural problems with the tax regime, I would be willing to support the proposal of making these people pay salaries tax. But now, it is not the case that they are financially sound and do not pay tax. Rather, they simply cannot afford paying tax because of their meagre income. How can the Government

conclude on this basis that the tax base is narrow? Therefore, we in the FTU have all along opposed using this approach to address the tax problems and that is, proposing a sales tax which is said to be able to broaden the tax base as a solution to the problem once the problem crops up. Certainly, when it comes to sales tax, we oppose it considering its very nature.

Madam President, then I would turn to the tax types. How can the tax types be duly reflected? If the community generally agrees on a system whereby a person who makes more income shall pay more tax, which means that people with the means will pay more and support should be provided to those without the means, then all tax types will come under a progressive tax regime. At present, our salaries tax is a progressive tax, and it is called vertical equity. But our profits tax is not a progressive tax and so, the tax rate will still be some 17% disregarding the profit size. Why is it so? The present situation is that the salaries tax is progressive, whereas the profits tax is not. We agree that the more income a person makes, the more tax he should pay. But this sales tax is basically not a progressive tax, but a regressive one. I always joke that when Mr LI Ka-shing (a decade or so ago he was not as rich as he is now) buys a bottle of water and if I also buy a bottle of water, we will be paying the tax at the same rate, and that is a regressive tax. How will we support such a tax regime? Had the Government based on theories in the formulation of the tax regime, it should not have supported this. Unless the community at large is already affluent and we have much time to spare and we are not considering such policies as building Hong Kong as the Shoppers' Paradise, then the sales tax could be implemented, and that should not do much harm. So, I think insofar as the tax regime is concerned, the Government should, firstly, have theories as the base, and secondly, it must look into the logic of its proposal as a whole.

Moreover, what I also wish to say is that in view of the current situation of Hong Kong, the Government cannot always resort to taxing the people. The Government must identify ways as to how taxation can be used as a tool to take forward economic development and create employment in the community at large, with a view to generating more revenue from tax for the Government. On this point, I think I do not have to say much about it, for our Secretary for Financial Services and the Treasury knows it only too well since there are many economists around him. In fact, any government will channel its revenue from tax to long-term economic development.

Mr TAM of the FTU has already put forward views on a comprehensive review of the tax regime over the past decade or so. Why have we done so? It is precisely because the Government has not considered this point. Before the economic recession, we already proposed to the Government that it must fully consider ways to achieve diversification in the Hong Kong economy. It is because at that time, we began to see the northward relocation of the manufacturing industry. We, therefore, proposed that consideration be given to how a manufacturing sector of higher quality could be developed in Hong Kong, and also how the tax regime could be utilized for this purpose.

China is a typical success example. Through the special economic zones, it has been making use of the tax regime to absorb capital for investment in those special economic zones. Mr DENG Xiaoping was, indeed, very capable. But our Government has not considered doing the same. The situation that we now face is that basically, there are not enough jobs and economic activities are far from robust. As at today, the Government still has not thought about using the tax regime as a tool and attracting inward investments through the tax regime. Now that the Central Authorities have finally made a move by providing us with CEPA (zero tariff) to help us out by way of tax. See how smart they are! But let us look back at Hong Kong. There is nothing for us to do and that is why Mr WONG Kwok-hing flew into a rage whenever he attended the trade and industry meetings. Please do not say that the representatives of our labour sector always get hot under the collar. We always say that tax is a very useful tool. Tax is not just a major source of government revenue. It also serves the function of facilitating economic development and providing a direction for economic development in the long term. Before I rose to speak, I had said to Mr WONG Kwok-hing that I would give vent to my grievances, because I have been talking about this tax issue for more than 10 years. But have Members noticed that as at today, our officials who have been practising a high degree of non-intervention towards social and economic activities appear to remain unchanged. As at today, economic activities are so scanty and difficult. But our officials have not made use of the taxation policy at all to address the present problem of a weak economy. Worse still, they have even kept on knocking down small and medium enterprises which existed originally and which could otherwise create economic activities and employment. This is precisely why the Government has given us much distorted information. For these reasons, we support the original motion and the amendments. Thank you.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, the original motion points out that it has been nearly 30 years since the Government conducted a comprehensive review of the Inland Revenue Ordinance (IRO). It also points out that some of the provisions were outdated or vague. I agree with this for we really have not conducted any review of the IRO. Nevertheless, I believe the focus of the original motion should not be just confined to a discussion on the IRO, it should also include a discussion on the taxation system.

With regard to the taxation system, despite the Government has conducted no official and comprehensive review, over the past few years, the Government has actually reviewed this issue from time to time and directly or indirectly reviewed the tax regime. In particular, it has been widely speculated that the so-called direct or indirect review would take place in view of the deficit emerged in recent years. In fact, over the last few years, the Financial Secretary has been emphasizing that it would be necessary to introduce other types of tax and the rationale was that the tax base of Hong Kong was too narrow; therefore it was considered that a way should be found to solve the problem, which included the proposed departure/arrival tax, offshore tax or even the so-called sales tax, and so on.

We should make clear the question we are going to debate today and to find out whether it is due to the lack of clarity in its provisions; or whether it involves the technicalities which should be amended; or whether we should discuss the general direction of the entire tax regime.

We are no professional accountants, we are ordinary taxpayers. As far as we are concerned, perhaps people from the accountancy sector are especially concerned about the uncertainty or vagueness in the provisions of the IRO which warrant some technical amendments, but to the general public, the extent of the concern is minimal. What is their greatest concern then? That is, the extent of the impact of the future tax regime on our "purse". That matters most to the general public.

For that reason, if we are to discuss issues about the tax regime, I do not consider that the Government should not conduct a review, but it has to set a clear direction before carrying out a review. Just now I have mentioned that the Government did conduct reviews, that is, to keep on increasing tax, and that is the established direction. However, if we are to discuss this issue today, we

should keep a tight rein on the Government and have it constricted. If we are to increase taxes, we should set a direction; otherwise things will get worse. Now we ask the Government to conduct a review and the Government is rather glad about it, for if we whip the Government up, the revenue will increase. If the Government considers that is not quick enough, it will facilitate the prompt introduction of sales tax, that is what the Government will do. For that reason, we have to define our stance today. If we are to discuss the tax regime, what direction should we set? This is the most important point.

Just now Mr LEE Cheuk-yan also proposed the introduction of a progressive profits tax, which is actually an indirect suggestion of a direction. What direction is that? That is, as we consider that perhaps the current tax regime has some unfair and inequitable elements, not perhaps, but unfairness and injustice do occur, it is therefore necessary to conduct a review. We can see a phenomenon in particular, and I believe the Financial Secretary and other colleagues may have noticed that the wealth gap problem is worsening. In view of the serious wealth gap problem, we should use the tax regime to reverse the situation. On top of other policies, the tax regime is a very important direction. Nevertheless, the general direction is to find a way to make people who earn more money to shoulder heavier social responsibilities, thus wealth can be more equally distributed in the terms of social resources, and the public may enjoy their share of social resources in a fairer and a more rational manner.

For that reason, we have to insist on establishing today's argumentation; otherwise it is meaningless to talk about a review alone. Besides establishing such argumentation, another issue is that the social expenditures are increasing incessantly and the Government has been using this as the reason for expanding our tax base over the years. Our resources are limited, if we have to make an increase in each and every area, it is simply impossible for us to cope. The only way to achieve the goal is to expand or extend the sources of revenue, and only in this way can the needs of society be met. We know that the social expenditures are increasing incessantly, that is the fact. Nevertheless, if we introduce so many types of new tax and ignore areas worthy of review in the respect of government expenditure, then it would be inadequate.

Madam President, why have I made such remarks? It is because in recent years, the public are getting more familiar with the name of a government department, the Audit Commission which audits the Government's accounts. Why? Since the Audit Commission has been bringing to light the

Government's gross waste of public money and the situation of inappropriate spending is rather serious. This is something worthy of our concern and attention. In spite of the Government's painstaking efforts to collect revenue, money was spent casually, and public money was wasted for no good cause, then the Government told us it was short of funds, thus no expenses could be increased. Madam President, is it not unfair, unjust and unreasonable?

For example, the Director of Audit's value for money report issued last month pointed out that the Government had wasted \$2 billion public monies, which included a waste of \$1.4 billion due to the loopholes in diesel vehicle emission control measures which had caused air pollution problems; a waste of \$100 million due to the mistake made by the Highways Department in its road-closure contracts; and a waste of \$1.7 million for works which could have been completed with just \$10 000 due to a delay in public works. Things like that were just the tip of the iceberg.

If we can actually utilize public money in a conscientious and careful manner, perhaps we can save a lot of money. Just now I also mentioned that if we really consider introducing a progressive tax regime, and if my memory serves me right, a 1% rise in profits tax can generate \$2 billion in revenue to the public coffers. Just as I said, the Audit Commission has found a waste of \$2 billion within several months, so if we add up the \$2 billion loss and the potential \$2 billion gain, it would be \$4 billion and our financial status could well be improved enormously with these savings.

In today's discussion, I hope we are not just reviewing the technical issues with the IRO, but to review the general direction, and that will enable us to achieve a fairer and more equal distribution of social resources and to narrow the wealth gap as much as possible. And that will give significance to the review. If the Government introduces sales tax, we would just get an opposite result (*The buzzer sounded*).....

Therefore, Madam President, I oppose such a practice. Thank you.

**MR WONG TING-KWONG** (in Cantonese): Madam President, Hong Kong enjoys a unique advantage in the tax regime, a simple tax regime. There are only a few types of tax in Hong Kong, but other parts of the world are infested with different types of tax which have caused certain impacts on their business environment. Nevertheless, in the wake of social development, a change in the

international environment and a closer economic tie with the Mainland, the IRD, despite updating the IRO on a yearly basis, has to make targeted and comparatively drastic reforms in response to the changed circumstances, with a view to enhancing Hong Kong's attractiveness to investors.

According to the information provided by Invest Hong Kong, in the latter half of last year, 1 098 companies set up regional headquarters in Hong Kong, representing a 13.6% year-on-year increase; and 2 511 companies set up regional offices in Hong Kong, representing a 12% increase. According to the survey conducted by the Invest Hong Kong, Hong Kong kept on attracting investors from traditional markets, including the United States and Japan, and the simple tax regime with low rates was regarded by 75% of the companies as a most favourable factor for Hong Kong. One may see that the simple tax regime is one of the most proven and effective ways we have adopted to attract investors.

According to our experience, only a simple tax regime with low rates can attract investors and give impetus to economic activities, which is an indisputable fact. For that reason, the purpose of tax reforms conducted by overseas' countries in recent years was to copy the simple tax regime of Hong Kong and adjust the high and progressive salaries tax rate to a flat tax rate and to streamline the tax regime. Although the tax regime of Hong Kong is highly praised, is it really flawless? Can Hong Kong's current tax regime keep abreast of the times and economic development and meet the needs in reality? In particular, can it meet the ever-increasing and closer economic tie between Hong Kong and the Mainland?

In the wake of political and economic changes, the mode of economic activities between Hong Kong and the Mainland has changed in tandem with mutual development. Specifically speaking, the processing and assembly business, equity joint venture and co-operative joint venture modes introduced at the early stage of Mainland's reform and opening have transformed into the "Build, Operate and Transfer" (BOT) mode. After China's accession to the WTO, an infant market economy has been established. After the return of sovereignty, the issue of double taxation arises due to the fact that a number of Hong Kong people are travelling to and fro the Mainland and residing in the two places. Moreover, some Hong Kong people are opening proprietorship businesses on the Mainland as a result of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) signed between Hong Kong and the

Mainland and the new economic and trade co-operation in reference of the "Nine plus Two" model. The old tax regime can hardly cope with these new issues, thus a review of the system is necessary and reviews should be made with flexibility from time to time against the economic condition, with a view to improving the relevant tax regime and addressing at specific issues.

I consider a more pressing issue is to clarify the taxation arrangements relating to manufacturers which engage in processing with supplied materials and imported materials in the Mainland. In the past, after local manufacturing businesses had moved to the Mainland, the IRD found it difficult to identify their source of profits and thus issued a guide on the territorial source principle of taxation on a 50:50 basis. So far, a lot of the mainland production lines founded by Hong Kong businesses have either become joint venture or sole proprietorship businesses. A number of people from the business sector point out that the 50:50 taxation guide is no longer adopted by the IRD, while profits from the businesses' mainland investments are subject to a full profits tax rate. Since the 50:50 guide was of a guideline nature, the business sector is always at a loss as to what to do, and disputes would arise from time to time as it is up to the IRD to decide whether or not to adopt such a basis in assessing the taxable profits of the businesses. It is necessary for the authorities to clearly define a taxation criterion for businesses which have investments outside Hong Kong such that a specific taxation policy can be formulated.

Moreover, the Hong Kong Institute of Certified Public Accountants has been advocating a group loss relief over the years, which allows companies of the same group to settle their profits and losses altogether. Nevertheless, the request receives no positive response from the IRD all along. At present, the United Kingdom and European countries have implemented such an arrangement. They are more advanced than Hong Kong in this respect. According to a notice of the State Administration of Taxation on relevant issues concerning enterprise income tax issues of taxpaying enterprises promulgated in August 1998, a holding company or a group of companies (hereinafter called "consolidated taxpaying enterprises") and its affiliates or subsidiaries are permitted to file the enterprise's income tax return on a consolidated basis by filing a consolidated tax return. Group loss relief may attract more foreign investments and encourage large-scale development of enterprises, which tallies with the conviction of the Government to seek economic development.

Madam President, the IRD should solve the problem concerning the definition of source of profits as soon as possible .....(*the buzzer sounded*)..... in order to enable more people to understand the relevant definition.

**PRESIDENT** (in Cantonese): Mr WONG, your speaking time is up.

**MR WONG TING-KWONG** (in Cantonese): Thank you, Madam President.

**MR ABRAHAM SHEK:** Madam President, Hong Kong has a sound and effective tax system. It is supported by an equally solid legal foundation: the Inland Revenue Ordinance (IRO). However, the Honourable Mandy TAM suggests that we should reform it comprehensively — even in the absence of any convincing reason. Honestly, I do not understand the logic behind her motion: When a system is fundamentally sound, why do we want to introduce radical changes to it? As they say in America: if it ain't broke, don't fix it.

As regards the problems of unfairness and limited transparency which Mandy alleged, even if they are factual, they are only technical in nature, while issues such as interpreting the territorial source concept and whether an Assessors' Manual should be published are more related to the implementation of the IRO.

However, the IRO deals with principles and policies to ensure that we have a low, simple tax system based on a territorial concept. If Miss Mandy TAM feels that there are uncertainties in interpretation, such reforms should be directed at the Inland Revenue Department (IRD) and the appeal system, rather than the IRO itself. They should be handled through an ongoing process of reviewing and fine-tuning.

Presently, the basic principle underlying our tax regime, that is, simplicity and certainty, is still widely supported. This is the real reason why no fundamental changes have been introduced in the last 30 years.

Miss Mandy TAM also seems to have conveniently forgotten that a total of 34 bills have been introduced into the Legislative Council since 1991, proposing various amendments to the tax laws. Furthermore, 40 guidelines have been issued by the IRD since 1983. This issue-oriented approach has the benefit of keeping our taxes competitive and up-to-date, while not undermining their stability.

The present targeted-reform approach also has other benefits. Imagine initiating an over-ambitious reform which touches just about every aspect of our tax regime. The bill would be so complicated that its chance of getting passed in this Legislative Council would be slim. For an ordinance of such importance to our continuing prosperity, we should adopt a very practicable approach in making improvements to it.

Regarding the present IRO, Mandy also worries that Hong Kong's competitiveness has been weakened, but I can see no evidence of this. Let me counter her claims with some real figures from Invest Hong Kong: In the last two years, 490 overseas companies have set up regional operations here. Between 1996 and 2004, that number has risen by more than 50%.

Indeed, one common and consistent conclusion arising from many multinational surveys on business environment is that investors are generally satisfied with Hong Kong's tax regime — instead, it is our deteriorating governance and declining government efficiency which worry them.

In her many appeals to various community sectors for an overhaul of the IRO, Mandy emphasized that Macao was becoming a threat to lure companies out of the territory. I suspect not many of our colleagues here are aware that the Macao offshore company legislation has been in existence since 1999. Yet, despite strenuous promotional efforts, not many companies have actually moved their operations to Macao to take advantage of the supposedly tax-free environment. Entrepreneurs fully understand that for a business to operate successfully, there are other factors apart from the availability of a low tax rate. Also important is a fair and reliable legal system, a proficient labour supply, efficient and creditable financial services, a convenient and comprehensive communication network, free flow of information and, last but not the least, an appropriate geographical location.

Moreover, if there is a need to match our competition elsewhere, we can adjust tax rate periodically. To broaden our tax base, we may introduce a goods and services tax in the near future. To enhance the competitiveness of our wealth management, we can abolish estate duty. The Financial Secretary can take care of all these in his Budget every year.

I feel that what we need is enhanced transparency in tax assessments and better communication between the tax collectors and the private sector. I urge

the IRD to explore ways to minimize bureaucracy and remove any uncertainties in the assessment process.

What I also fail to see is the need for a statutory advisory committee on tax reforms. In addition to the Joint Liaison Committee on Taxation, there are other well-established channels of consultation, such as regular meetings between the Government and the accounting industry, and the Financial Affairs Panel of this Council, of which Mandy is also a member.

The experience of other countries reveals that frequent reviews will simply lead to the tax books expanding to the size of the Encyclopaedia Britannica, which totally defeats our basic goal of creating a simple tax system. A large-scale review of the IRO will not automatically make its provisions more simple and certain, as Mandy claims in her motion. Often, the result is the opposite.

Madam President, I will, therefore, vote in favour of the Honourable Patrick LAU's amendment which I feel is more pragmatic and achievable. However, I will vote against the Honourable LEE Cheuk-yan's amendment. A radical shift to a progressive profits tax is short-sighted and is not worth any immediate gains.

Thank you.

**MR ALBERT CHAN** (in Cantonese): Madam President, many economic reviews or researches have often attributed Hong Kong's strong competitiveness to its simple tax regime and overall financial system. Hence, Hong Kong is seemingly publicized as a capitalist heaven and a paradise for "making money and gold mining".

The IRO and taxation policy reflect the philosophy and principle of the Government's fiscal operation, as well as its mode of governing society and the way forward for economic development. Which group of people will ultimately benefit from reform and review? Which group of people will ultimately be affected?

Many people, groups, and even economists have highly praised Hong Kong's simple tax regime and free market economy. However, from the

specific condition of Hong Kong over the past decade, we can clearly see who have been ultimately benefited under this highly-praised system.

In 1995, or a decade ago, when Chief Secretary for Administration Donald TSANG just became Financial Secretary, the unemployment rate stood at 3.2%, the Gini Coefficient at 0.43%, and the number of unemployed people at 95 000. Today, a decade after, the Gini Coefficient has exceeded 5.52%, the unemployment rate has reached 6.1%, and even up to 7.9% at the peak, with the unemployed population rising from 95 000 a decade ago to 211 000 at present. Prior to 1995, the annual figure of bankruptcy was around 300, the average throughout a decade. During the period from 1985 to 1994, a total of 1 599 bankruptcy cases were recorded. In other words, some 160 bankruptcy cases were recorded each year during the decade. However, since 1995, a total of 90 000 bankruptcy cases have been filed. This means that the average number of bankruptcy cases per year is close to 10 000.

The figures about the consortia are even more appalling. Of the four major consortia, namely Cheung Kong, Hutchison Whampoa, Sun Hung Kai and Henderson, Henderson and Sun Hung Kai have seen little changes. According to its annual report, Henderson posted a net assets value (NAV) of \$57.4 billion in 1995, and Sun Hung Kai a NAV of \$107 billion in 1996. In 2004, Henderson saw its NAV risen to \$61.2 billion, and Sun Hung Kai from \$100 billion to \$135.2 billion. In the case of Cheung Kong and Hutchison Whampoa, remarkable increases in value have been reported. Cheung Kong saw its NAV risen from \$51.9 billion in 1995 to \$180 billion last year, whereas Hutchison Whampoa from \$58.8 billion in 1995 to \$260 billion last year. Under the leadership of our financial and monetary officials, while some consortia see their profits spiralling frantically, the number of bankruptcy cases has continued to rise, with the number of the unemployed rising frantically and our Gini Coefficient continuing to inflate. With the widening disparity between the rich and the poor, the poor have become even poorer, and the rich even richer. It is hard to even secure a job. This is the reality brought about by Hong Kong's so-called free economy and low tax rates.

If reform is to be conducted, we have to ask this question: Should we continue to allow major consortia to do what they want such that the grass-roots people can hardly secure a job and, even if they do, face the prospect of bankruptcy? Poverty has become part of the life of the grassroots and the toiling masses. Are we going to continue exploiting, oppressing the people of

Hong Kong, particularly the toiling masses, and forcing them into hard labour in the name of maintaining our free economy, market economy or simple tax regime? Are we going to make millions of people face this cruel oppression and live in poverty and misery?

According to some foreign, authoritative comments on financial and monetary policies, as was pointed out in a report by the United States' Council of Economic Advisers in 1999, "The ultimate goal of currency and financial policies is to realize economic growth and upgrade the living standard of the people." What is the living standard of our people? During the past decade, their living standard has continued to fall and their plight worsened. Yet, our officials are still proud of our low tax rates and economic prosperity. They mentioned the economic recovery merely for the sake of painting a rosy picture. Yet, they have turned a blind eye to the people who are suffering.

It can be said that the Government has derived its revenue from the blood and sweat of the grassroots. The taxation policy should seek to distribute and re-distribute resources and, through doing so, improve the livelihood of the incapable, disadvantaged groups so that they can lead a basic and humane living. However, not only has our Government failed to do so through its taxation policy, this year it has even gone so far as to give \$1.5 billion to the rich by abolishing the estate duty in a bid to lure investors. The poor people will continue to live in poverty; the CSSA will continue to be slashed; and no facilities will be increased in new towns. As such, Madam President, I welcome and support the proposed review. However, the Government must seek to alter Hong Kong's current fiscal direction and value orientation in the review. If the right of the people to enjoying a basic living is not safeguarded, all changes will only end up, as before, reaping more frantic and unreasonable profits for the major consortia.

**MR VINCENT FANG** (in Cantonese): Madam President, today, many media quoted the 2005 World Competitiveness Yearbook published by the International Management Development, Lausanne, Switzerland, in which Hong Kong's ranking in global competitiveness rose from the sixth place last year to second, just after the United States. There are numerous competitive edges supporting Hong Kong. They include Hong Kong's ability to allow direct internal and external investments, free import and export of goods, international business and entrepreneurial spirit, and our profits tax level.

Albeit being such a tiny place, Hong Kong has managed to come so close to the world's biggest economy, the United States. It can be said that the simple tax regime with low tax rates adopted by Hong Kong over the past three decades has played a crucial role in the brilliant achievement it has made over the years. This competitive edge has not only encouraged many entrepreneurs to establish their business here, but also lure many multinational enterprises to choose to establish their regional headquarters in Hong Kong.

Madam President, having done business in Hong Kong for three decades and having established businesses both locally and internationally, I hope Hong Kong can cherish our achievements, which are not easy to come by, and the IRO, which is based on the spirit of "simple and low tax rates" and has contributed a lot to us.

Although there has never been a comprehensive review of the existing IRO over the last three decades, is it really necessary for this piece of fundamental law to be thoroughly reviewed at any time? In my opinion, unless there are problems with its framework, a law should not be reviewed in a comprehensive manner indiscriminately.

Right, compared with three decades ago, Hong Kong's economic structure has undergone enormous changes to date. Over the years, however, the IRO has made more than 30 amendments in the light of new developments to effectively make the Ordinance follow closely the social and economic development. Like the constitutions and laws enacted by various countries in the world, all provisions of law must be amended suitably in the light of social development.

For instance, as Members are aware, the Liberal Party supports the Government abolishing the estate duty as this will help Hong Kong develop into an offshore financial management centre. This is compatible with Hong Kong's current economic structure and direction of development as the territory has become a regional financial hub and fund management centre. We will continue to develop in this direction in the future. For this reason, we must complement the efforts in terms of policy to bring us forward to achieve our target expeditiously so as to enable the general public to share the fruit earlier. Furthermore, the abolition of estate duty is in line with our taxation policy of maintaining simple and low tax rates.

By the same token, I hope the Government can, if it is to conduct any taxation review in future, follow this guiding principle of continuing to support the policy of maintaining simple and low taxes that helps the development of other economic sectors. For instance, the goods and services tax currently being examined by the Government is a new type of tax. It will not only complicate the territory's existing taxation system, but also violate the spirit of maintaining a simple tax regime. Furthermore, it will affect our business environment and impact on trade in goods, tourism and our efforts in actively developing Hong Kong into Asia's professional services hub.

Therefore, I hope the Government can, in considering new types of tax in future, be it abolishing or imposing them, take Hong Kong's long-term development and the well-being of the people into its final consideration.

Hong Kong's IRO has given the Inland Revenue Department (IRD) a relatively great power of interpretation. In recent years, apart from receiving the complaints from the accountancy sector reflecting the undue strictness of the IRD in conducting tax assessment and checking information, we have also heard quite a number of entrepreneurs who have moved their major production processes northward complain that the IRD has introduced many intrusive measures. For these reasons, I approve of the Liberal Party's suggestion and hope that the Government can review whether it has acted too stringently and vigourously in enforcing the law.

Meanwhile, I all the more hope that the IRD can enhance the transparency of its guideline on implementing the IRO to enable the enterprises to provide information in accordance with the request of the Government to avoid aggravating their workload in compliance as a result of a prolonged and excessively detailed investigation, and reduce the nuisance caused to taxpayers.

For these reasons, I oppose a comprehensive review of the IRO.

I so submit. Thank you, Madam President.

**DR YEUNG SUM** (in Cantonese): Madam President, the Government has often raised the point that Hong Kong's deficit is a structural problem. The main

reason is that the deficit has been with us for the past seven years, a considerably long period, which was rarely seen before. Second, the Government has also raised the point that our tax base is too narrow. At present, although more than 3 million people in Hong Kong are employed, only some 300 000 people are taxpayers. In other words, only one in every three persons is required to pay tax. Owing to the narrow tax base, the middle class are required to bear a particularly heavy burden. Third, our public expenditure has continued to rise. With the ageing population and the rise in various social needs, public expenditure as a share of our Gross Domestic Product has exceeded 20%. For this reason, even our Financial Secretary hopes to reduce the proportion from 23% to 20%. I have always maintained that Hong Kong's deficit is a structural problem. However, while these words still ring in my ears, I find that this year's deficit has dropped to \$4 billion only. The Government has originally reported to have a deficit of more than \$13 billion. However, after deducting more than \$26 billion worth of bonds, it basically recorded a deficit of only \$4 billion last year. It is clearly reflected in this example that the Government has deliberately described the deficit as a structural problem. Actually, when our economy rides on an upturn and the Government is reaping more revenue from land sale, the argument that the fiscal deficit is a structural problem (this means the deficit will arise regardless of any action taken) is fundamentally untenable.

With respect to reviewing the tax regime, we in the Democratic Party support this motion and the amendments. In essence, we hope the Government can do something in terms of the progressive nature of profits tax and salaries tax. We do understand the importance of maintaining low tax rates and a simple tax regime to the competitiveness of Hong Kong economy. The Democratic Party also realizes, owing to globalization, the high mobility of capital, companies will move from places of high production cost to places of low production cost. Therefore, low tax rates and a simple tax regime are indeed crucially important to Hong Kong.

Madam President, the profits tax rate now stands at 17.5%. Regardless of the size of a profit, the amount of tax payable is still capped at 17.5% of the profit. On the other hand, the salaries tax rate is 15%. In other words, regardless of the amount of income, the amount of tax payable is also capped. Meanwhile, many middle-class people have to pay tax equivalent to two months' salaries, out of their 12 months of salaries, to the Government. Actually, we have to reflect certain phenomena for the middle class. Madam President,

despite the low tax rates in Hong Kong, the middle classes actually bear the heaviest tax burden. Some of the taxes they pay are direct, some indirect. For instance, they have two major expenditure items. First, education expenditure for their children. Second, mortgage repayment for their flats. They have to make repayment for both the interest and principal. Actually, most middle-class people — not to mention those facing negative-asset problems after 1997 — share the wish of gradually improving their lot. Basically, they are facing enormous pressure in meeting their expenses. Relatively speaking, the protection received by the middle and upper class in Hong Kong is particularly huge. Therefore, we in the Democratic Party hope that the Government can introduce mild, progressive profits tax and salaries tax rates. We are not advocating drastic tax increases. Only that we believe mild adjustments introduced by the Government can be helpful to easing the pressure on the middle class and ameliorating Hong Kong's problem of being ranked the fifth place internationally in terms of the disparity between the rich and the poor.

Moreover, Madam President, I know that the Financial Secretary is keen to launch a sales tax and has indicated that public consultation will probably be conducted at the end of this year after consulting the new Chief Executive. We in the Democratic Party are of the opinion that it is most preferably for taxes to be charged in accordance with the principle of "those who have the means pay more" in a progressive manner. Relatively speaking, sales tax is regressive. I believe the Government will probably, for the sake of easing political pressure, propose exemptions in various aspects. For instance, some places in Europe might grant tax exemption to such basic commodities as butter, bread, meat, and so on. Should certain commodities be exempted, the Government might find its tax revenue recording even more loss than gain after deducting administrative costs. It is also likely for Hong Kong's tourism, sales or recovering economy to be hit. Worse still, the levy of the tax would even pose an additional burden on the living of the general public, thus aggravating the disparity between the rich and the poor in Hong Kong. Therefore, we very much hope that the Government can think twice about the tax. As for the business sector, generally speaking, all the trade associations we have contacted hope that the Government can launch a sales tax because more people would then be included into the tax net. Even in times of economic recession, people would still have to buy things, though that would definitely pose a burden on the living of the general public. If the Government advocates implementing a simple tax regime, it had better think twice about introducing the sales tax. It must not launch the tax without careful consideration. I think the business sector has mainly considered

the matter from the angle of their own interest. As the introduction of sales tax can help reduce the pressure on profits tax, the taxation pressure will then be shifted onto the general public. Therefore, we in the Democratic Party basically disapprove of introducing the sales tax.

In order to reduce the pressure on the Government's expenditure, we propose that part of the investment proceeds from the Exchange Fund — I emphasize that I am talking about the proceeds, not the principal — be set aside for recurrent expenditure. I believe this will help alleviate the pressure on the Government to increase tax. However, generally speaking, there is definitely a need to maintain our simple and low tax rates. As regards the proposal of introducing a mild, progressive element into the profits and salaries taxes, the Democratic Party is of the opinion that it can be considered. However, it is impossible for us to express support for the sales tax at this stage because of its regressive nature.

Thank you, Madam President.

**MR LEE WING-TAT** (in Cantonese): Madam President, on behalf of the Democratic Party, I am going to express its views on reviewing the tax regime at the policy level.

Hong Kong's tax regime has been constantly reviewed by the Government. In 2001, the Advisory Committee on New Broad-based Taxes (the Advisory Committee) set up by the Government put forward a number of proposals to reform the tax regime. Every year, in consulting Members' views on the Budget for the following year, the Financial Secretary will review the tax regime jointly.

The proposal put forward by the Advisory Committee at that time, including introducing capital gains tax, interest tax/dividends tax, global tax, payroll tax, land departure tax and sales tax, was not supported by the Democratic Party on the ground that these taxes would, if not complicate the tax regime, aggravate the burden of the grassroots, or do nothing at all to help boost revenue.

When Financial Secretary Henry TANG consulted Members on the imposition of new taxes in the previous fiscal year, the Democratic Party expressed disapproval of imposing sales tax and capital gains tax, raising tunnel

tolls for more revenue, switching from the territorial source concept in taxation to global taxation, and slashing wine tax. However, we support increasing taxes and introducing green taxes. Mr Albert HO would explain later the policy in this respect in detail.

Although the Democratic Party disapproves of most of the new taxes proposed by the Government, we feel that there is still room for the Government to increase its tax revenue.

Mr LEE Cheuk-yan's amendment proposes to introduce progressive profits tax into Hong Kong. The Democratic Party not only supports this proposal, we even raised a similar proposal in an alternative budget published by us in 2001. Yet, the Government has never listened to our suggestion.

According to the specific proposal made by the Democratic Party, the profits tax rate will increase by 1.5% for companies with an annual profit reaching \$10 million, whereas the rate for companies with a profit not exceeding \$10 million will remain unchanged. This proposal will affect only 2 000-odd companies reaping the highest profits in Hong Kong, or some 5% of the companies required to pay profits tax. We have made some calculation and, as revealed by the information of 2001-02, this proposal will boost the government coffers by at least \$3.3 billion. Actually, these companies are only required to pay higher profits tax should their profits exceed \$10 million after deduction of all expenses. As such, raising their profits tax payment by 1.5% will not affect their affordability. I must add that, as revealed in their annual reports, many listed companies are actually not required to pay tax at the rate of 15% because, very often, they only need to pay tax at the rate of 8% to 10% or so by certain legitimate means.

Nevertheless, the Democratic Party supports the Government introducing some tax concessions as a means to encourage enterprises to spend in individual areas. The Democratic Party also agrees with Miss TAM Heung-man that the IRO should meet the needs of the current economic environment and mode of business. Hong Kong is no longer an industrial city. It has now turned into a world city dominated by services industries, tourism and financial industries. We have to move into a knowledge-based economy in tandem with the rest of the world. Therefore, we must recruit talented people and put emphasis on scientific research.

It goes without saying that talented people are important to Hong Kong in maintaining its status as a world city. Despite the large number of small and medium enterprises (SMEs) in Hong Kong, the culture of providing employees with on-the-job training is still lacking. Hong Kong companies generally spend little on R & D. The SME Training Fund launched by the Government a couple of years ago has received favourable responses. Over the years, more than 50 000 SMEs have received grants. It is thus evident that incentives help SMEs pay attention to the culture of training. Therefore, the Democratic Party will keep calling on the Government to consider providing tax concessions to the training initiatives made by enterprises.

The Democratic Party would also like to urge the Government to consider introducing other tax concessions for the purpose of, for instance, encouraging enterprises to invest in technology, purchase green facilities, recruit people with disabilities, organize volunteers to provide voluntary services, provide their employees with child care services, sponsor performing arts and cultural activities, and so on, as a means to encourage enterprises to assume their social responsibilities.

Besides the profits tax, the Democratic Party also hopes to introduce progressive rates. We propose to increase the rates percentage charge for properties with a ratable value exceeding \$15,000 to 5.5%, down to 4.5% for properties with a ratable value not exceeding \$5,000, and 5% for other properties, hence manifesting the principle of "those who have the means pay more".

In addition to taxation, the Democratic Party has conducted a detailed study on ways to allocate more Exchange Fund investment proceeds to the government coffers. Mr SIN Chung-kai will later explain at length the Democratic Party's suggestions in this area.

Actually, Secretary MA is aware that the Democratic Party disapproves of the Government's adjustment of salaries tax rates for the years 2002-03 and 2003-04 because of its indirect consequences of increasing tax. We have always hoped that the Government will lower taxes for the middle class when the economy turns the corner and government revenue stabilizes. This is because we feel that, even during the past several years when economic development had slowed down, the general tax burden on the middle class was still heavier, not lighter, than before. Let me cite an example. Wage earners making a monthly

income of \$15,000 have seen their salaries tax going up by 70% during these two years, whereas wage earners earning a monthly income of \$30,000 have seen an increase by 28%. Actually, most of them have not received any pay rise.

Madam President, on behalf of the Democratic Party, I have broadly expressed my view on each area. Next, Mr SIN Chung-kai and Mr Albert HO will explain in detail our justifications and views on two specific areas.

We support the motion and all the amendments. Thank you, Madam President.

**MR SIN CHUNG-KAI** (in Cantonese): Madam President, today's motion debate is about taxation review, however, the scope of a taxation review should be broader, that is, we should also discuss the source of government revenue since it is also a fundamental issue.

Besides taxes, revenues of the Government should include government fees, that is, the so-called government fees and charges. I shall now talk about the stance of the Democratic Party. With regard to government fees and charges related to the livelihood of the people, we support the Government's adherence to the cost-recovery principle when levying fees and charges. The Government has frozen the fees and charges over the last two years. This year's Budget also mentioned the possibility of resuming the cost-recovery, but it has not been put into practice yet. I consider that the Government should not subsidize these fees and charges with taxpayers' money.

I also wish to talk about the investment proceeds of the Exchange Fund, which are related to taxation as it is part of government revenue. The Democratic Party has been urging the Government to make better use of the investment proceeds of the Exchange Fund with a view to alleviating the drop in revenue since 2002. Unfortunately, the Financial Secretary has not responded to the request actively. Until the end of last year, Joseph YAM still said that the higher the aggregate amount of the Exchange Fund, the more stable the Hong Kong dollar would be. However, he changed his tone recently and said that the Government was studying the arrangement for sharing the Exchange Fund's investment proceeds and looking into ways to maintain a more stable revenue base. We hope the Government will study that seriously.

The Financial Secretary once expressed that the international financial environment was difficult to predict, thus Hong Kong should maintain adequate foreign exchange reserve in order to maintain the stability of Hong Kong dollar. Besides, it was hard to predict the rise or fall of the Exchange Fund's investment proceeds, thus he declined the Democratic Party's proposal.

First of all, most government revenues hinge on the performance of the local economy, but the Exchange Fund's investment proceeds depend more on the international investment environment. One may say that it actually plays the function as a cushion in this respect.

Secondly, the aggregate amount of the Exchange Fund has reached \$400 billion. After the Hong Kong Monetary Authority introduced seven measures to strengthen the currency board arrangements in 1998, plus the fact that since the latter half of 2003, actually, everybody understood that from 1998 to 2003 there was a discount in the exchange rate of Hong Kong dollar against the US dollar. So in simple terms, Hong Kong people are speculating that the Hong Kong dollar will depreciate — since the Reminbi is currently under pressure for appreciation, investors will bring money to Hong Kong and the Hong Kong dollar will in return under pressure of appreciation. For that reason, as far as the current situation is concerned, the so-called foreign exchange risk is rather insignificantly low. We can refer to the information given by Mr YAM when he came to this Council and gave the briefing. For that reason, we consider that since it is the time to strengthen the Exchange Fund, we should consider allocating a bigger portion of the investment proceeds of the Exchange Fund to support government expenditure.

Thirdly, with the exception of 2001, the annual rate of investment return of the Exchange Fund ranged from 4.8% to 10.8% from 1999 to now, and the annual investment income ranged from more than \$30 billion to more than \$90 billion. For that reason, it would not be difficult at all for the Government to allocate about \$ 30 billion as a fixed rate to the public coffers on a yearly basis from the proceeds of the Exchange Fund, and that is exactly what the Democratic Party has been proposing to the Financial Secretary. Of course, I do not know whether different political parties will have different suggestions. For example, the DAB and the Liberal Party have proposed that the Government should allocate more, but they have not proposed the specific measures. As to the Democratic Party, we consider that the Government should allocate a fix

amount. This is simple enough, and the so-called fixed amount means the allocation of more investment proceeds which will not affect the principal.

Besides the investment proceeds of the Exchange Fund, the Democratic Party definitely supports the Government's continued sale of government assets of marketable value, with a view to achieving the principle of cost recovery. For example, the Democratic Party supports the sale of shopping malls and car parks under the management of the Housing Authority. The Democratic Party also supports the proposed sale of the Airport Authority. We have also proposed that the Government should sell government car parks and we hope the Government will keep on studying the issue.

Besides what taxes should be collected and what taxes should not be collected, today's motion should involve another technical issue, that is, the question mentioned in Miss TAM Heung-man's motion which I also wish to take this opportunity to elaborate now. In recent years, more and more manufacturers from Hong Kong are investing on the Mainland, so for that reason, I personally consider that the taxation issue between China and Hong Kong is a bigger issue. Consideration should be given to how double taxation can be avoided in the two places. The integration of the two economies does bring about uncertainties in tax assessment, but the Democratic Party considers that the Government has the obligation to ensure no enterprise would be subject to double taxation, and it should ensure no double taxation would take place. The IRD has currently signed agreements with 27 countries in respect of avoidance of double taxation, which have clarified the taxing right of different countries and would help investors to assess their tax liabilities more accurately. Although Hong Kong has signed the agreement with the Mainland on the avoidance of double taxation, if an Government can discuss with the Mainland on the issue of taxing power between different trades comprehensively, I believe it would help cross-boundary enterprises to arrange the ratio of their businesses in the two places.

Moreover, what is more worthy of a review is the taxation of Hong Kong people who work on the Mainland. More and more Hong Kong people are required to stay and work on the Mainland for a long period of time, but very often, even if they are not resident employees as they work for sometimes and play for sometime, they will exceed the maximum stay restriction of 83 days, thus they have to pay the Mainland's income tax. I hope the Government can study whether it can discuss with the Central Government the issue about allowing Hong Kong residents who have to pay Hong Kong tax only through the

CEPA framework, I believe that is a worthy subject for the Government to study at the technical level.

As to the issue of establishing a statutory advisory body, the Democratic Party considers that the Government should make an effort to strengthen and enhance the consultation with the accountancy and business sectors via the Joint Liaison Committee on Taxation on various issues concerning the taxation legislation. If any major taxation review is to be conducted, the Government should expand the scope of consultation in order to ensure that all stakeholders can make their views known.

**MR ALBERT HO** (in Cantonese): Madam President, insofar as Hong Kong's tax regime is concerned, the Democratic Party considers both review and improvement essential. I believe Members will understand that taxation serves to provide the Government with a source of revenue, redistribute social resources, and achieve certain policy objectives.

However, can Hong Kong's existing tax regime achieve these targets? Since the reunification, more and more wage earners have seen their income slashed. In the fourth quarter of 2004, the number of wage earners earning a monthly income of less than \$4,000 reached 430 000. The middle-income earners, rather than enterprises capable of making enormous profits, have found themselves most badly affected by the Government's tax increase in 2003-04. Employees earning a monthly income of some \$15,000 have seen their tax increased by 70% within two years. After deducting all expenses, however, enterprises have only had their profits tax increased by a mere 6%. Furthermore, the Government has planned to introduce the regressive sales tax. Its taxation policy seems to have failed to achieve the target of redistributing social resources reasonably. For this reason, in addition to the proposal raised by Mr LEE Wing-tat earlier of introducing a progressive profits tax, I think the Government should also consider new tax types which can help resolve the problems currently confronting Hong Kong while boosting tax revenue. Examples are green taxes, electronic road pricing (ERP), and so on.

Let me start with the ERP scheme. As everybody knows, traffic congestion is very serious in Central, Hong Kong Island. On the pretext of having to construct roads to resolve traffic congestion on Hong Kong Island, the Government prefers wasting public money on reclamation to examining the

introduction of the ERP scheme. The Democratic Party maintains that the Government should try, as a pilot scheme, the ERP scheme on certain areas on Hong Kong Island, particularly Central, to encourage people with no real need to use those roads to switch to public transport through levying fees. This can ease congestion on some busy roads on the one hand and help reduce the number of vehicles using the roads as well as ameliorating air pollution in Hong Kong on the other. The ERP scheme is more beneficial to Hong Kong's long-term development than reclamation.

Let me come back to green taxes. The Government should be more proactive in examining the introduction of more green taxes to, apart from improving our environment, boost its revenue. Since the early '90s, many European countries have introduced green taxes to encourage their nationals to improve their habit of living through economic incentives in order to reduce the use of products causing environmental pollution. There are a wide range of green taxes: there is aircraft noise tax in Australia; taxes on plastic bags, paper bags and vehicle tyres in Denmark; and tax on drink containers in Finland. Some countries have even launched green taxation reforms by introducing green taxes while slashing other taxes to reduce the burden on their citizens. In Sweden, for example, its personal salaries tax was slashed after a duty on carbon dioxide was imposed in the early '90s. Similar measures are also implemented in other European countries.

Of course, the Democratic Party is not requesting the Government to turn Hong Kong into a city levying heavy duty. On the contrary, the Democratic Party considers it necessary for the Government to, in levying taxes, consider achieving other policy objectives conducive to social development, particularly environmental conservation. Besides the serious air pollution problem, Hong Kong is also facing another problem in its landfills filling up very soon. Instead of persistently contemplating levying tax on grass-roots wage earners, the Government might as well consider levying new taxes on people damaging the environment so as to improve the environment. This would be even more appropriate. In the opinion of the Democratic Party, the Government should levy green taxes, as a pilot scheme, on selected products that cause serious pollution to the local environment, as well as introducing initiatives to support and promote environmental protection. In the course of selection, the Government should refer to some of the overseas experience mentioned by me earlier in the light of the local actual situation.

In a survey conducted by the Democratic Party in mid-April, it was revealed that 60% of the respondents approved of levying tax on plastic bags in Hong Kong. The Democratic Party would like to urge the Government to expeditiously resolve the technical problem of levying tax on plastic bags so as to introduce this tax that can help protect the environment.

Lastly, I would like to say a few words on law enforcement. The Democratic Party would like to urge the Government to step up law enforcement and levying tax on profits reaped by people who engage in speculation in the stock market so as to boost government revenue. At present, companies or individual investors engaging in speculation in the stock market are required to pay tax on the profits derived from their speculative activities. Despite the fact that the total turnover of the Main Board and the Growth Enterprise Market reached \$4,000 billion in 2004, the annual amount of tax paid by local investors as a result of stock transactions stood at \$1.5 billion only. It is indeed unbelievable that, of the transactions amounting to nearly \$4,000 billion, only 0.25% is considered profitable activities made by company or individual speculation. Therefore, the Democratic Party urges the Government to step up investigation and law enforcement in this respect to recover payable tax so as to avoid slashing expenditure on social welfare and public services and aggravating the burden on the general public. I so submit.

**DR KWOK KA-KI** (in Cantonese): Madam President, I have read the content of today's motion and found that the request made in the original motion is indeed very small and can be described as not destructive. The motion has merely requested the Government to conduct another review of the IRO, which was reviewed in a comprehensive manner only in 1976. I have noticed from the speeches delivered by many colleagues that they hold diverse views because they have looked at the motion from different angles. Yet they all share the view that it is necessary to review Hong Kong's taxation matters. However, it is disappointing that I can already anticipate the Government's response. Moreover, as I have noticed, some colleagues treat the review like a scourge.

Let me cite an example. Mr Abraham SHEK considers the proposal of conducting a review too radical and technical. Furthermore, Mr Patrick LAU, the mover of one of the amendments, considers it unnecessary to conduct a major review. Instead, he suggests simply conducting an examination. What are the

problems with conducting a review? Actually, Hong Kong is always changing. It has changed a lot in the past three decades. Our economy has shifted from the construction industry at the beginning (three decades ago) to manufacturing industries. The manufacturing sector, now fully fledged, has even moved northward. Although services industries once occupied the leading position, changes might now be required for we have to shift our direction towards such industries as tourism.

Actually, the tax regime perfectly mirrors how the Government or society as a whole utilizes resources in different eras, including by what means expected social wealth is recovered and redistributed. Another objective and obligation of the tax regime is to help the Government and society as a whole to lure more people to Hong Kong for investment. Of course, we hope, and find it inspiring, that Hong Kong is still maintaining excellent competitiveness. However, I have been watching our neighbours, such as Singapore and Macao, and have noticed that they are also watching us closely and have kept enhancing their own competitiveness. This will, to a certain extent, have some sort of impact on Hong Kong.

We could see that a major listed company has shifted some of its businesses to Macao for taxation reasons. This is indeed a striking alarm to make us realize that, without more far-sighted or forward-looking strategies, Hong Kong might lag behind its neighbouring rivals. I cannot see, nor can I understand, why the Government and other colleagues cannot accept such a simple request — just a comprehensive review. What are the problems? Why is it that Hong Kong cannot conduct a review of the obsolete IRO at this moment?

Second, the motion has merely requested to make the provisions of the Ordinance more comprehensible and predictable, enhance consistency in its enforcement, and establish a statutory body. There are no problems with doing all this. In Hong Kong, there are advisory bodies in different policy areas, such as education, health care, social welfare, and so on. Why is it totally unacceptable when it comes to the tax regime? Is it the case that our taxation policy or everything done under the Secretary is completely flawless and it is basically unnecessary for any review to be conducted? I definitely disagree.

A good taxation policy can enhance the competitive edge of a region (including Hong Kong). More importantly, it can help the Government launch

policies agreed by everyone. Many colleagues have cited such examples as green taxes, plastic bag tax, and so on. I want to cite one more example. Many public services, including education, health care, and so on, are not supported by adequate resources from the Government. Before and after the publication of this year's Budget, I expressed my wish to the Government (including the Financial Secretary) of inducing more people to switch to the private sector for such services as health care, education, and so on, through tax concession or tax incentives. There are two advantages in doing so. First, the middle class can truly enjoy tax concession. At present, not only do they gain no benefit from the Government, they are required to pay exorbitant tax as well. Under such circumstances, tax concession or incentives may provide room to reduce the extra amount of money they are required to pay. Second, a positive effect can be produced, thereby lessening the heavy burden borne by the Government in providing these public services. This is evident in such areas as health care, education, environmental protection, and so on.

I really consider it imperative to review the existing tax regime from the angle of Hong Kong's long-term development and in the long-term interest of the territory. Although many Honourable colleagues oppose various policies to widen the tax base, including imposing a sales tax, I see it differently. In my opinion, Hong Kong has to implement proposals of widening the tax base, including considering imposing other types of tax, such as sales tax. Should the *status quo* be maintained, our tax base will become increasingly narrow in the future. Consequently, we will be forced to rely on real estate and the policy of maintaining high property and land prices, which we do not wish to depend on entirely. Without a better option, we can only continue to rely on them.

In brief, the Government should not stop this Council from requesting it to reform the IRO. Therefore, I hope Members can support the original motion. I support the original motion, but oppose Mr Patrick LAU's amendment.

Thank you, Madam President.

**MR JAMES TIEN** (in Cantonese): Madam President, insofar as this motion on taxation is concerned, every country in the world nowadays imposes tax only on a handful of people capable of paying tax. The tax collected will be used by the Government, through a series of policies implemented — of course, civil

servants will be employed to implement these policies — to respond to the needs of the general public in such areas as health care, education, and so on.

Under this general concept, Hong Kong is most unique in the sense that, when many countries have to spend in such areas as national defence and diplomacy, it is not required to do so. Judging from this aspect, it is easier for us, compared with many overseas places, to balance our budget or specify in the IRO which areas shall be taxable, the initiatives to be launched, and so on.

Hong Kong's success has all along been attributed to its simple and low tax rates, which are widely recognized by many places around the world which greatly envy Hong Kong for its simple, low tax regime which is understood by everyone because of its simplicity. Therefore, if a comprehensive review is conducted of the tax regime, Members must be able to convince us that there are major problems with Hong Kong's existing taxation policy that make it necessary for the entire policy to be scrapped before conducting another major review. In the opinion of the Liberal Party, the taxation policy adhered to by the Government for so many years remains simple, low, and fair. Moreover, the principles of "users pay more" and "those who have the means pay more" have actually been followed.

Miss TAM Heung-man mentioned that it had been decades since the IRO was last reviewed in 1976. According to the Government, however, up to 34 amendments have been proposed for debate in this Council over the past 14 years. In the opinion of the Liberal Party, if the existing tax regime as a whole has no problems, it is not necessary to abolish it completely. Or should the Government's current practice be maintained so that "patching up" is done only when necessary? Of course, we consider it necessary to review many policies in a comprehensive manner. However, does our taxation policy fall into this category? This year, for instance, we have conducted reviews in individual areas. For example, we have discussed whether the estate duty should be scrapped and whether a sales tax has to be introduced in the future, and so on.

Actually, we had the same feeling when discussing the issue of widening the tax base. However, the general public does not necessarily look at the matter in the same way. Hong Kong has a population of more than 6 million. Some 3.4 million people are wage earners, of whom only 1.1 million or so are required to pay tax. Of these 1.1 million taxpayers, however, the amount of tax paid by the 200 000 top taxpayers already accounts for 80% of the total amount

of salaries tax payable. This precisely demonstrates the principle of "those who have the means pay more". As regards the opinion of the Mr LEE Cheuk-yan, the Liberal Party does not share his proposed concept of "those who have the means pay more", saying that those who have the means have to pay tax in accordance with progressive rates of 15%, 16% and 17%. Actually, 15% of an income of \$1 million is equal to \$150,000 only, whereas 15% of \$10 million is equal to \$1.5 million. A tax payment amounting to \$1.5 million, 10 times that of \$150,000, has already met the principle of "those who have the means pay more". Conceptually, in addition to the extra portion already paid, is it necessary to raise the ratio or percentage of tax too? We think this is unnecessary. In fact, the taxation system would only be further complicated in doing so.

Of course, the Liberal Party has taken note of the Government's channels through which views on the IRO are collected. According to the Government, the channels will be reviewed annually or every several years. One of the channels is the Joint Liaison Committee on Taxation (JLCT), whose members include representatives from the Hong Kong Institute of Certified Public Accountants (HKICPA), one of them being Miss TAM Heung-man, a representative of the Hong Kong accountancy sector. Insofar as taxation is concerned, an accountant is merely an intermediary responsible for calculating the entire account, whereas the client will pay the tax. There are also other people interested in this issue. I see that the membership of the JLCT comprises representatives of the Hong Kong General Chamber of Commerce, the American Chamber of Commerce and the Taxation Institute of Hong Kong, and the indispensable representatives of the HKICPA, The Law Society of Hong Kong, international financial associations, and so on. In my opinion, such a composition is already able to balance the views of various sides, including the business sector, lawyers and foreign businessmen, on taxation.

The Hong Kong Association of Banks and the Capital Markets Tax Committee of Asia Hong Kong Chapter have also sent representatives to attend the meetings of the JLCT. As the JLCT comprises members from different sectors, it should be able to provide the Government with lots of opinions. Therefore, any stakeholders, such as the HKICPA, of which Miss TAM Heung-man is a representative, wishing to express their views can do so through the JLCT. Of course, we have also received the letter sent by the HKICPA. It was found that, on the contrary, the constituents of Miss TAM found it unnecessary to conduct a comprehensive review and preferred conducting the

review progressively. They have listed seven or eight issues for the Government to deal with. I also agree that the Government should pay attention to those issues.

Mr Patrick LAU's amendment actually seeks to bring the IRO to its original state for he supports the Government's existing practice. The Liberal Party also agrees that it is unnecessary to conduct a comprehensive review. When individual policies encounter a problem, a review can always be conducted in several years' time. For instance, we have now decided to scrap the estate duty, though it has been implemented for so many years. From the tax revenue figures, it appears that this measure will immediately cost the Government at least \$1.5 billion. Conversely, however, we will gain benefits amounting to hundreds of millions of dollars. Of course, we cannot ascertain the amount of tax involved for the time being. However, this is a matter of policy, which should be studied by the Government.

On sales tax, a number of colleagues from the Liberal Party have expressed their views one after another. We disagree with the imposition of sales tax, yet we do not oppose the Government conducting studies in this area before deciding, depending on our budget several years later, whether sales tax should be imposed.

Regarding the proposal raised by Mr LEE Cheuk-yan of introducing progressive profits tax, although some overseas places have already levied progressive profits tax, the Liberal Party considers it not worthwhile for Hong Kong, where a simple and clear tax regime with low rates is in practice, to introduce the tax. Furthermore, the progressive rate proposed by Mr LEE is not very big. Instead of jumping from 15% to 25% or 30%, he has only proposed an increase of 1%. Despite a difference of only 1%, many international giants would then be convinced that Hong Kong has the concept of progressive profits tax. In many countries where this concept is present, the local companies will act in a very smart manner by splitting a company into 10, and 10 companies into 100. As each company makes a profit of just hundreds of thousands of dollars, none of them will be required to pay profits tax. Is it our wish to see this phenomenon appear in Hong Kong? Of course, Hong Kong accountants will be the only ones who will be pleased, because 100 companies will have to employ 100 accountants. As a result, accountants will have more business. Therefore, we must balance the interest of both sides and, besides really boosting tax revenue, compare the applicability of this policy to Hong Kong.

Madam President, the Liberal Party supports the amendment and opposes the original motion. Thank you, Madam President.

**MR BERNARD CHAN:** Madam President, I fully support any measure which will enhance the strengths of our tax system. I would not be surprised if there are ways that we could improve it, because nothing in the world is perfect.

However, I am not aware of any really serious problems with the system as it currently stands, and I notice that the Honourable Mandy TAM has not identified any such problems in her motion today.

She did say something interesting about the *South China Morning Post* of 25 October last year. She said she opposed the abolition of estate duty because it would hurt accountants and lawyers. So, I really wonder what sort of improvements she has in mind for our tax system.

If anyone believes that there are specific problems with the existing ordinance, he or she should certainly raise them with our Financial Secretary. Maybe, the Joint Liaison Committee on Taxation would also take an interest in those problems. That would be the simplest and the most practical way to correct any problems with our tax system.

A full-scale review, however, would be time-consuming for many people, and it would probably lead to familiar debates on the methods of taxation and the principle behind our tax system. There is nothing wrong with having such debates, but they would not make a comprehensive review any quicker or more effective.

On the subject of familiar debates, I would like to mention the Honourable LEE Cheuk-yan's amendment to this motion. He refers to a progressive profits tax. Under our current simple system, 500 companies pay around 60% of all profits tax. Is he suggesting that they should pay more? Or is he suggesting that the tens of thousands of smaller companies which pay little or no tax at all should be brought into the tax net?

At best, we would end up with a more comprehensive or complex tax system, which is a bad idea. The simplicity of the system is one of its strengths.

At worst, we would end up with at least some companies paying higher profits tax. That might sound attractive if you think it would be paid by companies, not by people. But of course, it would be paid by people.

If taxes go up, companies will probably pass on the extra cost to their customers, or they might outsource some jobs to the Mainland to cut costs, or they might cut dividends to shareholders, including the Hong Kong workforce with their Mandatory Provident Fund.

So, Madam President, I do not think that anyone would benefit from this. Thank you.

**MR LEUNG KWOK-HUNG** (in Cantonese): Regarding this policy that exempts the wealthy people from paying estate duty, it was obviously a mistake made by the Government. Many people are still talking about this policy; they just keep talking about it.

In the United States, there is an organization that hates the Government for only cutting the tax payable by the rich. Perhaps you may say, "Long Hair, of course, you always cite news liking to your ears." However, this is not the case. In the United States, an organization is formed by many wealthy people to conduct a campaign that urges the Government to impose tax on them. They ask and request the Government to do so. In fact, one of the members of the organization is well known to many of us as his products are widely used all over the world. His name is Bill GATES who is also the founder of this organization. He finds it very unethical for the Government to abolish estate duty. The United States Government did that because the Bush Administration believes, in much the same way as our Financial Secretary Henry TANG does, that by cutting tax on the rich, they would come back to invest in the country; and on the other hand, many ordinary taxpayers, that is, those who are not required to pay substantial amounts of tax, are dragged deep into hot water by estate duty.

In fact, in order to evade tax, the rich would do what Mr James TIEN had said (Has Mr James TIEN left the Chamber now?) — they would definitely require their accountants to think of all sorts of arrangements or to set up trust funds, and so on. If the rich are now exempted from paying estate duty, the Government is telling them that they can evade tax with no cost incurred. The

organization just mentioned by me that asks the Government to impose tax on its members says that the Bush Administration, by cutting tax on the rich, has in turn increased the tax on the middle class. The poor will then be deprived of a kind of assistance originally provided by the Government. I have countless stories to tell about this organization. If you are interested, please visit this website at < [responsiblewealth.org](http://responsiblewealth.org) > to view it yourself. I believe many people can access this website. I would suggest that Honourable colleagues, Miss TAM Heung-man, in particular, should browse this website.

How does this organization get their message across? They posted extensive advertisements on *Washington Post*, which as Members all know is a newspaper with a wide circulation in the United States, and *New York Times* to condemn the Government for rebating the rich or cutting tax payable by the rich and stated that it is unethical for the Government to abolish estate duty. Actually members of this organization are really very wealthy. Guess how rich they are? In this so-called Responsible Wealth organization, members have to possess a net assets value of at least US\$650,000 or with an annual income of US\$164,000 or above. In fact, I do not completely believe in this organization as I do not know what it exactly does. However, please bear in mind that, at least they show their care about the poor on the surface, and they at least advocates social justice on the surface.

Then what about our Government? Our Government says it is not going to collect estate duty. However, since the Government does not have much money, it has to cut the Comprehensive Social Security Assistance (CSSA). It also states that it does not have money for implementing this kind of measures or that kind of projects. This is absolutely unreasonable. According to the same organization, the United States Government each year rebates US\$123,592 to taxpayers who have an annual income of US\$1 million, and only US\$383 to those who make less than US\$50,000; and such a difference has become the symbol of the wealth gap between the rich and the poor and is one of the reasons for the fiscal deficit of the country. As the United States Government has to purchase missiles on the one hand and proposes tax reduction on the other, so the sandwich class, that is the middle class and the poor, are bound to be out of luck.

The Hong Kong Government often makes reference to certain foundations in the United States or some other overseas countries and even queries their feasibility. Has the Government ever looked into the case of this organization? Has Secretary Frederick MA ever visited this website and learned from its

experience? I think the tax rate of Hong Kong is far too low, especially profits tax. For a long time, those who make profits are only required to pay very little in tax. Just as Mr LEE Cheuk-yan had said, just collecting 1% (sic) from them, it was so minimal. As far as the tax rate is concerned, we should at least bring it on par with that of Singapore. In Singapore, the tax rate has been reduced from 32% to 20% and the reduction will continue. However, it does not help the economic rebound. Is it not true that the Government had thought that tax reduction could trigger an economic recovery? Singapore has lost 12% of its tax revenue. Yet, its economy remains weak. Therefore the allegation that tax reduction can promote economic recovery is just a false claim.

Thus, I hope Members can support an increase in the progressive tax rates of profits tax to at least 20% as a way of solving the widening wealth gap in Hong Kong. During an economic downturn, the wage earners and the poor have gone through difficult times or even become homeless as a result of deflation. Now the economy has recovered, but the poor people cannot enjoy the so-called fruit of the economic recovery due to inflation. In fact, the Government should not benefit the rich through the tax regime. Instead, the Government should extract money from the rich through the system, such as from Mr LI Ka-shing and the four major property developers, so as to finance social reforms in Hong Kong.

I hope..... (*The buzzer sounded*), in that case, I need not hope anymore

**MS AUDREY EU** (in Cantonese): Madam President, first of all, I am grateful to Miss TAM Heung-man for having prepared a lot of information concerning the Inland Revenue Ordinance (IRO) so that we can have a better understanding of today's motion. She has also listed many provisions which warrant review and pointed out the direction of the review. She has also provided information concerning the statutory body she has proposed to be set up to take charge of the relevant matters.

In fact, the IRO, like the Companies Ordinance, is closely related to Hong Kong's business environment and its status as a financial centre. Relatively speaking, the IRO is also an old piece of legislation. It is not at all surprising that the laws should be reviewed and updated from time to time. Take the Companies Ordinance as an example. Consultants were commissioned by the Government to conduct a comprehensive study in 1994. Repeated studies were

then conducted after the outcomes were found unsatisfactory. Amendments to the Companies Ordinance have been introduced almost every year since 1999. Having dealt with an amendment in the last term, we are now required to tackle another one. However, the work has not been completed and the legislation needs to be constantly reviewed.

Madam President, I think you will also remember that the colossal securities laws, a consolidation of a dozen of ordinances, were thoroughly reviewed during the last term. From this we can see that the laws are subject to constant reviews and we should not be taken by surprise at all. However, just because the law proposed for a review by Miss TAM Heung-man is the IRO, many Members, as Mr James TIEN said in his speech, are frightened on hearing that the IRO is to be reviewed for fear that there will be tax increases which will target at the rich and Hong Kong cannot maintain its low tax rates. On the other hand, I can also see that the accounting profession has also expressed different views on this matter. For instance, the Hong Kong Institute of Certified Public Accountants has written to us, saying that a comprehensive review is not necessary. In my opinion, however, it depends on what attitude we adopt towards reviewing the IRO. According to the correspondences or views presented by Miss TAM Heung-man, the review will focus mainly on some of the questions that people often ask as far as the IRO is concerned. These include questions concerning the source of profit, which is a very complicated issue. Another example is the provisions concerning tax evasion which are considered to be ambiguous. But in fact, the relevant provisions aim at penalizing those who have evaded taxes. Besides, there is the question of double deduction. Those who are well-versed in taxation matters opine that the relevant questions can be given greater clarity. However, these individual issues can be dealt with not necessarily by conducting a comprehensive review of the IRO. So I remain open in this regard.

More importantly, however, the review of the IRO is not only an issue between the accountants or the Inland Revenue Department but also an issue related to the business environment and the tax regime of Hong Kong. Any changes will have a direct bearing on the public finance and the allocation of social resources. So, the scope of our discussion will exceed the technical and legislation level. Today, many colleagues have pointed out that many tax items should be reviewed, including estate duty, profits tax and a number of other taxes like the goods and services tax. However, I do not think that this is an

appropriate forum for very detailed discussions on every single item of tax that should be reviewed.

Nevertheless, I think there is a relatively general issue which is worth mentioning here and that is, the very narrow tax base in Hong Kong. Furthermore, we are now facing a quickly greying population and the problem is deteriorating. According to the Report of the Task Force on Population Policy compiled by the Government, in 2002 or three years ago, there were 381 children and elderly people per 1 000 persons aged between 15 and 60 (Appendix 1). By 2031, the dependency ratio will rise to 562 or a 50% increase. Having said that, Madam President, I wonder why the study has arrived at the dependency ratio of 562 on the basis of 1 000 persons aged between 15 and 60 (Appendix 1). How can we rely on a 15-year-old to support the others? Madam President, I think you are also aware that many people will further their studies after finishing the undergraduate programme and many people will start to earn money only when they turn 30. So, when we say that every 1 000 persons aged between 15 and 60 (Appendix 1) will have to support 562 people aged under 15 and aged 64 and over, the true ratio must be much higher. Just think about this and it becomes frightening because according to the said calculation, the number of dependent persons per 1 000 persons is 562. In other words, the dependency ratio is one per less than two persons. If people aged between 15 and almost 30 are taken out, the burden is indeed very heavy. So, from this perspective, a review of our tax regime is very very important.

Madam President, we have often wasted a lot of energy on discussing and reforming our constitutional system — I should not have said that energy has been "wasted", instead I should say that our energy should be expended on this matter because we should do so. But since the tax regime is crucial to the long-term development of Hong Kong, I very much hope that Secretary Frederick MA will consider from this perspective whether we should have a comprehensive review of Hong Kong's tax regime. Thank you.

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

**MR ALBERT CHENG** (in Cantonese): Madam President, apart from the rule of law which can protect the interests of investors as we have all along said in the debate, the most important element for Hong Kong to be an international

financial centre and a cosmopolitan city is a simple tax regime. Today's motion calls for a review of the existing Inland Revenue Ordinance (IRO) and the entire tax regime. Members who oppose the motion are of the view that if a review is conducted, in particular if a progressive profits tax proposed in Mr LEE Cheuk-yan's amendment is introduced, it will jeopardize Hong Kong's simple tax regime. They basically do not know what a simple tax regime is.

Stephen FORBES, a friend of mine, the chief editor of the *Forbes Magazine* in the United States, has run for the election of the Republican presidential candidacy twice. One of the major proposals in his manifesto is to adopt a simple tax regime like that of Hong Kong. He said that it would be great if the United States can adopt the system in Hong Kong where people can file their salaries tax return on just a piece of paper, thus obviating the need for tax consultants' service. So ours is regarded to be the best tax regime. His manifesto is supported by the Americans who in general also support the simple tax regime in Hong Kong.

Today, Mr LEE Cheuk-yan's amendment proposes the introduction of a progressive tax regime. In fact, a progressive tax regime has already existed in our simple tax regime. How can a progressive tax regime jeopardize Hong Kong's simple tax regime? Some Members oppose it. It does not matter even though Members oppose the motion. I have always objected to many things. But they have to offer justifications and cannot just say that the introduction of a progressive tax will jeopardize our simple tax regime. This is not justifiable. If it does, Hong Kong does not have a simple tax regime at all. Who will jeopardize our simple tax regime? It is Henry TANG and Frederick MA because they are now studying the introduction of a goods and services tax. By introducing an additional tax item, our simple tax regime will be jeopardized. It is surprising that some Members even fail to understand such simple economics 101. I really have to teach them some "instant" economic principles so that they can do some study.

To impose a higher tax rate on those high-income earners and highly profitable consortia will not jeopardize our simple tax regime. So I do not think that it is a problem of reviewing the tax regime. Everybody supports a simple tax regime and I certainly do. I will be the first one to voice objection should anyone try to jeopardize our simple tax regime. However, why is it that our simple tax regime will be jeopardized if a higher tax rate is imposed on the highly profitable enterprises and the high-income earners? This is in fact in line with

the principle of "those who have the means pay more". Colleagues who oppose the motion may really think that a progressive tax regime will jeopardize our simple tax regime. But in fact, a progressive tax regime has already existed. They are muddleheaded if they do not know that. Perhaps they have never paid taxes and perhaps they are tax evaders all their lifetime. Mr LEE Cheuk-yan's amendment calls for imposing a higher tax rate on the high-income earners and the consortia making enormous profits. This will not jeopardize our simple tax regime at all. This is a fact. If Members really think that the endorsement of Mr LEE Cheuk-yan's amendment will jeopardize our simple tax regime, I now tell them that they should support it.

I oppose the original motion and I oppose all the more Mr Patrick LAU's amendment. He has amended Miss TAM Heung-man's original motion to the last point and even the essence is totally deleted. However, I support Mr LEE Cheuk-yan's amendment.

I so submit. Thank you, Madam President.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, you may now speak on the two amendments. You have up to five minutes to speak.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, I am very glad that two Members have moved amendments to my original motion. This shows that quite a number of Members are concerned about the tax laws in Hong Kong. I hope Members will make extra efforts to urge the Government to improve the tax laws in order to consolidate the attractiveness and competitiveness of Hong Kong.

I would like to respond to Mr Patrick LAU's amendment first. Mr Patrick LAU considers that a comprehensive review of the Inland Revenue Ordinance (IRO) and the establishment of a statutory advisory body for conducting a review of the tax regime and legislation are not necessary. My

opinion is that I do not understand why my proposal of conducting a comprehensive review of the IRO has created such misgivings among Members. As I said earlier, by a comprehensive review I do not mean a drastic review of the IRO. I only hope that the authorities can scrutinize the provisions of the IRO in detail to examine if there is any ambiguity. If so, a review is needed. If not, it is unnecessary. However, I found many Members are very worried. They think that the motion is something like a scourge which asks for a thorough examination of the IRO. I hope Members can understand my interpretation of the meaning of a comprehensive review and agree with my standpoint.

Regarding Mr Patrick LAU's deletion of the proposal of urging the Government to establish a statutory advisory body on taxation in the original motion as suggested in his amendment, I would like to explain why it is necessary to set up a statutory advisory body. As I have said, the existing advisory bodies are subject to various constraints in terms of their functions, compositions, and so on. To set up a statutory body, it will only make its functions, powers, responsibilities, composition and structure more specific. Let me emphasize that this is not going to erode the Government's powers, rather, it is to conduct an independent and comprehensive review from multiple perspectives at both the policy and technical levels in a pragmatic manner.

Here I would like to extend my sincere thanks to over 23 Members who have expressed their views on the motion. A number of Members have pointed out that there are certain ambiguities in the IRO. Some Members have also urged the Government to conduct a review of the IRO. In view of this, I really do not understand why Mr Patrick LAU should delete the wordings in the original motion which call for efforts to make the provisions of the IRO more simple and predictable and enhance the consistency in enforcement. In view of the fact that a number of Members have expressed their misgivings and comments on the IRO, I wonder if the existing IRO is absolutely free of problems and ambiguities and consistent in enforcement.

Mr Bernard CHAN just said, "If anyone believes that there are specific".....

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, you should now speak on the two amendments in your reply.

**MISS TAM HEUNG-MAN** (in Cantonese): Yes, I will. Madam President, thank you for your reminder.

Mr LEE Cheuk-yan proposes the introduction of a progressive profits tax in his amendment. In my opinion, if a progressive profits tax is introduced in Hong Kong, the burden of profits tax in Hong Kong will further be shouldered by a handful of companies which are most profitable. In this case, I will doubt if such tax revenue is stable and whether such situation is sound. Furthermore, the introduction of a progressive profits tax will increase the tax burden of big enterprises. As a result, some overseas enterprises may move out of Hong Kong on the ground that the tax burden in Hong Kong is exorbitant. So, in order to preserve Hong Kong's competitiveness, we have to conduct an in-depth study and strike a balance between the pros and cons.

Finally, Madam President, I hope Members will understand that my motion seeks to urge the Government to lay down a set of clear rules of the game in respect of taxation so that the doubts of taxpayers, investors and enterprises of various scales can be dispelled. In doing so, we can preserve Hong Kong's competitiveness and further bring the low tax rates and simple tax regime of Hong Kong into full play. And the proposal of establishing a statutory advisory body will be the best way to conduct a review for such purpose.

With these remarks, I hope Members will support the original motion. Thank you, Madam President.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, since she became a Member of this Council, Miss TAM Heung-man has repeatedly proposed conducting a comprehensive review of the IRO. I do respect her perseverance.

I also wish to make it clear that the Government will definitely support any proposals so long as they are in the overall interest of Hong Kong and practically feasible.

With respect to Miss TAM's motion, I wish to analyse and respond to it as follows:

Miss TAM's motion begins by pointing out that "it has been nearly 30 years since the Government conducted a comprehensive review of the Inland Revenue Ordinance (IRO)" and urges the Government to "expeditiously conduct a comprehensive review of the IRO". I wish to reiterate that it is not, I repeat, not the case that the Government has not reviewed the IRO over the past 30 years. Actually, the IRO has been amended almost every year. Some Members have also mentioned that 34 amendments have been made since 1991.

Actually, the comprehensive review conducted in 1976, as often cited by Miss TAM, was the mode adopted by the Government decades ago for reviewing our tax legislation. Starting from the '80s, we have switched to a constant mode of review in the light of the ever-changing social and economic conditions. In other words, our tax legislation is under constant review. We have not only encouraged the establishment of a cross-sector Joint Liaison Committee on Taxation (JLCT) to advise the Government on taxation policies and legislation, but also reviewed a number of tax items in conjunction with the formulation of the Budget every year.

Furthermore, as Members are aware, the Government has in recent years conducted a number of taxation policy reviews. For instance, a profits tax review group was set up in 1997-98 for the purpose of conducting a comprehensive and in-depth review of the profits tax regime. Upon the recommendation of the review group, the Government has also launched a number of reforms to the profits tax regime, including granting a 100% immediate reduction to specified equipment such as the machinery, computer equipment and software used by the manufacturing industries, offering concessionary tax rates for interest income derived from eligible debt instruments, establishing a system for the Commissioner of Inland Revenue (the Commissioner) to provide advance ruling on taxation matters, and formulating with overseas countries and the Mainland a direction for a full avoidance of double taxation agreement.

In 2000, the Government established the Advisory Committee on New Broad-based Taxes (the Advisory Committee) to, under the principle of maintaining a simple tax regime and Hong Kong's competitiveness, examine which new broad-based tax types are suitable for introducing into Hong Kong, because the Government also noticed the problems raised by Ms Audrey EU earlier. As a result, 13 taxation proposals were assessed at that time, including

a number of proposals on raising the taxable capacity of existing tax items and introducing new tax items.

Last year, the Government also set up a team for assessing the estate duty to examine the abolition or otherwise of estate duty and consult the practitioners and the public on ways to exempt overseas funds from profits tax, and so on. Members should have heard that tax legislation is actually subject to constant review by the Government. I heard Dr KWOK Ka-ki question earlier why the Government treated the review like a scourge as it was just a very simple matter. I also heard Miss TAM Heung-man say that she had merely asked the Government to examine whether the provisions were clear. However, I would like to tell the two Members that a comprehensive review of the tax regime is not a simple move. It is unlike resolving the trivial problems of a small company. Such a review invariably takes several years to complete. Such a move might also give international and local investors a wrong message that Hong Kong is going to conduct a dynastic reform of its tax regime, thus creating long-lasting uncertainties to the local investment environment. Not only will it do no good to our competitiveness, it may be counterproductive.

We consider that the existing mode of constant review can better adjust our taxation policy and improve our tax regime in the light of the changing circumstances and mode of business. As far as I understand it, many professionals of the accountancy sector, including the 20 000-strong Hong Kong Institute of Certified Public Accountants (HKICPA), the Association of International Accountants (Hong Kong Branch), and so on, consider it more effective and better meets the actual needs of the territory to conduct in-depth studies on specific matters of importance than conducting a comprehensive review of taxation legislation.

One of the reasons for Miss TAM to propose conducting a comprehensive review is to enhance consistency in the enforcement, which is actually related to the enforcement of tax legislation. In order to ensure integrity and transparency in the exercise of tax-assessing duties, the IRD has published a series of Departmental Interpretation and Practice Notes (DIPNs) setting out the IRD's view on applications of the tax law and the usual practices in conducting the tax assessment functions in the context of the precedents of the Board of Review, and local and overseas Courts. To facilitate taxpayers' access to such information, the DIPNs have been published on the website of the IRD. The IRD also has a

statutory scheme of providing advance ruling on taxation matters. Rulings that may be of interest to the tax-paying public will be published on the website. Other more important policies that may affect taxpayers, such as the policy of imposing penalty by way of Additional Tax on tax evasion offences, are also published on the IRD website for public reference.

In addition, our taxation system has a well defined system of objection and appeal, which enables taxpayers to contest the judgements or assessments made by the Commissioner or assessors. For instance, the disagreements will be adjudged by the Board of Review, which is an independent statutory body established to determine tax appeals, as well as the independent Courts. This mechanism imposes very effective checks and balances on the limited discretionary power exercised by the Commissioner or other tax officials and has been operating effectively.

Another reason cited by Miss TAM for proposing a comprehensive review of tax legislation is to make the provisions of the IRO more simple and well-defined. In her speech, Miss TAM remarked that "Hong Kong's tax legislation is uncertain and the rules of the game are not clear". I have reservations about this statement made by Miss TAM. I do hope she can put forward concrete proof to substantiate her accusation. This is because Hong Kong's strength actually lies in its simple tax regime, and this is recognized internationally. We rank the first in 2005 amongst 161 places as the freest economy in the world by the Index of Economic Freedom published jointly by the Heritage Foundation and the Wall Street Journal. One of the criteria adopted in determining the ranking is taxation. Certainty and simplicity in the tax regime are very important to foreign investors. Apart from these, many professionals and businessmen who have experience with the tax laws of other places have reflected to me that, compared with other places such as the United States, Hong Kong's tax regime and legislation are simple and clear. Members should have heard Mr Albert CHENG and Mr Abraham SHEK praising the local tax regime earlier in the meeting.

There is one point I do not quite understand — my IQ might be relatively low — Miss TAM has, on the one hand, proposed conducting a comprehensive review in order to simplify the IRO and, on the other, suggested including the DIPNs into the IRO. Will it not further complicate the IRO? I have therefore consulted some colleagues of the IRD what DIPNs really are. I was told that there are altogether 40 copies of DIPNs, with each copy consisting of 10-odd to

30 or 40 pages. Should the DIPNs be included into our tax law, I believe the volume containing the IRO will become fairly thick. In addition, enacting details of interpretation and law enforcement into law will inevitably undermine the flexibility and timing of improvements to the IRO. This is imaginable. Furthermore, it seems to go against Miss TAM's hope of keeping our tax legislation abreast of the times. At present, many tax jurisdictions around the world adopt a practice, similar to ours, of publishing some sorts of DIPNs, in addition to the law.

Regarding Miss TAM's proposal of setting up a statutory advisory body on taxation, there are actually a number of channels through which the Government consults the practitioners and the public on the taxation policy.

First of all, the abovementioned JLCT was jointly set up by the Government, professional, business and academic bodies and other people interested in taxation matters. As mentioned by Mr James TIEN earlier, the JLCT comprises representatives from the HKICPA, the International Fiscal Association Taxation, The Law Society of Hong Kong, chambers of commerce, and so on. Monthly meetings are held by the JLCT. Not only will the Commissioner attend the meetings, the Treasury Branch will also delegate its staff to attend the meetings on my behalf. Ad hoc committees set up under the JLCT on individual topics will also hold meetings on the basis of actual needs to examine these specific issues in an in-depth manner. The JLCT has put forward a lot of constructive views. We are positive about its views and contribution.

Regarding the point raised by Miss TAM, that the JLCT merely discusses technical issues, I wish to take this opportunity to do some clarification. Her understanding in this respect is wrong. The scope of the JLCT covers all taxation matters. In other words, the JLCT can also advise the Government on the taxation policy.

Apart from these, in formulating the Budget every year, the Financial Secretary will widely consult different sectors, including Members of this Council, District Councils, Heung Yee Kuk, chambers of commerce, academics, tax practitioners, analysts, professional accountancy groups, economists, labour and welfare representatives, and so on, for the purpose of giving full consideration to the views of different sectors and strata. This year, for instance, the Financial Secretary, my colleagues and I have attended more than 20 consultative sessions to listen to the views expressed by different organizations and people on public finances, including the taxation policy. The

sectors and levels covered by this consultative channel can be said to be much wider by any single advisory body.

Furthermore, as I mentioned earlier, ad hoc committees have been set up to conduct in-depth studies on a number of topical issues with respect to the taxation policy in such areas as profits tax, widening the tax base, abolishing estate duty, and so on.

In addition, regular meetings are held between the IRD and the HKICPA to discuss issues of mutual concern. As I said earlier, the HKICPA, with a membership of more than 20 000, has over the past four-odd years submitted to the Government a total of 16 submissions on many taxation matters. The Government has also appointed representatives of the accountancy sector to sit on the Board of Inland Revenue and take part in the IRD Users' Committee to advise on the IRD's procedures and *modus operandi*. The Government also invites the HKICPA to nominate representatives to sit on the Board of Review to play a key role in the enforcement of the tax laws and arbitration of taxation disputes. Colleagues of the IRD and members of the HKICPA will also, from time to time, get in touch with their mainland counterparts. I note that several Members mentioned earlier the taxation problems concerning the Mainland. We have actually been paying attention to the issues in this respect too. Since taking office, I have held more than 30 meetings with different accountancy bodies and professionals to exchange views on issues of mutual concern.

As we believe that the existing mechanism has been very effective in enabling the Government to grasp the views of the relevant professional, business and other sectors on the taxation policy and the tax laws, there is simply no reason to scrap them and start all over again.

Mr LEE Cheuk-yan's amendment proposes to examine the introduction of progressive profits tax. I understand, and respect, the starting point of this proposal. However, insofar as profits tax is concerned, introducing a progressive regime will easily lead to tax evasion, thus making it impossible to achieve the desired result. Mr James TIEN earlier listed numerous ways to avoid tax, such as setting up more companies to reduce profits tax liability. Actually, once such a proposal is made, people will come up with ways to avoid tax. Meanwhile, we must consider whether Hong Kong's tax regime, compared with other parts of the world or other countries in the region, is competitive. Just now, Mr LEUNG Kwok-hung pointed out that Singapore has

been constantly lowering its tax rate. He is right. The tax rate in Singapore has fallen from more than 30% to 20% at present, bringing it closer and closer to that in Hong Kong. Therefore, this issue has to be taken into consideration as well. Some European nations have been striving to switch their progressive profits tax regime to a flat rate regime. Mr LEE has evidently done a lot of homework. Regarding the example of Estonia cited by him earlier, I understand that, since the introduction of a flat rate regime by the country, eight European countries have followed suit. It seems that a flat rate regime has become a global trend. For this reason, we disapprove of Mr LEE's amendment.

Mr Patrick LAU suggests the Government to examine the specific matters relating to Hong Kong's taxation system and the implementation of the IRO with a view to enhancing Hong Kong's competitiveness and attractiveness to international investors. We very much agree that a more pragmatic approach to deal with the taxation matters is to conduct systematic and in-depth discussions on specific issues of concern to the practitioners. This would be far more effective and practical than expending enormous manpower and resources to conduct a review of the entire IRO of more than hundreds of pages as well as relevant subsidiary legislation without a direction, goal and focus. I therefore support Mr LAU's amendment.

A simple tax regime with low tax rates underpins the success of Hong Kong. Such a strength is not at all easy to come by. Strategic improvements should be made on the existing foundation of success to enable us to pool our resources and energy to deal with matters considered to be really important to all of us. Hastily conducting a comprehensive review in a sweeping and not at all simple manner would only end up diverting our limited resources to many of those taxation provisions which have proved effective — even Mr Abraham SHEK agreed that they have proved effective — and been operating smoothly. In doing so, the resources originally intended for dealing with taxation matters of mutual concern and considered requiring priority treatment would inevitably be thinned. Will this do any good to Hong Kong?

Of course, my colleagues and I will continue striving for improvement and study important subjects of concern to the practitioners, various industrial and business organizations, and the public at large. Actually, when Miss TAM and people from various sectors raised the taxation issues of concern to them— some of those were mentioned by Members earlier — or issues concerning the

enforcement to us, we have already forwarded similar issues to the JLCT for studies. Regarding the individual taxation issues raised by some Members with us, we are very pleased to listen to their views and will arrange for colleagues of the IRD to listen to their suggestions. I wish to point out that we will continue to communicate and co-operate closely with various sectors to study how to do better and widen the existing consultative channels so as to pool wisdom to enable us to do even better in formulating and executing the work associated with the taxation policy. We will definitely strive for constant improvement, and not be complacent.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now call upon Mr Patrick LAU to move his amendment to the motion.

**MR PATRICK LAU** (in Cantonese): Madam President, I move that Miss TAM Heung-man's motion be amended, as set out on the Agenda.

**Mr Patrick LAU moved the following amendment: (Translation)**

"To delete "as it has been nearly 30 years since the Government conducted a comprehensive review of the Inland Revenue Ordinance ('IRO') in 1976," after "That,"; to delete ": (a) expeditiously conduct a comprehensive review of the IRO, so as to ensure that it meets the needs of the current economic environment and mode of business; (b) make the provisions of the IRO more simple and certain, and enhance consistency in its implementation; and (c) establish a statutory advisory body on taxation for conducting a policy study on the IRO, and ensure that members of the advisory body come from different sectors" after "low tax rates"; and to add "examine the specific issues relating to Hong Kong's taxation system and the implementation of the Inland Revenue Ordinance," before "with a view to enhancing Hong Kong's competitiveness"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Patrick LAU to Miss TAM Heung-man's motion, be passed.

**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.

(Members raised their hands)

Miss TAM Heung-man rose to claim a division.

**PRESIDENT** (in Cantonese): Miss TAM Heung-man has claimed a division. The division bell will ring for three minutes, after which the division will start.

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

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

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Ms Margaret NG, Mr CHEUNG Man-kwong, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Mr Patrick LAU, Mr KWONG Chi-kin and Miss TAM Heung-man voted for the amendment.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr CHAN

Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr MA Lik, Mr Alan LEONG, Mr CHEUNG Hok-ming and Mr Ronny TONG voted for the amendment.

Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the amendment.

Mr Albert CHENG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present and 25 were in favour of the amendment; while among the Members returned by geographical constituencies through direct elections, 29 were present, 25 were in favour of the amendment, two against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

**MS MIRIAM LAU** (in Cantonese): Madam President, I move that in the event of further divisions being claimed in respect of the motion on "Comprehensive review of the Inland Revenue Ordinance" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

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

I order that in the event of further divisions being claimed in respect of the motion on "Comprehensive review of the Inland Revenue Ordinance" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan, as Mr Patrick LAU's amendment has been passed, I have given leave for you to revise the terms of your amendment, so you have up to three minutes to explain the revised terms in your amendment and to move your revised amendment.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, I move that Miss TAM Heung-man's motion as amended by Mr Patrick LAU, be further amended by my revised amendment. Madam President, we all know that my amendment is very explicit — just requests for the introduction of progressive profits tax. The Secretary mentioned that Mr LEUNG Kwok-hung had pointed out that Singapore had reduced its tax rate from over 30% to 20%. This is Singapore's approach which is unlikely to be adopted by Hong Kong because both Mr TUNG and Mr TSANG claim that we now had the support from our country, and this is sufficient for bringing about economic prosperity in Hong Kong, whereas Singapore does not have such an advantage. Therefore, I hope, from now on, we do not have to consider Singapore as a competitor that makes us worry, and

we hope that such a description has become out-dated. Besides, I would like to lodge a protest with the Secretary on behalf of Mr James TIEN because whenever he mentions evasion of tax, he will say that Mr James TIEN must have already thought of a way of evading tax. In this way, he has described Mr James TIEN as someone who like to evade tax very much (*Laughter*). I feel that this was unfair to him. Of course, Mr James TIEN .....

**MR JAMES TIEN** (in Cantonese): I wish to make a clarification. (*Laughter*) If I make the request later, you will not let me do so, so I wish to clarify now.

**PRESIDENT** (in Cantonese): Are you requesting Mr LEE Cheuk-yan to make an elucidation?

**MR JAMES TIEN** (in Cantonese): I am requesting an opportunity to let me make a clarification. I did not say that I will avoid tax, but that some people know how to avoid tax.

**PRESIDENT** (in Cantonese): I will give you an opportunity to make a clarification later.

**MR LEE CHEUK-YAN** (in Cantonese): Madam President, on behalf of Mr James TIEN, I wish to make a protest to the Secretary because it is the Secretary who said Mr TIEN knows how to avoid tax. Madam President, the Secretary in fact also knows that a company can avoid progressive profits tax by splitting into smaller companies, but a company making \$10 billion profit will not split into 2 000 companies in order to avoid tax.

**PRESIDENT** (in Cantonese): Mr LEE, this is the time for you to explain the revised wording of your amendment. (*Laughter*)

**MR LEE CHEUK-YAN** (in Cantonese): I know.

**PRESIDENT** (in Cantonese): This is not the time for you to induce any further debate.

**MR LEE CHEUK-YAN** (in Cantonese): I know.

That is why I added progressive profits tax into the wording and I am now trying to explain the reason. Thank you, Madam President.

Finally, I hope Members will support introducing progressive profits tax, which is in fact a very simple tax regime than can benefit the small and medium enterprises. Thank you, Madam President.

**Mr LEE Cheuk-yan moved the following further amendment to the motion as amended by Mr Patrick LAU: (Translation)**

"To add "; this Council also urges the Government to consider introducing progressive profits tax in order to fully implement the principle of 'those who have the means pay more' and to maintain abundant tax revenues to cope with Hong Kong's development and social needs" after "its attractiveness to international investors"."

**PRESIDENT** (in Cantonese): Mr James TIEN, is it true that you no longer need to make a clarification? Or you still want to do so? You can only clarify the part being misunderstood in your speech.

**MR JAMES TIEN** (in Cantonese): Madam President, I want to clarify that I will not avoid tax. What I was saying is many countries in the world have progressive profits tax in place, but the outcome is that there is no company paying the tax.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr LEE Cheuk-yan's amendment to Miss TAM Heung-man's motion as amended by Mr Patrick LAU, be passed.

**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.

(Members raised their hands)

Mr LEE Cheuk-yan rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for one minute, after which the division will start.

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

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, are you prepared not to vote?

(Mr LEUNG Kwok-hung cast his vote)

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr WONG Kwok-hing, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Miss TAM Heung-man abstained.

**Geographical Constituencies:**

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr MA Lik, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming, Mr Ronny TONG and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, 10 were in favour of the amendment, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 29 were present, 26 were in favour of the amendment and two against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Miss TAM Heung-man, you may now reply and you have one minute 40 seconds.

**MISS TAM HEUNG-MAN** (in Cantonese): Madam President, I am thankful to the twenty-odd Members for enthusiastically expressing their views on this motion. I also noted Secretary Frederick MA has looked at the review of the Inland Revenue Ordinance (IRO) positively and undertook to follow up suggestions by Members on certain specific provisions. I would like to thank the Government again for adopting a positive attitude in this respect and I hope the Government will continue its efforts in amending the IRO as it is very important to the economy and business environment of Hong Kong. I believe Secretary Frederick MA has heard the messages and views of Members. I am grateful to the Secretary and Members for their support. I believe a review is necessary even if it is only carried out on certain part of the IRO.

I wish to make a clarification to the Secretary, which is, in my speech today, I did not ask him to incorporate the Departmental Note into the IRO. I did not say it in my speech today, so I need to clarify this point.

**PRESIDENT** (in Cantonese): Mr MA, do you want to make a clarification on what you said just now?

(Secretary for Financial Services and the Treasury nodded his head)

**PRESIDENT** (in Cantonese): Yes, please.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Madam President, I would like to elucidate because I said in my speech that Miss TAM once mentioned that issue. I was referring to another occasion, not today. I said that Miss TAM had once mentioned that issue and Members had once discussed it too. My draft speech has pointed out very clearly that Miss TAM has once done so. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Miss TAM Heung-man, as amended by Mr Patrick LAU, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

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

#### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 18 May 2005.

*Adjourned accordingly at twenty-one minutes past Seven o'clock.*



**Appendix 1****REQUEST FOR POST-MEETING AMENDMENTS**

**Ms Audrey EU requested the following post-meeting amendments**

**Line 4, fourth paragraph, page 189 of the Confirmed version**

To amend ".....aged between 15 and 16" as ".....aged between 15 and 64"  
(Translation)

(Please refer to line 6, second paragraph, page 7299 of this Translated version)

**Line 6, fourth paragraph, page 189 of the Confirmed version**

To amend ".....aged between 15 and 60" as ".....aged between 15 and 64"  
(Translation)

(Please refer to line 9 to 10, second paragraph, page 7299 of this Translated version)

**Line 9, fourth paragraph, page 189 of the Confirmed version**

To amend ".....aged between 15 and 60" as ".....aged between 15 and 64"  
(Translation)

(Please refer to line 14 to 15, second paragraph, page 7299 of this Translated version)