

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 25 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 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

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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

CLERKS IN ATTENDANCE:

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

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

No. 90 — Report by the Trustee of the Correctional Services Children's Education Trust for the period from 1 September 2003 to 31 August 2004

Report of the Bills Committee on Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill

Report of the Bills Committee on Citibank (Hong Kong) Limited (Merger) Bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Factory Buildings in Industrial Estates

1. **DR LUI MING-WAH** (in Cantonese): *Madam President, some factory operators have reflected to me that the prices of factory buildings in industrial estates are excessively high. It is not uncommon for a factory building to be sold for tens of millions of dollars, which is beyond the means of ordinary businesses. In this connection, will the Government inform this Council:*

- (a) *of the current vacancy rates of various industrial estates as well as the number and percentage of factory buildings which are being used for logistics operations instead of industrial production; and*
- (b) *whether it will consider offering the factory buildings in industrial estates to factory operators under a "rent before purchase" option, so as to benefit more of them; if not, the reasons for that?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, in response to Dr LUI's question, my reply is as follows:

- (a) The three industrial estates located in Yuen Long, Tai Po and Tseung Kwan O are run by the Hong Kong Science and Technology Parks Corporation (HKSTPC). Unleased land accounts for 4.3%, 6.1% and 51% of the available land in the three respective industrial estates. At present, two factory buildings are used for logistics operations, which accounts for 1.4% of all the enterprises in the three industrial estates.
- (b) Apart from land sales, the HKSTPC will consider allocating vacant factory buildings for lease or for sale, when, for example, some admitted enterprises surrender the land together with the factory buildings to the HKSTPC. Any request for "rent before purchase" may also be considered in order to benefit more enterprises.

PRESIDENT (in Cantonese): Dr LUI Ming-wah.

(Dr LUI Ming-wah indicated that he would raise no supplementary question)

PRESIDENT (in Cantonese): Miss TAM Heung-man.

MISS TAM HEUNG-MAN (in Cantonese): *To cope with the Government's policy of encouraging more industries to return to Hong Kong, have the industrial estates offered or considered offering concessions in capping the maximum price of factory buildings for specific industries?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the HKSTPC has all along been actively promoting the diversified development of manufacturing and service industries within the industrial estates and supporting the upgrading of technology, with a view to promoting the overall economic development of Hong Kong. In general, our principle is to charge on a cost-recovery basis; no specific criteria

are set other than this. As for other conditions such as interest or other items, they are open to negotiation.

MR MA LIK (in Cantonese): Madam President, may I ask the Secretary whether the authorities have estimated the amount of rental income forgone because of vacancy in the industrial estates over the past three years?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): We have not done any calculation on this. However, as I have mentioned in the main reply earlier, the vacancy rate of industrial estates is not particularly high with the exception of the industrial estate in Tseung Kwan O which is relatively new. So far, several proposals are under negotiation, and we hope that a number of enterprises will move into the industrial estate in Tseung Kwan O this year.

MR ABRAHAM SHEK (in Cantonese): *Madam President, I would like to ask the Secretary why the vacancy rate of the industrial estate in Tseung Kwan O stands at 51%, but the Secretary has already answered it. May I then ask other than that two enterprises are going to move into the industrial estate in Tseung Kwan O, what else will the Government do to lower the vacancy rate of that industrial estate?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, more often than not, we will promote the purpose of industrial estates in Hong Kong overseas. If other companies wish to move into these industrial estates, we will discuss with them the way to better utilize the sites in these industrial estates.

MR VINCENT FANG (in Cantonese): *Madam President, in order to promote creative industries, the Government has renovated the Cheung Sha Wan Factory Estate to offer for lease to operators intent on developing creative industries. However, the existing small-scale factory operators are forced to move out but fail to find suitable factory buildings for relocation. Will the Government provide assistance to these operators?*

PRESIDENT (in Cantonese): Mr Vincent FANG, this question is on the existing factory buildings in industrial estates, but you have mentioned the existing small and medium enterprises operating in the Cheung Sha Wan Factory Estate. Will you please explain its relevance to the main question?

MR VINCENT FANG (in Cantonese): *Madam President, it is the desire of the Government to promote creative industries. Thus, I would like to ask the Government whether assistance will be provided to factory tenants now operating in the factory buildings but are unable to identify suitable sites for removal.*

PRESIDENT (in Cantonese): Are you asking the Government whether these small and medium factory operators are eligible for land grant in industrial estates?

MR VINCENT FANG (in Cantonese): *Yes, Madam President. Thank you.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the main objectives of the establishment of industrial estates are to upgrade the current technology level in Hong Kong and to promote diversified development of service industries and manufacturing industries. The main criterion we have laid down in this respect is that the process or business of the factory operators cannot be carried out in multi-storey factory buildings or commercial premises. If they meet this requirement, they are welcome to submit applications.

MR ALBERT HO (in Cantonese): *Madam President, in 1999, the industrial estate in Tseung Kwan O offered a preferential arrangement to the Television Broadcast Limited, providing to it rent reduction and interest reduction with retrospective effect. That approach had been criticized for lacking transparency, and being partial and unfair at that time. Today, may I ask the Secretary if he can undertake that such approach will not be repeated and that irrespective of what policy the Government will adopt in future, all users must be treated equitably, fairly and openly?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, our approach has all along been fair and impartial.

MR LAU KONG-WAH (in Cantonese): *Madam President, upon the signing of CEPA, has the Government encouraged factory tenants of industrial estates to cope with the implementation of this policy? Moreover, upon the conclusion of CEPA, can the effect of the arrangement be seen from the situation of the industrial estates?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, since the introduction of CEPA, we have conducted appropriate promotional activities in the Mainland and overseas. We see that motivated by CEPA, the number of enterprises admitted to industrial estates has increased, including several Chinese medicine companies and some logistics companies. We hope that more high value-added manufacturing activities will be attracted to continue to take place in Hong Kong.

DR RAYMOND HO (in Cantonese): *Madam President, a couple of years ago, when the HKSTPC was established, it was formed by the amalgamation of three industrial estates and the Hong Kong Technology Centre located in Kowloon Tong. The work of the Hong Kong Technology Centre is incubation, nurturing some small-scale industries or small and medium enterprises. Since the current vacancy rate of the industrial estate in Tseung Kwan O exceeds 50%, will the Secretary consider moving the Hong Kong Technology Centre into the industrial estate in Tseung Kwan O and converting the original site of the Centre for other purposes? The price of that site is extremely high, so has the Government ever considered this option?*

PRESIDENT (in Cantonese): Dr Raymond HO, the subject of this question is the three industrial estates, so the supplementary raised by you seems to bear no direct relevance to it. However, I understand your point. You mean to ask the Secretary that since vacant factory buildings are available in these industrial estates, will it be possible to relocate some projects now underway to these industrial estates. Is that what you mean?

DR RAYMOND HO (in Cantonese): *Since vacant factory buildings are found in industrial estates, will the Government think of some ways to lower the vacancy rate?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have tried every means possible to reduce the vacancy rate. Members may know that the industrial estate in Tseung Kwan O is only an open space with no factory buildings now. If industrial activities are moved into the estate, factory buildings have to be built. We have to study the issue in this respect.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, the situation the Government now faces is the continual development of the economy of Hong Kong, particularly after the conclusion of CEPA. Moreover, recently, the Mainland has been considering imposing zero tariff on certain manufacturing industries — this has no relation with the measure implemented lately on the increase of tariffs. Obviously, many initiatives are beneficial to Hong Kong. May I ask the Secretary who is the overall controller in this area, in view of the excessively high vacancy rate in the three industrial estates and the new opportunities laid before us, if discussion on these problems among different bureaux has been conducted? Or will Secretary John TSANG, Secretary Dr Patrick HO and Secretary Stephen IP each conduct studies separately? May I ask the Secretary, given that the economy is now heading towards the development of high value-added industries (including industrial estates), if he has ever considered from an overall perspective how best to promote development in Hong Kong, in particular in terms of land and rental?*

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, your supplementary question also request the Government to identify ways to increase the utilization rate of the three industrial estates, am I right?

MISS CHAN YUEN-HAN (in Cantonese): *And how much longer do we still need to wait?*

PRESIDENT (in Cantonese): Your supplementary question also asks whether consultation of other departments will be conducted to see how the utilization rate of industrial estates can be increased.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have had discussions with the relevant Policy Bureaux from time to time on the way to promote the diversified development of manufacturing and servicing industries in Hong Kong, as well as the way to upgrade our technology level. I believe the current vacancy rate of the industrial estate in Tseung Kwan O is only transient, for we notice from the proposals of many companies that they wish to operate in Tseung Kwan O. We hope that the utilization rate will reach a more healthy level in future.

MISS CHAN YUEN-HAN (in Cantonese): *The Secretary has not answered my supplementary question. I asked earlier that whether he had discussed the issue with other Secretaries, such as Secretary Stephen IP and Secretary Dr Patrick HO. The Secretary replied that discussions were often held. However, are those discussions held with the Chief Secretary for Administration or the relevant Policy Bureaux?*

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Discussions are held with different Policy Bureaux.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the industrial estate in Tseung Kwan O has been commissioned for many years. However, up till now, its vacancy rate (that is, unleased land) still exceeds 51%. May I ask the Government whether it will consider formulating some policies to attract more operators to use the industrial estates? Otherwise, will the Government consider changing the overall planning on industrial estates? For leaving land unoccupied for several years is a significant waste of resources.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, in fact, quite a number of enterprises has made enquiries and engaged in negotiations with the HKSTPC on the use of vacant land and factory buildings in industrial estates. As I said earlier, in the year 2005-06, the deals with at least three companies will be completed, and the vacancy rate will be lowered by then.

MRS SELINA CHOW (in Cantonese): *Madam President, the first sentence of Dr LUI Ming-wah's main question said that many factory operators had considered the prices of factory buildings in industrial estates were excessively high, but apparently, the Secretary has not responded to this. May I ask the Secretary whether studies have been conducted to prove if factory operators have backed off owing to the excessively high selling price? Today, the price of industrial land in Hong Kong has been dropping, but why do the land prices in industrial estate remain so high?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we do not believe the land prices in industrial estates are excessively high, for the price in 2005 is the same as that in 2000 which has remained unchanged since then, while the price in 2000 was the same as that in 1993. Since the price in 2005 is the same as that in 1993, I think the price is very attractive.

PRESIDENT (in Cantonese): Second question.

Psychiatric Specialist Out-patient Service in Public Hospitals

2. **DR JOSEPH LEE** (in Cantonese): *Madam President, it has been reported that the median waiting time for psychiatric specialist out-patient service in public hospitals has increased from three weeks in the year 2000-01 to five weeks in 2004-05, which is the longest waiting time among those for various specialist out-patient services. Moreover, the average length of stay (ALOS) of psychiatric in-patients was 105 days, the highest among all specialist consultation units. In this connection, will the Government inform this Council if it knows:*

- (a) *the respective average waiting time for the new and old cases for psychiatric specialist out-patient service in public hospitals for each of the past five years; whether new and old cases, and cases in various conditions are placed on separate waiting lists; whether the Hospital Authority (HA) has reviewed the ways to shorten the relevant waiting times; if so, of the review results;*
- (b) *the respective numbers of the new and old cases for psychiatric specialist out-patient service in hospitals of each hospital cluster as well as the number of psychiatrists and psychiatric nurses, in each of the past five years; and*
- (c) *whether the HA has assessed by how much the ALOS of psychiatric in-patients can be shortened upon execution of its plan to transfer approximately 200 long-stay patients in psychiatric hospitals to a newly commissioned long-stay care home?*

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

- (a) The median waiting times for first appointment at a psychiatric specialist out-patient clinic (SOPC) in public hospitals for each of the past five years are given in the table below:

	2000-01	2001-02	2002-03	2003-04	2004-05
Median waiting time for first appointment	three weeks	three weeks	four weeks	four weeks	five weeks

The HA has put into place a standardized triage mechanism in all psychiatric SOPCs. Under this mechanism, patients are assessed in accordance with established criteria and those assessed with urgent clinical needs will be given an earlier appointment. In the first quarter of 2005, the median waiting time for patients in urgent need of specialist psychiatric care is less than one week.

There is no waiting time for follow-up consultations as such because the date of follow-up consultations is set in accordance with the clinician's assessment of the medical needs of the patients. In general, psychiatric patients are given three to four follow-up consultations a year.

- (b) The respective numbers of first and follow-up consultations at psychiatric SOPCs in public hospitals, and the numbers of psychiatrists and psychiatric nurses, by cluster for the past five years are given in the Annexes A and B. From Annex A, the number of first attendance was about 21 000 in 2000-01, about 24 000 in 2001-02 and about 26 000 in 2002-03. However, in 2003-04, perhaps it was due to SARS, the number of attendance dropped to 21 000, in 2004-05, the number went up again to 25 000. As for the number of staff, the number of psychiatrists has gone up from 212 in 2000-01 to 258 at present. Also, the number of psychiatric nurses increased from 1 797 to more than 1 900. During the past four years, the number of psychiatric nurses has maintained at the level of more than 1 900, to tie in with the number of our psychiatric beds. Despite an increase in the number of out-patients, the number of in-patients has slightly gone down.
- (c) Part (c) of the main question is related to the ALOS. Generally speaking, in respect of the ALOS of in-patients, it is calculated from the length of time spent in public hospitals by those patients who left (including discharges, deaths and transfers) the hospitals in that year, meaning the time they have been hospitalized before being discharged, dead or transferred. Patients staying more than one year would not be captured by the calculation. As most of the 200 patients to be transferred to the new long stay care home are long stay patients, who have been hospitalized for more than four years, if these patients are expected to be discharged in 2005-06, the HA will be required to include them in the calculation of the ALOS for patients with mental illness for that year. Therefore, the HA is anticipating that the ALOS for patients with mental illness will increase substantially in 2005-06.

Annex A

Number of First and Follow-up Consultations at SOPC by Cluster

	<i>2000-01</i>		<i>Total</i>
	<i>First attendance</i>	<i>Follow-up attendance</i>	
Hong Kong East Cluster	2 022	54 161	56 183
Hong Kong West Cluster	2 262	44 878	47 140
Kowloon East Cluster	2 969	45 575	48 544
Kowloon Central Cluster	1 572	45 098	46 670
Kowloon West Cluster	5 287	149 992	155 279
New Territories East Cluster	4 334	47 521	51 855
New Territories West Cluster	2 952	62 605	65 557
Total	21 398	449 830	471 228

	<i>2001-02</i>		<i>Total</i>
	<i>First attendance</i>	<i>Follow-up attendance</i>	
Hong Kong East Cluster	2 258	56 996	59 254
Hong Kong West Cluster	2 570	45 323	47 893
Kowloon East Cluster	3 464	49 951	53 415
Kowloon Central Cluster	1 642	45 778	47 420
Kowloon West Cluster	6 228	160 040	166 268
New Territories East Cluster	4 910	58 801	63 711
New Territories West Cluster	3 152	70 014	73 166
Total	24 224	486 903	511 127

	<i>2002-03</i>		<i>Total</i>
	<i>First attendance</i>	<i>Follow-up attendance</i>	
Hong Kong East Cluster	2 737	60 325	63 062
Hong Kong West Cluster	2 400	45 117	47 517
Kowloon East Cluster	3 737	49 695	53 432
Kowloon Central Cluster	1 816	46 640	48 456
Kowloon West Cluster	6 998	173 800	180 798
New Territories East Cluster	4 444	66 165	70 609
New Territories West Cluster	3 873	81 386	85 259
Total	26 005	523 128	549 133

	<i>2003-04</i>		<i>Total</i>
	<i>First attendance</i>	<i>Follow-up attendance</i>	
Hong Kong East Cluster	2 164	60 363	62 527
Hong Kong West Cluster	1 737	44 498	46 235
Kowloon East Cluster	3 304	47 269	50 573
Kowloon Central Cluster	1 776	47 067	48 843
Kowloon West Cluster	5 965	170 354	176 319
New Territories East Cluster	3 642	63 231	66 873
New Territories West Cluster	3 293	88 780	92 073
Total	21 881	521 562	543 443

	<i>2004-05</i>		<i>Total</i>
	<i>First attendance</i>	<i>Follow-up attendance</i>	
Hong Kong East Cluster	2 520	62 583	65 103
Hong Kong West Cluster	1 972	42 662	44 634
Kowloon East Cluster	3 428	52 253	55 681
Kowloon Central Cluster	2 195	48 635	50 830
Kowloon West Cluster	6 589	180 711	187 300
New Territories East Cluster	5 251	69 577	74 828
New Territories West Cluster	3 721	94 668	98 389
Total	25 676	551 089	576 765

Annex B

Number of Psychiatrists by Cluster

<i>Year</i>	<i>Hong Kong East Cluster</i>	<i>Hong Kong West Cluster</i>	<i>Kowloon East Cluster</i>	<i>Kowloon Central Cluster</i>	<i>Kowloon West Cluster</i>	<i>New Territories East Cluster</i>	<i>New Territories West Cluster</i>	<i>Total</i>
2000-01	25	13	16	12	62	30	54	212
2001-02	27	16	15	15	62	33	55	223
2002-03	30	17	22	16	64	39	55	243
2003-04	31	18	23	19	63	41	59	254
2004-05	31	18	22	21	64	41	61	258

Number of Psychiatric Nurses by Cluster

Year	Hong Kong East Cluster	Hong Kong West Cluster	Kowloon East Cluster	Kowloon Central Cluster	Kowloon West Cluster	New Territories East Cluster	New Territories West Cluster	Total
2000-01	218	83	92	44	625	229	506	1 797
2001-02	216	88	98	55	644	252	573	1 926
2002-03	222	87	122	52	614	261	568	1 926
2003-04	216	86	121	52	599	257	599	1 930
2004-05	225	78	122	53	578	251	603	1 910

DR JOSEPH LEE (in Cantonese): *Madam President, from Annex A of the main reply, we can see that there is a rather substantial increase in the attendance rate in the Hong Kong East and Kowloon West Clusters. May I ask the Secretary whether the HA would consider opening long-stay care homes in these two districts, so as to alleviate the manpower problem in hospitals? If such care homes are to be provided, how much resource and manpower will be injected?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, owing to historical reasons, a number of beds in long-stay care homes and hospitals are scattered in different districts at present. In relation to the overall provision of psychiatric services, we hope to provide the services within the same district as far as practicable. We will only transfer cases of special illnesses requiring long-stay care or enhanced supervision to purpose-built psychiatric hospital. As such, in relation to the planning, we will adopt a district-orientated approach, to gradually enable them to get the service near to their homes. In regard to the question just raised by Dr Joseph LEE, there will be changes in our planning and, depending on the needs of our patients, we will try all means to provide psychiatric treatment in the community, rather than in the environment of a residential institution.

PRESIDENT (in Cantonese): There are a total of nine Members waiting for their turns to ask supplementary questions. Will Members please keep their questions concise, so as to allow as many Members as possible to ask questions?

MR KWONG CHI-KIN (in Cantonese): *Madam President, in regard to the waiting time of follow-up consultations, the Secretary pointed out in his reply that there should not be any problem. In general, psychiatric patients are given three to four follow-up consultations a year. I am not familiar with the situation, yet it appears to me that it is too few. According to the main reply of the Secretary, it is obvious that the waiting time for first appointment was three weeks in 2000, two years later, it became four weeks, and lately, the time required is as long as five weeks. From the waiting time of first appointment, we have reasons to doubt that our resources are inadequate and that the level of service has been lowered, thus making people wait for a long time.....*

PRESIDENT (in Cantonese): Mr KWONG, what is your supplementary question?

MR KWONG CHI-KIN (in Cantonese): *I have to give the background of my question.*

As the waiting time of first appointment is so long, will the Secretary please tell us if it is adequate to arrange only three to four follow-up consultations for patients? If the conditions of such patients fluctuate, would it be due to inadequate care?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): I would like to thank Mr KWONG for his question. From the figures in Annex A, we can see that the ratio of follow-up attendance to first attendance is approximately 20 to 1. In other words, we have 20 000 new patients and 400 000 follow-ups. It means that many patients have been included in the flow of follow-up consultations.

Besides, as I just said, this is an average figure in general. Patients who come back three or four times per year are patients with stabilized conditions. These patients can come back in an even longer period, maybe once every year. As their conditions have been stabilized, they can integrate into society and resume their work or normal family life. According to the clinician's assessment, they may need to have follow-up consultation only once a year.

However, for patients who need intensive care and consultation, clinicians may require them to come back in one or two weeks or even at shorter intervals. The pattern will vary. As such, only clinicians can explain the frequency of consultations needed by a particular patient. The figure given in the main reply is only an average. In different districts, the figure may be different. It is therefore inappropriate to say that the number of follow-up consultations is inadequate.

As Members can see, the number of attendance has risen on a year on year basis. Likewise, there is a suitable increase in the number of psychiatrists. Although the problem of mental illness is not indeed a very serious one, we can see that in the absence of a family doctor structure, some relatively mild mental illnesses, such as depression, are not attended to at the family doctor level. For this reason, many patients have to be treated by SOPCs. I hope Members understand my explanation.

MS LI FUNG-YING (in Cantonese): *Madam President, while the Secretary stressed repeatedly in his replies to questions that it was up to the clinicians to decide on the timing of follow-up consultations, I do not see in the Annex any significant increase in the number of psychiatrists. Also, in the Kowloon West, New Territories East and New Territories West Clusters, for instance, we see a marked increase in the number of patients against a decrease in the number of psychiatric nurses. Is it due to resource problems, such as a zero increase of doctors and fewer nurses, coupled with the increase of patients, thus lengthening further the waiting time?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): I would like to thank Ms LI for the question.

Firstly, we have to look at the resource allocation in the various areas of psychiatric service. For in-patients, as I explained just now, we would gradually transfer long stay patients in stabilized condition to be taken care of in the community. This would also require additional resources. For instance, 400 such patients will be transferred to community care this year, thus enabling the HA to save \$59 million in this area. The saving can be injected into other psychiatric services for better utilization, no matter in manpower or medicine.

As such, we are trying as far as possible to transfer long stay patients in stabilized condition out of the hospitals, so that we can reduce the number of psychiatric nurses accordingly.

MR ANDREW CHENG (in Cantonese): *Madam President, I also want to follow up Ms LI's question. When we take a look at Annexes A and B, the figures are indeed alarming, especially those for New Territories East and New Territories West, for the total number of attendance has gone up to 44% and 50% respectively. However, while there is no increase in the number of doctors, there is also a decrease in the number of nurses. Although the Secretary pointed out that \$59 million might be saved as a result of some administrative measures, I still want to ask the Secretary a question. Given the sharp rise of attendance in individual clusters and the territory as a whole, will the Government use the abovementioned \$59 million to shorten the waiting time for patients in need of follow-up consultations? The median waiting time at present is as long as five weeks, will the Secretary give an undertaking in this regard? If not, is the Government not neglecting the sharp rise in psychiatric cases? We are worried that the health of the public will thus be jeopardized.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): *Madam President, as far as I know, the triage mechanism of the HA aims at handling patients in critical conditions. As such, the triage mechanism can ensure that patients in urgent needs are attended to as soon as possible. At present, such patients can be treated within a week. I consider the service very satisfactory. Although some patients may have to wait for a very long time, if they are already under the care of other doctors, they can wait and do not have to be treated early. However, patients who are genuinely in need of special attention and psychiatric care can indeed be treated in a short time. As such, we have to look at the problem more flexibly, rather than strictly set down the waiting time for treatment. I hope Members will understand the arrangement.*

MR JASPER TSANG (in Cantonese): *Madam President, according to the information provided by the Secretary, the numbers of first attendance and*

follow-up attendance in Kowloon West Cluster have been far higher than those in other clusters during the past five years. As far as I know, it does not mean that the number of psychiatric patients in the Kowloon West Cluster is exceptionally high, but rather due to the distribution of hospitals. Nevertheless, for the ratio of doctors to patients in the territory, the latest figure in 2004-05 is one doctor to 2 235 patients, while in the Kowloon West Cluster, it is one doctor to 2 927 patients. In relation to nurses, the territory-wide ratio is one nurse to 302 patients, while the ratio in the Kowloon West Cluster is one nurse to 324 patients. From these figures, is it the case that the numbers of doctors and nurses allocated to the Kowloon West Cluster are below average standard? If yes, will the waiting time in this district be longer than others?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to my understanding, the services provided by different clusters are different. The services and out-patient clinic service provided by the Kowloon West Cluster, especially the Kwai Chung Hospital, are different from other clusters. As to the question of whether or not it is necessary to further allocate or redeploy resources of the Kowloon West Cluster, I do not have the finding of any analysis in this regard at the moment. However, I will look into the matter in the light of circumstances. Nevertheless, the entire psychiatric service is centrally co-ordinated by the HA. Whenever there is any shortfall in manpower, staff will be redeployed to provide assistance. As it has been a long-standing arrangement for many years, there must be justifications.

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

MR LI KWOK-YING (in Cantonese): *Madam President, I want to follow up Mr Jasper TSANG's supplementary question. According to the figures mentioned by him just now, if the ratio of doctors to patients is so large, has the Secretary examined and explored the possibility of referring suitable cases to the private sector, or has the assessed if medical staff in the private sector has the capabilities to assist in taking care of patients from the public sector?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, there are more than 30 psychiatrists in private practice. Some of them may deal with many cases, while some may not. We are not sure about the situation. However, compared with the number of psychiatrists in the public sector, their number is very small indeed. If we refer a lot of patients to the private practitioners, they may not be able to cope. On the other hand, we also know that the consultation fees charged by private psychiatrists are not inexpensive. The Government has no plans to subsidize patients to receive private treatment.

Furthermore, it is difficult for mental patients to determine the number of follow-up consultations required. If we ask patients to pay for their own medical bill, they have to consider whether they can afford the cost. As a matter of fact, many psychiatric patients are referred to the public sector after receiving treatment from private doctors or private psychiatrists for a period of time. Although the Member has put forward a very good proposal, I think it is not easy to implement. Perhaps it can only be achieved when there is a rearrangement between the public and private medical sectors in future.

PRESIDENT (in Cantonese): Third question.

Restraining Mis-selling Behaviour of Telecommunications Service Operators

3. **MR JAMES TO** (in Cantonese): *Madam President, according to the report released by Office of the Telecommunications Authority (OFTA) at the end of March this year, since section 7M of the Telecommunications Ordinance came into operation in 2000 to tackle the problem of mis-selling behaviour, the OFTA had received a total of 391 complaints in this respect, and it adjudged that fixed network operators had violated the provision in 86 cases. However, the OFTA did not impose any fine on the four fixed network operators which had violated the law, but only issued warning letters to these operators regarding 32 cases. The fixed network operators also agreed to adopt the nine best practices drawn up by the OFTA, and made a funding contribution of \$2.3 million to the authority concerned to carry out a consumer education programme. In this connection, will the Government inform this Council:*

- (a) *whether the OFTA's established policy is merely to issue warning letters to telecommunications service operators which violate the law, instead of imposing a fine on them;*
- (b) *given that the Telecommunications Authority (TA) has never invoked the relevant provision under the Telecommunications Ordinance to impose a fine on telecommunications service operators which have violated the law, whether it will consider abolishing such provision; if it will, of the details of its consideration; if not, the reasons for that; and*
- (c) *of the overseas experience the OFTA had made reference to when drawing up the above best practices, and whether it has assessed if allowing operators to voluntarily adopt the best practices will be more effective than the OFTA's enforcement of the law in restraining the mis-selling behaviour of telecommunications service operators and enhancing self-discipline of the trade?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, written warnings, settlements and financial penalties are all measures which the TA may take to ensure that telecommunications operators comply with section 7M of the Telecommunications Ordinance. The section prohibits misleading or deceptive sales conduct.

In respect of the three parts of the question raised by Mr TO, I would like to reply as follows:

- (a) The OFTA does not have any established policy to issue warning letters only to operators as a deterrent.
- (b) We will not abolish the power for the TA to impose a fine. If warnings or settlements could not ensure that operators achieve the standards set by the best practice indicators, the TA will, where appropriate, exercise his power to impose a fine on the operators which are adjudged to have involved in mis-selling practices.

- (c) When drawing up the best practice indicators, the OFTA had made reference to the experience in the United Kingdom and Australia. The indicators will help the industry understand what sales conduct is appropriate and the standards to follow. Through voluntary participation, our objective is to strengthen the self-discipline and improve the conduct of the industry, thereby preventing the occurrence of mis-selling behaviour.

MR JAMES TO (in Cantonese): *Madam President, I asked this question not because I really wanted the Government to abolish the power of the TA to impose fines. Instead, I wish to reflect that only warning letters were issued although dozens of cases had occurred in the past few years. In view of the fact that only warning letters were issued repeatedly and no fine was imposed despite a large number of cases, under what circumstances will the authorities impose a fine? Besides, how can the authorities ensure that no more warning letters will be issued next time after so many warning letters have been issued? Is it because the Government has observed a trend that marked improvement has been made after implementing the measures proposed by the TA?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): *Madam President, we also hope that marked improvement can be seen after implementing these measures. However, the TA will make a final decision depending on the circumstances. But we do not rule out the imposition of fines.*

MR CHEUNG HOK-MING (in Cantonese): *Madam President, regarding the mis-selling behaviour of some telecommunications service operators, the Democratic Alliance for Betterment and Progress of Hong Kong (DAB) has received more than 120 complaints over the past five months, reflecting the seriousness of the situation and various bizarre selling techniques employed. However, under section 7M of the Telecommunications Ordinance, the TA is a "toothless tiger", so to speak. Concerning such illegal practices, will the authorities conduct a study on how to strengthen regulation as soon as possible? Besides, what regulatory measures will be adopted by the authorities? Will it consider amending section 7M?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we will study each case in great details and adopt appropriate measures depending on the areas which need further enhancement. However, the authorities opine that section 7M has given us sufficient power. We will conduct regular reviews of this matter in order to determine whether amendment is necessary.

MR ALBERT CHAN (in Cantonese): *Madam President, in replying to Mr James TO's follow-up question, the Secretary said that the situation had been improved. But I do not know in what aspect improvement has been made. In fact, we have received a lot of complaints concerning misleading and deceptive selling techniques and harassment which includes harassment of customers by debt collecting agencies. Just now, in replying Mr James TO's question, the Secretary said that there had been improvement. In which aspect improvement has been made? Besides, will the Secretary consider prohibiting or requesting telecommunications service operators not to hire debt collecting agencies to collect their debts? Should there be payment in arrears, they should resort to litigations instead of hiring debt collecting agencies to harass the customers and their families.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the example just cited by Mr CHAN is not covered by section 7M of the Telecommunications Ordinance which relates to misleading and deceptive selling behaviour. As regards other problems, they are regulated by other legislation. However, if it is related to telecommunications, we will conduct an in-depth investigation so that an appropriate review can be carried out.

MR FRED LI (in Cantonese): *Madam President, I have looked up the Consumer Council's record, finding that there were 7 000 complaints concerning telecommunications service in 2004, among which 25% are related to fixed network service. Because of these complaints, the Consumer Council had to deal with a lot of workload and enormous resources had been devoted to conducting investigations and taking follow-up actions. If the Government still insists on encouraging self-regulation and self-discipline on a voluntary basis*

despite a soaring number of complaints, the Consumer Council will not be able to handle them. Under such circumstances, how can complaint cases, in the Secretary's opinion, be reduced and how can the Consumer Council be assisted in dealing with such a soaring caseload? Besides, as far as requiring the trade to practise self-discipline is concerned, is it the only possible method that can be adopted?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, requiring the trade to exercise self-discipline is certainly not the only option. But I believe that settlement will be a very positive and pragmatic way of dealing with the problem. If these operators can comply with some best practice indicators, many problems can be resolved. We also hope that the operators can draw up some appropriate internal guidelines on the basis of these indicators. However, if these measures are still not satisfactory, we do not rule out the possibility of adopting other measures or even amending the relevant legislation in order to force them to change their practices by imposing heavier penalties.

MISS TAM HEUNG-MAN (in Cantonese): *Madam President, I would like to ask a question about the operation of the best practices. Has the OFTA monitored how telecommunications service operators act in accordance with the best practices formulated by the OFTA and reviewed the effectiveness?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, as we issued the nine best practices just a couple of months ago, it is not possible to review the effectiveness for the time being. But we will require them to submit regular reports from time to time in order to examine the effectiveness.

MR LAU KONG-WAH (in Cantonese): *Madam President, in the evenings, I often saw that salespersons were working very hard to sell their products under dim light in the streets and people signed the contracts without clearly understanding the terms therein. What measures will the Secretary adopt to promote public awareness that no contract should be signed in the dark in order to avoid being cheated?*

PRESIDENT (in Cantonese): Mr LAU Kong-wah, are you referring to the selling techniques of fixed network operators?

MR LAU KONG-WAH (in Cantonese): *Yes.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have required the four operators to contribute a total of \$2.3 million for the launch of public education. We hope that, through public education, consumers' awareness can be enhanced. I think this should be the best way. Consumers will be able to make a wise choice if their awareness has been enhanced.

DR KWOK KA-KI (in Cantonese): *Madam President, the Secretary's reply is very simple. He did not mention or explain at all the reason why the authorities had not initiated prosecution. Neither did he mention whether the Government should take any action to ensure that such selling behaviour of fixed network operators will be reduced. Can the Secretary tell us what the Government has done or will do in relation to this matter?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, my reply was to Mr TO's question. As regards Dr KWOK's question about what will be done by the authorities, we have required the four fixed network operators to contribute \$2.3 million for launching public education. We will produce announcements of public interest or introducing other educational programmes. In addition, we will co-operate with the Consumer Council in enhancing public understanding of selling behaviour, hoping that they will become wiser consumers.

DR KWOK KA-KI (in Cantonese): *Madam President, the Secretary said that the fixed network operators had contributed \$2.3 million. May I ask how much resources the Government has devoted to this aspect?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, apart from the \$2.3 million, the Government has constantly launched educational programmes through different channels and engaged in publicity work with the Consumer Council.

MR CHAN KAM-LAM (in Cantonese): *Madam President, according to the Secretary's main reply, the Government has not imposed any penalties in relation to the 300-odd non-compliant cases. By adopting such a lenient approach, the Government can neither protect the people's interests nor promote self-regulation on the part of the operators. In the main reply, the Secretary said that the TA would, where appropriate, exercise his power. May I ask the Secretary whether the Government has any criteria to let us know what circumstances are considered to be appropriate and whether such penalties are open and transparent so that the fixed network operators know to what extent their mis-selling behaviour is tolerated so that they will avoid breaking the law?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, fines have been imposed in accordance with section 7M. During the past 18 months, we have imposed fines on seven non-compliant operators with regard to issuing misleading and deceptive advertising materials. The fines range from \$25,000 to \$70,000. Although these are not directly related to mis-selling behaviour, we do have imposed fines on other offences.

PRESIDENT (in Cantonese): Mr James TO.

MR JAMES TO (in Cantonese): *Madam President, from another point of view.....*

(Mr CHAN Kam-lam raised his hand)

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, has your supplementary question not been answered?

MR CHAN KAM-LAM (in Cantonese): *Yes, Madam President. I have just asked whether the Government has laid down any highly transparent criteria to let us know under what circumstances penalties will be imposed?*

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

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, this will be more difficult because the nature of each case varies and it depends on each individual case. It is rather difficult to specify what penalties would be imposed if certain acts are committed. However, I believe the operators fully know under what circumstances the authorities will impose penalties. I believe they understand that.

MR JAMES TO (in Cantonese): *Because of such misleading and deceptive behaviour, the Government has formulated the nine indicators, mainly due to the over-enthusiasm of the salespersons in promoting sales or even adopting misleading and deceptive means in promoting sales under the incentives of remuneration or commission. Under such circumstances, will the Government consider — as the amount of fine only reflects the additional sales volume brought about by such selling efforts and will be regarded as part of the expected operating costs — amending the law eventually by stipulating that, for instance, the licence will be revoked if no improvement is made within a period of time in order to serve as a most effective deterrent?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the nine best practice indicators aim at tackling the problems just mentioned by Mr TO, such as the selection of salespersons, their remuneration, the withholding of their commission and their training. We will discuss with the operators to see how the trade standard can be upgraded on the basis of these indicators.

MR JAMES TO (in Cantonese): *The authorities have not even exercised the power of imposing fines. And the problem is that even if a fine is imposed, the operators may regard it as part of the operating costs. Should the Government lay down a provision in the legislation as a last resort that a warning will be issued if no improvement is made within a certain period of time and the licence will be revoked if no improvement is made thereafter?*

PRESIDENT (in Cantonese): Secretary, will the authorities consider Mr TO's proposal?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have such a power. But I think such a practice may be rather extreme.

PRESIDENT (in Cantonese): Fourth oral question.

(Mr James TO raised his hand to indicate that further question be asked)

MR JAMES TO (in Cantonese): *Madam President, I do not mean that the licence should be revoked immediately. I mean that licence will be revoked if no improvement is made after warning has been given so as to let the operators know that this is the final warning and the situation is most critical. Otherwise, the operators will not know that the Government has regarded the situation as very serious.....*

PRESIDENT (in Cantonese): Mr TO, I understand what you mean. But you have to repeat the part of your supplementary question that has not been answered.

Secretary, do you have anything to add?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I have nothing to add.

PRESIDENT (in Cantonese): Fourth question.

Self-financed Tertiary Courses

4. **MR CHEUNG MAN-KWONG** (in Cantonese): *Madam President, will the Government inform this Council:*

- (a) *of the respective numbers of places provided annually between 2000 and 2008 in the self-financing programmes offered by University Grants Committee-funded (UGC-funded) institutions or their affiliated schools, private organizations, or jointly by these two types of institutions, and the percentages of such places in all those provided in the self-financing programmes offered by all local institutions each year;*
- (b) *among the land and loans granted by the authorities over the past five years for the above programmes, whether there were cases of the land and loans granted being given up or of failure to offer programmes as planned; if so, of the details of such cases and the ways to deal with these cases by the authorities; and*
- (c) *whether the authorities have assessed if there are difficulties in enrolment and operation of self-financing programmes run by the above institutions; if there are difficulties, of the details of such difficulties and whether they affect students in terms of continuity of the programmes; and whether the authorities will consider assisting those institutions that have financial difficulties?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I have the following responses to the three parts of the questions by Mr CHEUNG Man-kwong:

- (a) According to the information provided to us by individual institutions, the number of full-time accredited self-financing tertiary student places at intake level, offered by UGC-funded institutions or their affiliated schools, other private organizations and joint bodies operated by UGC-funded institutions and private organizations between the 2000-01 and 2007-08 academic years, and the percentages of these places in the total provision, are listed at the Annex.
- (b) To assist non-profit-making organizations in providing full-time accredited self-financing tertiary programmes, the Government introduced schemes to offer interest-free start-up loans and land at nominal premium in August 2001 and December 2002 respectively.

To date, 19 applications have been approved under the interest-free start-up loan scheme in 11 rounds of loan application exercises. Among all the applicants, there was only one education provider which did not complete the borrowing procedures after we accepted its loan application, so it can be said that no education provider has given up any loan agreement. Two rounds of land grant application exercises have been conducted, and five sites allocated. No education provider has given up the allocated sites. The relevant institutions also offered the programmes that they planned to provide.

- (c) Since 2000, the number of self-financing tertiary student places has been increasing steadily, indicating that there is a growing demand for this type of study programme, and that education providers are positively responding to such need.

Self-financing programmes enjoy great flexibility in student recruitment and school operation. We encourage education providers to develop its niches, and offer different types of competitive, quality-assured programmes in accordance with its education ideals and market demand.

The Government appreciates that education providers may require some assistance, at the initial stage of operation, to launch their study programmes successfully. We have therefore made available to them a series of support measures, including earmarking \$5 billion for interest-free start-up loans, granting land at nominal premium for campus development to suit the needs of institutions with different operating scales, and allocating \$30 million for subsidizing academic accreditation exercises. We also provide grants and loans to students, to ensure that no one will be deprived of further education opportunities because of the lack of means.

Apart from giving support in terms of money and land, we have, through various means, including large-scale exhibitions, seminars, webpages and careers guidance handbooks for secondary school graduates, publicized details of self-financing tertiary programmes, so that students, parents, teachers and the general public will have full access to such information, and can choose the right programmes to suit their individual needs.

We believe the above measures provide an enabling environment for education providers to develop and sustain their self-financing operations.

The Education and Manpower Bureau works closely with education providers and listens to their views. Should individual institutions encounter difficulties in their operation, we will assist them and their students in accordance with our existing policies. We will also review our policy initiatives from time to time, to ensure their effectiveness. Nevertheless, we do not consider it appropriate to use public funds, on top of the existing support measures, for assisting individual private organizations, to ensure that they reach their student recruitment targets, or to subsidize their operating expenses.

Annex

**Number of full-time accredited self-financing
tertiary student places at intake level offered by different types of institutions**

<i>Academic Year</i>	<i>No. of student places offered by UGC-funded institutions or their affiliated schools</i>	<i>No. of student places offered by other private organizations</i>	<i>No. of student places offered by bodies jointly operated by UGC-funded institutions and private organizations</i>	<i>Total no. of student places in this category offered by local institutions</i>
2000-01	940 (38.1%)	1 528 (61.9%)		2 468 (100%)
2001-02	3 330 (53.7%)	2 866 (46.3%)		6 196 (100%)
2002-03	4 763 (57.8%)	3 479 (42.2%)		8 242 (100%)
2003-04	6 767 (61.6%)	4 223 (38.4%)		10 990 (100%)
2004-05	10 268 (56.2%)	8 016 (43.8%)		18 284 (100%)
2005-06 (Estimate)	10 357 (51.1%)	8 798 (43.4%)	1 125 (5.5%)	20 280 (100%)
2006-07 (Estimate)	12 559 (51.7%)	10 012 (41.2%)	1 710 (7.1%)	24 281 (100%)
2007-08 (Estimate)	13 059 (49.4%)	10 682 (40.4%)	2 690 (10.2%)	26 431 (100%)

MR CHEUNG MAN-KWONG (in Cantonese): *Madam President, in part (b) of the main reply, we note that 19 loan applications made by institutions have been approved by the Government. I have also liaised with education providers and community colleges which have applied for the loans and they are entering their 10-year repayment period. The pressure of repayment has thus become a great burden to them to offer self-financing programmes and even affected their investment in terms of teaching in upgrading their sub-degree programmes.*

Will the Government inform this Council whether it will consider alleviating the financial burden of loan repayment by extending the repayment period from 10 years to, for example, 20 years, so that these institutions can focus their resources on upgrading their quality of education or providing a reasonable campus life to students?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, among the 19 applications made by the institutions, 11 of them have already started their repayment without encountering any major problems because this is conducted in 10 instalment repayments starting one year after the draw down, meaning one year after the receipt of the last lot of the subsidy. As most of the institutions have not encountered major problems in this respect, we will not consider changing the requirement of the 10-year repayment period.

DR YEUNG SUM (in Cantonese): *Madam President, as noted from the statistics provided by the Government, the number of student places available is approaching the Government's target of enabling 60% of the senior secondary school leavers to receive tertiary education. Will the Government consider setting a more long-term roadmap to upgrade the quality of associate degree programmes and to avoid cut-throat competition among the associate degree programmes which are being dominated by commercial and logistics courses, so that more choices can be provided to our youngsters and the quality of the programmes better assured?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, I am very happy that we are approaching the target of enabling 60% of the senior secondary school leavers to receive tertiary education. It is hoped that we can reach this target by the year 2010 and in 2005, it has already reached 57%, hence we are confident that the 60% target can be reached. Our major concern now is the quality of the programmes, most of which are currently offered by higher education institutions. I believe higher education institutions have their own quality assurance mechanism to maintain their standard and I am glad to see that they have formed among themselves the Joint Quality Review Committee which is represented by different institutions to

mutually monitor the quality of the programmes offered in different institutions. With regard to programmes offered by non-institution education providers, their quality, I believe, is assured because all of them are accredited by the Hong Kong Council for Academic Accreditation.

MR MA LIK (in Cantonese): *Madam President, in the main reply, the Government mentioned that self-financing programmes are getting increasingly popular and that education providers are responding positively to such need. May I ask the Government what are the major factors of consideration when assessing applications of the education providers? Are their financial status, experience in providing education, history and reputation among the major factors?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): In fact, the applications of the education providers are not vetted by the Government. We have an independent committee to assess the applications by considering such factors as the experience, business plan and past performance of the education providers.

MR JASPER TSANG (in Cantonese): *Madam President, just as the Secretary has said, the number of self-financing tertiary student places has been increasing steadily since 2000, but as seen from the Annex provided by the Secretary, the increase in the number of self-financing tertiary student places offered by other private organizations, meaning those offered by non-UGC-funded institutions or their affiliated schools, is lower than those offered by UGC-funded institutions. May I ask the Government whether there are policies in place to gradually reduce the proportion of student places offered by private organizations, and whether there is a tendency to approve applications for loans and land made by UGC-funded institutions or their affiliated schools?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, it is undeniable that UGC-funded institutions have considerable experience in offering self-financing programmes which are often very successful, so we are not surprised to find that when granting loans for

self-financing programmes, many of them are for programmes offered by them. However, private organizations are encouraged to offer these programmes. If these programmes are offered only by higher education institutions, it will lack competition.

PRESIDENT (in Cantonese): Fifth question.

Treatment of Waste Oil

5. **MR PATRICK LAU** (in Cantonese): *Madam President, regarding the treatment of waste oil in Hong Kong, will the Government inform this Council:*

- (a) *of the quantity of waste oil treated in Hong Kong and the expenses incurred in each of the past five years, as well as the respective percentage shares of such expenses borne by the authorities and the waste oil producers;*
- (b) *of the name of the operator commissioned to handle waste oil treatment currently, as well as the commencement and expiry dates of the contract awarded to the operator; and*
- (c) *whether it has drawn up any plans for the arrangements upon the expiry of the above contract; if not, the reasons for that?*

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

- (a) During the five-year period between 2000 and 2004, the quantity of waste oil, including land-based waste oil and waste oil from ocean going vessels, collected by the Chemical Waste Treatment Centre (CWTC) at Tsing Yi were 30 500 tonnes, 44 000 tonnes, 35 000 tonnes, 30 400 tonnes and 25 200 tonnes respectively. Over the same period, the corresponding variable costs of treating the waste oil at the CWTC were \$116 million, \$149 million, \$118 million, \$99 million and \$83 million respectively.

The CWTC is a government facility and the Government pays the operating cost in accordance with the contract. In the past five years, the average charge paid by chemical waste producers was only about 34% to 41% of the variable operating cost. That is, the Government has been providing a subsidy to chemical waste producers, which was about 59% to 66% of the variable operating cost.

- (b) The CWTC was commissioned in April 1993. It is now operated by the Enviropace Limited under a government contract and the contract will expire in April 2008.

In addition to the CWTC, there are three private chemical waste disposal facilities that are licensed to treat waste oil in Hong Kong. The largest of these facilities collects waste lubrication oil from local public transport companies, government fleet as well as machinery and vehicle maintenance workshops, and so on, for recycling into recycled lubrication oil.

- (c) As the contract of the CWTC will expire in 2008, the Environmental Protection Department (EPD) is now conducting a study on the future of the CWTC. The main objectives of the study are to review chemical waste arisings in Hong Kong and the scope and extent of services that need to be provided by the future CWTC and to prepare a conceptual design for any modifications or new facilities provisions that may be required. It is anticipated that this work would be completed by 2006.

MR PATRICK LAU (in Cantonese): *Madam President, in part (a) of the main reply, the Secretary mentioned that the Government had been providing a subsidy to chemical waste producers, which was as much as 59% to 66% of the variable operating cost. May I ask the Secretary whether this is reasonable, and whether she will consider improving the situation of subsidization in the course of the review?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, from the perspective of the Government,

particularly when we look at the percentage of subsidy against the existing "polluter pays" principle, the level of subsidy is of course rather high. At the same time, since this policy was formulated more than a decade ago, according to the assessment back then, chemicals had a lot more usage in the industry than nowadays. The assessment conducted by a lot of factories in the early '90s is very much different from that conducted in 2005. The operating cost has increased, as the facilities themselves are very expensive while the fixed expenditure also accounts for a large proportion of the cost. Therefore, when conducting the review, we will definitely consider how best to lower the cost in this aspect in order to lessen the Government's burden.

MR ANDREW LEUNG (in Cantonese): *Madam President, there is a severe shortage of oil in Guangdong Province recently. We also know that many people openly buy this kind of waste oil, send it to Guangdong Province through different channels and then sell it as fuel. This kind of waste oil is actually toxic. I would like to ask the Government: Firstly, does it know this case; and secondly, what measures will it take to deal with this case together with the authorities of Guangdong Province? It is because this will affect the recovery of waste oil in Hong Kong on the one hand, and also affect the overall air quality and environment of Hong Kong on the other hand.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, we are aware of such cases through some non-official channels. However, it is clearly stipulated in the Hong Kong legislation concerning disposal of waste that it is forbidden to export waste oil without authorization. In other words, there are clear provisions in the law. But it is also true that such illegal activities are happening. We will discuss with the authorities concerned in Guangdong Province or Shenzhen on how to co-operate to combat this kind of illegal activities.

MR ANDREW LEUNG (in Cantonese): *Madam President, may I ask the Secretary whether she will join other law enforcement departments, for example, the Customs and Excise Department (C&ED) or the police, in taking actions to strengthen their efforts in curbing such illegal activities?*

PRESIDENT (in Cantonese): Secretary, please be seated. Mr Andrew LEUNG, a follow-up question raised by a Member must be about the part of the supplementary just asked that has not been answered by the Secretary. Since what you are now asking is not part of the supplementary just raised, you have to press the button and wait for another turn.

MR ANDREW LEUNG (in Cantonese): *No, Madam President, it was in the question earlier. The Secretary should know what measures the Hong Kong Government has to enforce the law and whether the Government has enforced the law or not. In fact, I am asking her about the situation of law enforcement. That is, I am asking the Secretary whether she will join other law enforcement agencies in Hong Kong to curb such activities.*

PRESIDENT (in Cantonese): Your earlier question was about whether the Hong Kong Government would co-operate with Guangdong Province to take such action.

MR ANDREW LEUNG (in Cantonese): *Madam President, the Hong Kong Government also has law enforcement agencies to enforce the law. For instance, will the C&ED curb such activities vigourously?*

PRESIDENT (in Cantonese): In the next attempt, you should directly ask your question at the very beginning, as I will not allow you to ask that way again.

MR JEFFREY LAM (in Cantonese): *Madam President, the contract on the CWTC will expire in 2008. First of all, I would like to ask whether the existing mode of operation of the entire centre is consistent with economic principles. When the contract expires in 2008, will it be renewed in a simple way or will there be an open tender?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, as I said earlier on, since almost 20 years

were spent from the conception to the construction of the CWTC, we need to conduct a holistic review on the premise of the overall need of the industry and the concept of environmental protection, as well as the "polluter pays" principle. As we are in the course of the review, I am unable to answer Mr LAM whether we will conduct an open tender or not. We will make a decision after the review.

MS MIRIAM LAU (in Cantonese): *Madam President, in the main reply, it is said that there are three private chemical waste disposal facilities licensed to treat waste oil. May I ask the Secretary whether the Government provides any subsidy to these facilities? If yes, what are the details? If not, why is it unnecessary for the Government to subsidize the private chemical waste disposal facilities, while the CWTC has to receive government subsidy at a level as high as 59% to 66% of the variable operating cost?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): *Madam President, private chemical waste disposal facilities do not receive any subsidy from the Government. Although one of the larger-scale private chemical waste disposal facilities is located in a government industrial estate, this is not taken as a kind of subsidy. However, during their operation, some sludge will be discharged from their engine oil or lubrication oil in the recovery process, and they will send the sludge to the Enviropace Limited for disposal. Thus, the Enviropace Limited is disposing some valueless substance for them, and we can say that this is an indirect subsidy to these three private facilities. The Enviropace Limited is responsible for receiving all the chemical related waste, among which a lot of the materials do not have recovery value. Under the circumstances, it can only be done with the operating expenditure subsidized by the Government.*

MISS CHOY SO-YUK (in Cantonese): *Madam President, in the contract between the CWTC and the Government, a minimum operating expenditure should have been set. In other words, no matter how much waste the CWTC has treated, the Government will also pay this level of minimum expenditure. At present, the amount of chemical waste that has to be treated in Hong Kong is decreasing. As the EPD has promised me during a meeting to discuss with the*

CWTC lowering the level of minimum operating expenditure that the Government has to shoulder, may I ask the Secretary whether this has been done or not? Besides, in the next review in 2008, will they take a simple formula to calculate the amount of government subsidy according to the amount of chemical waste, instead of guaranteeing the minimum government subsidy?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, the Government and the CWTC at Tsing Yi have reached a contract. As I briefly mentioned earlier on, in the contract, the amount of chemical waste to be treated was assessed on the basis of the industrial operations at the time back then. For this kind of large-scale facilities, after activating the machine, a certain amount of waste has to be treated in order to make the operation economical. However, the industries in Hong Kong are getting less and less at present. It is actually not possible to satisfy the minimum requirement of operation of that centre. However, if the Government requires that centre to continue operating the incinerators or treating the waste, it should guarantee that they can receive the minimum operating fees. After discussion with them in 2002, we have successfully reduced the level of subsidy on treatment of waste oil from ocean going vessels. In regard to treatment of other chemicals, we will continue to negotiate with them. Nevertheless, according to the spirit of the contract, the Government has to honour the contract.

PRESIDENT (in Cantonese): Miss CHOY, has your supplementary not been answered?

MISS CHOY SO-YUK (in Cantonese): *Madam President, the Secretary has not answered the part in relation to the review in 2008.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Cantonese): Madam President, of course, the review to be conducted in 2008 will be similar to our study presently being conducted. We will consider the questions of this aspect, namely what we can do to make it most economical and compatible with the "polluter pays" principle.

MS EMILY LAU (in Cantonese): *Madam President, in the main reply, the Secretary mentioned that the Government had been providing a subsidy to chemical waste producers, and the percentage of the subsidy is quite high. May I ask the Secretary, under the "polluter pays" principle, on what principle the Government has actually based in subsidizing chemical waste producers? The Secretary said that the percentage of such subsidy is rather high. However, comparing with other subsidies, is the percentage of such subsidy high or low? What are our principles? Madam President, when the Government provides subsidy, will it take away some business from private chemical waste disposal companies? Does the fact prove that there is such a situation? It is because when that centre is subsidized, people will naturally patronize that centre.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, first of all, concerning the principle of subsidization, when the CWTC was established then, we had consulted various parties. And it is only in recent years that the "polluter pays" principle gained greater recognition by people. Even in the treatment of other aspects of pollution, such as treatment of sewage, the Government is subsidizing 50% of the cost, and that is the standard adopted back then. As regards the grounds on which this standard was formulated, I believe that there has been much argument in the Legislative Council. Pollution created by individuals is different from that created by the industry. Members generally agreed that the level of government subsidy was reasonable if it was between 50% and 60%.

Will that centre take away some business from private organizations? The three chemical waste disposal facilities operate on a pretty large scale. Besides, there are also other minor facilities which will recover some materials like cooking oil. They can thus maintain their operation. As I said earlier, private organizations can choose to recover some oil with value. Hence, the Enviropace Limited cannot compete with them. At the same time, I have to emphasize that I believe private organizations are unable to treat other chemicals, as the operating cost concerned is very high indeed. Apart from advanced equipment, there should be huge investment in the research of high-tech disposal methods. If the responsible company is not operating under a contract with the Government, it will be very difficult for a private organization to invest such a substantial amount of money to maintain this industry, to treat such a small amount of industrial waste produced in Hong Kong.

MR ALBERT CHAN (in Cantonese): *Madam President, I find that the figures calculated from the data provided by the Secretary are rather alarming: during the five-year period, 165 000 tonnes of waste were produced and the subsidy was as much as \$360 million. The subsidy for each tonne of waste was \$2,180. After adding up the amounts of subsidy, the figure is rather shocking. At present, the entire operation of the centre is neither cost-effective nor could it be replaced by another mode. Besides, the CWTC at Tsing Yi, while being criticized by the public, is even unacceptable to the public. If the Secretary undertakes to conduct a review, will she consider terminating the operation of this centre after conducting a comprehensive review?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): *Madam President, I think I can tell Mr Albert CHAN categorically that we will never terminate the operation of this centre. It is because the CWTC at Tsing Yi is a centre which complies with the international standard. We have invested a lot of money in it and its operation is also very smooth. Globally speaking, where can the waste that we produced be sent? Besides, if we send the waste out of Hong Kong, this is also against the international convention. Thus, the waste that we produce should be treated in our own place. I admit that in doing so, there is a price to pay. However, society as a whole should also understand that as long as chemical waste is produced, we have to properly dispose of this toxic and harmful chemical waste with our best technology on the premise of protecting the environment.*

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

MR LAU KONG-WAH (in Cantonese): *Madam President, I note from part (a) of the Secretary's main reply that the quantity of waste oil collected is dropping every year. Actually, are we using less oil or collecting less oil? I am especially concerned about the waste oil collected from garages or filling stations. How is the effectiveness of collection at present?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, the reason for the lowering quantity of waste oil is that in the last two years, we have collected less oil from ocean going vessels. And thus the quantity is reduced.

MR LAU KONG-WAH (in Cantonese): *Madam President, what is the effectiveness of collecting waste oil from garages and filling stations?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, comparatively speaking, the quantity of waste oil collected from garages and filling stations is also reduced. However, this is not the main reason for the overall reduction in quantity, and the effectiveness has not changed.

PRESIDENT (in Cantonese): Sixth question, and the last oral question.

Embedding Digital Certificates in Smart Identity Cards

6. **MR JASPER TSANG** (in Cantonese): *Madam President, in order to promote electronic commerce, the Hong Kong Post (HK Post) has offered the public the option of embedding a digital certificate (e-Cert) in their smart identity (ID) cards, for free use in the first year. In this connection, will the Government inform this Council:*

- (a) *of the number of e-Certs that have been embedded in smart ID cards since the commencement of the Hong Kong Smart Identity Card Replacement Exercise in August 2003, and the respective percentages of this number against that of smart ID cards issued by the Immigration Department and that of personal e-Certs issued by the HK Post so far;*
- (b) *whether it has estimated the monthly numbers of electronic transactions conducted in the past 12 months by the use of the e-Certs embedded in smart ID cards for identity authentication; and*

- (c) *whether it has enquired about the up-to-date number of persons who never used the e-Cert embedded in their smart ID cards for identity authentication by the expiry of the first-year free offer, and the reasons for their not using the e-Cert?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, my reply to Mr Jasper TSANG's question is as follows:

- (a) As at end of April 2005, the Hong Kong Post Certification Authority (HKPCA) has issued about 880 000 personal e-Certs embedded on smart ID cards, representing 28% of the total number of smart ID cards issued by the Immigration Department and 85% of the total number of personal e-Certs issued by the HKPCA.
- (b) Since there is no need to go through the HKPCA's system when the public use their e-Certs in electronic transactions, the HKPCA does not possess records or accurate information on whether the public have used the e-Certs embedded on their smart ID cards for identity authentication. We are therefore unable to verify the number of electronic transactions conducted using the personal e-Certs.

In November 2004, the HK Post surveyed the individuals who obtained their personal e-Certs embedded on smart ID cards during the period from June to August 2004. Results of the survey indicated that about 10% of the respondents had used the e-Certs embedded on their smart ID cards.

- (c) As pointed out in part (b) of my reply, the HKPCA does not possess records or information on whether the public have used their e-Certs. It is therefore unable to verify the number of persons who have never used the e-Certs embedded on their smart ID cards. However, based on the results of the survey conducted in November 2004, a rough estimate is that about 90% of the persons who have obtained personal e-Certs embedded on smart ID cards have not used their e-Certs.

We believe that the main reason why some members of the public have not used their e-Cert is that there are still not yet sufficient e-commerce applications requiring the use of e-Certs in the market. The Government is therefore strengthening its promotion efforts to encourage the business community and the general public to use and adopt the e-Cert.

MR JASPER TSANG (in Cantonese): *Madam President, according to the figures provided by the Secretary, the number of people who made use of the service offered by the HK Post to embed e-Certs on their smart ID cards when applying for such cards accounts for 85% of the total number of personal e-Certs issued by the HK Post, that is, these e-Certs account for the majority of e-Certs issued. According to the information provided by the Secretary and if the survey conducted in November 2004 is employed for reference, 90% of members of the public did not make use of their e-Certs after obtaining them. In the final analysis, it is a waste of resources to obtain them but not use them. The Secretary said that the government policy would strengthen its efforts to promote the use of e-Certs in the business community and among the general public, however, in order to avoid embedding e-Certs for members of the public who do not know how to use them or who have no need of them, has the Government ever considered adopting a more pragmatic approach by refraining from simply encouraging the public to have e-Certs embedded in their ID cards, instead, e-Certs will be embedded only for people who really know what e-Certs are for and who intend to use them? Such an approach will avoid wasting resources.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we will do both. On the one hand, the promotion of e-Certs will be stepped up, and on the other, we also hope that more can be done in education, so that a greater number of members of the public will make use of the facilities. I believe that at present, many members of the public are simply not used to using e-Certs to conduct online transactions. This situation will improve only after a period of time, however, we will make more efforts in this regard.

MR BERNARD CHAN (in Cantonese): *Madam President, my supplementary is more or less the same as Mr TSANG's. I believe that over 80% of the applicants for smart ID cards had e-Certs embedded on their smart ID cards mainly because the authorities greatly encouraged us to have an e-Cert embedded in our ID cards when we replaced them and also offered a lot of concessions to us, so a lot of people did not mind applying for one. However, I have personally tried to use it after having applied for one since I often shop online. However, I found that shopping online and the purpose of e-Certs appear to be two distinct matters and they are entirely different. Moreover, the explanation in the Government's promotional pamphlet is not at all clear either. After reading the pamphlet, I still do not know how to use the e-Cert. Just now, the Secretary said that more publicity was planned. I believe it is not simply a matter of publicity. Perhaps there are actually not too many users and the explanation on the pamphlet is not clear actually. In the last sentence of the last paragraph of the main reply, the Secretary says that promotional efforts will be stepped up. May I ask the Secretary how promotion will be conducted? Actually, the authorities have been distributing pamphlets, however, I do not understand its contents after reading it.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): *Madam President, I also agree with Mr Bernard CHAN's comments. I have tried to use the e-Cert and found the process rather complicated. I think that it is necessary to make improvements. I will instruct the departments concerned to simplify matters such as the relevant guidelines so that the e-Cert will be easier to use. If more members of the public find it convenient to use, hopefully more people will use it.*

MR SIN CHUNG-KAI (in Cantonese): *Madam President, I wish to air my views. When the HK Post came to the Legislative Council and said that the e-Cert would be provided for free, the Legislative Council supported the proposal. Of course, it has turned out that few people are using it. This is what is called the inverse relationship between convenience and security: the greater the convenience, the less the security and vice versa. Concerning my supplementary, to put it simply, I support continuing to give away e-Certs,*

however, the problem is, given that the Hong Kong Monetary Authority (HKMA) has requested banks to reinforce the authentication process for e-banking, for example, by using the so-called PINs and to change to a two-tier security approach, may I ask the Government what it has done to encourage e-banking services to make use of e-Certs? In view of the fairly common use of online banking services, will this be a better promotional approach?

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I agree with Mr SIN Chung-kai that if more banks use this type of facilities as an authentication tool, more members of the public will be induced to use the e-Cert. In response to the guidelines issued by the HKMA on strengthening the security measures for online banking services, we have also been very actively promoting to local banks the use of e-Certs as the authentication tool in personal online banking services. We expect that by the middle of this year, the number of banks using e-Certs to authenticate the identity of customers will increase from three at present to 12. In order to tie in with this development, we will also launch a new promotional campaign on using the e-Cert later this year and encourage more people to use e-Certs to carry out online banking and other e-commerce transactions through various types of concessions and educational services.

MISS CHOY SO-YUK (in Cantonese): *Madam President, on introducing the use of e-Certs, may I ask how much additional resources the HK Post has committed to this end and if there is any plan to expand the scope of e-Cert service, so that the cost-effectiveness will improve?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, we have used a considerable amount of resources in this area. As of 2004-05, the Government has committed a total of about \$240 million to establishing and operating the HKPCA and to promoting among the public the embedment of e-Certs, the use of which is free of charge in the first year, in smart ID cards. After deducting \$34 million in revenue, the net expense amounted to \$210 million, which is a considerable sum of money.

Members may also be aware that comparatively speaking, this method of authentication is an encryption and security measure of higher quality and not all electronic transactions have to be verified in this way. Such higher-quality authentication is required only in a rather small number of items. The Government has introduced many types of electronic services, however, many of them do not require authentication. Therefore, it is necessary for us to strike an appropriate balance between these two aspects.

MR CHAN KAM-LAM (in Cantonese): *Madam President, of the 880 000 personal e-Certs embedded in smart ID cards, only 10% of them have ever been used. This gives one the impression that the more than \$200 million that the Government spends each year is a very substantial amount of expense. The Secretary conjectured in the last paragraph of the main reply that the main reason may have to do with the insufficient number of applications requiring the use of e-Certs. It seems that the responsibility has been quietly shifted to the market and the actual reasons have not been thoroughly investigated. Therefore, may I ask the Secretary whether, in order to make e-Certs more useful, studies with a view to enhancing cost-effectiveness will be conducted to understand the actual reasons, so that the approach or overall design adopted by the Government in future will be more popular with users of such e-Certs?*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I said that we believe the reason is probably that the use of e-Certs in commercial services is still not very common. Since we do not really know the reason, therefore, I said "we believe". It may also be due to the fact that the public are still not used to carrying out transactions online. I still remember that some time ago, when automatic teller machines were first introduced, a lot of people appeared to have an aversion to them. It took some time to get used to them. After that, these machines have now become a necessity. I also believe that this type of online transaction will become a necessity in the future and it is necessary for us to promote it. We can also see very clearly that we have to fulfil the Government's responsibilities and commit resources to putting in place this type of so-called public key infrastructure as an important foundation for the long-term development of e-commerce.

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary has not replied as to whether further study will be conducted to examine if there are inadequacies that can be addressed, so that e-Certs will become more popular.*

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): *Sorry, I have omitted this point. We will definitely follow up this point.*

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

WRITTEN ANSWERS TO QUESTIONS

On-street Promotions

7. **MR LEUNG KWOK-HUNG** (in Chinese): *Madam President, I have received complaints from many members of the public, alleging that the pitches set up on streets by many organizations and companies to conduct sales promotion activities have caused obstruction and nuisance to the public. In this connection, will the Government inform this Council:*

- (a) of the number of complaints concerning the above activities received by government departments in each of the past three years, the respective numbers of cases in which verbal warnings were issued and prosecutions instituted, as well as the locations and natures of the pitches involved;*
- (b) whether any accidents or conflicts involving on-street sales promotion pitches have been reported to government departments over the past three years; if so, of the respective numbers of cases received and persons injured; and*
- (c) whether the authorities will step up the management measures or enforcement actions against the black spots of on-street sales promotion activities; if so, of the details?*

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

- (a) Generally, on-street pitches for commercial promotion purposes are related to services ranging from mobile phones, fixed-line telephones, Internet, health and fitness to credit cards. Most of these pitches are set up at locations with high pedestrian traffic, such as access points to Mass Transit Railway and Kowloon-Canton Railway stations, bus terminals, pedestrian links near markets or shopping malls and major walkways or pedestrian precincts in busy locales.

Various departments such as the police, Food and Environmental Hygiene Department (FEHD), Transport Department, Lands Department and Home Affairs Department would receive complaints from the public in respect of on-street promotion activities at public places. The police and the FEHD can take enforcement action according to the relevant legislations in areas under their jurisdiction. The following is a breakdown of complaints received, verbal warnings issued and prosecutions made over the past three years by the departments which have compiled statistics on the above activities:

<i>Year</i>	<i>Complaints</i>	<i>Verbal Warnings</i>	<i>Prosecutions</i>
2002	434	495	13
2003	918	2 988	16
2004	1 202	3 948	17

Since the complainant may lodge a complaint to different departments or at different times, it is possible that the above figures contain an element of double counting.

- (b) Over the past three years, the FEHD has recorded one complaint involving a conflict relating to an on-street promotion pitch. Nobody was injured in the incident. The other departments have not kept any statistics for these cases.

- (c) On-street promotion activity is a street management problem that involves a number of departments. For instance, the FEHD and the police take joint actions from time to time to curb the nuisance and obstruction caused by such activities. Departments will continue to work together to manage on-street promotion activities.

Compensatory Ex-gratia Payments by Government

8. **MR VINCENT FANG** (in Chinese): *Madam President, concerning ex gratia payments of a compensatory nature made by government departments, will the Government inform this Council of the following over the past five years:*

- (a) *the total amount of ex gratia payments set aside by various government departments, the annual amount of ex gratia payments approved by various departments, and the change compared to that of the previous year;*
- (b) *an annual list of:*
- (i) *the names of government departments which made ex gratia payments, the types, number and amount of such payments;*
- (ii) *the number of applications made to the above government departments, the average amounts applied for and, of the successful applications, the time limit on making ex gratia payments set by the relevant government departments; and*
- (iii) *the average amount of ex gratia payments approved by the departments;*
- (c) *whether any government departments have applied for supplementary provisions to cover the amount in excess of their estimates for ex gratia payments; if so, the number of government departments involved; and*

- (d) *whether any government departments have made ex gratia payments below their estimates; if so, whether the balances have been returned to the Treasury or retained in the accounts of the relevant government departments, and the up-to-date total unused amount of ex-gratia payments?*

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

- (a) and (b)

The Government makes provision, according to requirements, for the purpose of "*ex gratia* payments" in the prescribed expenditure areas every year. Information on the subheads and items with the name of "*ex gratia* payments" in the 2004-05 General Revenue Account (GRA) and on the changes in the relevant provisions/expenditure over the past five years is set out in the table at Annex.

There may be some other provisions in the GRA and the Capital Works Reserve Fund (CWRF) made in connection with "compensation" or "*ex gratia* payments". However, they are multifarious and vary in nature and therefore cannot be set out in the Annex exhaustively.

- (c) and (d)

The Government makes provision for *ex gratia* payments every year according to the estimated number of applicants and expected requirements. It is not common that the requirements exceed the original estimates and supplementary provision is sought. If the provision for "*ex gratia* payments" is a non-recurrent commitment, its balance can be carried forward to the following year to cover approved expenditure for the same purpose; if it is a recurrent expenditure or a block allocation of individual project under the CWRF, its balance will lapse at the end of the year and the provision for the following year will be determined afresh according to requirements.

Ex-gratia Payment (EGP) by Government (2000-01 to 2004-05)

(A) Non-recurrent Commitments

Head Subhead	Approved Commitment			2000-01		2001-02		2002-03		2003-04		2004-05		Remaining Balance of the Commitment (\$'000)
	Item - description	Amount (\$'000)	Application period allowed	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	
AFCD Head 22 S/H700	573 – Ex gratia payment to live poultry operators affected by outbreak of avian influenza in the region	42,000	N/A	-	-	-	-	-	-	-	-	1 291	38,464	3,536
FEHD Head 49 S/H700	001 – Ex gratia payments to cooked food hawkers licences	9,960	5 (NT) years - 6 ¹¹ / ₁₂ (urban) years	7	420	5	300	3	180	5	300	12	720	7,980
	002 – Ex gratia payment under Itinerant Hawker Licence Compulsory Deletion Policy	19,200	7 years	39	1,170	33	990	22	660	14	420	19	570	15,000
	009 – Ex gratia payment to stallholder affected by the redevelopment of Central Market site	23,321	N/A	-	-	-	-	61	12,852	39	8,648	1	205	1,616
	011 – Extension of ex gratia payment to the Itinerant Hawker Licence holders of the New Territories	9,990	4 years	-	-	-	-	65	1,950	49	1,470	27	810	5,760

Head Subhead	Approved Commitment			2000-01		2001-02		2002-03		2003-04		2004-05		Remaining Balance of the Commitment (\$'000)
	Item - description	Amount (\$'000)	Application period allowed	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	No. of cases	Actual expenditure (\$'000)	
	014 – <i>Ex gratia</i> payment to stallholders affected by the redevelopment of Stanley Temporary Market site	1,394	N/A	-	-	-	-	-	-	4	169	16	1,216	9
	015 – <i>Ex gratia</i> payment to licencees of the fresh provision shops selling live poultry in private premises	1,470	N/A	-	-	-	-	-	-	141	1,410	2	20	40
	436 – <i>Ex gratia</i> payment to live poultry retailers surrendering their licences with endorsement to sell live poultry or public market tenancies	236,428	1 year	-	-	-	-	-	-	-	-	208	58,657	177,771
Pensions Head 120 S/H700	006 – <i>Ex gratia</i> payments to early retirees who are Model Scale I officers on Old Pension Scheme in grades designated for the Second Voluntary Retirement Scheme	5,000	3 months	-	-	-	-	-	-	11	1,247	7	686	3,067
TOTAL		348,763			1,590		1,290		15,642		13,664		101,348	214,779

(B) Recurrent Provisions

Head Subhead	Item - description	2000-01			2001-02			2002-03			2003-04			2004-05		
		Approved provision (\$'000)	Actual expenditure (\$'000)	No. of cases	Approved provision (\$'000)	Actual expenditure (\$'000)	No. of cases	Approved provision (\$'000)	Actual expenditure (\$'000)	No. of cases	Approved provision (\$'000)	Actual expenditure (\$'000)	No. of cases	Approved provision (\$'000)	Actual expenditure (\$'000)	No. of cases
Pensions Head 120 S/H021	230 - <i>Ex gratia</i> pensions, awards and allowances	1,900	1,488	37	1,950	990	34	1,940	378	27	1,399	275	20	820	210	18
LandsD Head 91 S/H221	888 - Clearance of government land - <i>ex gratia</i> allowances	30,026	12,147	74	30,026	9,426	62	30,026	3,218	35	13,000	843	24	12,220	788	32
TOTAL			13,635			10,416			3,596			1,118			998	

AFCD - Agriculture, Fisheries and Conservation Department

FEHD - Food and Environmental Hygiene Department

LandsD - Lands Department

Note: As the above *ex-gratia* payments are different in nature and the amount payable per case may vary considerably, it is not appropriate to calculate the average amount of *ex-gratia* payments for comparison purpose.

Points Incurred by Cyclists Without Driving Licences

9. **MR ANDREW CHENG** (in Chinese): *Madam President, under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375), where 15 or more points have been incurred by a person in respect of offences specified in the Schedule to the Ordinance which were committed in any two-year period, he shall be disqualified from holding a driving licence. On 27 March this year, the police advised that if a person not holding a driving licence committed the specified offences while cycling, the points thus incurred would also be logged in his register of points. In this connection, will the Government inform this Council of:*

- (a) *the legal basis for adopting the measure mentioned above; and*
- (b) *the number of cyclists not holding a driving licence who incurred points in the past three years and, among them, the number of those who obtained a driving licence within a period of two years from the dates at which they had committed the last cycling-related offence?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): *Madam President, section 4 of the Road Traffic (Driving-offence Points) Ordinance provides that where a person is convicted of a scheduled offence or becomes liable to a fixed penalty in respect of a scheduled offence, he shall incur the driving-offence points in respect of that offence. According to section 3(1) of the same Ordinance, the Commissioner for Transport shall maintain a register of points to record the relevant information. The legislation does not specify that the person who is convicted of a scheduled offence must hold a driving licence. Therefore, even if the offender does not hold a driving licence, the points that he has incurred will still be recorded in the register of points.*

Since the register of points does not record the vehicle class involved in the offence, we do not have the statistics concerned.

Construction of Heated Public Swimming Pool in Tai Po

10. **MR LI KWOK-YING** (in Chinese): *Madam President, for many years, Tai Po District Council has been striving for the construction of a heated public*

swimming pool in the district, but so far little progress has been made. In this connection, will the Government inform this Council:

- (a) of the progress of its study on converting the main pool at the Tai Po Swimming Pool (TPSP) into an uncovered outdoor heated pool, and when the study results will be published;*
- (b) whether it has looked for another location outside the TPSP but within the district for the construction of a heated swimming pool; if so, of the details; if not, the reasons for that; and*
- (c) whether it will construct a heated public swimming pool in Tai Po; if so, of the anticipated implementation date for the construction works; if not, whether it is attributable to the lack of resources?*

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

- (a) As regards the proposal on provision of heating to the main pool of the TPSP, the Administration has completed a preliminary study which considers that the works are technically feasible, but the main pool will need to be completely closed during the construction (including a period of time within the swimming season). According to the record of the Leisure and Cultural Services Department, the usage rate of outdoor heated pools in winter is relatively low. The Administration has also studied the feasibility of incorporating a permanent or retractable cover to the main pool of the TPSP, but the findings reviewed that this is technically not feasible. The Tai Po District Council has been informed of the findings on 5 March 2005.
- (b) According to the Hong Kong Planning Standards and Guidelines, a swimming pool complex should be provided for every 287 000 population. With a current population of about 300 000 in Tai Po District, the TPSP should be able to cope with the demand of local residents. Therefore, the Administration has no plan to provide another site in Tai Po for construction of a heated swimming pool.

- (c) The Administration proposes to provide heating facilities to the main pool of the TPSP and is working on the scope of development. A concrete timetable for the works will be worked out upon the approval of funding.

Taking over of Housing Authority's Divestment Portfolio and Related Services by The Link

11. **MR LEUNG KWOK-HUNG** (in Chinese): *Madam President, it has been reported that, although The Link Real Estate Investment Trust (The Link REIT) could not be listed as scheduled, The Link Management Limited (The Link) had taken over the divestment portfolio of the Housing Authority (HA) and the related services half a year ago. In this connection, will the Government inform this Council whether it knows:*

- (a) *the amount of funding provided by the HA to subsidize the monthly operating expenses of The Link, and the details of the manpower deployed to monitor its operation;*
- (b) *whether the HA has conducted any tendering exercise before handing over the divestment portfolio and the related services to The Link; if it has, of the details of the tendering exercise and the tender results; if it has not, the reasons for dispensing with the tendering exercise; and*
- (c) *whether, after the taking over of the HA's divestment portfolio and the related services by The Link, the HA has received any complaints concerning the closedown of shops in The Link's shopping centres, the charging of new fees by The Link and increases in the rents of shop premises and parking spaces in car parks; if so, of the number of such complaints and their details?*

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

- (a) Prior to the listing of The Link REIT, The Link is a wholly-owned subsidiary company of the HA. The operating budget of The Link

has to be approved by the HA and The Link's expenditure is fully met by the HA. According to The Link's operating budget for 2005-06, its average monthly operating expenditure is about \$12 million.

Since The Link is a subsidiary company of the HA, the HA monitors its operations in a different manner from that applicable to general outsourcing arrangements. Specific measures include:

- A joint committee, comprising senior management of the HA and The Link and chaired by the Director of Housing, has been set up to discuss important issues relating to operations and management of the properties to be divested.
- The HA's Commercial Properties Sub-division keeps close contact with The Link over daily operational matters so as to ensure that requests and demands of commercial tenants and residents are properly responded to. Final decisions on tenancy matters rest with the Commercial Properties Sub-division.
- The Link has to obtain the HA's consent before undertaking any major improvement works for shopping centres. The HA's approval is also required for any capital expenditure incurred for such works.
- The Link keeps the HA's Commercial Properties Committee (CPC) informed of its work from time to time. Prior consent of the CPC has to be obtained for any major changes to management policies of shopping centres or carparking facilities.
- The HA's internal audit section scrutinizes The Link's key internal codes and auditing mechanism for the deployment of resources. The HA's auditors may examine the financial system and accounts of The Link as and when necessary.

The HA and The Link work closely together. This involves considerable manpower from different divisions of the HA

(including the Commercial Properties Sub-division, the Divestment Sub-division, the Finance Sub-division and the Estate Management Division), many of whom also attend to other work at the same time. Hence, we have not worked out specific figures on the manpower deployed for monitoring The Link.

- (b) Prior to the listing of The Link REIT, the shopping centres and carparking facilities to be divested remain the HA's properties, and The Link a wholly-owned subsidiary company of the HA. Transfer of management responsibilities for these facilities by the HA to its subsidiary company is different from general outsourcing arrangements. Hence, no tender exercise needs to be conducted.
- (c) The HA and The Link have been liaising with commercial tenants and have received feedback and enquiries concerning tenancy renewal, rent, carparking fee, and other related charges. However, after The Link's takeover of the management of the facilities concerned, the HA has received no complaints concerning the closedown of any shops, or any rent increase of shops or parking spaces under the Link's management. Moreover, The Link has not charged any new fees and the HA has not received any complaints in this respect.

Designation of Lantau North (Extension) Country Park

12. **MR LEE WING-TAT** (in Chinese): *Madam President, under the Country Parks Ordinance (Cap. 208), the Country and Marine Parks Authority (the CMP Authority) should prepare and publish in the Gazette draft maps showing proposed country parks for public consultation, and should, within the following six months, submit such draft maps, together with papers setting out the objections and representations made, to the Chief Executive in Council for approval. After a draft map has been approved, the Chief Executive should, by order in the Gazette, designate the area shown to be a country park. Given that the CMP Authority has published in the Gazette the draft map of Lantau North (Extension) Country Park in July 2001, but designation of the country park has yet to be made, will the Government inform this Council of the latest progress of and the timetable for the designation; if a timetable is not available or another round of public consultation will be conducted, the justifications for that?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

(in Chinese): Madam President, in consultation with the Country and Marine Parks Board (the Board), the CMP Authority gazetted a draft map of the proposed Lantau North (Extension) Country Park on 13 July 2001 for public inspection. Public objections received during the inspection period were heard by the Board in October 2001. The Board rejected all the objections.

However, in the light of the overall planning for Lantau, the Administration has decided to review the designation proposal. A Concept Plan for Lantau setting out an overall planning framework to integrate development and conservation needs for the island was published for public consultation in November 2004. The implementation of the proposed Country Park is one of the conservation proposals in the Concept Plan. The public consultation period of the Concept Plan ended on 28 February 2005. The Government is reviewing the designation proposal and the implementation timetable of the proposed Lantau North (Extension) Country Park, taking into consideration the public comments received on the Concept Plan and related resource implications.

As the draft map of the proposed Lantau North (Extension) Country Park was gazetted for public inspection in July 2001 and the designation proposal was included in the Concept Plan for Lantau for public consultation in November 2004, we do not consider it necessary to conduct another round of public consultation.

Arrangements for Persons with Disabilities to Attend Selection Tests

13. **DR FERNANDO CHEUNG** (in Chinese): *Madam President, will the Government inform this Council whether it has issued guidelines to government departments instructing them to make special arrangements to ensure that disabled applicants for government posts are given, when attending various types of selection tests, sufficient opportunities to demonstrate their capabilities at work, if so, of the details of the arrangement for each type of disabled persons attending each type of tests; if not, the reasons for that?*

PERMANENT SECRETARY FOR THE CIVIL SERVICE (in the absence of Secretary for the Civil Service) (in Chinese): Madam President, the Government's policy on employment of people with disabilities (PWDs) is to place them in appropriate jobs wherever possible. We welcome applications from PWDs for employment in the Government. If a PWD meets the basic entry requirements specified for a post, he/she will not be subject to any shortlisting criteria, and will be invited to the selection interview to compete with other shortlisted candidates for the post on the same grounds. Once a PWD is considered suitable by the selection board to carry out the duties of a particular post, he/she will be recommended for appointment even though he/she may not be able, due to disability, to perform the duties of every post in the same rank or level.

My reply to the individual parts of the question is as follows:

- (a) We have promulgated to departments the requirement that if disabled candidates are invited to a written examination/selection interview, the departments concerned should make special arrangements to facilitate such candidates in attending the examination/interview; or the examination/interview process should be adjusted to cater for their special needs. For the purpose of making such arrangements, we have incorporated into the standard application form for employment with the Government a section, which is optional for completion, requesting the candidate to indicate whether he/she is a disabled candidate, and if so, the nature and degree of his/her disability, and the special arrangements that he/she requires for taking a written examination or attending an interview.
- (b) Depending on the nature and extent of the disability of the candidates, appropriate arrangements will be made to facilitate their attendance during the selection process. The general arrangements made for candidates with disabilities for taking written examinations or attending selection interviews are set out at Annex A and Annex B respectively.

General arrangements made for
candidates with disabilities for taking written examinations

<i>Types of Disabilities</i>	<i>Arrangements</i>
Blind	<ul style="list-style-type: none"> - Provide braille examination papers to the candidate and braille or personal computer with special software for the candidate to type out the answers in braille¹. - Extend the examination time having regard to the degree of the candidate's disability and complexity of the paper.
Partially-sighted	<ul style="list-style-type: none"> - Provide enlarged question paper or paper with special font size and enlarged answer sheets. - Allow the candidate to bring along a magnifier. - Extend the examination time having regard to the degree of the candidate's disability and complexity of the paper.
Mobility-impaired	<ul style="list-style-type: none"> - The examination hall and toilets should be made accessible by wheel-chair. - Arrange the candidate to sit near the entrance of the examination hall.
Hearing-impaired	<ul style="list-style-type: none"> - Make available a set of written directions for the candidate to follow while the presiding invigilator is making relevant announcement.

¹ The Hong Kong Society for the Blind provides various services including translating the examination papers in braille and translating the answer sheets completed by the disabled candidates into English/Chinese. It also provides equipment/software and/or examination venues as required.

Annex B

General arrangements made for
candidates with disabilities for attending selection interviews

<i>Types of Disabilities</i>	<i>Arrangements</i>
Mobility-impaired or Vision-impaired	<ul style="list-style-type: none"> - Provide temporary parking space upon the candidate's request. - Clear up the corridors for easier access. - Make the corridors and interview room accessible to wheel-chairs. - Arrange staff to lead the candidate from the entrance of the office building to the interview room, and/or help him/her get a taxi after the interview.
Hearing-impaired and Speech-impaired	<ul style="list-style-type: none"> - Allow a hearing-impaired candidate to bring along his/her hearing aids. - Conduct an interview through written communication. - Interview board members to speak slowly and clearly to enable the candidate to catch the meaning of the questions. - Allow the candidate to bring along a sign language interpreter to the interview.

Purchase of Poor Quality Medical Consumables by Hospital Authority

14. **MR LI KWOK-YING** (in Chinese): *Madam President, it has been reported that in order to save expenditure, the Hospital Authority (HA) has recently purchased medical consumables such as masks, syringes, gloves, and so on, of poor quality for use in public hospitals, adversely affecting the efficiency*

of health care personnel and the quality of their service. In this connection, will the Government inform this Council whether it knows:

- (a) the number of complaints received by the HA in the past two years about the poor quality of medical consumables, broken down by the type of the consumables concerned and the place of origin;*
- (b) if the HA's procurement guidelines have specified certain safety specifications for medical consumables; if so, of the details of the specifications; and*
- (c) the HA's procedure for the procurement of medical consumables, including the selection criteria and the acceptance procedure?*

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

Madam President,

- (a) In the past two years, the HA Head Office received from its hospitals a total of 270 reports of quality discrepancies involving 46 types of medical consumables. A breakdown of these cases by the type of medical consumables involved and the place of origin are given in the Annex.
- (b) The HA's specifications for medical consumables are based on relevant quality standards, such as the European Standard, the standards promulgated by the United States Food and Drug Administration and those by the International Organization for Standardization (ISO). Where appropriate, the HA will also require the vendors to meet certain quality system standards such as ISO 9001 or ISO 13485.

During the tender evaluation process, Tender Assessment Panels comprising relevant experts from the front-line units are set up to ensure that the product quality standards as well as the system quality standards of the vendors are in compliance with the specified requirements.

- (c) The HA has well-established tendering processes for the procurement of medical consumables. All purchases of medical consumables are carried out in accordance with the procedures stipulated in the HA Procurement and Material Management Manual.

For purchases of tender value over \$4 million, the tendering processes are carried out in accordance with the World Trade Organization Agreement on Government Procurement. Tender Assessment Panels comprising representatives and experts from the HA Head Office and user hospitals are formed to evaluate the tender offers. The HA Main Tender Board is the approving authority.

For purchases of tender value between \$500,001 and \$4 million, similar processes are adopted by the respective clusters in the HA. The authority to approve these tenders is vested in the Cluster Tender Boards.

As part of the HA's existing practice for monitoring the quality of purchased items, discrepancy reports are made by users or the hospital administration to the Procurement and Materials Management Section (PMMS) at the HA Head Office for follow-up action. The PMMS will investigate and make appropriate requests to the vendors for improvement within two weeks. The vendors' remedial actions will also be closely monitored by the PMMS.

Annex

Breakdown of Quality Discrepancies Reports on Medical Consumables

<i>DESCRIPTION</i>	<i>NO. OF CASE</i>	<i>TWO YEARS CONSUMPTION</i>	<i>COUNTRY OF ORIGIN</i>
ABDOMINAL SWAB	2	618 000	China
INTRAVENOUS CANNULA	5	2 758 660	Mexico/Brazil/Italy
APPLICATOR	1	1 412 000	Australia/China
AUTOCLAVING TAPE	10	65 000	Canada/Italy
BLOOD PUMP SET	3	104 150	Ireland

<i>DESCRIPTION</i>	<i>NO. OF CASE</i>	<i>TWO YEARS CONSUMPTION</i>	<i>COUNTRY OF ORIGIN</i>
BLOOD SAMPLE COLLECTING UNIT	6	over 7 000 000	United States/ United Kingdom
BLOOD GIVING SET	5	220 000	Singapore
COMBINED DRESSING, SURGICAL	1	956 000	Australia/China
COTTON CREPE BANDAGE	1	494 000	China
COTTON WOOL BALL	4	59 000	China
COVER GLASS, SLIDE	1	2 100 000	Germany
COVER GLASS	1	2 870 000	China
CENTRAL VENOUS PRESSURE MANOMETER	1	32 000	Mexico
DRESSING SET	43	3 800 000	China/Australia
ELECTRODE, INFANT	1	130 000	Deutschland
EXAMINING GLOVE	4	1 199 700	Malaysia
FACE SHIELD	3	4 000 000	China
FOLEY CATHETER	7	392 745	Malaysia
GAUZE, ABSORBENT	4	148 000	China
GAUZE SWAB	1	820 000	Australia/China
HEPARIN PLUG	1	2 525 000	Germany
INTRAVENOUS INFUSION SET	12	1 530 000	Singapore
INTRAOCULAR LENS (IOL)	1	23 804	United States
ISOLATION GOWN	1	2 000 000	China
LANCET	4	3 200 000	Poland
NASAL FEEDING TUBE, INFANT	1	36 000	Taiwan
NEEDLE	1	4 850 000	Singapore/ United States
MICRODRIP SET	5	198 500	Ireland
STERILIZATION PAPER BAG	4	15 735 000	United Kingdom
PLASTIC OF PARIS (POP)	1	33 210	India
RAYTEC GAUZE	31	2 089 000	China
SCALP VEIN NEEDLE	1	730 700	Singapore
SHARP BOX	1	510 000	United States/ Malaysia
SPLINTING MATERIAL	3	13 640	Belgium
STOMACH TUBE	6	545 400	China
STOPCOCK	1	151 200	China

<i>DESCRIPTION</i>	<i>NO. OF CASE</i>	<i>TWO YEARS CONSUMPTION</i>	<i>COUNTRY OF ORIGIN</i>
SURGICAL BLADE	2	1 399 000	Germany
SURGICAL GLOVE	7	5 919 000	Malaysia
SYRINGE	65	37 679 000	Singapore/ United States
SYRINGE BLADDER	2	20 000	United States
TEST STRIP, URINE	6	2 670 000	United States
TRACHEAL TUBE	3	371 900	Ireland/Thailand
TUBE-SWAB SET	1	350 000	Italy
TUBING INTRAVENOUS 94U	2	34 000 (Metre)	Korea
UNDERPAD	1	6 000 000	Thailand
URINAL BOTTLE	3	5 250	United States
Total no. of Case	270		

Reduction of Chips Allotted by Hospital Authority Clinics

15. **MR ALBERT CHAN** (in Chinese): *Madam President, recently I have received complaints from many members of the public that a number of clinics under the Hospital Authority (HA), such as Lady Trench Polyclinic, have substantially reduced the number of chips allotted per day, and many members of the public are unable to receive timely out-patient services because of their failure to obtain a chip. In this connection, will the Government inform this Council whether it knows:*

- (a) the number of chips allotted by each clinic each month over the past three years;*
- (b) the reasons for the recent substantial reduction in the number of chips allotted per day by some clinics; and*
- (c) if the HA has any measures to ensure that all of its clinics have the capacity to meet the public demand for out-patient services during the peak influenza season; if so, of the details; if not, the reasons for that?*

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

- (a) The quota provided to the public varies from day to day according to the number of scheduled appointments, and the unused priority chits for civil servants and the elderly (which can be redistributed to the public). Besides, the number of doctors available may change as some may be on sick leave or redeployed for other urgent services. The clinic staff will adjust the daily quota flexibly based on utilization patterns in past weeks in order to meet changing seasonal demands.
- (b) Since the transfer of general out-patient clinics (GOPCs) from the Department of Health (DH) to the HA in July 2003, the HA has introduced various improvements to the GOPC service. The most notable ones are the introduction of individual patient records and family medicine training and service.

The introduction of individual patients' records enables a comprehensive record of patient's health status and problems and the doctor's diagnoses and treatments prescribed to be maintained and retrieved for reference in subsequent consultations. The use of information technology also makes patients' records retrievable by any GOPC. The input of accurate data by doctors and nurses inevitably requires extra time for each consultation. The introduction of family medicine, which emphasizes continuing, comprehensive and holistic care for the patient, also results in longer consultation time. Despite the injection of additional resources to the GOPC service (additional 42% more doctors, 21% more nurses, 27% more pharmacy staff, and 6% more supporting staff in the GOPCs), the number of patients that can be seen as a result has to be reduced in some clinics. Each GOPC doctor is now seeing a maximum of 85 patients during the day sessions (four hours a session and two sessions in a day) and 50 patients during the evening session (four hours).

However, the reduction in the number of patients seen does not mean deterioration in the service. On the contrary, the above measures have brought about better understanding of the patients'

problems and better documentation of patients' clinical information. As a result, patients will not only enjoy quality treatment upfront but will also need fewer subsequent consultations.

Other improvements to the GOPC service include:

- (i) provision of essential pharmacist support to the clinics;
 - (ii) enhancement of service linkage with other HA clinical services through implementation of the Clinical Information System; and
 - (iii) introduction of community-based specialist and nursing consultation sessions to improve quality of chronic illness management.
- (c) The Government's strategy is to prevent outbreak of infectious disease where possible. The DH has all along provided immunization to infants for better protection against a range of infectious diseases. For influenza, the DH and the HA have jointly provided vaccination to vulnerable groups such as elderly patients over 65 with chronic diseases attending public clinics and disabled persons staying in institutions. In the case of an outbreak of an infectious disease, the HA's priority will be to minimize the spread of disease among the general public. Under such circumstances, members of the public are most likely to be advised to stay away from crowds and busy public places such as clinics where possible. The GOPC's roles will be that of case finding, triaging of those patients who need hospital management and symptomatic treatment of those other patients who do not need hospitalization. As part of our contingency plan, depending on the nature of the disease, there may be a need to designate some GOPCs as medical centres in each district to attend to patients affected by the prevailing infectious disease. Normal GOPC services to walk-in patients might need to be scaled down and limited to the follow-up of patients with chronic diseases. The Government will also work closely with the private medical sector to ensure sufficient capacity for treating patients in the event of an infectious disease outbreak.

Re-invitation of Tender for Livestock Waste Composting Plants

16. **MISS CHOY SO-YUK** (in Chinese): *Madam President, it has been reported that the Environmental Protection Department (EPD) recently invited tenders for the operation of the livestock waste composting plants in Sha Ling and Ngau Tam Mei and the provision of livestock waste collection services. In this connection, will the Government inform this Council:*

- (a) *whether, prior to the tendering exercise, it had compared the composting techniques adopted by the above composting plants to the new techniques available in the market before deciding on the techniques to be used in the composting plants; if it had, of the new techniques involved and details of the comparison results, including the time and land area required for making compost, the market value of compost and whether other emissions will be produced during the composting process; if it had not, the reasons for that;*
- (b) *given that the EPD has indicated that it will study setting compost standards so that composted waste can be put to use in more ways, of the details and timetable of the study;*
- (c) *given that the EDP has indicated that it will require the new operator of the composting plants to increase their handling capacity, of the reasons for not specifying such requirement in the tender document;*
- (d) *of the authorities' estimated amount of livestock waste that has to be transported to landfills for disposal each day by the successful tenderer, in order to meet the requirements of the tender document; and*
- (e) *whether the authorities have considered adopting other techniques to handle the livestock waste collected by the operator, in order to reduce waste loads to landfills; if they have, of the details; if not, the reasons for that?*

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

- (a) Prior to determining the scope of service for this current tender, the EPD has carried out an initial evaluation of the alternative technologies available and has also considered the possibility of increasing the compost quantity at the Sha Ling and Ngau Tam Mei Composting Plants so as to relieve the pressure at the landfills. Taking into account the available area at Sha Ling and Ngau Tam Mei, the evaluation concluded that the existing aeration composting technology, force aeration composting and in-vessel composting are appropriate. Furthermore, it would be prudent to establish a long-term strategy for the management and treatment of livestock waste pending the decision from the Government on the voluntary scheme for the surrender of pig farm licences, before making substantial changes to the composting requirements at Sha Ling and Ngau Tam Mei. As the current livestock waste collection and compost contract will expire shortly, the Government has decided that a new contract should be awarded to continue to provide the existing service, covering the operation and maintenance of the composting plants as well as maintaining the livestock waste collection service for over 360 farms.
- (b) The EPD is working together with the Agriculture, Fisheries and Conservation Department and the Hong Kong Organic Resources Centre on a set of compost standards for the use of compost in Hong Kong. The result is expected to be published in the near future. In determining the compost standards for the current tender, we have made reference to the existing compost characteristics and quality from the composting plant and have also considered relevant standards from various overseas countries.
- (c) The tender has a requirement to treat 700 tonnes of livestock waste per month, while the future contractor is encouraged to improve the composting process with a view to increasing the treatment capacity such that a higher quantity of compost can be produced. As mentioned in part (a) above, we felt it prudent that a long-term strategy for the management and treatment of livestock waste should be established prior to making substantial changes to the composting requirements of the composting plants.

- (d) Under the contract requirement, the contractor is required to collect around 200 tonnes per day of livestock waste from farms out of which about 23 tonnes of the waste will be delivered to the composting plants for composting process while the rest of the livestock waste will be disposed of at the landfills.
- (e) The Government has considered alternative technologies to treat the collected livestock waste. Having taken into account the available area at Sha Ling and Ngau Tam Mei, the existing aeration composting technology, force aeration composting and in-vessel composting are considered appropriate.

Establishment of Consultative Framework for Cultural and Creative Industries

17. **MR FREDERICK FUNG** (in Chinese): *Madam President, the former Chief Executive stated in the 2005 policy address that the Administration would establish a consultative framework for cultural and creative industries as soon as possible, and "will work together to study the vision for development, direction, and organizational structure to see how we may deploy our advantages, consolidate resources and pursue key areas". In this connection, will the Government inform this Council whether:*

- (a) *the establishment of a consultative framework for cultural and creative industries has been affected by the departure of the Chief Executive; if not, of the progress of the work in this respect, and the date of its establishment and the mode of operation to be adopted; and*
- (b) *it will consider reorganizing the government structure when studying "the vision for development, direction, and organizational structure" by, for example, setting up, with reference to the experience of Taiwan or some European countries, a high-level cultural council, so that it will take more account of cultural factors and attach greater importance to promoting the development of cultural industries in the course of policy formulation and implementation?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Madam President, the former Chief Executive stated in the 2005 policy address that the Government would establish, as soon as possible, a consultative framework for cultural and creative industries so that relevant representatives from these industries including outstanding personalities from outside Hong Kong could participate, and that the Government would work with these people to study the vision for development, direction, and organizational structure to see how we might deploy our advantages, consolidate resources and pursue key areas. My reply to the question raised by Mr Frederick FUNG is as follows:

- (a) The Government is studying the establishment of a consultative framework for cultural and creative industries. It is expected that a set of feasible proposals will be completed within the third quarter of this year. The new Chief Executive will be consulted before the proposals are taken forward.
- (b) The Government will work with relevant representatives from the cultural and creative sector including outstanding personalities from outside Hong Kong to study the vision for development, direction, and organizational structure for these industries in Hong Kong. Detailed proposals will be mapped out after completion of the study. The Government will take account of the cultural elements and place emphasis on the promotion of development of cultural and creative industries in the course of policy formulation and implementation.

Promoting Development of Local Digital Entertainment Industry and Wireless Technology Industry

18. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that in order to promote the further development of the digital entertainment industry and the wireless technology industry in Hong Kong, the Government plans to launch a pilot internship programme to enable selected graduates from the relevant disciplines to gain practical working experience through attachment to local digital entertainment companies. In this connection, will the Government inform this Council of:*

- (a) *the application requirements for the above internship programme and the estimated number of graduates who will benefit from the programme;*

- (b) *the estimated amount of expenditure on the programme; and*
- (c) *the commencement and completion dates of the programme?*

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

- (a) The Office of the Government Chief Information Officer is implementing a pilot internship programme for the digital entertainment industry. The programme aims to enable selected graduates from digital entertainment-related courses to acquire practical working experience. It will enable the local post-secondary institutions to better understand the requirements of the digital entertainment industry in respect of the knowledge and skills of their graduates. It is estimated that 20 graduates will benefit from the internship programme. Applicants should meet the following requirements:
 - are undertaking academic programmes relating to digital entertainment in a local post-secondary institution and will be graduated in 2005 (for applicants who were graduated from the relevant programmes prior to 2005, he/she should not have worked in the digital entertainment industry before);
 - possess good academic records;
 - submit an essay of 300 words in English, setting out how the applicant will further his/her personal career objectives through taking part in this pilot programme; and
 - have the right to work in Hong Kong.
- (b) The Office of the Government Chief Information Officer will provide a monthly allowance of \$4,000 for each participating

graduate. The total expenditure of the pilot programme is estimated to be \$990,000, including administrative and promotional expenses.

- (c) The Government had already announced the details of the pilot internship programme on 29 April 2005. Students from local post-secondary institutions may submit applications before the deadline of 31 May 2005. The internship is expected to commence in July this year for a period of six to 12 months, depending on the requirement of the job. The whole programme will be completed in July 2006.

Widening and Improvement Works at Castle Peak Road

19. **MS EMILY LAU** (in Chinese): *Madam President, widening and improvement works are currently underway at the section of Castle Peak Road between Area 2 and Ka Loon Tsuen in Tsuen Wan. Upon completion of such works, this road section will be realigned from a single two-lane to a dual two-lane carriageway. It has been reported that the Highways Department has broken the continuous double white line in the middle of that road section at locations off a number of housing estates and placed right-turn road markings on the westbound fast lane, so that when there is a gap in the opposite stream of traffic, vehicles can turn right, cross the two lanes for traffic from the opposite direction and enter roads leading to those housing estates. Such a measure has departed from the original design of such works, which prohibits westbound vehicles from turning right. The police have also closed the eastbound fast lane at the relevant parts of the road section, reducing the number of eastbound lanes from two to one at these locations. In this connection, will the executive authorities inform this Council:*

- (a) *of the number of requests made to the departments concerned in the past three years by members of the public for permission for westbound vehicles to turn right at the above locations after completion of the works;*

- (b) *given that westbound vehicles will be able to reach the housing estates concerned by making U-turns at any one of the five roundabouts at the above road section, of the reasons for permitting westbound vehicles to turn right at the above locations;*
- (c) *when the decision to assign the right-turn locations for westbound vehicles was made, which government department(s) made the decision and which government departments were involved in the decision;*
- (d) *whether the police have given any advice to the government department(s) deciding to assign the right-turn locations for westbound vehicles; if so, please provide the relevant correspondence and minutes of meetings held between the police and the department(s) concerned;*
- (e) *of the date at which the department(s) concerned assigned the right-turn locations for westbound vehicles at the above road section, and whether they are considering assigning more right-turn locations; if so, of the reasons for that and the locations concerned;*
- (f) *whether it goes against the existing road safety standards to permit vehicles travelling on fast lanes to turn right at non-signal-controlled locations with no waiting area available for right-turning vehicles, and cross two-lane (multiple-lane) carriageways for traffic from the opposite direction where permissible speeds are very high and traffic is heavy; if so, of the reasons for implementing such a measure at the locations concerned; if not, the reasons for that;*
- (g) *among the busy roads with a permissible speed of 50 km/h or above, of those which have adopted the measure mentioned in (f) above and the relevant details; and*
- (h) *of the reasons for the police closing the eastbound fast lane at certain parts of the road section, reducing the number of eastbound lanes from two to one at these locations?*

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

(a) In the past three years, two requests were made to the Transport Department and the Highways Department for maintaining the right turn arrangement for westbound traffic after completion of the improvement works. The housing estates concerned and their representatives were as follows:

- (1) Sea Crest Villa Phase 4 - the Owners' Committee and Management Office of Sea Crest Villa Phase 4 as well as a District Council member; and
- (2) Sunny Villa - Sunny Villa Owners' Committee

There were also two requests for maintaining the right turn arrangement for eastbound traffic. The estates concerned and their representatives were as follows:

- (1) Long Beach Gardens - Long Beach Gardens Management Office; and
- (2) Grand Bay Villa - Owner of 133 Castle Peak Road.

(b), (c), (d) and (e)

The section of Castle Peak Road between Area 2 and Ka Loon Tsuen in Tsuen Wan was a single two-lane carriageway with over 30 vehicular ingresses and egresses. After completion of the improvement works, this section of the road will be widened into a dual two-lane carriageway with a central divider separating eastbound and westbound traffic.

During the construction period, the original right turn arrangements will be maintained. According to the original design of the

improvement works, for road safety and management reasons, the original right turn arrangements will be cancelled upon completion of the improvement works except for the four locations at Bayside Villas, Hong Kong Garden, Airport Core Programme Exhibition Centre and Ting Kau Lot No. 403. Vehicles can make U-turns at the roundabouts to be provided at four locations, that is, Ting Kau Village, Rhine Terrace, Sea Crest Villa Phase 3 and Tsing Lung Tau Tsuen.

Since the commencement of improvement works in August 2001, some local residents had requested for changes to the traffic arrangements. In response to those requests, the Highways Department and the Transport Department had reviewed whether to retain or change the arrangements at those locations concerned along Castle Peak Road. The review findings showed that, on technical consideration alone, keeping the right turn arrangements at five locations should meet the basic standard for road safety (that is, adequate sight distance available). The five locations are in the vicinity of Long Beach Gardens, Sunny Villa, Riviera Apartment, Sea Crest Villa Phase 4 and Grand Bay Villa. The review recommended that the original right turn arrangement at Bayside Villas should be changed to a roundabout. Based on the review findings, the Government had changed the right turn arrangement at Bayside Villas into a roundabout and gazetted the new arrangement in February 2005. As a result, there would eventually be five roundabouts and three locations for making right-turn along this section of Castle Peak Road.

The Highways Department and the Transport Department initially considered that the suggestion to maintain the five right turn arrangements acceptable and were planning to gazette the proposed changes in accordance with the stipulated procedures. However, after taking into account the views from the Hong Kong Police Force from the traffic management, road use and traffic control

angles, it has been decided that the suggestion should not be pursued. The notes of the meeting held amongst the three departments on the subject are at Annex.

(f) and (g)

At present, vehicles are not permitted to turn right or cross over at two-lane (multiple-lane) carriageways where there are no traffic light control signals or right-turn lane, where the speed limit is 50 km/h or above, and where the traffic is heavy. Upon completion of the improvement works at Castle Peak Road, an exclusive traffic lane for right-turning traffic will be provided at the three locations where the right turn arrangements are to be retained. The design of this extra traffic lane will allow adequate sight distance and time for turning right. Such an arrangement complies with the existing road safety codes.

This section of Castle Peak Road will be classified as "Rural Road (A)" after completion of the improvement works. Right turn facilities are also provided for this type of road sections (such as Siu Lam and So Kwun Tan sections of Castle Peak Road and Tai Po Kau, Piper's Hill and Ma Liu Shui sections of Tai Po Road, and so on). These arrangements will be implemented only if traffic conditions permit and road safety considerations can be duly observed.

(h) During the construction period, the existing right turn arrangements along the road section will be maintained. The closure of a lane off Long Beach Gardens is only a temporary measure to facilitate vehicular access before full opening of the dual two-lane carriageways. The Highways Department has consulted the Hong Kong Police Force and other departments concerned before implementing the above temporary measure. All the lanes presently closed will be opened upon completion of the improvement works.

Annex

Traffic Branch Headquarters,
32/F, Arsenal House,
Police Headquarters,
Wanchai, Hong Kong.

**Notes of Special Meeting held on 2005.05.10
to Discuss Castle Peak Road Improvement Project
Proposed Right Turn Junctions between Area 2 & Ka Loon Tsuen**

In Attendance :-

Police:	Mr. B.D.M. Hancock	CSP Traffic
	Mr. CHIU Kai-ting	SSP Adm Traffic
	Mr. LAM Yiu-wing	SSP Traffic NTS
	Mr. WONG Chi-hang	SP TMAN
	Mr. NGAI Shu-tak	CIP DEV TMAN
	Mr. CHEUNG Kong-sang	SIP DEV TMAN
	Mr. LAM Yam-man	IP RMO Traffic NTS
HyD:	Mr. Adrian NG	Project Manager, Major Works
	Mr. WAN Man-leung	Deputy Project Manager, Major Works (2)
TD:	Mr. LEE Yan-ming	Chief Engineer, Traffic Engineering (NT/W) Division

Introduction

At Highways Department's request, a special meeting was held between 1000 hrs and 1100 hrs on 2005.05.10 at the Conference Room, Traffic Branch Headquarters, Arsenal House, PHQ. A summary of the comments, responses and opinions by different parties is reproduced hereunder.

Mr. Adrian NG (HyD)

- Original design concept was to build a 2 lane dual carriageway minimizing right turn access so that traffic flow along Castle Peak Road could be optimized without compromising safety. To facilitate local residents, 4 junctions allowing right turns into slip roads and 4 roundabouts were catered for;
- Construction work started in 2001 and will be completed in phases from now

until 2007;

- Existing Castle Peak Road before improvement is a single carriageway with about 30 locations permitting right turn in-out movements. During the construction period, current ingress/egress to these locations will be kept until completion;
- In the intervening period TD and HyD had been approached by local resident groups to retain right turn access to various properties. HyD and TD have commissioned their consultants to review the possibility of additional right turn movements on Castle Peak Road. 5 possible locations were identified. Of these 5 locations, a roundabout (recently gazetted and authorized), will be build outside Bayside Villa. Regarding the remaining 4 locations, HyD has discussed with TD as to the most suitable way forward;
- HyD recognized that Police had not been consulted earlier in this process, leading to the current situation. Apologies were offered for this oversight. However as plans were still being considered and nothing concrete decided, HyD valued input from Police and other involved parties.

Mr. Y M LEE (TD)

- Traffic volume at the remaining 4 suggested locations does not warrant traffic lights;
- Subject to Police and HyD agreement, a right turn into Long Beach Gardens was feasible, as HyD has provided a right turn lane allowing vehicles to wait but not obstruct others. However right turns out should be banned.

Mr. B.D.M. Hancock (Police)

- Police wished to focus meeting on general principles rather than a detailed examination of each proposed right turn.
- Police considered the original design ideal, however recent deviations to incorporate additional right turns had compromised the enhanced safety features of the upgraded road. TD's input was valued in this regard.

Mr. Y M LEE (TD)

- TD looks at individual cases to examine the possibility of allowing right turns in/out without reducing dual 2 lane arrangement;
- In response to Police question re. need to reduce 70 kph limit at such turns, TD stated that it would depend on the design of the road at that point, and whether Police recommended any reduction;
- Each location will be examined for good sight-lines and whether HyD can

provide physical measures to allow right turns in/out.

Mr. Y W LAM (Police)

- On 2005.04.14 the consultant had briefed Police that for junctions of this nature the speed limit would be reduced, and he enquired if this principle had now been changed?

Mr. Adrian NG (HyD)

- The design principle for Castle Peak Road improvements has not been changed. The current proposals under discussion are being reviewed and discussed in order to determine whether residents' demands can be met in some form without deviating from the original design concept.

Mr. M L WAN (HyD)

- HyD together with TD has further reviewed proposals for the 4 remaining locations for further discussion in this meeting;
- Allowing right turn in only outside Long Beach Gardens;
- The proposed right turn junction to Sunny Villa will not be pursued;
- The right turn in junction to Lot 417 will not be pursued;
- To allow a right turn in junction outside Sea Crest Villa Phase 4, as the road is wide enough for a feeder lane and has good sight-lines.

Mr. K S CHEUNG (Police)

- At a meeting with the Consultant last week, Police had noted some demand for a right turn out but very little demand for right turn in to Long Beach Gardens. Police also pointed out that the signaled junction about 50 meters to the west of Long Beach Gardens could be modified to allow u-turns to facilitate vehicles coming out from Long Beach Villa to head for Kowloon. The Consultant undertook to consider;
- Regarding Sea Crest Villa Phase 4, there are roundabouts on both sides, not far from the site. As these facilitate access, the need for an additional junction was hard to justify.

Mr. B.D.M. Hancock (Police)

- Noted that HyD and TD's criteria for creating right turn junctions had been publicly stated on a number of occasions. In the original design published in 2001, sufficient roundabouts had been included to cater for demand;
- The original design was well thought out and met its purpose in providing

enhanced traffic flow and improved road safety. It included 11 footbridges to segregate pedestrians from motorists;

- The Police view was that opening up additional right turn junctions would seriously compromise the original design and carry considerable safety implications;
- Even if movement was restricted to right turns in only, this would place turning vehicles in the path of oncoming traffic, which at 70 kph was unacceptable. Even a reduction to 50 kph did not greatly improve safety, whilst any temporary speed restriction undermined the upgrading of the road;
- Further, the creation of so many additional breaks in the central divider (to accommodate these turns) encouraged jay-walking, whilst PLBs and taxis would likely loiter there to await passengers;
- By so compromising the original design, additional Police resources would be needed to enforce speeding and jay-walking. All of these points had been pointed out to HyD in writing already, and nothing had changed following today's discussions.

Mr. Y M LEE (TD)

- TD considered that safety and other issues should be looked at again to see if these junctions should be banned. The decision should be a joint decision by the Government.

Mr. B.D.M. Hancock (Police)

- Police had heard nothing to change their stance that any deviation from the original design would unnecessarily compromise safety. This was equally the case whether one or five or more turns were added. For the record, Police did not support these proposed changes;
- Police reiterated that they fully agreed with the original design but did not agree with the major changes that were being proposed. Further, if HyD acceded to residents requests, it would be very difficult for them to control design criteria in the future.

Mr. Adrian NG (HyD)

- HyD appreciated this input from Police and TD and would not unilaterally change the design unless it was agreed by all parties.

Mr. B.D.M. Hancock (Police)

- Noted a follow-up article in today's newspaper (Apple Daily) saying that some

junctions are built on a trial basis. The Police view remained that whether temporary or permanent, their inclusion in the plan could not be supported for the safety and enforcement reasons already detailed above.

Mr. Adrian NG (HyD)

- Noted that the media may have misunderstood the current situation. Existing right turns were temporary only insofar as they remained open until construction was completed, when they would be closed up. For the eastern end of the road, it was hoped that all work could be completed by late May/early June, after which these right turns would be sealed.
- HyD reiterated that this had been a useful discussion and helped to clarify the Police's views on this matter. It was agreed that the best way forward was to adhere to the authorised design and proposals for the additional right turn locations should not be further pursued.

Mr. B.D.M. Hancock (Police)

- Thanked all parties for openly sharing views on this problem. As the lead Department in this issue, it was for HyD to consider how best to proceed, based on this discussion and the Police views re. safety and enforcement.

Meeting concluded at 1100 hrs

Sexual Offences

20. **MR LAU KONG-WAH** (in Chinese): *Madam President, regarding sexual offences in Hong Kong, will the Government inform this Council:*

- (a) *of the respective numbers of various sexual offences which occurred last year, broken down by:*
- (i) *the districts in which such crimes occurred; and*
- (ii) *whether such crimes occurred at public housing estates;*
- (b) *of the number of suspected persons prosecuted for sexual offences in the past year;*
- (c) *whether the police has taken special actions, such as stepping up patrols, at places where repeated sexual offences have occurred; and*
- (d) *whether the number of sexual offences has been on the rise in recent years; if so, of the measures in place to combat such crimes?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) The relevant statistics for 2004 are as follows:

Area	Number of reported cases	
	Rape	Indecent assault
Hong Kong Island	16	179
Kowloon East	10	155
Kowloon West	28	250
New Territories North	20	247
New Territories South	18	199
Islands	-	4
Total	92	1 034

<i>Public housing estates or elsewhere</i>	<i>Number of reported cases</i>	
	<i>Rape</i>	<i>Indecent assault</i>
Occurred at public housing estates	22	83
Occurred elsewhere	70	951
Total	92	1 034

- (b) Among the cases concluded in 2004, 34 persons were prosecuted for rape, and 418 were prosecuted for indecent assault.
- (c) Depending on the circumstances, the police take corresponding targeted actions to combat and prevent sexual offences. These include stepping up patrols by uniformed and plain-clothes police officers. Furthermore, where necessary, the police will take intelligence-led actions to identify and arrest offenders.
- (d) In the past five years, the number of reported cases for rape and indecent assault has remained stable. The details are as follows:

<i>Year</i>	<i>Number of reported cases</i>	
	<i>Rape</i>	<i>Indecent assault</i>
2000	104	1 124
2001	95	1 007
2002	95	991
2003	70	1 018
2004	92	1 034

In any case, the police will continue to take firm enforcement actions against sexual crimes, and continue to co-operate with other departments and organizations to raise public awareness on prevention of sexual crimes.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bill. We will resume the Second Reading debate on the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

CHIEF EXECUTIVE ELECTION (AMENDMENT) (TERM OF OFFICE OF THE CHIEF EXECUTIVE) BILL**Resumption of debate on Second Reading which was moved on 6 April 2005**

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MR TAM YIU-CHUNG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bills Committee), I submit the report to this Council.

The Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill) seeks to amend section 3 of the Chief Executive Election Ordinance (CEEEO) to provide that the term of office of a Chief Executive elected under Article 53 of the Basic Law is not five years but the remainder of the term of the preceding Chief Executive.

On the same day, 6 April 2005, the Bill was introduced to the Legislative Council, the Government of the Hong Kong Special Administrative Region (SAR) submitted a report to the State Council proposing that a request be made to the Standing Committee of the National People's Congress (NPCSC) for an interpretation of Article 53 para 2 of the Basic Law concerning the term of office of the new Chief Executive.

A Bills Committee was formed on 8 April 2005. It has since held six meetings with the Administration and has also met with and received views from 18 organizations and individuals. A detailed account of the deliberations of the Bills Committee is given in the written report; I will only report several salient points today.

Members of the Bills Committee have expressed concern about the meaning of the word "term" in the Ordinance and the Basic Law. Section 3(2) of the CEEEO stipulates that no person shall hold the office of the Chief Executive for more than two consecutive terms. With the new concept of the remainder of the term of office of the preceding Chief Executive introduced under the Bill, the

Bills Committee is concerned about whether the meaning of the word "term" in section 3(2) includes the remainder of a term. Members consider that the Administration should clarify whether the new Chief Executive may serve a maximum of seven years or 12 years.

The Administration agrees that the issue raised is important but not an urgent one that needs to be dealt with through the Bill. The Administration has undertaken to examine the issue carefully and thoroughly, and make known its findings in due course.

Members have also requested the Administration to clarify whether the meaning of the word "term" in Article 50 of the Basic Law, which stipulates that the Chief Executive may dissolve the Legislative Council only once in each term of his office, includes part of a term served by a Chief Executive elected to fill a vacancy in the office of the Chief Executive arising before the expiry of the normal five-year term.

The Administration has advised members that as the preceding Chief Executive has not dissolved Legislative Council under Article 50 of the Basic Law, Article 50 should not be an issue during the period from 2002 to 2007. The Administration considers that although the issue is important, it does not need to be addressed in the context of the current Bill.

Some members have also pointed out that the Bill will have implications on the operation of other provisions of the CEEO, such as creating anomalous consequences, or producing irrational or illogical results. These members have requested the Administration to review all relevant provisions of the CEEO with a view to introducing necessary consequential amendments to the CEEO in the context of the current Bill.

The Administration considers that there is no inconsistency between the provisions in the Bill and the provisions in the CEEO and other legislation. The sole purpose of the Bill is to provide that the term of office of a Chief Executive who fills a vacancy that arises otherwise than due to expiry of term of office shall last until such expiry. Thus, no consequential amendments are required.

The Bills Committee has also discussed the basis for the Chief Executive to request for an interpretation of the Basic Law by the NPCSC. Some members consider that the Government has not followed the proper procedure for seeking an NPCSC interpretation. While there is an express provision in

Article 158 para 3 of the Basic Law for a judicial request for an NPCSC interpretation, the SAR Government has chosen to ignore it. While Article 158 of the Basic Law has no express provision for the Chief Executive to request an NPCSC interpretation, the Acting Chief Executive has made such a request. Some members have also pointed out that if the Administration considers it necessary for the Chief Executive to have a role under Article 158 of the Basic Law, the Article should be amended to that effect after thorough consultation and deliberation.

The Administration has explained that the power of interpretation of the Basic law is vested in the NPCSC. Apart from the circumstances provided for in Article 158 para 3 of the Basic Law, an NPCSC interpretation can be made other than in the course of legal proceedings in the SAR.

Regarding the basis for the Chief Executive to request an interpretation by the NPCSC, the Administration has explained that Article 43 of the Basic Law provides that the Chief Executive shall be the head of the SAR and shall represent the SAR. Article 48(2) of the Basic Law provides that the Chief Executive shall be responsible for the implementation of the Basic Law and other laws which, in accordance with the Basic Law, apply in the SAR. Given that the Chief Executive has these constitutional powers and functions, the Chief Executive has the duty to make a report to the Central People's Government in the event of him meeting difficulties in the course of exercising such powers and functions. The Administration considers that the whole process of interpretation is conducted in accordance with the Constitution and the Basic Law.

Madam President, on 27 April 2005, the NPCSC made the interpretation of Article 53 para 2 of the Basic Law (the Interpretation). The Bills Committee has also discussed the consistency of the Bill with the Interpretation. Some members consider the Bill exceeds the scope of the Interpretation, for according to the Interpretation, the requirement that the Chief Executive elected to fill a vacancy under Article 53 para 2 of the Basic Law should serve the remainder of the term of his predecessor will only apply prior to 2007. As for the term of office of the Chief Executive after 2007, it is linked with the method for selecting the Chief Executive after 2007, in that the term of office shall be determined in accordance with the amended method of selecting the Chief Executive. However, the present formulation of the Bill has not reflected such a timeframe. Some members have suggested that the Administration should amend the Bill to make it consistent with the Interpretation.

Some other members consider that the Bill is acceptable, as there is scope for the CEEO to be further amended, if the method for selecting the Chief Executive after 2007 is amended.

The Administration has advised that according to the Interpretation, the "remainder of the term" requirement will continue to be in effect unless and until amendments are made to the method for selecting the Chief Executive specified in Annex I to the Basic Law. The Administration considers that the Bill is fully consistent with the Interpretation.

Some members have reservations about the Bill itself. They consider that the Interpretation made by the NPCSC on 27 April 2005 has already provided a legal and constitutional basis for the term of office of the new Chief Executive, thus there is no need for the Bill to be passed by the Legislative Council at this stage. These members consider that the Administration should introduce all amendments relating to the election of the Chief Executive, including amendments to give effect to the new election method for the third term Chief Executive, if any, and amendments to address the various issues raised by members during the deliberation of the current Bill, in one package. Some other members, however, consider that there is a need to enact the Bill to give a clear legal basis to the appointment term of the new Chief Executive in local legislation.

The Administration has undertaken that it will address the relevant issues raised by the members of the Bills Committee in the Fifth Report to be issued by the Constitutional Development Task Force in the second half of the year.

Next, Madam President, please allow me to express the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) towards this Bill, and our support for the passage of this Bill.

After Mr TUNG Chee-hwa resigned from the office of the Chief Executive in March, according to the Basic Law and the CEEO, a new Chief Executive returned by by-election must be elected on 10 July. However, since the term of office of the new Chief Executive is not stipulated in the relevant ordinance on election, while it is the legislative intent of the Basic Law that the term of office of the new Chief Executive should be the remainder of the term of the preceding Chief Executive, it is necessary for the Government to introduce

the Bill to make definite provision to provide the essential legal basis for the election of the new Chief Executive to be conducted on schedule.

On the day the SAR Government introduced the Bill, it concurrently submitted a report to the State Council proposing that a request be made to the NPCSC for an interpretation of Article 53 para 2 of the Basic Law to explain the term of office of the new Chief Executive. The DAB supports this. We consider that though the SAR Government has already introduced the Amendment Bill to this Council, society still embroils in the disputes on the term of the Chief Executive. The election of the new Chief Executive may not be conducted in time because of these disputes, thus creating a constitutional vacuum in Hong Kong and directly affecting the effective operation of the Government and the stability of society. Therefore, the SAR Government does have the responsibility to eliminate these uncertainties so as to maintain the confidence of the public. The issue on the term of office of the Chief Executive cannot be resolved by the SAR itself. The Chief Executive of the SAR being accountable to the Central People's Government and the SAR has to report the issue to the State Council and make recommendations in accordance with the Basic Law. We thus consider this a responsible act.

To support the amendment of this Bill is tantamount to supporting the interpretation of the NPCSC. But some people still hold a negative attitude to the NPCSC interpretation, this is really regretful. The power of interpretation of the Basic Law is vested in the NPCSC. The SAR Government may seek the Interpretation, as this mode of legal operation is part of the constitution and rule of law of Hong Kong. Therefore, the Interpretation was made in accordance with the law and has inflicted no damage on "one country, two systems" and our "high degree of autonomy". On the contrary, this is a security system safeguarding the effective governance by the SAR Government and the social stability of Hong Kong.

The interpretation of the Basic Law by the NPCSC has not injured the judicial independence and power of final jurisdiction of Hong Kong. The interpretation of law by the NPCSC is conditioned. Its interpretation of the Basic Law is on provisions which require clearer definition or issues which require supplementary stipulations, but not on the applicability of law in the course of legal proceedings. Thus, it will not affect the power of final jurisdiction the Court of Final Appeal possesses in cases under its jurisdiction.

Besides, in terms of the manner of the interpretation in legal context, the method adopted by the NPCSC interpretation is the same as that adopted in interpretation of common law. Literal interpretation of pure wording must be avoided, and the interpretation should be faithful to the legislative intent. This is not "instant legislation" as some Members have referred.

We obviously see that the interpretation this time around, which clarifies the term of the new Chief Executive, has won the support of the majority. Therefore, the current Bill will certainly be supported by the majority.

On 27 April, the NPCSC gave an interpretation on Article 53 para 2 of the Basic Law to further clarify the constitutional provision on the term of office of the Chief Executive to be returned by by-election. But this time, some Members take it the other way round, criticizing the amendment of the Bill for exceeding the scope of the Interpretation. These Members consider that the term of office of the Chief Executive returned by by-election as stated in the Interpretation only applies prior to 2007. I can hardly agree with the views of these people who have made no effort to understand the issue but aim only to carp.

According to the Interpretation, the "the remainder of the term" requirement is not confined to the situation prior to 2007 but will continue to take effect. Until when then? It will continue to take effect until amendments are made to the method for selecting the Chief Executive specified in Annex I to the Basic Law, when the Chief Executive is no longer selected by an Election Committee with a fixed term. Therefore, the Bill is fully consistent with the content of the NPCSC interpretation.

As to whether Committee stage amendments should be moved to reflect the following sentence stated in the Interpretation (and I quote to this effect): "and that after 2007, the abovementioned method for selecting the Chief Executive could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive" (end of quote), I consider it not necessary. For, first, according to the established practice in law drafting, it is unnecessary to predict the possible amendment that may arise in future. For instance, the Legislative Council (Amendment) Ordinance 1999 enacted in the year 1999, the Legislative Council (Amendment) Ordinance 2003 enacted in 2003 and the Chief Executive Election

Ordinance enacted in 2001 only stipulated the requirement on the election at the time. Though Annex I and Annex II to the Basic Law have already stated the relevant requirement beyond the election at the time, it is not necessary to predict possible future amendment in an election bill for the current term.

Second, according to the NPCSC interpretation, after 2007, only when amendment to the method for selecting the Chief Executive specified in Annex I is made does the term of office of the Chief Executive returned by by-election needs to be determined in the light of the amended method for selecting the Chief Executive. Before the method is amended, the term of office of the Chief Executive returned by by-election should be confirmed according to the existing selection method. The present Bill has fully reflected the above content and thus there is no possible loophole which requires plugging.

The present Bill is a straightforward Bill which deals mainly with the term of office of the Chief Executive returned by by-election. I acknowledge that there are other outstanding issues which need to be addressed, such as the requirement on holding office of the Chief Executive for no more than two consecutive terms, and how the number of times a Chief Executive may dissolve the Legislative Council during each of his term be counted. However, Members may have different opinions about these issues and a consensus is unlikely to be reached within a short time. Since these are no urgent issues that need to be resolved immediately, it is not necessary to include these in the current Bill, affecting the timely selection of the Chief Executive by by-election. However, the Government should study these issues carefully in future, vigorously seeking the consensus of society with a view to further perfecting the relevant legislation.

Madam President, upon the passage of this Bill, disputes in society on the term of office of the Chief Executive to be returned by by-election will come to an end, and the nomination of candidate for election of the new Chief Executive will commence. The DAB hopes that the candidate running for the office of the new Chief Executive will not only be accountable to the Election Committee or just answer their questions. We hope that he will come forward to face the some 6 million people in Hong Kong, introduce his election platform, vision of governance and administrative strategies and listen carefully to the views of all sectors. He should pool the forces of all sectors to work for the future of Hong Kong. I wish for the smooth election of a new Chief Executive. With this remarks, I support the Bill.

MR RONNY TONG (in Cantonese): Madam President, the late Chairman MAO Zedong once remarked, "What is constitutionalism? It is democratic government." Constitutionalism is the Constitution put in practice, a basic element of the democratic rule of law. As a matter of principle, all laws must be compatible with constitutionalism. It goes without saying that the provisions of the Constitution must be unequivocal, comprehensive and free from self-contradiction, and so must the law.

Legislators have the responsibility to respect constitutionalism. Legislation must be made with meticulous care. It must not be prone to abuse, nor must it create contradictions. It should by no means be reduced to a political tool for suppressing democratic ideals and undermining the rule of law.

However, it is regrettable that the Government has made all of the above mistakes in drafting the Bill in question. The provisions of the Bill are confusing and unclear and prone to abuse, creating inconsistencies and hence contradictions within the whole piece of legislation. They are not addressing any practical needs. The impression one gets is that in order to serve the political purpose of prescribing a two-year probation period for the new Chief Executive, all other principles must give way.

The Bill provides that, subject to the following two requirements, a new Chief Executive shall serve the remainder of the term of his predecessor: First, a vacancy in the office of the Chief Executive arises during the term of office of a Chief Executive; and second, a new Chief Executive is appointed by the Central Government "to fill the vacancy before the expiry of the term of office".

The second requirement is entirely unnecessary. None of the provisions of the Basic Law prescribes that the Central Government has the power or the obligation to decide whether a certain Chief Executive is to be a Chief Executive who serves the regular term or one who fills a vacancy. Neither was this point mentioned in the Interpretation the NPCSC gave on Article 53 of the Basic Law. The introduction of such a requirement only serves to muddle the law and it will even leave room for abuse. Lord Justice DIPLOCK said in "Merkin Island Shipping Corporation" (1983) that "Absence of clarity is destructive to the rule of law". Time is not an issue in rectifying such a flaw. All it takes is simply the deletion of the new sub-section (1A)(b) proposed in clause 2 of the Bill. Why is the SAR Government adamantly refusing to do this?

Both Article 53 of the Basic Law and the existing Chief Executive Election Ordinance (CEEEO) are based on the premise that a Chief Executive shall serve a term of five years. The Basic Law makes no mention of the circumstances under which no election is needed to fill a vacancy in the office of the Chief Executive. However, introducing the "remainder of the term" concept without introducing corresponding provisions at the same time to explain when an election will be unnecessary for the selection of a Chief Executive to fill a vacancy would only lead to the scenario that the election of a Chief Executive filling a vacancy and that of a Chief Executive serving the full term may be held successively within a short period of time, or even concurrently. This is a bad consequence that is as surreal as it is absurd. LENIN said, "A constitution is fictitious when law and reality diverge". The Bill has imposed on the arrangements for the Chief Executive elections the concept that a Chief Executive filling a vacancy shall serve the remainder of the term of his predecessor. It is a makeshift remedial measure diverging from reality, which has been introduced to achieve a political purpose. Such an arrangement is inconsistent with the rule of law.

The introduction of the concept of the remainder of the term does not only make the other original provisions of the Basic Law and the CEEEO confusing, but also make the original provisions contradict the newly introduced provisions. First of all, if the "term of office" includes the "remainder of the predecessor's term", then does the "consecutive term" as provided for in Article 46 of the Basic Law include the "remainder of the predecessor's term"? If it does, is it fair to the Chief Executive who is selected to fill a vacancy arising prematurely? If it does not, is it fair to other candidates? What is the meaning of "term" in other provisions, for example, in Article 50? Does the Chief Executive who is selected to fill a vacancy arising prematurely have the power to dissolve the Legislative Council? What will happen if the previous Chief Executive has dissolved the Legislative Council before the office of the Chief Executive falls vacant? As these are the fundamental systems of the SAR, any solution to the issue may affect other provisions, hence the legislators cannot afford to turn a blind eye to these questions.

In his book entitled *On Constitution*, Prof XIAO Weiyun, while referring to the stipulation of the Constitution, says that, "Currently, when some of the bills make reference to the provisions of the Constitution, the content of the Constitution is sometimes altered by adding, removing or revising the provisions. This demonstrates the lack of understanding of the supremacy, fundamentality

and authority of the stipulation of the Constitution. Stability is another feature of the stipulation of the Constitution..... it cannot be changed unpredictably."

In interpreting Article 53 of the Basic Law, the NPCSC emphasized that the original legislative intent should only apply to the arrangement in 1997. It did not make it mandatory for the selections of the Chief Executive after 2007 to follow the original legislative intent. However, the Bill provides that the term of office of the Chief Executive selected to fill a vacancy arising prematurely applies thereafter in all circumstances. It obviously goes beyond the NPCSC Interpretation of Article 53 of the Basic Law. As Prof XIAO Weiyun has said, such amendment demonstrates the lack of understanding of the supremacy, fundamentality and authority of the stipulation of the Constitution. If no respect is shown for the provisions of the Constitution, no respect is shown for constitutionalism nor the rule of law. I do not understand why the SAR Government has been so adamant in refusing to introduce amendment to the relevant provisions.

In fact, it is clearly provided in Article 11 of the Basic Law that no local law shall contravene the Basic Law, and the NPCSC Interpretation of Article 53 has in reality "amended" the term of office of the Chief Executive selected to fill a vacancy arising prematurely by providing that his term of office shall be the "remainder" of the preceding Chief Executive. Thus, there is no urgency for the SAR Government to amend the CEEO in such a hasty manner. In fact, the SAR Government does have ample time to make a more comprehensive amendment to the CEEO after detailed consideration, so as to resolve the confusing and contradictory constitutional issue mentioned above.

Madam President, as legislators, we should not only be accountable to our conscience and the people of Hong Kong, but we should also uphold the rule of law. There is no room for compromise with respect to the rule of law, as with democracy. We will never turn ourselves into a rubber-stamp or a voting machine with no thinking of our own, nor should we become part of a political tool. This is a disgrace to the sacred legislative work. As the SAR Government urges us to pass the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill, I can only quote the words spoken by Mr Donald TSANG, the Chief Secretary for Administration, in this Chamber, that "we regret that we cannot act in this way."

DR YEUNG SUM (in Cantonese): Madam President, with a heavy heart, I rise to speak against the Second Reading of the Bill concerning the term of office of the Chief Executive.

Madam President, in regard to the term of office of the Chief Executive of the Hong Kong Special Administrative Region (SAR), Article 46 of the Basic Law already has very clear provisions. Article 46 of the Basic Law provides that "The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms." This is written very clearly without any grey area. According to Article 46 of the Basic Law, the term of office of any Chief Executive elected according to Article 45 of the Basic Law is five years. When the Chief Executive Election Ordinance was enacted in 2001, the provisions concerned were also made on the basis of this article.

This had been the original stance of the SAR Government. It was not until Mr TUNG Chee-hwa had resigned from the position of the Chief Executive and the Central Authorities had decided only to offer a probation of two years to the next Chief Executive according to their political need — I stress that it is political need — that the SAR Government needed to change its original stance. Afterwards, we saw the Secretary for Justice seeking legal advice and the so-called legislative intent from the Central Authorities through the Legal Affairs Commission of the Standing Committee of the National People's Congress (NPCSC). They came up with the excuse and quibbled that as far as the legislative intent of the Basic Law was concerned, there was actually a by-election system. In other words, if the office of the Chief Executive becomes vacant before the expiry of the term, the new Chief Executive returned will only serve the remainder of the term of the preceding Chief Executive. This is also the arrangement of the mainland authorities. Thus, the SAR Government had made a mistake earlier.

Finally, the SAR Government submitted a report to the State Council, requesting the State Council to ask the NPCSC for interpretation of the Basic Law. On 27 April this year, the NPCSC conducted the third interpretation exercise, reinterpreting Article 53 para 2, Article 45 para 3 and Annex I of the Basic Law, so that the term of office of the Chief Executive has a new interpretation in the Basic Law as follows: before 2007, if the office of the Chief Executive becomes vacant within a term of five years, the term of office of the new Chief Executive should be the remainder of the term of the preceding Chief

Executive; after 2007, if the method of returning the Chief Executive has been amended, in the event that the office of the Chief Executive becomes vacant within a term, the term of office of the new Chief Executive should be decided by the amended method of returning a Chief Executive.

In accordance with the interpretation of the Basic Law by the NPCSC on 27 April, if the office of the Chief Executive again becomes vacant in November 2006, according to Article 53 of the Basic Law, the SAR will have to conduct an election within six months in order to return a new Chief Executive to serve the remainder of the term of the preceding Chief Executive until 30 June 2007. However, at the same time, the SAR will have to hold another election instantly, or within a few months or within one to two months, in order to return a new Chief Executive with a term of office of five years. Madam President, the purpose of quoting this example is to show the absurdity of this amendment. Do Members see that this is an unconvincing political system? In fact, Article 45 and Annex I of the Basic Law only provide for the method for the selection of the Chief Executive, in which there is actually no provision on the by-election and time for by-election of the Chief Executive, not to say the arrangement for the remaining term of office. Using the same method of selecting the Chief Executive as stipulated in Article 45 and Annex I of the Basic Law, why is the Chief Executive elected in 2002 has a term of five years, while the one elected in 2005 can only have a term of two years? Surely the public will find it difficult to believe that this is the so-called genuine legislative intent.

Moreover, Madam President, both the NPCSC and the SAR Government are still unable to spell out to the public whether the shortened term of office of the by-elected Chief Executive is counted as one term. How can the legislative intent be so unclear? The SAR Government keeps on saying that it has to let the candidates of the future Chief Executive Election know the length of the term of office, and thus the Ordinance has to be amended. However, the SAR Government has so far failed to let the candidates know whether the remaining term of office to be served will be considered as one term or not, the length of the consecutive term that the new Chief Executive can strive for, that is, whether he can serve for seven years or 12 years? Perhaps all these are basically not provided in the law, but totally depend on how the Central Authorities think at that moment. Is that not also absurd? Is it tantamount to injecting some ridiculous elements into our system of rule of law which we have built up so painstakingly? To the question of whether the candidate can serve for seven years or 12 years, it is surprising that the Government said that it did not know

and even pointed out that it was not important. On behalf of the Bills Committee, Mr TAM Yiu-chung, Chairman of the Bills Committee, said that this could be determined in due course. This has exactly reflected the absurdity of the thinking of both the SAR Government and the Central Authorities.

Therefore, we cannot agree with the Government that the substance of the amendment to the Bill is in line with the genuine legislative intent. We can only say that the Bill of the Government is in line with the political will and intention of the Central Government. It is the practice in the Mainland that politics overrides the law and the rule of man supersedes the rule of law. But that is definitely not the system in Hong Kong. Under "one country, two systems", Hong Kong should retain its original legislation, including the common law system. We stand firm in defending the system and rule of law in Hong Kong. Thus, we have to oppose with all our strength the Bill proposed by the Government and the resumption of the Second Reading debate on the Bill.

Besides, there are also a lot of problems unsolved in the Bill proposed by the Government, some of which have been mentioned by Mr TONG. In the above, I have also mentioned some questions concerning the consecutive term, the possibility of conducting more than one Chief Executive Election within a short period of time, and so on. Apart from all this, the term of the Election Committee (EC) responsible for selecting the Chief Executive will expire on 14 July 2005. Afterwards, if — just in case — the office of the Chief Executive becomes vacant again in December 2005, how is the SAR going to elect a new Chief Executive? Shall we consider the existing term of the EC as the new term of the EC, or re-elect members to the new term of the EC so that the new Chief Executive can be elected by the EC of a new term? Should the new Chief Executive elected by the EC of a new term serve the remainder of the term of the preceding Chief Executive, which is up to 30 June 2007, or should he serve a term of five years? There are indeed lots and lots of unsolved problems in this aspect. However, I fail to understand why Members of the royalist party can totally neglect these questions and support the Government with full efforts.

Madam President, I conclude as follows: The SAR Government is now amending the Chief Executive Election Ordinance in a piecemeal manner which is devoid of an overall constitutional arrangement and holistic consideration. This is destructive rather than constructive to the system. Should the SAR Government go and seek interpretation of the Basic Law from the NPCSC as an instant solution whenever it comes across a political problem? The existing Bill

is basically unable to provide a fine solution to the possible recurrence of vacancy in the office of the Chief Executive. Therefore, the Democratic Party has to oppose the Second and Third Readings of the Bill.

Madam President, although we in the pan-democratic camp will voice our views on the absurdity of the amendment, I believe that with the full support of the royalist party, the Bill will also be passed as scheduled. I also believe that the reaction from the public will not be drastic, as they consider that the performance of the former Chief Executive is indeed too unsatisfactory, and Mr Donald TSANG may be their new hope. Furthermore, the Acting Chief Executive is now in the honeymoon period of public views. And during this period, even though there are a lot of queries on the amendment, public views may not react so drastically. However, there were unprecedented percussions on the absurdity and foundation of the rule of law yesterday, to which I express my deepest regret. Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, there is a famous quote from Mr PENG Zhen, a veteran of the Communist Party of China, which says to this effect, "Whether the Party or the law is more authoritative, I cannot tell." We are all aware that when he said this, the mainland legal system was still rather underdeveloped. Yet this saying of "whether the Party or the law is more authoritative" can be said to have revealed the crux of the matter. However, it is sad to see that this saying is still valid in Hong Kong today to a certain extent.

In a society governed by the rule of law, the Government cannot be above the law, and should never arbitrarily twist the clear meaning of a legal provision for political ends.

The present amendment to the Chief Executive Election Ordinance (CEEEO) is made to align with the Interpretation of Article 53 of the Basic Law by the Standing Committee of the National People's Congress (NPCSC). According to the Interpretation, the term of office of the "new" Chief Executive returned in a by-election should only be the remainder of the unexpired term. But where does this legislative intent come from?

Ms Elsie LEUNG, Secretary for Justice, explained that the legislative intent came from the opinions of the mainland legal experts. Prof XU Chongde and LIAN Xisheng, members of the Basic Law Drafting Committee (the

Drafting Committee) who took part in the drafting of the Basic Law, "proved" this legislative intent from their recollection.

Nevertheless, why did she only ask the duo among so many members of the Drafting Committee? Why can the Government not furnish striking evidence in black and white to prove that there is such a legislative intent? The ground put forward by the Government is that the words "一屆" (term) were later deleted from Article 53 of the "Draft Basic Law (for Solicitation of Opinions) of the Hong Kong Special Administrative Region of the People's Republic of China" (the Draft Basic Law (for Solicitation of Opinions)) published in April 1988, which stated that "in the event that the office of Chief Executive becomes vacant, a Chief Executive of the new term (新的一屆行政長官) shall be selected within six months".

In studying the Bill, I asked the Legislative Council Secretariat (the Secretariat) to assist us in collecting all the draft papers on the term of office in the Basic Law. As a result, the Secretariat furnished us with a big batch of materials. What have I come up with after reading these materials? I found a document called "Notes of an Exchange Meeting Between the Special Group on Political Structure (3) and the Members of the Drafting Committee" (the Notes) on 6 June 1988. Four members of the Drafting Committee, namely Mr XIAO Weiyun, Mr SHAO Tianren, Mr Louis CHA and Mr Raymond WU, attended the meeting that day and the convenor was Mr Gary CHENG. That meeting was also attended by 15 members of the Basic Law Consultative Committee, including Dr Philip WONG of this Council. Questions on the Draft Basic Law (for Solicitation of Opinions) were raised by members in the meeting and answered by the four members of the Drafting Committee. Among those raised, one question and its answer were very crucial.

Paragraph 1.2.2 of the Notes reads as follows, "A member asked whether 'the new term' in Article 53 meant a term running afresh or the remainder of the unexpired term." Then, members of the Drafting Committee responded in paragraph 10.4 of the Notes that "As Article 53 refers, the new Chief Executive should serve another term for five years and it had no connection with the preceding term of office".

The above question and answer are the only reference to Article 53 in the Notes. Both of them are very clear. The question was asked to seek clarification of whether "the new term" refers to a term of office running afresh

or the remainder of the unexpired term. The answer given by members of the Drafting Committee not only stated clearly that "the new Chief Executive should serve another term for five years", which means that his term of office shall run afresh, but also contained a further remark that "it had no connection with the preceding term", that is, it is not necessary to consider the preceding term of office.

However, some people do not agree to this because the later deletion of the two words "一屆" (term) proved that the Article had been altered. Therefore, there is nothing to do with Article 46. Article 46 only refers to the term of office generally. But if you have studied these two batches of documents provided by the Secretariat, you can find that Article 46 and Article 53 were actually handled side by side and in parallel to each other. In other words, if the two words "一屆" (term) were used in Article 46 or Article 53, they would be used in both Articles. If the two words were not used in either of the Articles, they would not be used in both.

As a matter of fact, the changes can be divided into three stages. For example, in 1987, the two words "一屆" (term) were not used in either Article 46 or Article 53, then known as Article 50.

Later, in the Draft Basic Law (for Solicitation of Opinions) published in April 1988, we find that the word "屆" (term) was used in both Article 46 and Article 53. Article 46 reads, "Each term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms." Article 53 para 2 reads, "In the event that the office of Chief Executive becomes vacant, a Chief Executive of the new term shall be selected within six months."

In the third stage, the word "屆" or the two words "一屆" were deleted in both Article 46 or Article 53 as shown in the "Compendium of Documents of the Eighth Plenary Session of the Basic Law Drafting Committee of Hong Kong Special Administrative Region" published in January 1989.

Therefore, if you spend some time checking the records, you can find that we cannot cheat history. Nor can we cheat the people of Hong Kong. Article 46 and Article 53 are linked to each other and the concept of the remainder of the unexpired term has never been mentioned. Apart from a term of five years, no other terms have ever been mentioned.

In addition, there is a method called "reduction to absurdity" in logic. It is an approach to test whether the conclusions derived from an assumption that an argument is correct are contradictory. If they are found contradictory to each other, it will prove that the argument cannot stand. If the term of office of the new Chief Executive is interpreted as the remainder of the unexpired term, many ridiculous consequences will be brought forth. This again proves that such an "instant noodle" interpretation can only serve as a handy tool for political expediency.

Take the date of election as an example. Under section 10(1) of the CEEO, where the office of the Chief Executive becomes vacant upon the expiry of his or her term, the election shall take place on a Sunday 95 days before the expiry of his or her term. However, section 10(2) stipulates that where the office of the Chief Executive becomes vacant because of the death of the Chief Executive or other reasons, the election shall take place on a Sunday 120 days after the date on which the office becomes vacant. Should the concept of the remainder of the unexpired term be adopted, it would be possible to have a ridiculous situation of conducting the election of the Chief Executive twice within 15 days if the period of the remainder of the unexpired term is very short. The term of office of one Chief Executive is five years while that of another is only a few weeks.

Moreover, many problems surrounding this interpretation remain unresolved, and have been raised by some Honourable colleagues earlier. Article 46 of the Basic Law stipulates that the Chief Executive "may serve for not more than two consecutive terms". In accordance with this provision, it is clear that the maximum term of office of a Chief Executive should be 10 years.

However, if we accept the interpretation on the remainder of the unexpired term, the word "term" may have two meanings: one refers to the normal term of office of five years while the other refers to the remainder of the unexpired term. Then, problems arise. Article 46 stipulates that the Chief Executive "may serve for not more than two consecutive terms". Does it include the remainder of the unexpired term? If it is included, the Chief Executive to be selected on 10 July can serve a maximum term of seven years, not 10 years. If it is not included, he or she can serve a maximum term of 12 years, not 10 years. Evidently, in this respect, there exists a very serious problem which needs to be resolved. In addition, there are still many similar problems because whenever reference is made to the word "term", whether in the Basic Law or in the CEEO, there is also

a need to explain whether the word "term" includes the remainder of the unexpired term. Such an explanation is extremely important. This reflects a serious attitude a legislator should take in legislation. I have repeatedly raised this question before. But Mr Stephen LAM, Secretary for Constitutional Affairs, always says that the issue needs to be further studied and there is no urgency. But the question is not whether it is urgent or not. It matters whether we are taking a serious attitude in legislation or whether our law, legal system or institution is predictable. I do not think the Government does not know these problems. It just shows disrespect for the rule of law for the sake of political expediency.

Certainly, it may be said that this problem originates from the interpretation. This can also be seen from the interpretation made by the NPCSC this time because the NPCSC has explicitly stated that the interpretation applies to the situation before 2007. Whether it will also apply after 2007 depends on what amendments will have been made to the methods of selecting the Chief Executive. Therefore, it again proves that whether it is the interpretation or the request for the Legislative Council to pass the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill, they are both tools for political expediency. It is not the proper attitude we should take in legislation.

Eight years after the reunification, three interpretations, of the Basic Law have been made. The situation is aggravated by each interpretation and the way it was done has become worse and worse each time. It seems that the Government is holding a sword over the law. In the first interpretation, the Government acted like a bad loser, and requested the NPCSC to repudiate the decision of the Court of Final Appeal on the right of abode issue. In the second interpretation, they ruled out as soon as they could the possibility of selecting the Chief Executive in 2007 and forming the Legislative Council in 2008 by universal suffrage. Now this time, they wanted to win it without putting up a fight by denying the Court an opportunity to discharge its constitutional responsibility to deal with all constitutional issues under the Basic Law. This time, the Government asks the Legislative Council to pass a piecemeal Bill that holds disrespect for the rule of law and the proper attitude of legislation.

Frankly speaking, the Government only wants to amend or even change the law under the disguise of interpretation. Worse still, it has not taken a serious attitude to amend the law. It just does this in a piecemeal manner and

has adopted some indirect and ridiculous explanations to replace the provision which is very clearly stated itself. For the sake of political expediency, it has created a number of legal problems which still remain unresolved to date.

With these remarks, Madam President, I oppose the Second Reading of the Bill.

MS MARGARET NG: Madam President, let me read from an elementary textbook on legislative drafting:

"An Act of Parliament is a serious document which confers rights and privileges and imposes obligations. It regulates the conduct of our affairs and demands a concentrated study

Every word in a statute is intended to have a definite purpose

All the provisions in it are intended to constitute a unified whole.

It can only be understood if it is read as a whole. Its drafting proceeded on that basis"

The question is, does the Bill now before us meet these basic requirements?

The Bill before us purports to amend the Chief Executive Election Ordinance. The Ordinance was drafted and enacted in 2001 on the basis that the term of a Chief Executive elected according to its provisions is five years, whether the election is held at the expiry of a term, or to fill a vacancy arising before the term has expired. This was clear from the minutes of 5 June 2001 of the Bills Committee which scrutinized the relevant bill. It was also confirmed unequivocally to this Council last May.

The Government now seeks to amend the Ordinance fundamentally, so that the term of the Chief Executive elected to fill a vacancy arising before expiry is to be what remains of that term. Leaving aside whether or not this is desirable or compatible with the Basic Law, before such an amendment can be made, the whole Ordinance must be given a thorough check to see how each part is affected, and whether the Ordinance still works together as a whole, without

creating anomalies and ambiguities. This does not appear to have been done. The Bill before us is a flimsy document baldly asserting that from now on, the "term" of a Chief Executive elected may be five years or may be shorter, depending on whether the Chief Executive's office falls vacant before its term expires.

This gave rise to a host of problems. As the Legal Adviser of the Bills Committee pointed out, there are at least three problems:

- (1) Section 3(2) of the Ordinance provides that a Chief Executive can serve a maximum of "2 consecutive terms". What meaning does the word "term" now have? Does it include the remainder of a term? Supposing the remainder of the term is two years, does "2 consecutive terms" now mean "2+ 5", or does it mean "2+ 5+ 5"?
- (2) Section 6 provides that an election has to be held within six months if the Chief Executive's office falls vacant before his term expires. This is also in fact a requirement of Article 53 of the Basic Law. Now, how is this provision to function if what remains of his term is too short for an election to be held? Or, say only four months of his term are left, would it mean that the new Chief Executive will serve only for a few days, and in the meantime, another election will have to be held to elect the next Chief Executive?
- (3) Section 10 requires an election to be held on the 120th day (if it falls on a Sunday) of the vacancy occurring. Section 11(3) provides that if the Chief Executive so elected cannot assume office for any reason, a second polling should be held. How are these provisions to function if the remainder of the term is too short for a second polling?

Yet, the Government refused to answer these questions. The response of the Secretary for Constitutional Affairs was that these were "related issues"; "they are important but do not have to be dealt within the context of the current Bill." It is incredible that he should not have appreciated that these are not questions of future policy but present meaning of the law, which have to be clarified now. Many more anomalies were raised. They were met with the same indifference. The Government must have known that the amendment does

not work. It must have known that the Bill is half-baked at best. Such a bill is not fit to be brought before the Council for enactment. It should be sent back to the drawing board. It is, therefore, inappropriate for us to propose any Committee stage amendments. The Government has refused to make any amendments of its own accord.

Madam President, an even more serious point is that, but for the Interpretation of the Standing Committee made on 27 April expressly to facilitate the passage of this Bill, the Bill would have been blatantly unconstitutional. The result of the judicial review already before the Court challenging the single material clause of the Bill would undoubtedly be a declaration of the Court to that effect, that is, it is unconstitutional. To force through the Bill and defeat the proper process of the Courts, the Government requested for an Interpretation by the Standing Committee. Thus, this Bill occasioned the third Interpretation by the Standing Committee, and with it, all the damage to the rule of law. The Interpretation may, as a matter of law, make the Bill constitutional. But as a matter of fact, when the Bill was introduced, it was clearly in breach of Articles 46 and 53 of the Basic Law as everybody could see. You can change the law but you cannot rewrite history. This Bill was and is and will remain disreputable and a blot of shame.

The irony is that, after all, the Bill is still unconstitutional. It is inconsistent with Article 53 paragraph 2 as interpreted by the Standing Committee. Perhaps the Standing Committee felt uncomfortable about all the anomalies which the introduction of a remainder-term concept is creating all over the Basic Law itself. For example, we have to ask now what the reference to "term" means in Article 50, where it says the Chief Executive may dissolve the Legislative Council "only once in each term of his or her office"; and again, what Article 46 means in saying that the Chief Executive "may serve for not more than two consecutive terms"; or Article 55 which provides that "The term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them". Does it mean that the present Executive Council is required to step down or to stay on with Mr TUNG's resignation? The Government told us, unblushingly, that the question in fact did not arise because all Members of the Executive Council had been invited to stay on. The question in law, however, remains, and perhaps the Standing Committee found it harder not to blush at such a shambles being made of the Basic Law.

Or perhaps the Standing Committee merely wanted to keep its options open or limit the legal and political damage, but the contents and effect of the Interpretation were narrower than previously publicized as the "original intent" of Articles 53 and 46. The provision that a new Chief Executive elected to fill a vacancy arising before the expiry of a term serves only the remainder of the term is expressly confined to the situation up to 2007 and firmly linked to Annex I. The Bill goes beyond that: It boldly provides that "where" a vacancy arises under section 4(b) or (c) of the Ordinance, and a person is appointed by the Central People's Government as Chief Executive to fill the vacancy, the term of office "shall expire upon the expiry of the term" of the former Chief Executive. Of course, at the time the Bill was drafted, the Government might not have known that the Interpretation would turn out to be so confined in scope. But to persist in the original drafting knowing that it does not accurately reflect the Basic Law as interpreted suggests a fundamental contempt of the Government for the legislation it is proposing. It seems that all it wants is for the Bill to be passed, and its political purpose will be served.

We were told repeatedly that the Bill and the Interpretation of the Standing Committee were necessary to ensure that the election on 10 July will not be derailed by possible challenge. This again is hard to believe, since a whole host of contingencies which may expose the election to challenge — much more realistically than the term of the Chief Executive — are blithely ignored. For example, the present Election Committee expires on 13 July, and if anything should happen to delay the election on 10 July, there will be no time to elect a new Election Committee; further, there are many current Election Committee members who may have been disqualified because their status has changed; and above all, if the pretext of clarifying the term is fairness to the candidate, then, the case is even stronger to clarify whether "2 consecutive terms" means a maximum of seven years or a maximum of 10 years.

The truth is that this Bill is a charade. The four Members of the Article 45 Concern Group in this Council have no intention of playing along. We will vote against the Second and the Third Readings of the Bill.

Thank you, Madam President.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, after the interpretation of the Basic Law by the National People's Congress (NPC) on

27 April, the SAR Government immediately made a statement, saying that the Interpretation did not cause any harm to the principles of "one country, two systems" and "high degree of autonomy" of Hong Kong. This statement is a manifestation that the SAR Government is protesting its innocence too much, is ruining the effect by adding something superfluous, and is like a fig leaf trying to cover its guilty conscience. In order to ensure that the Chief Executive could be returned on 10 July as scheduled, the Government sought interpretation of the Basic Law by the NPC. However, the grounds for interpretation are flimsy. It definitely is an instance of politics overriding the rule of law, pushing the political fast meal of interpretation of the Basic Law down the throat of Hong Kong people, and forcing Hong Kong people to accept a disposable election ordinance. The SAR Government is suffering from its own actions, having destroyed its Great Wall of defence, which is an unforgivable sin. Eight years since the reunification, the SAR has experienced three interpretation exercises. The rule of law has experienced three "earthquakes". The principle of "one country, two systems" is on the verge of death, while the principle of "high degree of autonomy" is also approaching its demise. Facing the three interpretation exercises, Hong Kong people feel totally hopeless. They can only face the power with silence, and delimitate the stance clearly with their indifference.

The Democratic Party's opposition to the interpretation of the Basic Law on the term of office of the Chief Executive is not based on consideration of two years or five years in material terms, nor is it based on political calculation, but because it is clearly stipulated in the Basic Law that: the term of office of the Chief Executive shall be five years. It is written very clearly. The SAR has been practising common law, and it is the practice that "clear and unambiguous provisions should be interpreted according to their literal meaning". This is what the Secretary for Justice has openly said. Therefore, the SAR Government used to think that with the clearly written provisions in the Basic Law, under any circumstances, the five-year term of office of the Chief Executive should warrant no explanation.

When the Legislative Council enacted the Chief Executive Election Ordinance in 2001, members of the Bills Committee did discuss how a new Chief Executive should be elected in the event that the office of the Chief Executive became vacant in the middle of the term. At that time, the Government insisted that the Basic Law had already provided that the term of office of each term

would be five years, and the Chief Executive might serve for not more than two consecutive terms. After this law was passed through the Legislative Council, according to the provisions of the Basic Law, it was sent to the Standing Committee of the National People's Congress (NPCSC) to be kept as a record. As the Ordinance was not returned by the NPCSC, it is evident that the Central Authorities have already recognized or have not negated the views of the SAR Government. No matter it is the Chief Executive returned in the normal course or elected to fill a vacancy midway, the term of office should be five years, and it is clearly stipulated.

In 2004, Mr Stephen LAM, Secretary for Constitutional Affairs, also clearly stated when answering a question from a Legislative Council Member, "The term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception. In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law." While the words were still ringing in the ears, Ms Elsie LEUNG, Secretary for Justice, suddenly took a U-turn, disregarding the statutory rules of common law of the SAR. In order to submit herself to politics, to be obedient to the Central Authorities, and for the memory and explanation of the Basic Law guards, she made use of the documents and discussion papers of the early days of drafting the Basic Law, and the memory of two professors who have participated in the drafting of the Basic Law. Eventually, she replaced the clear and unambiguous provisions of the Basic Law, totally overturning what the usual government stance, but said that the term of office of the Chief Executive returned on 10 July would be the remainder of the term. This is absolutely ridiculous. When Mr Stephen LAM and Ms Elsie LEUNG had changed such an important point of view, they did not feel shameful at all, as usual. It is amazing to see how they overturned their stance and remarks made before, and even denied themselves.

Ms Elsie LEUNG, Secretary for Justice, even recognizes that the SAR Government should follow the mainland practice. In other words, when the office of the head of the executive authorities becomes vacant, the election will only be a by-election. Therefore, the term of office of the by-elected Chief Executive is the remainder of the term of the preceding Chief Executive. However, the Basic Law has clearly provided that the SAR would apply the common law system. The Joint Declaration also clearly states that the law

originally adopted in Hong Kong, that is, the common law, be retained, while the original capitalist system and the freedoms and style of living of Hong Kong people will remain unchanged for 50 years. This is a solemn undertaking of the country in respect of the reunification of Hong Kong: Hong Kong be ruled by the laws of Hong Kong, while the legal system and practices of the Mainland should not apply to the SAR which implements the principle of "one country, two systems". However, the remarks of Ms Elsie LEUNG serve to introduce the legal system and practices of the Mainland into Hong Kong. They interfere with our court jurisdictions, causing the collapse of the common law system of the SAR. How can there be judicial independence? When the "pillar" of the Judiciary broken, how can there be "one country, two systems"?

Madam President, it is beyond any doubt that the NPCSC possesses the power to interpret the Basic Law. However, the crux is: There cannot be no restrictions on the power of interpretation of the NPC, and the substance of interpretation cannot be fabricated. Now, the SAR Government has openly jumped the gun. It overrode the provisions in Article 158 of the Basic Law, bypassed the Court of Final Appeal, avoided the judicial review and sought an interpretation of the Basic Law by the NPC. And the NPC conducted a political interpretation of the clear and unambiguous provisions in the Basic Law in relation to the term of office of the Chief Executive. This is the crux today, also the reason for the strong opposition from the Democratic Party. To all the amendments from the Government relating to the interpretation of the Basic Law, the Democratic Party will vote against them. It is because we are not prepared to and will not collude with the Government in calling a stag a horse, undermining the rule of law, turning against the common law and dismantling the Basic Law.

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

Madam Deputy, I believe only a few Members will be participating in this motion debate today. Today, silence is obviously being used to fight a quick battle and force a quick decision, and silence is used to despise the voices of opposition in the community. Members only choose to express their wish of seeking interpretation of the Basic Law by the NPC by pressing their button at

the end of the motion. However, be that as it may, I still have to point out that: This piece of fragmented amendment, moved with the conscience buried, for the sake of a smooth Chief Executive Election to be held on 10 July, and for the sake of fighting a quick battle and forcing a quick decision, will give rise to a lot of loopholes in law. The Government, knowing clearly that ridiculous consequences may be resulted when the five-year term is changed into the remaining term while the corresponding provisions are not amended, still adopts a "couldn't care less" attitude. Taking the excuse that "there is no urgency", Mr Stephen LAM leaves the issue of consecutive term for handling in the future. Therefore, in regard to the major questionable points and fallacies in the law like whether the remainder of the term of the Chief Executive shall be considered as one term, and if the by-elected Chief Executive runs for the election for a consecutive term, then whether he can eventually serve for seven years or 12 years, the Government is now turning a deaf ear to them, regarding them as transparent, pretending to be a fool itself and sweeping them all under the carpet. This is an ostrich in the interpretation of the Basic Law. This sorrowful, deplorable and abominable situation is created because our useless Government, which acts according to the political circumstances, only knows to wait for answers from the Central Authorities.

With these remarks, Madam Deputy, I oppose the interpretation of the Basic Law by the NPC and also the amendment to the Chief Executive Election Ordinance. The Democratic Party will vote against it from the beginning to the end.

MS EMILY LAU (in Cantonese): Madam Deputy, I speak to oppose the Second Reading of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

Madam Deputy, in early March, the people of Hong Kong came to learn that TUNG Chee-hwa was going to step down at last. Not so much that it was joy all over the territory, but someone did tell me that he had opened bottles of champagne in celebration for he considered this was really tidings of good joy. I believe one of the reasons that this should be regarded as good news is that the Central Authorities have responded to the aspiration of the people of Hong Kong — an aspiration of the population of Hong Kong at large. This is particularly the aspiration expressed by the hundreds of thousands of people who

had taken to the streets in the two previous marches. We also hope that on 1 July this year, people will dress in white and take to the streets to express our determination to strive for freedom and democracy.

At first, people did breathe a sigh of relief when Mr TUNG stepped down, for Mr TUNG had once said that it was easier for him to go than to stay and that his mission had not completed. At that time, many were taken aback by the remark and could hardly stand it. Madam Deputy, they said that they already had to struggle on the brink of death when Mr TUNG said that he had not yet completed his mission. What if he could complete his mission? Would they be stripped of everything they have? However, though his mission has not yet been completed, there is instruction from higher authorities that he should step down. Such an outcome should have amply answered the aspiration of the people, but it turns out to have sparked off endless disputes.

As many colleagues have mentioned earlier, the SAR Government — it should be the "executive authorities" of the SAR, for the Legislative Council also forms part of the Government, only that we are the legislature — has all along held a most clear position on the solution for filling the office of the Chief Executive when it falls vacant. In 2001, Madam Deputy, both you and I were in the Legislative Council. When the relevant bill was scrutinized, the issue was only brought up for brief discussion. I have checked the record, and the Secretariat has also helped me check it up. I found that it was Mr HUI Cheung-ching, a former Legislative Council Member, who had asked about the arrangement to be made should the office fell vacant. At that time, it was said that it did not matter as long as we acted in accordance with the Basic Law, that meant another election would be held and the term of the office would be five years. Madam Deputy, back then, this issue, unlike other provisions, had not induced extensive debate, for we all considered the arrangement acceptable.

In May last year, rumours about Mr TUNG's resignation were rife, and thus I raised a question on the issue. And for the first time in his life, Secretary Stephen LAM gave the most unequivocal answer he had ever made. I believe he probably regrets he has done so. Some people also said that this is the best question I, Emily LAU, have ever asked in the Legislative Council. Colleagues have also mentioned the remarks of Secretary Stephen LAM earlier. He said that the term of office of the Chief Executive, as prescribed in the Basic Law, was five years, and that provision applied to any Chief Executive with no

exception. Otherwise, that would be inconsistent with the Basic Law. As this remark still rang in our ears, something called legislative intent was brought up, and this, that and the other were mentioned. Madam Deputy, we of course understand that the Central Authorities may have other ideas in their mind. We do have reasons to believe that the Central Authorities also considered that it should be a five-year term all along. That explains why when the legislation was enacted in 2001, it was not met with any opposition, and when I raised the question last year, no one said anything particular. Why has it suddenly become the remainder of the term? People may have talked about it, but no one has ever confirmed it. It is all because of three Chinese characters: the name "曾蔭權 (Donald TSANG)". I do not understand why the Central Authorities cannot allow a person who loves both his country and Hong Kong to take up the office of the Chief Executive, maybe some of the differences between them have yet to be settled. However, the Central Authorities do not feel quite at ease about having Donald TSANG as the Chief Executive, Madam Deputy, what can be done then? The idea of probation then came to their mind. If he could prove his ability within a shorter period, he might be allowed to stay in his job.

Originally, in Hong Kong, more often than not, policy changes will be implemented through legislative amendment. Now, everyone in the Legislative Council is terribly busy, for dozens of Bills Committees are in operation to scrutinize legislative amendments that the Administration may introduce. However, in the present case, this cannot be done; there is no time for legislative amendments. Since nothing can be done, it can only think of seeking interpretation of the Basic Law. The Acting Chief Executive (or the incumbent Chief Secretary for Administration at the time) told us at the Legislative Council meeting on 6 April that he had carefully reflected on the matter and finally decided to request an interpretation of the Basic Law, and that he was confident the decision would not damage the rule of law on which Hong Kong's success was based. If the decision really would not inflict any damage, why do the two legal professional bodies have to oppose it? Some lawyers have changed their stance after meeting officials in Beijing, but they made another volte-face later — Alas, these people belong to the legal professional body of yours, Madam Deputy. However, the stance of the Hong Kong Bar Association is definite in this respect.

The present approach has bypassed the Court. In his statement, the Chief Secretary for Administration said that if someone sought judicial review of the

issue, the judicial process once initiated would take a long time before it could be concluded, and the Government could not guarantee that the election could be held on schedule. Indeed, in a letter signed and addressed jointly by all 25 Members of us to him, we have stated it clearly that the Court has also looked at the Basic Law. Article 53 of the Basic Law stipulates that in the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months. Why do we not have confidence in the Court? Madam Deputy, seeking interpretation of the Basic Law is a display of no confidence in the Court? Why? If the challenge, the process of the judicial review, is allowed to commence, and that the final outcome does not meet its expectation, stating a five-year term as stipulated in the Basic Law instead, no time is left for remedy.

Madam Deputy, this is not an outcome that the Government can take. It thus considers it better to bypass the Court, so as to avoid any court proceedings. I do not know how our Judges and members of the Judiciary will think about it, but many citizens are a bit upset. Perhaps it is for this reason that Mr Donald TSANG had to say before he did something challenging our rule of law and system that he had reflected on it carefully. Therefore, Madam Deputy, how can we be required to support the Bill today?

When Mr TAM Yiu-chung of the DAB talked about the term of office earlier, he said the SAR Government could not solve the problem by itself and thus had to seek assistance from the Central Authorities. Certainly, we think it is understandable should the Central Authorities want to express their opinions eventually. But what do I expect the SAR Government would do, had it been a government with dignity and self-respect as well as respect for public opinions and the rule of law? Madam Deputy, the Government should inform the Central Authorities what we think all along — perhaps the Government may also think the same way and changed its mind only because of some sudden incidents. All along, we think that the term of office should be five years, and many Members, legal professionals and citizens in Hong Kong also think that way. Even at the hearing of the United Nations Committee on Economic, Social and Cultural Rights held on 29 April, many of the members also said that the provision was very clear. The Judge of the High Court of Mauritius also considered the provision very clear with no ambiguities. When everyone says that the provision is clear, the issue should be left to the Central Authorities. If the Central Authorities say no to this and insist that the term of office should be

fixed at a certain term, this should at least be initiated by the Central Authorities and it will be for the Central Authorities to bear responsibility for the outcome. It should not be the SAR Government to seek interpretation of its own accord after careful reflection. This really worries us.

Madam Deputy, I cannot agree with the remarks of the DAB. I am also disappointed that the DAB has not encouraged the Government to come forward to state its own views. Why does the Government dare not be honest, stepping forward boldly to tell the truth? Madam Deputy, despite the fact that the Chief Executive is elected by a small coterie, as a government we desired, we hope that the SAR Government can show some commitment in this respect, telling the Central Authorities bravely that we do have our own consensus and views on certain issues and we do hope that our consensus and views can be respected. If the Central Authorities want to do something that may distort our legal system, it should be left to the Central Authorities to execute. But still, our Government should do its level best to dissuade the Central Authorities from doing so. This is what we expect the SAR Government will do. It should not, as the DAB said, be incapable of solving the problem.

The DAB also said that this amendment had the support of the majority. Madam Deputy, what we are discussing now is legal provisions not an opinion poll, and it cannot be carried out just because someone supports it. Otherwise, what is the point of writing it into law? Does it mean that if an amendment to legislation is desired, it will be considered as not important? Does it mean that even if the provision is not well-drafted, it can be amended if it is widely supported? Is that the case? If the DAB really agrees that things supported by the majority should be done — Madam Deputy, I believe the Liberal Party will also agree that things supported by the majority should be done — why do they not support the implementation of universal suffrage in 2007 and 2008? For many years, results of opinion polls have indicated that more than half of the people interviewed, that is, the majority, support the implementation of universal suffrage in 2007 and 2008. On 1 July last year, tens of thousands of people took to the streets to express their support for universal suffrage because of the interpretation of the Basic Law by the NPC in last April vetoing the implementation of universal suffrage in 2007 and 2008 in Hong Kong. If another survey is conducted now, the result will still be the same. Why do they not support this despite it had received massive support? Why do they have to be selective? Unlike the Chief Executive of the SAR, the DAB carries members returned by universal suffrage. I fully support any members of the

DAB to run in the popular elections. But since the DAB does have Members returned by popular elections, it has to tell its voters that it has not been selective, supporting only issues that they agree and have the majority support but opposing those they disagree despite there is majority support. Otherwise, such performance of them will make me, their voters, and the people of Hong Kong at large confused. Madam Deputy, I hope the DAB can explain why it says a certain issue desirable because it is supported by the majority but considers another which also has massive support undesirable?

Moreover, Madam Deputy, as some colleagues said earlier, despite the narrow scope of the present amendment, some issues do have to be attended to. For example, should candidates failing to secure the nominations of 100 members of the Election Committee be allowed to run for office, so that more people will have the chance to stand in the election? No matter LEE Wing-tat or any other person, they will have a chance to stand in the election. Should voting be conducted? And whether the question that the Chief Executive should not be affiliated to any political party can be dealt with altogether? But the Administration rejected all this, stating that the amendment must be confined to the extremely narrow scope as it stands, which does not allow passage of even a single person. However, the problem is whether the Government has paid heed to the many opinions expressed in society, including agreement to the above remarks expressed by some people who love their country, their party and Hong Kong. Madam Deputy, I do not know why, but they agree particularly with the point of voting. Perhaps this should also be attributed to the three characters: the name "曾蔭權 (Donald TSANG)"

At present, many matters are done selectively by the Government on its own accord, which are carried out right away without any consultation or the solicitation of public opinions. This makes us feel very uncomfortable. As in the case of the remainder of the term, should it be two years, five years or plus an extra five years? No one knows even at this moment. This is simply laughable. The Government once said that it would not allow the reoccurrence of incidents similar to that of The Link REIT which is a disgrace for Hong Kong. Thus, this time around, it must know how to manipulate its power and must do a good job. However, when it is asked about the duration of the term of office? It just says it does not know. This shows it knows how to manipulate its power. To look at it from another angle, I actually do not quite mind whether the term is two years or five years, for we can see that if the person is incapable, tens of thousands of people will take to the streets to express their discontent. I do not

know whether the term of office at that time will be two years or five years, but I hope that the views of the people of Hong Kong will be respected. When the person concerned fails to live up to the requirements of the post, he should not stay. I hope the public will be allowed to express their opinions by casting their votes, and that the candidate will not be hand-picked by the Central Authorities or a few plutocrats.

Some commentaries said that Donald TSANG would be able to chart a course uninhibited upon the passage of this Bill, but I believe this is not easy. No matter how many plutocrats has heaped praises on him, once he is awarded the imperial attire, he can only act in accordance with the decree of a single person. How can he chart a course uninhibited? The only person who can do so is the one elected by the public through a universal, fair and one-man-one-vote election. I have learnt from the media that Donald TSANG intends to deny chances of other candidates, but a discussion on this seems no longer necessary. We all know from the outset that the election farce of this time is only a political tool of the Central Authorities. Unless the Central Authorities allow others to stand in the election, otherwise, no one, be him LEE Wing-tat, CHEUNG Wing-tat or CHAN Wing-tat, will be able to secure enough nominations. Is such a process an insult to the wisdom of the people of Hong Kong? Today, with our development in economy, education and society, we absolutely have the conditions to select our SAR Government, implementing "one country, two systems" under the sovereignty of China. However, we have to gone through such a charade, such a farce. Perhaps some colleagues are right in saying that the Bill may well have many loopholes. Madam Deputy, I hope that those loopholes will not trigger off a series of incidents, tarnishing the reputation of Hong Kong.

With these remarks, I oppose the Second Reading of the Bill.

MR ALAN LEONG (in Cantonese): Madam Deputy, the Standing Committee of the Tenth National People's Congress approved at its 15th session on 27 April the interpretation of Article 53 para 2 of the Basic Law of Hong Kong and decided that the term of office of the new Chief Executive shall be the remainder of the term of office of the Chief Executive whose office has become vacant. However, can such an interpretation reflect the so-called "legislative intent"? Judging from the arguments put forward by the Central Authorities and the impact of the interpretation, I am afraid the remainder of the term of office is not the legislative intent of Article 53 of the Basic Law.

Madam Deputy, the interpretation of the Basic Law is only a contingency measure adopted by those in power after gauging the current situation and taking into account the political needs. In order to impose the will of a superior on the people of Hong Kong, the SAR Government has resorted to creating something out of nothing and written into the legislative provisions certain concepts that are not found in the Basic Law such as those on the by-election of the Chief Executive and the remainder term of office. This is done because they know that if a ruling is sought from the Courts of Hong Kong, there would not be a 100% guarantee that the result would be the one desired by the Government and that is why an interpretation from the NPCSC has to be sought. That would bypass the Courts and the decision reached would be final. But the move is made in blatant disregard of the damage done by the interpretation to the new constitutional order as promised in the Basic Law. This is also a disregard of the challenge which the interpretation would pose to the well-established system of the rule of law in Hong Kong.

In my discussions with QIAO Xiaoyang, Deputy Secretary-General of the NPCSC and LI Fei, Deputy Director of the Legislative Affairs Committee of the NPCSC, I raised two questions in relation to the arguments held by the Central Authorities on the controversies over two years and five years in the term of office of the Chief Executive.

First, the view that the term of office of the Chief Executive shall be bound by the term of office of the Election Committee is actually unfounded. Just imagine, had TUNG Chee-hwa not resigned, he would stay in office as the Chief Executive until 30 June 2007; while the term of office of the Second Election Committee which has selected him would expire on 13 July this year. This shows that the two are not designed to be synchronic. Moreover, the arrangement of the five-year term of the Election Committee came into existence because of the so-called "three-violation" package of Christopher PATTEN which had precluded the smooth transition of the former Legislative Council before the reunification. Under the original design, the Election Committee may have been dissolved right after the Chief Executive is selected and its continued existence would not be necessary for the sake of the Legislative Council elections. From the above two points it can be seen clearly that the argument that the Election Committee should tie in with the term of office of the Chief Executive is only a speculation. It is a distortion of the Basic Law provisions in the interest of political expediency. It is only an attempt to find an excuse to justify a preconceived view.

The second question I raised was that the words in Chinese meaning a "new term of office of Chief Executive" (新的一屆行政長官) actually did appear in an earlier draft of the Basic Law and that was revised to "a new Chief Executive" (新的行政長官) later. The deletion of the words meaning "a term of office" (一屆) in Chinese does not mean that this is an argument in support of the remainder term of office theory. Likewise, this is no argument in support of the view that Article 46 was designed to refer to the normal term of office of the Chief Executive while Article 53 was designed to address the circumstances of the office of the Chief Executive becoming vacant before the term of office has expired. As a matter of fact, when a change was made to Article 53, a similar change was made to Article 46 as well. Therefore, the two provisions in the Basic Law cannot be discussed in isolation without referring to the other. The deletion of the Chinese words to the effect of "a term of office" is to be viewed as merely a stylistic change and cannot be regarded as a ground for interpretation.

With respect to these two questions, I have never received an answer from the officials from the Central Authorities. This may be due to the fact that these two questions are not easy to answer from the perspectives of jurisprudence and logic.

Madam Deputy, what must be pointed out is that after the interpretation of the Basic Law on this occasion, a host of unanswered questions still remain. This is further proof that the original design of the Basic Law has never accommodated the two concepts of by-election and the remainder term of office of the Chief Executive. The term of office of a Chief Executive shall be five years irrespective of the circumstances under which he or she is selected.

The Chief Executive Election (Amendment) (Term of Office of the Chief Executive Bill (the Bill) introduced by the Government to this Council adds to the existing legislation the concepts that a Chief Executive who fills a vacancy shall serve the residue of the term of his predecessor. In the many meetings held by the Bills Committee, many Members who are serious about legislative matters and their duties as Members of the Council raised questions which should have been considered by any responsible government before the introduction of any bill. It is unfortunate that the replies given by officials had either evaded the crux of the question or requested the Members to raise their questions later. The replies were totally unsatisfactory and they were really shocking and amazing. The questions raised include the following:

- (1) What is the maximum number of years of service the new Chief Executive selected on 10 July can expect, seven years or 12 years?
- (2) If the previous Chief Executive has acted on the strength of Article 50 of the Basic Law and dissolved the Legislative Council once during his term of office, can the new Chief Executive dissolve the Legislative Council again during the remainder of the term of his predecessor?
- (3) Article 55 of the Basic Law stipulates that the term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them. When the office of the Chief Executive becomes vacant, should all Members of the Executive Council tender their resignation according to this provision?
- (4) If the new Chief Executive selected on 10 July fails to complete the two-year term of office, would there be a need for another by-election after a new Election Committee is formed? Will the term of office of the new Chief Executive selected by the second by-election synchronize with that of the new Election Committee?
- (5) If the office of the Chief Executive becomes vacant 200 days before the expiry of the original five-year term of the Chief Executive, should the SAR in the interim which lasts for just 20 days first hold a by-election to select a new Chief Executive who will only stay in office for 20 days and then conduct an election of another Chief Executive who will serve a five-year term?

Madam Deputy, it is hard for me to believe that the Basic Law which took four years of hard work to write and underwent numerous revisions could be so crude and that nothing was done to deal with the above problems which are so obvious. If this possibility can be ruled out, then there can only be one other possibility and that is: the Basic Law does not have any design on a by-election at all and there can only be a Chief Executive for the SAR serving a term of office of five years.

Madam Deputy, leaving aside the issue of legislative intent, all the above questions should be clarified at the time when the Bill was being deliberated. An example is if two Chief Executives are to be selected within such a short span

of time as 20 days, it would be a tremendous waste of public money. Moreover, it would be gross absurdity in law and procedure and hence it would become a laughing stock of the world.

The duty of Members of the Legislative Council is to enact laws. When Members discharge this duty, it is the expectation of the public that Members would consider the legislative item wholesale and to ensure that nothing ridiculous, absurd or unconvincing is produced. If Members do not see far ahead and if what they do is to tackle problems in a piecemeal manner, unable to foresee the impact of the legislating on other laws or make preparations for the matching arrangements for the implementation of the law, then there will only be impractical provisions and a host of problems will appear when the law is put into force. The provisions may be so poorly written and fraught with problems that they have to be repealed or scrutinized again. Therefore, when such problems arise, the Legislative Council is bound to be blamed and Members would fail public expectation.

If these problems as mentioned above are not dealt with properly, when they appear, the SAR may be caught in a constitutional crisis. Then the public would be perfectly justified to accuse Members of the Legislative Council for having been careless and performing their duties perfunctorily when they passed the Bill.

The Government has been trying to put forward the argument that a new Chief Executive must be selected by 10 July and the date is deemed as a deadline that cannot be changed. This move uses the urgency of the matter to justify the request made to the NPC to interpret the Basic Law and washes the guilt from it. Madam Deputy, all along I have been saying that even if the Court cannot reach a final judgement to solve the controversies around two years or five years before the election day, there will be no impact whatsoever on the legitimacy and constitutionality of the election. Moreover, since the NPCSC has made the interpretation, there would be no need to amend the Chief Executive Election Ordinance and the new Chief Executive can be selected in the absence of any worries.

Before new problems and uncertainties associated with the new by-election concept are all tackled, it would be premature to ask the Legislative Council to legislate on the issue. It would be too early as well. Why can legislation not be made all at one time after these problems are solved? Would this not put the mind of the public more at ease and would it not comply with the solemn and

rigorous approach to legislation? In view of this, the Government cannot arbitrarily introduce a half-baked and ill-considered Bill to this Council for deliberation and hence doing injustice to the Council.

I hope sincerely that the constitutional order for Hong Kong as defined by the Basic Law would not be undermined anymore and that the well-established system of the rule of law here will not be challenged yet again. But if those people who claim that they can reach the topmost tier in the Central Authorities would only say yes to the Beijing Government and if these people would go so far as to suppress discussions in Hong Kong by brandishing a self-claimed decree from Beijing, then the conflicts between the Central Authorities and Hong Kong would only intensify. The misunderstanding would only aggravate and the internal depletion would only get worse than ever. These will never do any good to fostering mutual trust between the Central Authorities and the SAR as well as to promoting social and political harmony in the SAR.

Madam Deputy, anyone who is truly committed to Hong Kong and China should require himself to say words of truth to national leaders in charge of Hong Kong affairs and to convey to them the true picture of Hong Kong society, without any undue arrogance or humility. They should point out what is right and what is wrong to these national leaders. Only by doing so that they will be doing things for the good of Hong Kong and the country. These are what people of calibre who are set on improving the relationship between the Central Authorities and the SAR should do. We must beware of people who will never say no and will only do what the Central Authorities want, for they may end up turning a well-intentioned deed into a disaster.

With these remarks, Madam Deputy, I oppose the Second Reading of the Bill.

MR DANIEL LAM (in Cantonese): Madam Deputy, there is only one point in the resumed Second Reading debate on the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill) today, and that is, to stipulate clearly the term of office of the new Chief Executive to be selected to fill a vacancy. However, as the Standing Committee of the National People's Congress (NPCSC) has made an interpretation of the Basic Law with respect to the contents of the amendment long ago and no change can be made, so the Second Reading debate is in fact only a required statutory procedure. The

Heung Yee Kuk supports the Bill and this has always been the stand of the Heung Yee Kuk.

(THE PRESIDENT resumed the Chair)

Over the past few years, the endless disputes and ceaseless confrontations served almost to plunge Hong Kong society into division and there was little or no progress on the political and economic fronts. It was only after a hard time that the Hong Kong economy gradually saw the light at the end of the tunnel. Some improvements are beginning to be seen in social harmony. All these are fruits of success that are never easy to come by.

Madam President, Hong Kong is a society upholding the rule of law and every person may hold different views and opinions. However, when it comes to putting things into practice, there is only one standard that dictates our action and that is the law. We must do whatever that is stipulated in the law, not going beyond it, against it or in contravention of it. The Chief Executive is the topmost official in the SAR and he is a crucial figure in reviving the Hong Kong economy and unifying society in harmony. Electoral arrangements should more so be in compliance with the law and it is only by being law-abiding that the election can maintain its fair, solemn and legitimate nature.

Madam President, for any system of law, irrespective of how perfect it is in its original design, there would be a need for supplements and improvements in the course of implementation and evolution because it will always meet new circumstances. The same goes for the electoral arrangements for the Chief Executive. Recently, some people have put forward the ideas of a "four-no" election and a "vote of confidence". All these can be considered and they can form the basis of future improvements. But having said that, ideals must not be allowed to detach from reality.

Today, we must look at our legislative work from a pragmatic angle and complete the procedures concerning the by-election of the Chief Executive soon to take place on 10 July. It must be borne in mind that any delays in the legislative work and other preparations may lead to a vacancy of the office and this would mean great uncertainties for the governance of the SAR and stability

in society. Therefore, all discussions and views should not deviate from what is stipulated in the provisions and they must not impede the smooth conduct of the by-election on time. This is the common responsibility which falls on Members of this Council in respect of the well-being of the people of Hong Kong.

Madam President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, the Secretary for Justice and the Director of Bureau are right when they point a finger at this bunch of democrats and say that they are against China and stirring up troubles in Hong Kong. The reason why they sought an interpretation of the Basic Law is for the sake of stability and peace in Hong Kong. They are doing this for the good of everyone. So why do these people oppose their seeking an interpretation of the Basic Law? Can we not see the point? The same goes for the interpretation on 26 April and the editorial on 26 April, it would not make any difference at all. Would it not be a good thing to use the interpretation of the Basic Law on 26 April to commemorate the editorial on 26 April? It would be the same thing — I will say the things I want to say and others will listen to what they want to listen and when the votes are cast, they will win in any case.

Madam President, Honourable colleagues, please do not call the police for what I have said just now. I have not gone nuts. I just want to show the Secretary for Justice an object and I hope this would be taken as a warning. We all know that in the puppet shows there is a character called Pinocchio. I am not sure if the President knows about Pinocchio or not. I think she does. It is because I think she must have read *Children's Paradise* when she was young. This Pinocchio is a character in the book *The Adventures of Pinocchio*. The story has it that as Pinocchio tells more and more lies, his nose will grow longer and longer. This is the nose, can you all see it? I am just doing my duty to bring a well-known story into this Council. I think there are many students who will watch the broadcast of this Council meeting when they have civic education class. So I might as well let them see the harm of telling lies.

Ladies and gentlemen, I am now telling you what I think of the interpretation of the Basic Law this time through this puppet character Pinocchio. Madam President, please do not think I am out of my mind. You do not need to call the police or the ambulance. I am not out of my mind.

Members of the democratic camp, let me tell you, you are the ones who oppose China and stir up troubles in Hong Kong. Now look at my nose! You are the ones who add to the troubles and confusion. You have ulterior motives. You are doing all these for the votes. As for us, we do not have to worry about votes because we shall not stand in that election. But you are doing these for the votes, that is for sure.

Ladies and gentlemen, ever since the interpretation of the Basic Law made by the NPC on 26 April, what the Central Government has in mind is that it would be better for Hong Kong and all of us if we will all shut up. The lie about 1.67 million people flooding into Hong Kong — I should have said the truth — in the end it could not be proved to be a lie. So we should not say that it is a lie. Dear members of the democratic camp, you must remember one thing and that is, do not ever make any rash criticisms, especially about the interpretation of the Basic Law on 26 April. Now we can ask the Chief Executive to collect the views of Hong Kong people to see whether or not this should be done. He is elected by 800 people, should we not admit that he is elected by 800 people? Let him go and collect public opinions first and he should come here to listen to what you are talking, then he should tell the Central Authorities whether this is a good thing to do or not. Why do you have to convey public opinion on Annex I? What is this Legislative Council all about? If you democrats do this again, you are creating more troubles and confusions.

Ladies and gentlemen, have you ever heard a song with the lyrics "Arise, ye who refuse to be slaves!"? I hope all members from the democratic camp must have heard of it. What you should do is to take away one word from it and replace it with another. Now it goes like this, "Arise, ye who want to be slaves!"

Ladies and gentlemen, now let me — this long-nosed whiz kid — tell you, everyone should have a conscience. I tell you what, this is a very abstract thing, and it does not have a price tag to it. You should all find something which carries a price tag and do it. Now you want to interpret the Basic Law, what is wrong with it? At first the Secretary for Justice said that the term of office was five years, but now after listening to the advice of mainland officials, a change has been made to suit you but you do not appreciate it.

Ladies and gentlemen, in the debate today, you people from the democratic camp should repent and realize that it is useless for you to fight with

them. That "Long Hair" is especially detestable and he is making noises all the time. There is one simple way out and that is, heed everything which the Central Authorities say. The way votes are cast in this Council is unique in the world and so you should treasure it. This system cannot be found elsewhere in the world. Here it is one Council, two votes, that is to say, in this Legislative Council, the Members are divided into two groups for the purpose of voting — this is something that is not done in other places. It is already a great leap forward for the electoral college to increase from 400 people to 800 people. Why do you not show any gratitude and why do you still want to oppose this interpretation of the Basic Law? This applies especially to those several lawyers — now they have left — who always talk about the rule of law. What is this rule of law any way? I can never make head or tail out of it. The most important thing is that we can make a living, right? The Secretary must be praised for his great contribution. After the interpretation on 26 April, the people's grievances were felt and though this was.....

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, this Bill is about the term of office of the Chief Executive, but so far you have not talked about the term of office. I have been listening to what you have been saying. You look weird and you do not look like Mr LEUNG Kwok-hung, Member of the Council, I hope you can show some respect for yourself.

MR LEUNG KWOK-HUNG (in Cantonese): Fine. Where is Mr LEUNG Kwok-hung? He is nowhere to be seen? This is of course due to this nose.

Chief Secretary for Administration Donald TSANG has really made a huge contribution. We should vote in his favour. This is because after the 26 April interpretation, he has written four reports in his honour to reflect public opinions in Hong Kong. Ladies and gentlemen, the length of his term of office does have a great bearing on us. For such a loyal servant as he, why can he not be given five years? That bunch of democrats would just give him two years, are they just stirring up troubles?

The term of office which I have just talked about is very important. What about his term of office? This is already determined by 800 people who voted unanimously and it was in line with the Basic Law, so what is the point for you to argue about it and hold a great march on 1 July? I tell you all — Secretary

Frederick MA, you should have come earlier — Secretary, do you know about *The Adventures of Pinocchio*? Forget it if you do not. Today I want to tell you all that you are right and the entire Government is right when you tell Hong Kong people that the term of office of the Chief Executive is extremely important — even more important than the rule of law.

Once I talked about what would happen when things fell apart. At that time I was not a Member of this Council, now I am not one either. I am just a long nose telling lies. I saw a person and she was called Secretary for Justice Elsie LEUNG. It is right in this place that she said in a reply that it would be five years of course. Right here. Now after some twists and turns, she says that it is no longer five years.

My nose is always long, but now it cannot grow any longer. It is because I cannot convince myself anymore now. Ladies and gentlemen, please look at my nose. Why is it that the Secretaries of Department and the Directors of Bureau are not coming to hear me speak although I am such a staunch supporter of the Government? My nose is the spoils of my war. Every time when there is an interpretation made of the Basic Law of Hong Kong, it would grow one inch longer. Do you want to see my nose grow longer? Mr Albert HO, I tell you, do not laugh. You are forbidden to laugh. This is a most solemn forum. It is a place for all Members of this Council to see who has got the longest nose. I am not quite sure whether or not chemical changes would really take place all of a sudden.

Madam President, I can see that you are getting impatient. I will not wear this nose anymore. My view on this is very simple. Whenever my nose would grow longer, it would mean that the Basic Law has been interpreted for one more time. Later on, I would give this thing to Chief Secretary Donald TSANG cum Chief Executive-designate Mr Donald TSANG, as well as Secretary for Justice Elsie LEUNG for their joint possession and fond memory. I hope they will remember what has happened to Pinocchio and repent, thus stopping the further growth of their nose.

Thank you.

MR HOWARD YOUNG (in Cantonese): Madam President, before completing his second-term tenure, Mr TUNG Chee-hwa submitted to the Central

Government on 10 March this year a request to resign from the office of the Chief Executive for health reasons, and his request was accepted by the State Council on 12 March this year. Naturally, an ensuing priority is to elect a new Chief Executive.

As the Basic Law has not specifically provided for the term of office of the new Chief Executive elected to fill a vacancy in the office of the Chief Executive, the people are divided on the term of the new Chief Executive. Some think that the new Chief Executive should serve the remaining two years of Mr TUNG's term. On the other hand, some interpret according to the wordings of the provisions and maintain that the term of office should be five years. On the issue of term of office, people hold diverse views and stick to their own stand. Owing to the ambiguity of the provisions, there are grey areas in the term of office of the new Chief Executive. In order to resolve this problem, the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill) was proposed by the Government.

For the sake of social stability, the Liberal Party agrees that the scrutiny of the Bill be completed expeditiously to avoid delaying the timetable for the selection of the new Chief Executive so as to enable the Chief Executive to, in accordance with the provisions of Article 53 of the Basic Law, be selected within six months, or before the expiry of the term of the current Election Committee on 10 July. Actually, the provision in question is very simple — only that the term of office of the new Chief Executive should last till 2007.

Even before the Government submitted the Bill and decided to request the Standing Committee of the National People's Congress (NPCSC) to make an interpretation, the Liberal Party had been maintaining that the new Chief Executive should serve the remaining two years. The fact that when an office in state organs, such as the President, Vice-President, National People's Congress, State Council and the Chinese People's Political Consultative Conference, falls vacant prematurely, the successor will serve the remaining term of the outgoing office holder does demonstrate that such an arrangement is part of the country's constitutional tradition. Besides, the match between the term of the Election Committee and that of office of the Chief Executive has to be taken into account as well.

Furthermore, in a survey conducted by the Liberal Party on the term of the new Chief Executive, more than half of the respondents held that it should end in 2007. As such, it is more reasonable and convincing to argue that the term of the new Chief Executive should be two years. Anyhow, this must be spelt out clearly in the law to avoid disputes.

Although the Liberal Party is not in favour of interpreting the Basic Law indiscriminately and knows that the public hope to avoid an interpretation as far as possible for they have always hoped deep in their mind that Hong Kong can resolve the issue of term of office on its own, this time it is pretty obvious that, without seeking an interpretation, the disputes over the term of the Chief Executive returned through the by-election will, like today's meeting, go on endlessly, and even lead to a constitutional crisis.

The contents of the Bill submitted by the Government for deliberations are focused on the term of the new Chief Executive only, and this is fully in line with the result of the interpretation made by the NPCSC. However, this amendment alone cannot fully resolve the problems relating to the Chief Executive Election. There are other problems pending to be solved. For instance, can the new Chief Executive seek re-election once or twice? What arrangements can be made should the new Chief Executive leave office before the expiry of his two-year tenure? What can be done should the Chief Executive leave office shortly before the expiry of his tenure? All these issues have to be explored and examined.

As there is a time constraint on the by-election, we can only solve the problems one by one and start by immediately clarifying the one concerning the term of the Chief Executive returned through a by-election. Other problems should be finalized as soon as the by-election is over. It is hoped that, in discussing the 2007 Chief Executive Election in future, a comprehensive review can be conducted once and for all and a sound and well-defined mechanism be formulated.

With these remarks, Madam President, I support the Bill on behalf of the Liberal Party.

DR RAYMOND HO (in Cantonese): Madam President, compared with other bills I have deliberated, the Chief Executive Election (Amendment) (Term of

Office of the Chief Executive) Bill (the Bill) is unique in several aspects. First of all, the deliberations of the Bill were subject to tight time constraints to ensure that the term of the Chief Executive to be returned in the by-election on 10 July this year has a solid legal foundation. Despite that the Bill was not submitted to this Council by the Government until 6 April this year, the Bills Committee has held six meetings in less than a month and met with 18 deputations and people from various sides. Second, the scope of the Bill is extremely confined for only the term of the Chief Executive returned under Article 53 para 2 of the Basic Law is being dealt with. Third, almost all Members of this Council, a record number of 58, have joined the Bills Committee to scrutinize the Bill. This reflects the significance of the Bill to the territory and the level of concern thus aroused.

Although the Bill was tabled to this Council before the interpretation made by the Standing Committee of the National People's Congress (NPCSC) on the relevant provisions of the Basic Law concerning the term of office of the new Chief Executive and its legal basis was thus doubted by some Members, the Government has, in this connection, repeatedly elaborated on its viewpoint and position and gained the support of the Legislative Affairs Commission of the NPCSC. Actually, the relevant provisions of the Bill provide the term of the new Chief Executive with a clear legal basis.

Meanwhile, the NPCSC unanimously passed a motion on 27 April this year on the interpretation and confirmed that the term of the new Chief Executive to be returned in the by-election on 10 July should be the remainder of the term of office of the preceding Chief Executive. On the other hand, the Bill seeks to provide that the term of the Chief Executive who fills a vacancy arising prematurely should be the remainder of the unexpired term of his predecessor. The Bill is therefore fully consistent with the NPCSC interpretation.

As the by-election of the Chief Executive must be held on 10 July this year, amendment of the Chief Executive Election Ordinance (the Ordinance) is therefore essential and there is a time constraint too. This is because section 3 of the Ordinance provides that the term of the Chief Executive shall be five years. However, it has not stated, in the event that the original Chief Executive leaves office before the expiry of term, whether the Chief Executive who fills the vacancy thus arisen should still serve five years. In addition to the great likelihood for the existing provision to cause controversy, a constitutional or political crisis might even be triggered should there be judicial challenge. These are the last things the people of Hong Kong would like to see.

Due to the time constraint, I agree with the Government that the most urgent and important task, that is, amending the Ordinance, must be handled with priority to clearly provide for the term of office of the new Chief Executive returned through a by-election. As for the other provisions of the Ordinance and follow-up of relevant matters, we can examine and discuss them again in detail when a more appropriate opportunity arises in future.

With these remarks, Madam President, I support the Second Reading of the Bill. Thank you, Madam President.

MR FREDERICK FUNG (in Cantonese): Madam President, today we are going to read the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill) for the Second and Third time. The Bills Committee has held six meetings and no amendment, not even a word of change, will be made to the Bill. Under such circumstances, a bill which is full of flaws and in breach of the Basic Law and contradicts the interpretation by the NPC is now presented to the Council for Second Reading. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I find it most regrettable.

Honourable colleagues, we, as legislators, should not pass a bill that is not clear and will give rise to a series of anomalous and illogical consequences which may create countless troubles in the future into law. On the contrary, during the scrutiny stage, we are duty-bound to make sure that the clauses of a bill are clear and consistent with the existing legislation. We must ensure that the legislation is predictable and can be implemented. We should not allow a law which is full of room for manipulation by those in power and to be reduced into a tool of political expediency.

Honourable colleagues must bear the consequences of their vote for or against the Bill today. So, I hope Members can consider carefully whether the contents of the Bill can meet the criteria I have just mentioned: Are the clauses of the Bill clear? Will it lead to anomalies? Is it consistent with the existing legislation? We should vote for or against the Bill on the basis of its predictability and our judgement of whether it carries any loopholes. Only by doing so can the interests of Hong Kong society be upheld and people's expectation on us as legislators be fulfilled. We should not just look at the current political gains and declare loyalty hastily to those in power without due regard to the reality and the principles of legislation.

The Government has made it clear right from the beginning that the objective of the Bill is just to cater for the dramatic or a 180-degree change of its position. It is a change from advocating the concept of "any Chief Executive will serve a five-year term" to supporting the "remainder of the term concept". The Government tries to impose such an interpretation — when the office of the Chief Executive falls vacant before expiry, the Chief Executive elected to fill the vacancy will only serve the remainder of the term of his predecessor — on a piece of local legislation, the Chief Executive Election Ordinance, without any basis in the Basic Law. In my opinion, such an interpretation is inconsistent with our previous interpretation of the Basic Law. It also goes against our support and observance to the Basic Law in the past.

Madam President, I remember that at the beginning, the Secretary for Justice advanced a number of fabricated reasons to support her case that the by-elected Chief Executive should only serve the remainder of the term. These include the memory of the Basic Law drafters, the authoritative opinions of the mainland scholars on constitutional law, the term of office of the Election Committee and the fact that in Article 53 of the Draft Basic Law (for Solicitation of Opinions), "the new term" had been changed to "new Chief Executive". She then tried to impose such a concept by forcing through the Bill.

Later, on facing the challenge of some Members and the threat of applying for a judicial review by a citizen, the Government, realizing that justice may not be on its side, was afraid of being defeated in case the Court makes a different interpretation of the Articles of the Basic Law. It therefore sought an interpretation from the NPCSC on the ground that the judicial review would eventually jeopardize the Chief Executive election. In doing so, it has turned a blind eye to the authority of the Courts. Without any legal grounds, it submitted a report to the State Council requesting the NPCSC to interpret the Basic Law. It has bypassed the Courts, deprived the litigants and respondents of the right to go through the due legal process and denied both parties a chance to state clearly their views with an intention of obtaining an overriding decision from a higher authority. All this has severely damaged the rule of law in Hong Kong.

Madam President, the Government's request for an interpretation has a far-reaching effect. As I have fully discussed the matter in great detail during the last two motion debates, I will not repeat the points today. Instead, I will

focus on the Bill. I remember at the meetings of the Bills Committee, many Members who had carefully scrutinized the Bill had raised many sharp questions, some of which were related to the Bill itself and some were related to the impact of the Bill on other relevant provisions. What is the Government's reply then? Mr Stephen LAM maintained that there was no urgency to deal with the questions raised by Members or related queries simultaneously in the Bill scrutiny stage. In other words, the most urgent and crucial task now is to prepare for the new Chief Executive Election on 10 July 2005. Are these justifiable from the angle of jurisprudence?

The Government insists that the Bill only deals with the term of office of the Chief Executive. It implies that if the Chief Executive election can be held smoothly, problems or consequences arising from the Bill can be set aside. It is inconceivable that the Government can disregard all problems or consequences, hell bent on pushing through the Bill. Such a legislative process and approach is indeed an insult to the legislators. It is also contempt of the principles adopted by the Legislative Council for bill scrutiny. All of a sudden, legislation seems to have become a tool to serve political expediency and to lay the groundwork for putting the new Chief Executive on probation.

As Members of the Legislative Council, our genuine responsibility is to ensure that the clauses of the Bill are consistent with the existing legislation in terms of jurisprudence and to examine the impact of the Bill on other existing legislation. Furthermore, we have to closely examine the Basic Law, the Chief Executive Election Ordinance and other corresponding provisions in order to make consequential amendments where necessary. More importantly, we must avoid the emergence of any unpredictable consequences that may render the Bill null and void.

Madam President, I would like to reiterate that we cannot turn a blind eye to the problems and consequences arising from the Bill. The enactment of the Bill will bring infinite variables and unlimited room for manipulation to a provision which is originally clear and specific. This will pave an even longer road of political expediency in future.

Let me point out some related problems and consequences arising from the Bill, in the hope that Members can understand that a hasty endorsement of the Bill will give rise to many anomalies.

First of all, re-election and term of office. I remember that the Acting Chief Executive requested an interpretation by the NPCSC on 6 April, pointing out that a judicial review would jeopardize the Chief Executive Election to be held on 10 July and therefore interpretation by the NPCSC was necessary. However, Members have advised with all the good intentions that a judicial review would only examine the length of the term of office and would not affect the smooth return of the Chief Executive on 10 July. Despite that, Mr TSANG, the Acting Chief Executive, in an attempt to get things done, made up a pretext in ambiguous terms that for fairness to the candidates, an interpretation by the NPCSC was necessary in order to clarify the length of the term. Such a justification for seeking an interpretation of the Basic Law cannot be more flimsy. The contents of the Bill on this occasion have not resolved the problem concerning the Chief Executive's term of office. According to Article 46 of the Basic Law, the Chief Executive may serve for not more than two consecutive terms. Does the word "terms" here include the remainder of a term? There is no answer to even such a question. Is it fair to the prospective candidates? The prospective candidates do not know the answer either. Why is it unfair if the prospective candidates do not know the answer to the former question but it is fair even though the answer to the latter remains uncertain? What the Government did has not only seriously damaged the predictability of the law, but also left us a question: Is this for the purpose of setting the "rules" of the Chief Executive's training course? If the future Chief Executive has done a good job, he or she will be granted one more term. Otherwise, sorry, his or her "term" is only the remainder of the predecessor's. Will such a legislative process not make people think that it is absurd? Is such legislation intended to serve as a tool of political expediency for those in power who can then interpret the law arbitrarily and brush aside the clarity, solemnity and predictability of the law?

Article 50 of the Basic Law provides that "The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office." What is the meaning of the word "term" here? Does it cover the "remainder of the term concept"? At the Bills Committee, the Government did not give a specific answer, saying that it was not urgent and could be discussed and dealt with later. I would like to emphasize that this is a very serious question and should not be taken lightly as it is about the exercise of powers by the Chief Executive. Article 55 also makes it clear that the term of office of Members of the Executive Council shall not extend beyond the expiry

of the term of office of the Chief Executive who appoints them. Again, what is the meaning of the "term" here? Now Mr TUNG, the former Chief Executive, has resigned before expiry of his term. As his term has come to an end, does it mean that the term of Members of the Executive Council appointed by him should also come to an end?

Besides, the Bill has also turned a blind eye to many bizarre consequences arising from the "remainder of the term concept". For instance, if the office of the Chief Executive becomes vacant again after 13 July 2005 and the term of the Election Committee also expires by that time, will it be necessary to elect a new Election Committee or an Election Committee of a new term? Will the Election Committee be granted a five-year term as stipulated in Annex I to the Basic Law? How can it ensure that the Election Committee with the same beliefs will select the Chief Executive? In other words, the new Chief Executive is returned by the Election Committee of the same term as that of the Chief Executive, as the Secretary for Justice has said. Again, will the Election Committee be granted a term of office which is the same as that of the elected Chief Executive? Furthermore, if the office of the Chief Executive becomes vacant shortly before expiry, a newly elected Chief Executive will have a very short term of office. Under such circumstances, it may be necessary to hold two Chief Executive elections, a by-election and an election of a Chief Executive of a new term. In addition, there will be a host of problems and bizarre consequences which beggar description. I believe we cannot go into every detail in our debate today. However, I have mentioned many possible absurd consequences which may arise after enactment of the Bill.

In fact, if we can go back to the original provision that any Chief Executive will have a term of five year, the problems I have just mentioned will become very clear. It is also very clear that the Chief Executive may serve not more than two terms with a maximum of 10 years. There will not be any problem as those arising from the so-called "remainder of the term" concept or other oddities. The SAR Government tries to impose the "remainder of the term" concept on us without triggering the mechanism of amending the Basic Law through seeking an interpretation by the NPCSC and introduction of a local legislation. As a result, the existing provisions have become chaotic in terms of logic and full of loopholes. Moreover, as such a minor change will have a far-reaching impact, it fully reflects that the "remainder of the term" concept is illogical in terms of jurisprudence under the framework of the Basic Law.

The Bill is the cause of the abovementioned problems and the creator of problems. Worse still, the Government disregarded all the questions raised by us at the Bills Committee. It answered our questions in an ambiguous manner and failed to propose any amendments in order to minimize the impact of the Bill on other ordinances. I am sure that Honourable colleagues here should not and will not endorse such a bill in a hasty manner.

On the other hand, the contents of the Bill are in fact inconsistent with the contents of the NPCSC interpretation. According to the Interpretation, "prior to the year 2007 when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of the Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the abovementioned method for selecting the Chief Executive could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive." The Interpretation has made it clear that the "remainder of the term" concept only applies to the Chief Executive before 2007. After 2007, the amended method for the selection of the Chief Executive shall apply. Besides, the Interpretation does not specify whether the "remainder of the term" practice will continue to apply after 2007 if the method for the selection of the Chief Executive has not been amended.

The SAR Government disregards the NPC interpretation which is clear and specific. In the Bill, it is provided that whenever the office of the Chief Executive falls vacant before expiry, the successor will serve the remainder of the term of the outgoing office holder no matter it is before or after 2007. It does not follow the interpretation of the NPC as I mentioned above in order to specify that the remainder of the term only applies to the Chief Executive before 2007. The Bill has obviously surpassed the contents of the NPCSC interpretation. It seems that the SAR Government is trying to make arrangement for the Chief Executive by-election of all terms through local legislation, in order that an inevitable *fait accompli* be created that the "remainder of the term" concept shall apply for all thereafter. Such legislation, without adopting the latest NPCSC interpretation as its basis, will eventually lead to challenges or another judicial review by the public. As a result, the Government may be unable to hold its own and will put up a host of justifications to seek further and further interpretations by the NPC.

Madam President, in view of the so many problems I have just mentioned, I will, during the Second and Third Readings of the Bill, vote against the Second Reading after presenting all my arguments. It is because I oppose the Second Reading of the Bill proposed by the Government to this Council. If the Bill is endorsed at the Second Reading, the ball will fly into the court of Legislative Council Members because they have endorsed the Second Reading of the Bill. In my opinion, all legislative work after the Second Reading is in breach of the Basic Law, the mini-constitution of Hong Kong. I, as a Member of the Legislative Council, am reluctant to take part in the work. Later, when we vote on the Second Reading of the Bill, I will express my regret to colleagues who have voted for it. So, if the Bill is passed at Second Reading, I will walk out as a gesture of protest and I will not take part in the Third Reading of the Bill which is in breach of the Basic Law of Hong Kong. Thank you, Madam President.

MR LEE WING-TAT (in Cantonese) : Madam President, on behalf of the Democratic Party, I oppose the Second Reading of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill).

Just now many Honourable colleagues have pointed out a host of problems concerning legal matters. In fact, as far as the amendment proposed in the Bill is concerned, the main argument does not lie in the provision itself as it is very clear. Not only the Democratic Party and Members from the democratic camp have all along held the view that the provision has clearly stipulated that the term of office is five years, colleagues from the Government, including Secretary for Justice Elsie LEUNG and Secretary Stephen LAM also held the same view last year. They considered that the five-year term was indisputable according to the unequivocal provisions.

So, when problems arise, is it because of the ambiguities of the provisions concerned as some political parties, members of the public or those who support the Interpretation have said? Is it due to the difference between common law and continental law or other reasons? Or as the Government said, the purpose of amending the Ordinance is to eliminate any risk that may jeopardize the Chief Executive Election which is to be held as scheduled in accordance with the provisions of the Basic Law. In fact, these three reasons, including the ambiguities of the provisions, the difference between common law and continental law and the elimination of any risk that may possibly prevent the Chief Executive Election from being held as scheduled are invalid.

In fact, the provisions are very clear. I will not repeat this point anymore. Many government officials or even some commentaries also maintained that interpretation of the Basic Law was necessary because of the difference between common law and continental law. Sometimes I think repetition of such an argument is just an insult to the Judges and the legal practitioners in jurisdictions which practise continental law. It also damages their dignity. In fact, these jurisdictions uphold and respect the rule of law as much as we do. In Europe, many countries implementing continental law do not regard the law as a political tool as our country does. So, when Hong Kong lawyers are advised that they should not interpret the Basic Law from the angle of common law, I am really puzzled.

The third reason, which is about the avoidance of any risk that may jeopardize the Chief Executive Election, seems to be valid. However, this is not the reason cited by the Government because it will not allow the emergence of any variables beyond its control and design as far as all the considerations in respect of the election are concerned. It seems to be justifiable relatively. However, it is valid not because we do not allow any legal challenge that may jeopardize the election, as the Government said. According to many solicitors and barristers, even if there is litigation, it is strongly believed that the Judges will act in accordance with the Basic Law, particularly it is provided that the Chief Executive should be selected within a certain period of time when the office becomes vacant. So the Courts will not allow the election to be impeded. From this we can see that such an argument is just alarmist talk.

In fact, the real reason is that on the sudden resignation of the Chief Executive, the Central Authorities have to grant permission and deal with a host of political problems within a very short period of time. The fact that these political problems have nothing to do with the rule of law is exactly the reason why the Democratic Party strongly objects to the interpretation of the Basic Law on this occasion and the endorsement of the Bill. If our rule of law or legislation is to serve political purposes, it is not the rule of law. If our rule of law is sacrificed for the sake of political considerations, it is not the rule of law either.

What are in fact the political considerations of the Central Authorities? I think there are three such considerations: first, the so-called allegiance. To put it simply, as the office falls vacant on the former Chief Executive's resignation, if it is filled by an Administrative Officer who had been criticized by the pro-China camp as one groomed by the British Colonial Government, can the Central Authorities put their mind at ease? As many people have said, the

purpose of fixing the term of office at two years is not for greater clarity of the law but for testing the candidate's allegiance. I also find such an argument convincing. For the Communist Party, allegiance is very important. The only reason of seeking interpretation is to see whether or not the candidate will deviate from the Central Authorities' directive on important issues. This is the first and foremost reason why the Ordinance has to be amended. Basically, this is to put Mr Donald TSANG on a two-year probation.

The second political consideration is to pacify the pro-China camp. As we all know, the pro-China camp in Hong Kong or the Central Authorities of China have all along harboured much reservations about the Administrative Officers groomed by the British Government. They do not have much trust in them either. This is nothing new to us. During such a short period of time, they are asked to change their attitude from one which is hostile to or suspicious of the elites, the Administrative Officers, groomed by the British traditions to one which accepts them as the top leaders of the SAR Government, I believe the DAB, NPC Deputies and even many pro-China bodies cannot accept it within a short period of time. Otherwise, why should there be the CHOY So-yuk case? Why have some other people from the pro-China camp cast doubts on the Central Authorities' choice of candidate explicitly or implicitly in their chats? And why have they even expressed that they could hardly accept it in a short period of time? If the term of office is only two years, these people will be told that the candidate will be put on probation only. If he is loyal, he can stay longer. If not, he will be told to leave. This is to pacify the pro-China camp, including the DAB.

The third political consideration is to serve as an inducement to prospective candidates. To put it simply, the Central Authorities are now employing different means to pacify different people who all aspire to running for the Chief Executive. Each of them has an aspiration, that is, to become the Chief Executive one day. Many who are interested in running in the election are also in the ruling team, including Financial Secretary Henry TANG, Secretary Prof Arthur LI, or even Mr James TIEN who are always being named as some of the prospective candidates. Many of them are now in the ruling team. How can they be pacified? The simplest way is to tell them to wait because the term of office of the prospective Chief Executive is only two years. They can afford to wait for two years, particularly those who are younger or around 50.

In our conversations with friends, we often find that the Central Authorities are very clever. The Central Authorities have told each prospective

candidate a story which is characterized by one theme, and that is, they will have a chance to run for the Chief Executive. It is by adopting such a means that the Central Authorities pacify those in the ruling team who may be dissatisfied with the present arrangement. So, after listening to such an analysis, you may ask a question: For those who always mention the rule of law in their daily talks or articles written by them, or for those Secretaries or Bureau Directors who would talk about all these things from time to time, do they really believe what they said? In reality, are political considerations overriding factors?

Last week, Mr Albert HO told us a joke here, "a bird eating a cake". I do not know how to tell jokes, but I can talk to Members about another topic: What socialist democracy is. This is in fact not a joke. The difference between socialist democracy and democracy in general is that in the former, the electoral arrangement is made to ensure a predetermined result. Is the system implemented in Hong Kong, as a matter of fact, a kind of capitalist democracy? I do not know because every time the outcome of the Chief Executive election is foretold. We should not deceive ourselves and others. If the Chief Executive Election in Hong Kong is fair and open, why is the election outcome foretold? Now we can foretell the outcome. Despite that, the Central Authorities cannot put their mind at ease. They have to not only make sure that the outcome is predictable but also eliminate all obstacles, all risks and all possible variables. So they first dissuaded Financial Secretary Henry TANG from running in the election and then Mr James TIEN. Of course, I have no idea whether or not the old friend of Mr CHEUNG Man-kwong — I mean Prof Arthur LI — has been dissuaded from running in the election. But I think he has been. The Central Authorities can put their mind at ease only after having persuaded all prospective candidates not to run in the election. Of course, Mr CHIM Pui-chung and I have not been scared away. We take part in the election even though we know that it is impossible to win. Frankly speaking, concerning the discussion on the Bill and the voting later on, the first question I would like to ask is: China, as a great and proud country, in the face of challenges from candidates with slim chances of winning the election in its special administrative region, has made such a great effort in discouraging, deterring or even preventing them from running in the election. Should this be done by the government of a country? I am really puzzled.

Regarding the interpretation of the Basic Law on this occasion and the discussion of the Bill, I am extremely disappointed by three groups of people. The first group includes Mr Donald TSANG. According to my memory, the former Chief Secretary for Administration, Mrs Anson CHAN, has said

something like this: In Hong Kong we have some core values and, as far as these core values are concerned, we cannot step beyond the limits. These core values are fairness, openness, justice, rule of law and tolerance. Our society cannot be considered a democratic one, but many people know that these are the values of our society. So when these values are being infringed, just like the legislation on Article 23 of the Basic Law which may infringe on our freedoms, people staged a strong protest on seeing that the bottomline of these core values are being threatened. When our core values are subject to challenge, each person and each person at each position will put up defence. However, I do not see that the Chief Secretary or our Acting Chief Executive has tried to defend our rule of law.

The second group of people who have made me feel disappointed are some in the legal profession of Hong Kong. Many in the legal profession have always criticized that some senior counsels such as Mr Martin LEE, Ms Audrey EU, Mr Ronny TONG, Mr Alan LEONG, Ms Margaret NG, who was criticized as uncompromising and stubborn, and Mr Albert HO, had mixed up common law with continental law. On one occasion, I could not help asking them a question: Do you know your remarks will mislead the youngsters? There are many students in society, just like those people sitting in the public gallery of this Chamber. As we can see on television, the so-called mainland legal experts, the senior government officials and commentaries would, whenever common law became a topic of their discussion, criticize that some people had mixed things up and did not understand the Basic Law or the reasons why the Basic Law was so drafted. What these legal experts, senior government officials and commentaries did has not only insulted the legal profession but also, in my opinion, misled our next generation. We must admit that the provisions in the Basic Law are drafted in an unequivocal way, no matter it is viewed from the perspective of common law or continental law. The lawyers, who are being criticized as uncompromising and stubborn, are in fact not. They have behaved in such a way just because the Government of our country and our state leaders have considered this legal issue from the angle of politics.

Of course, after the endorsement of this Bill, there are a host of problems to be dealt with. As these have been mentioned by many colleagues, I will not repeat them. Among these problems are whether the term of office of the Chief Executive should be seven or 12 years and how long the term of office of the Election Committee should be. I have repeatedly asked this last question in the Bills Committee.

I would like to mention what I felt in the last minute. Many Honourable colleagues have asked: As this is the third interpretation of the Basic Law, should we express our standpoint in a stronger way? We should understand that we have to persevere with our cause even though we know that it is impossible to succeed. Our stand must be firm. We must be confident in ourselves and in Hong Kong people. In the short term, we may lose in the voting in this Chamber on account of the votes we may get. But I think we will win in the long run. Thank you, Madam President.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, with respect to the discussions today, some people think that it is only a matter of routine and there is no need to hold such discussions. This is because ever since there were speculations in end February this year that Mr TUNG Chee-hwa would resign from the office of the Chief Executive up to the present moment, everything which has happened seems like the scripted unfolding of a drama scene after scene. We saw at first an interpretation of the Basic Law by the National People's Congress (NPC). Then under the arrangements of the Election Committee, only one person was tipped to be the candidate. All these happened like watching a movie in a cinema. Everything was fixed nicely and well beforehand. There was to be no change. At last the result is that Mr Donald TSANG would be elected uncontested, in the same way as Mr TUNG Chee-hwa was when he ran successfully for the second term.

In addition, some members of the public think that since Mr Donald TSANG is very likely to be elected uncontested in this small-circle election and since his popularity rating is at an all-time high, he can be said to have gained a solid base of popular support. As the Legislative Council is aware of all these, then why should it spend time on holding a debate and discussions? Would this not be a waste of everyone's time?

Madam President, all the things which I have mentioned just now are of course the political reality that we are facing. There can be no denying of it. Having said that, and even though this is a political reality, we must still ask, "Though everything is fixed beforehand and today the Bill is introduced to this Council by the Government for scrutiny, then should the Council just act as a rubber-stamp and bother not about doing anything, just put the stamp on and that is it?" Madam President, I have listened to some Honourable colleagues making their speeches earlier and I am glad because I have heard many of them

say that the Legislative Council should not act as a rubber-stamp. We must race against time and raise each and every problem that we may have found. For if not, if we remain reticent and let the Bill get passed, I am very worried how we can claim to be defending the rule of law. How can we say that there is rule of law in Hong Kong? I think that we should not just say that the candidate in question has a very high popularity rating and so we can cast our principles aside. We cannot sit back and do nothing because a candidate can be regarded as almost the Chief Executive designate. Nor can we apply the same attitude towards the rule of law and other issues. I do not think we should be like that. Quite the contrary, I think we should point out the problems at this juncture so that this future Chief Executive would take these problems seriously. This is the most important point.

Ever since the interpretation of the Basic Law by the NPC, we have a feeling that the provisions in the Basic Law have been distorted once again. We can see that Mr Donald TSANG, the Acting Chief Executive, whose popularity ratings are rising all the time, has handled this situation with a very composed frame of mind. Moreover, many people are saying that the person with such high popularity ratings should become the new Chief Executive and we should not think too much or say too much. However, I would like to cite some unofficial history to illustrate my point. We know that Emperor Yong Zheng of the Qing Dynasty ruled the country very well during the 14 years of his reign. Some people wrote about how he had come to the throne by ordering his subordinates to change the imperial decree of his late father. It was said that the decree had stated that the throne should be passed onto the 14th son of the emperor, but it was changed to the effect that the throne should be passed onto the fourth son of the emperor. This fourth son is Yong Zheng and so he succeeded to the throne. Doubtless, during the 14 years of his reign, he ruled the country very well. But I have to ask a question, "If a king rules well, should we stop asking how he ascended to the throne? Speaking from ancient Chinese history, society at that time was ruled by the man, not by the law, and the people did not care so much about such matters and all they were concerned was that stomachs were full. If the people could make a living, they would not care who the king was. This was true in Chinese society in the past, but Madam President, what about our society in the 21st century? Can we have such a mentality? Can we just pay attention to a society ruled by the man and not pay attention to a society ruled by the law? If we know that the person about to ascend to the seat of power, that is, about to become the Chief Executive, does not come to power through a legitimate process, should we not do anything?

Should we just do nothing and pin our hopes on him to rule Hong Kong well? Madam President, I think that we really cannot do so. Not only should we attach importance to problems surrounding the Chief Executive of this term, we should also do the same for the Chief Executive of the next term. And if things do not go well for this term, can we expect things will be fine for the next term? Can we expect the elect next term will do a good job? So we must point out that the Bill today has come into existence under unreasonable and distorted circumstances.

Madam President, we oppose this Bill. However, I wish to state that I oppose this Bill is not because I oppose the two-year or five-year term but because the Basic Law has not said anything about the remainder of the term of office and now an attempt is made arbitrarily to amend the law to make it refer to the remainder of the term of office. This is really in contravention of the original intent of the Basic Law.

As a matter of fact, we are not the only people who say this. Madam President, I think you also recall that before Mr TUNG resigned, Members of this Council had asked the Government on many occasions and the Government also made it clear that after the Chief Executive had resigned, the succeeding Chief Executive would definitely serve a five-year term. This reply was confirmed by Secretary Stephen LAM and Secretary for Justice Elsie LEUNG repeatedly and not only by words of mouth, but in writing. Unfortunately, things took a swift turn afterwards. After Mr TUNG had resigned, the Government made a U-turn and said that its understanding had been erroneous and after consulting the Mainland and upon examining the matter it was found that the previous view was not right and it should mean the remainder of the term of office. Such a turn of events is really shocking. Why had the Government not examined the issue carefully before giving an answer to Members? Can the Government not do anything at all? It does not even offer a word of apology. It only says that this is how the matter should be understood. Such a performance on the part of the Government is downright disappointing and this is not befitting for a government to do such things. In addition, we can see that on this occasion when the SAR Government sought an interpretation of the Basic Law from the NPC, it had invoked Article 53 para 2 of the Basic Law. But the argument was lame and unconvincing because the provision does not state clearly that it is related to the term of office of the Chief Executive. But it has been arbitrarily interpreted as bearing such relevance. This is another occasion

which we see this wilful twisting and distortion made of the meaning of the law which is so horrible. We see people changing something from black to white and *vice versa*, in accordance with their own will and in total disregard of facts.

Madam President, on the previous occasions when the Basic Law was interpreted, including the one in 1999 on the right of abode in Hong Kong and this time, when the SAR Government had put up such a request on each of these occasions, we reminded the Government that it was not a proper move to make. Article 158 of the Basic Law has stated clearly that the SAR Government is not vested with the power to make such a request. But the Government is bent on having its way and it has made repeated requests to interpret the Basic Law. I think that this is not only a blatant disregard of the contents of the provision but also of the legal procedures. What is the Government trying to do? What does it want when it disregards procedures and contents?

Madam President, as a member of the legislature, I think that we definitely have the duty to defend the rule of law and its dignity. I think that the law must not be bent and twisted at will. So I think the debate today and the voting are very significant. We wish to show our discontent for the SAR Government for undermining the rule of law. We urge the Acting Chief Executive, Mr Donald TSANG, to realize that even if he enjoys a great popularity, he must not pretend that the constraints of law do not exist.

I was very disappointed during the discussions on the Bill. Some Honourable colleagues were members of the Basic Law Drafting Committee, such as Mr TAM Yiu-chung who is Chairman of the Bills Committee. I think he has double the responsibility to uphold and defend the supremacy of the Basic Law. It is a pity that what he and others did was only strict compliance with the will of the Government. And so when the Government said that it should be the remainder of the term of office, they would agree that it was indeed. If the Government put up the idea that the term of office of the Chief Executive should be two years, then they would agree that it should be so. They have not done anything to defend the spirit of the Basic Law and they have allowed the Government to twist and bend the law time and again. Madam President, the dignity of the Basic Law has been trampled upon and today when we say that we want to defend the Basic Law, this means that it has already been trampled upon again.

Madam President, during the discussions on this Bill, we discovered a lot of problems, because of the distortions of meaning. But the Government did not care about these problems and it went on to introduce this Bill to the Council. Again this is disappointing to us. Some Honourable colleagues have mentioned that a lot of problems were found when the Bill was deliberated, such as how to solve the problem of the remainder of the term of office, and so on. If the remainder this time around is two years, then should the term of office of the new Chief Executive be two years plus five years, or should it be two years plus five years plus another five years? The answer given by Secretary Stephen LAM is simply that problems like these would be dealt with later, but not now, for these are future matters and should be handled in future. But should we be ostriches and pretend that these problems do not exist? Why should we forget about them now? Why does he not even know how long the term of office of the new Chief Executive is? This is most disappointing indeed. It shows how terrible the result of the distortion of the law is. But our Government can care nothing about it. Therefore, I am very worried that the Government will just act blindly according to someone's will or order while it does not have any independent view of its own. It may just cover up wrong things or yield to crooked arguments. I think that, as Members of this Council, we can hardly swallow such things.

Madam President, a democratic government must place emphasis on a few points, including public endorsement and that it should be responsible, subject itself to constraints and that its acts should be constitutional. On the constitutional development in Hong Kong in the past, though we were not happy about it, it could still be considered to be in line with the constitutional spirit in some measure. Unfortunately, we can see very little of qualities like public endorsement, responsibility, submission to constraints, and so on, these days. I therefore hope that the new Chief Executive will understand this and avert the situation so that the Government can win the trust and endorsement of the people and that he should also think how to shoulder the responsibility of fulfilling these tasks.

Madam President, I really do not want to see the rule of law in Hong Kong sink in degeneration time and again. I would therefore oppose this law which is founded on unreasonable grounds.

Madam President, I so submit.

DR FERNANDO CHEUNG (in Cantonese): Madam President, when the Government calls white black and black white, society will become most horrible.

The dispute on the term of office of the Chief Executive to be returned by by-election indicates that Hong Kong is in such a crisis, a terrible situation. Many people would of course say that the difference between two years and five years is not that important and that we should not be so stubborn. Is the democratic camp indeed raising a false alarm by exaggerating things? Nevertheless, I have to reiterate here that our focus is not on two years or five years, we are just expressing our concern on the upholding of the rule of law.

The Basic Law does not specify the arrangement when the office of Chief Executive becomes vacant. According to interpretation of the provisions *per se* the term of a Chief Executive returned in a by-election shall be five years, but actually there is no such thing as a by-election. However, after listening to the opinions of legal experts in the Mainland, the Government claimed that the legislative intent provided for the by-election and that the term of a Chief Executive returned in a by-election should be the remaining term of the outgoing Chief Executive. This so-called legislative intent is so far unable to be verified. Naturally, if there is controversy in society over the term of the new Chief Executive, we can reach consensus through open discussion and amend the Basic Law in a proper manner. However, the Government of the Hong Kong Special Administrative Region (SAR) is cheating by saying that it is against the Basic Law for the term of the new Chief Executive to be five years. Having followed the interpretation of the Central Authorities and those so-called mainland legal experts, it presented itself as being so aggrieved of being put into a position that it has to appeal to the State Council for an interpretation from the National People's Congress (NPC).

This reminds me of some historical pictures in the past, especially in handling the group pictures of party leaders during the Cultural Revolution. The situation was amusing. When certain party leaders were criticized and denounced, we would find some blanks in the photo due to their disappearance. However, when those leaders were reinstated, their faces would reappear in the relevant pictures. In my opinion, the interpretation of the NPC is similar to the handling of group pictures during the Cultural Revolution. They achieved the same goal with different means. Even for pictures which had already been taken, no matter the person was present or not, he or she could appear or

disappear at any time. It is clearly stipulated in the law that the term of office is five years, but this "five years" can disappear all of a sudden to become "remainder of the term". If, later on, the office of another Chief Executive expires and there is a certain candidate whom the Central Authorities is very fond of, do we need to interpret the provisions of the Basic Law again to enable him or her to serve a longer term? In regard to the handling of serious issues on constitutional system and law, is such situation unique in China or a characteristic of socialism as Mr LEE Wing-tat just said?

To put it bluntly, the entire arrangement this time around is in fact a measure of political expediency. Even though the Central Authorities have secretly appointed Donald TSANG, they still want to put him on probation. As we all know, the two-year term is his probation period. We also know that, should nothing wrong happen, everything will unfold as scripted by the Central Authorities. Upon the passage of this Bill by the Legislative Council today, Donald TSANG will resign tomorrow. After the Central Authorities have accepted his resignation, he will openly declare his participation in the by-election.

This reminds me of another incident. When Beijing joined in the bid for hosting the Olympic Games, a series of pictures were taken by a foreign correspondence agency, showing some workers spraying green paint on a piece of muddy ground to make it look like a piece of grassland. When the Olympic Games Committee visited Beijing to decide whether Beijing could host the Games, they would pass that piece of land. For this reason, the Authorities wanted the Committee to see a scene of green fields, to make them feel that Beijing was quite a green city, leaving the Committee members with a good impression.

Should we attain our end by hook or by crook? Can we give up our law and rule of law for political needs? Can we recklessly distort law or even create something out of nothing? Right in this Council, the authorities are asking us to point out that piece of green land is really a piece of grassland. Many colleagues, including Mr Alan LEONG and Mr Frederick FUNG, have pointed out that the Bill tabled today is full of loopholes and defects. If anything happens, this Council may also be put into an unfavourable situation. If something happens after Mr Donald TSANG has become the new Chief Executive, thus making the Chief Executive office vacant again, are we going to hold another election? Is the new Chief Executive returned going to serve the remainder of the term? It may be too ridiculous to suggest that only 20 days are

left, even if the remainder of the term is half a year or one year, it is still terribly ridiculous. How is it possible that such a Bill with so many loopholes be tabled for Second Reading by this Council?

As this Bill may put this Council in a difficult situation, if our colleagues support this Bill which is basically against the constitution and rule of law, I would feel most sorry about it.

Madam President, I will vote against the Bill, to regret the dishonourable behaviour of the Government in destroying the rule of law! I think the treachery on the part of the Government has brought regrettable result. Madam President, I have spoken in opposition of the Second Reading of Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill. I so submit.

MR MARTIN LEE (in Cantonese): Madam President, I am wearing a black necktie again today. In fact, I wore a black necktie whenever the NPC had made an interpretation. Although the NPC is not making any interpretation today, I think it is also a right occasion to wear a black necktie as the Bill is resulted from an interpretation by the NPC. Besides, we are going to debate "The 4 June incident" motion later.

Recently, in regard to this Bill and the issue of whether the term of the Chief Executive should be five years or the remainder of the outgoing Mr TUNG Chee-hwa's term, we have had numerous discussions. I want to remind Members that, while we were studying this Bill, at the meeting held on the 28 April this year, I asked Mr TAM Yiu-chung, a member of the Basic Law Drafting Committee (he is also the Chairman of the Bills Committee to study this Bill), that before the drafting of the Basic Law and on the day when it was promulgated, that is, 4 April 1990, whether he had known then that the legislative intent was indeed included in the provision mentioned by the NPCSC in the recent interpretation exercise. According to the legislative intent, the term of office of a new Chief Executive returned is the remainder of the outgoing Mr TUNG Chee-hwa's term. Did Mr TAM Yiu-chung know about that then? I thought he would say no, but he said, "Yes, I knew". He then jeered at me by saying that, "Maybe it is because I am smarter than you." It is not surprising if he is cleverer than me, as I am the most stupid in my family. Then I asked, since he was so clever, if he knew that the longest term of the Chief Executive

returned in the by-election should be seven years (two plus five years) or 12 years (two plus five plus five years). As smart as Mr TAM may be, he was reduced to silence and could not give me an answer.

This legislative intent is in fact a fraud. Just as the Communists pull wool over the eyes of their people, saying whatever they want. When they could not justify their argument, they would say it is the legislative intent. In regard to this legislative intent, I have thought of a good tactic, but I am too late. Mr Edmund HO in Macao has been re-elected to serve a second term, and he can only serve two terms in a row. This arrangement made the taxi drivers in Macao very angry, for they were not satisfied with the drafting of the Basic Law as it only allows their Chief Executive to serve two terms. They knew nothing about the performance of the Chief Executive in Hong Kong, but then they considered that the Chief Executive in Macao should not be restricted to serving two terms. I just thought about a useful tactic, but then it is too late. He has already been re-elected for a second term.

In fact, when his first term expired, he should have found someone, no matter who he is, to take up the second term. After a month or so, this person would resign on the ground of a soar foot. Then they can hold a by-election and explain that the term of this Chief Executive returned in a by-election is not subject to any restriction. In other words, the Chief Executive returned in a by-election can serve as long as he can. As such, Mr Edmund HO can serve the next term of the Chief Executive — it will be four plus five plus five years. As he is returned in a by-election, his term can go on and on, and the remaining term of four years or so will not be taken into account. Upon the expiry of his term of office, as this term does not count, he can take part in a by-election again. All the same, he can ask somebody to take up office for a month or so. This time, he can resign on the ground of a headache. Mr HO can then serve the remainder of his term and continue to be the Chief Executive. All they need is an interval in between. Unfortunately, I am really sorry that I only think of this tactic now, otherwise Mr HO can go on being the Chief Executive in Macao.

However, it also shows how ridiculous this arrangement is. People may say that Martin LEE is day-dreaming when they hear me say this. They may be right. Yet, the idea of this day-dream was inspired by the legal experts in the Mainland. They have indeed moved our Secretary for Justice who has been looking at the issue from the angle of common law. She has changed her mind and adopted the thinking of people in the Mainland. Since there is a legislative

intent and we have been informed of such intent by the experts in the Mainland, our Secretary for Justice should know that according to this intent, the term of the new Chief Executive to be returned — we all know that it is going to be Mr Donald TSANG — should be two plus five years or two plus five plus five years. I really hope the Secretary for Justice can clarify this point today. If she tells us that she does not know, it would be most strange. The legislative intent does not come out today or in the future, it is something already there back in 1990 or before. If she cannot give us an answer, I really do not understand what this legislative intent is.

Ms Elsie LEUNG, the Secretary for Justice, has said that in state organs in the Mainland, it is indisputable that whoever fills up a vacant post will serve the remaining term. I therefore looked up the Constitution and found that Articles 66, 79 and 87 did stipulate that in relation to the term of office of the NPCSC, the President and Vice-President of the People's Republic of China and the State Council (including the Premier), it is the same as that of the NPC. As the term of office of the NPC is five years, therefore all these officials also serve a term of five years. This is of course true, because they are elected by the NPC. Even the leadership of the State Council is also decided by the NPC, so their term of office should thus tally with the NPC. Article 84 of the Constitution clearly provides that, in the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the NPC shall elect a new President and Vice President. The word "elect" is written down in the Constitution.

In regard to the term of office in state organs, it is clearly set down in the above provisions. However, as far as the Chief Executive of Hong Kong is concerned, we can see that his term of office is five years. He is not elected by the Legislative Council. As our term of office is only four years, it is therefore two separate issues. Our system is totally different from that of the Mainland, and the word "by-election" is not adopted in the Basic Law. As such, how can we compare the system in Mainland with that in Hong Kong? Under "one country, two systems", we are not allowed to do that. If we adopt the same system as they do, then at least we can say that though the Basic Law is silent on the issue, since we have the same system as the Mainland and the Chief Executive is also returned in an election, then we should follow their system. Nevertheless, given the difference in the systems of both places, these arguments are totally not tenable.

Ms Elsie LEUNG, the Secretary for Justice, should also be well aware of that. She has told us frankly that, under the common law system adopted in Hong Kong, provisions are set down clearly and should be interpreted according to their literal meaning. For this reason, she has been given to understand that, the Chief Executive elected, no matter he or she is returned in a normal situation or in a by-election arising from resignation, should serve a term of office of five years. In a written reply to a Legislative Council question on 5 May last year, Mr Stephen LAM, the Secretary for Constitutional Affairs, said clearly that "any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law." This is very clear, "not consistent" means against the law. Yet, why are we facing the present outcome? Why do we have to study this Bill? It is because our Secretary for Justice, Ms Elsie LEUNG, has had her brain washed by the experts in the Mainland and was convinced by them. As such, she no longer tackled the issue from the common law angle. On 20 March, in a RTHK programme entitled "Letter to Hong Kong", Ms Elsie LEUNG said that "it should be remembered that the Basic Law was enacted in a civil law country, and that our common law system is capable of evolution." This is a most interesting remark, but unfortunately, she has got it all wrong.

I want to remind colleagues that, before the promulgation of the Joint Declaration, around 1983, I had a discussion with Mr LI Chu-wen, the then Vice Director of the Xinhua News Agency in my office, there I showed him a number of law copies, all of them were cases in the United Kingdom. I also showed him our Laws of Hong Kong. When he saw that our court judgements often followed the precedent in the United Kingdom, he told me that he understood the situation and said that in future, the laws of Hong Kong would definitely follow the existing law instead of that of the Mainland. For this reason, it was clearly stipulated in the Joint Declaration that the laws currently in force in Hong Kong, including common law and rule of equity, would remain unchanged. In addition, Article 18 of the Basic Law provides that "The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law" — meaning the common law — "and the laws enacted by the legislature of the Region." Article 18 also mentions that some national laws could be applied in Hong Kong. As I insisted that those laws that were not intended to be applied in Hong Kong must be set out in Annex III, those laws are therefore listed in Annex III. However, in Annex III, we could not find the provisions in the civil law system referred to by Ms Elsie LEUNG. She relied on those provisions to interpret Article 53 or

46 of the Basic Law, enabling her to interpret that the term of office of the Chief Executive returned in a by-election should not be five years, but the remainder of the preceding Chief Executive's term. It is not written in the Basic Law.

If, under this circumstance, we have to adopt the mainland system, a system which we do not understand, to interpret the five-year term clearly indicated under the common law system as the remainder of the term (equivalent to two years) of Mr TUNG, then our legal system is obviously being destroyed by our Secretary for Justice herself. She has taken the lead in not using the common law system to interpret the laws of Hong Kong, including the Basic Law. If this is allowed to continue, then professors of law in the universities will find difficulties in their teaching. What are they going to tell their students? Students may ask, "Professor, which system should be adopted?" Then we have to put the question to Ms LEUNG. I hope that Ms LEUNG can write more articles on this subject, to teach us how to deal with these laws. Otherwise, we do not know how to learn even if we want to.

Madam President, there were so many television cameras outside that I could barely walk through just now. I was wondering what had happened. I found out very soon that they were waiting for Mr TSANG, the soon-to-be Chief Executive and Dr David LI, his election manager. I thought Mr TSANG would feel keen to have the Bill passed. Also, I thought that it was because he had been so devoted that he was unwilling to tell people whether or not he would run in the election. However, he is not here to take part in the debate. Perhaps it is because he is, in common expression, assured of enough votes to pass the Bill with the presence of the pro-government camp and his supporters. He made me feel very disappointed. As a matter of fact, Madam President, it is not the first time that he is doing this. I believe Members would also remember that, on Wednesday, 6 April, we had a meeting at eleven o'clock. It was not until 10.30 am that day, when the meeting was about to begin, did he tell the President that he was going to announce that the SAR Government would seek an interpretation of the Basic Law by the NPCSC. Later, he was absent from our debate. Instead, he held a press conference outside. The most disappointing thing was, even before our debate was over, he had already presented us with a report, telling us that the issue had been submitted to the NPCSC via the State Council. This showed that his mind was not here, but in running for the Chief Executive Election. For this reason, we can not expect too much of this Chief Executive, because he is a yes-man to the Central Authorities. Thank you, Madam President.

MR CHIM PUI-CHUNG (in Cantonese): Madam President, I wish to declare some facts, but not interests. In the afternoon of the 17th of this month, in a press reception I announced that I would accept nomination as candidate for the Chief Executive Election. As this is a fact, I will make a declaration of it here.

Madam President, the topic of our debate today is by-election of the second Chief Executive. According to the latest explanation by the SAR Government, this would be held to select a Chief Executive to complete the remaining two-year term of office of the second Chief Executive. To be exact, this would be a term stretching two years and four months.

Madam President, as far as we know, the election of the Chief Executive of the Hong Kong SAR can be traced back to the Sino-British talks which began in 1982. At that time the idea was put forward to hand over the sovereignty to China. The British Government made a counter-proposal to trade off sovereignty with the right of governance. In other words, this was to hand over sovereignty to China while the right of governance would remain in the hands of the British. The Chinese Government flatly rejected this proposal. Thereafter, another suggestion was made and that was both the Chinese and British Governments would stay away from governing Hong Kong and the right of governance would be given to civil servants of a high calibre and outstanding leadership. However, the Chinese side still refused it. Mr DENG Xiaoping made it clear that the sovereignty over Hong Kong was to return to China, but the right of governance would be given to the hands of a leadership formed mostly by Hong Kong people who really loved China and Hong Kong. He added a proviso to this: As not any person would fit this criterion of being Hong Kong people who love the country and Hong Kong, so he also made it clear that should the British Government want to impose their practice on Hong Kong, the Chinese Government would set up another centre of power.

Madam President, we recall that during the run-up to 1997, the Provisional Legislative Council was set up in Shenzhen. Madam President, it was the first time you were elected President of this Council and this is a post you have been holding ever since. This setting up of the Provisional Legislative Council shows that the Chinese Government would not yield to any pressure and will strive to effect the return of Hong Kong to China and to achieve the goal of "Hong Kong people ruling Hong Kong".

Madam President, on the morning of 17 May, I issued 795 letters to all members of the Election Committee at the same time. This included you, Madam President. In the letter I talked about my decision to accept nomination due to the following reasons. First, I hope that the by-election for the Second Chief Executive would be endorsed by all the people of Hong Kong and respected by the media. Despite criticisms that the Chief Executive Election in Hong Kong is a small-circle election, we should not forget that the election in the Vatican of the Pope is decided by only 115 cardinals. People can just look at the black or grey smoke that rises to know whether or not a new Pope has been elected. The outcome would affect more than 1 billion Catholics all over the world. The point here is not so much in the number of voters but in the credibility of an election.

Second, I also hope that the Chief Executive by-election will be regarded highly by all members of the Election Committee who will also exercise their rights. Third, I have made it a point to request all candidates to face the people of Hong Kong and the voters, fulfil their aspirations and answer their questions. I said therefore that apart from the candidate from the pan-democratic camp, that is, Mr LEE Wing-tat, I would be happy to see other people coming out to stand in the election. If not, I would accept nomination boldly. This is also what elections are all about.

PRESIDENT (in Cantonese): Mr CHIM, we are now discussing the term of office of the Chief Executive, not the election.

MR CHIM PUI-CHUNG (in Cantonese): Right. As to whether the term of office should be two years or five years, nothing more can be said about it. But actually the whole thing is about the election of the Chief Executive. Madam President, I have heard in great detail earlier about problems related to the election of the Chief Executive. I have made a declaration of the relations and the interests, for they are facts. I hope.....

PRESIDENT (in Cantonese): Please come back to this Bill.

MR CHIM PUI-CHUNG (in Cantonese): I see. But as I have said, much has already been said about two years and five years. On top of this, everyone may speak for 15 minutes. Madam President, irrespective of whether it is two years or five years, this election must be endorsed by the public. We should know that Hong Kong is not an independent place but a special administrative region of China. It follows that questions about politics and constitutional reform must be discussed with the Central Authorities and it is only when support is gained from the Central Authorities that gradual and orderly progress can be made towards the final goal of universal suffrage for the two elections.

I would like to make use of this opportunity to remind members of the Election Committee at the same time that they should bear closely in mind the words "Hong Kong people ruling Hong Kong" as well as the demands of Hong Kong people on the term of office of the Chief Executive. Like what I have said, if this aspiration is to be fulfilled, we must all treasure the opportunity. Apart from what I have said that on matters about politics and constitutional reform, co-ordination must be sought from the Central Authorities, for matters related to finance, the economy and even elections are all internal affairs of Hong Kong. We should treasure the opportunity before us and never give up our rights. This is because apart from Hong Kong, the Central Government has also to focus its attention on Taiwan and even other places like Beijing, Shanghai, Guangzhou, Chongqing, and so on. So as the Central Authorities would be concerned about the term of office of the Chief Executive of the Hong Kong SAR, we should treasure all the more our election rights. This would put, Madam President, your mind at ease. That is all I wish to say.

DR KWOK KA-KI (in Cantonese): Madam President, what we are discussing today is actually about a very short and simple amendment to the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill). What is involved is actually a very small matter and there should be no cause for such lengthy discussions and disputes. Many people have asked me how to deal with the Bill and how to cast a vote on it. I have often said that I can really find no reason to oppose the Bill. This is because we need to select a new Chief Executive, that is for sure. After TUNG Chee-hwa has resigned from the office of the Chief Executive, there is a need for Hong Kong to select a new Chief Executive and problems like universal suffrage and the term of office should also be addressed. As a member of Hong Kong and the Legislative Council, I am

obliged to see to it that such an election can be held. But the problem is the way in which the SAR Government has handled the matter.

This very short piece of amendment actually stemmed from the disputes around the term of office of the Chief Executive as stipulated in the Basic Law. On 5 May 2004, in a written reply to a question raised by a Member of this Council, the Secretary for Constitutional Affairs said, "The term of office of the Chief Executive, as prescribed in the Basic Law, is five years. This provision applies to any Chief Executive. There is no exception. In the light of the above, any amendment to the Chief Executive Election Ordinance which would provide for a term of office other than that of five years is not consistent with the Basic Law." These words were written in black and white at that time and there is no question about it. I would also like to cite what Secretary for Justice Elsie LEUNG has said about the Basic Law or about how the common law is to be merged into the Basic Law. She says to the effect that provisions which are clear in meaning should be construed literally.

In fact, this has been the principle used by local scholars, legal experts and members of the legal profession to interpret the Basic Law. The same principle is also used to interpret Hong Kong laws on the basis of principles found in the Basic Law. Whenever a dispute arises, our normal and correct approach would be to look up the Basic Law itself and examine it. If it is found that there are loopholes or inadequacies in the Basic Law, we should seek an interpretation in law based on the Basic Law or the spirit of common law to which we have always adhered, or to amend the Basic Law when it is deemed necessary.

A question we may ask is: Which is of greater importance, to return a new Chief Executive in a by-election or to defend the rule of law, the common law as well as the Basic Law? Obviously, the Government has chosen to sacrifice everything to facilitate the smooth conduct of an election. However, as a member of the Legislative Council and even as a member of the public in Hong Kong, there is no way I can agree to that. Ever since the reunification, we have had an interpretation made of the Basic Law three times. On two occasions the SAR Government went so far as to request the Standing Committee of the National People's Congress (NPCSC) for an interpretation of the Basic Law. Every interpretation made, including this one, has cast an ominous shadow over "one country, two systems" and the rule of law in Hong Kong. The outcome of the interpretation this time, or when the Bill is passed today, may mean a

convenience, that is, the by-election which is to be held because of the need to fill the vacant office occasioned by TUNG Chee-hwa's resignation can proceed in a smooth and predictable manner with all hurdles removed. However, the price we have to pay is immense — public confidence in the rule of law, in the determination of the SAR Government to uphold the rule of law and in the determination of the Central Government to uphold the rule of law will all be eroded. No one wants to see or feels happy when doubt is cast on the prestige and ability of governance of the SAR Government and the Central Government. The disputes which arise because of the way in which the Bill is handled have really served to injure public confidence in the SAR Government and even the Central Government. Such a state of affairs could have been avoided.

Mr Martin LEE said earlier that he had asked Mr TAM Yiu-chung who was a member of the Basic Law Drafting Committee on how the term of office issue is to be construed. It is found that the Honourable colleague who was a member of the Basic Law Drafting Committee and is now a Member of this Council does not have a clear view of this issue even to this date. It is still a big question mark as to how long our new Chief Executive — if it is to be Chief Secretary for Administration Donald TSANG as reported in the media — can stay in office, whether it will be seven years or 12 years. I believe in the days to come there would be more occasions when the Basic Law will need to be interpreted in view of the grey areas, inadequacies and uncertainties in it. This would compel us to examine the Basic Law. If we continue to follow the practice adopted by the Government this time and ask the NPCSC to interpret the Basic Law and hence bypass the Courts and the well-established mechanism and opt against a more open and transparent course of action such as amending the Basic Law, that would mean more harm than not to the governance of the SAR Government and the Central Government, public confidence as well as the future development of Hong Kong.

Coming back to the Bill, I have often said that as Members of the Council we have a duty to see to it that the governance of Hong Kong or other important administrative moves like the by-election to select a new Chief Executive can proceed. But if we vote for the amendment as proposed in the Bill and pass it, that would mean condoning what the Government has done in this matter, that is, it has inflicted damage on "one country, two systems", the rule of law, "Hong Kong people ruling Hong Kong" and the trust which Hong Kong people have placed in the SAR Government and the Central Government. That is why I cannot give the Bill my support. Though it is my hope that this election and the

Bill can be passed and put into force so that we can find someone of high calibre to lead us to scale greater heights and I am sure this is also the common aspiration of Hong Kong people, if the means used and the principles adopted are not clear or pure, or if they are unscrupulous, we will never accept them. It does not matter whether or not the goals sound grandiose or not, each acceptance by us would mean condoning the action taken by the Government. But this is in fact damaging to the governance of Hong Kong and to "one country, two systems". Therefore, after much pondering over the matter, I think only one conclusion is left and that is, I will vote against the Second Reading of the Bill.

Thank you, Madam President. I so submit.

MR LEE CHEUK-YAN (in Cantonese): Madam President, on behalf of the Hong Kong Confederation of Trade Unions, I oppose the Second Reading of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill).

Having heard Mr CHIM Pui-chung's remarks, I feel very sorry for the people of Hong Kong. The Bill has yet to be passed and the candidates for the Chief Executive election have yet to emerge, but there has been "grey smoke" everywhere, indicating that the outcome is already known. I feel very sorry for Hong Kong people because we have smoke everywhere when the election is yet to take place. Also, the Bill we are discussing now is not about the Chief Executive Election, but the issue of the remaining term.

Madam President, about the Bill, there is a term in Economics called "creative destruction", meaning that while the innovations of capitalist enterprises destroy the original economic equilibrium, the drastic changes brought about will in turn promote the development of capitalism. The present situation is the opposite of "creative destruction" — the third interpretation of the Basic Law by the NPCSC is tantamount to a destructive creation. The NPCSC has made an imaginative, groundless, fraudulent and distortional interpretation of the provisions of the Basic Law, and injured as a result the rule of law in Hong Kong. According to the Secretary for Justice, the dispute between two years and five years originated from the conflict between the civil law and common law systems. As the two legal systems have been developed in two different backgrounds, it is inevitable that individual provision will be understood differently between Hong Kong and the Mainland. It is necessary to have a

gradual integration through mutual understanding and enhanced communication. The law system of the Mainland that the Secretary referred to might not be continental law, but mainland law. In any case, no matter which legal system is adopted, the fundamental requirement in relation to the interpretation of law is being logical. However, in regard to the dispute on the term of office, the most critical question is that the justification for supporting the remaining term is basically illogical and untenable.

The democratic camp is not trying to be at loggerheads with the Government by opposing the Bill. We hope the officials and pro-communist camp can understand that their greatest enemy is logic. The Government pointed out that, in the draft Basic Law issued for solicitation of opinions, the relevant provision was written as "the Chief Executive of a new term", but on 14 January 1989, at the eighth meeting of the Basic Law Drafting Committee, the wording in the draft was revised to "new Chief Executive" with the word "term" deleted. In the Secretary for Justice's opinion, it obviously meant that the new term would start afresh. However, it is not a logical induction, as the word "new" could mean a new term or a new office. Just looking at the change in certain wording, we cannot come to the Secretary's conclusion.

To understand the meaning of the above alteration, we have to make deduction from other objective evidence. Unfortunately, from the objective information already known, we cannot obtain evidence which supports that it means the remainder of the term. These data include: firstly, according to the working report submitted by HU Sheng, Deputy Director of the Drafting Committee, the purpose of using "the Chief Executive of a new term" in the solicitation draft was for textual refinement.

Secondly, in reports and minutes on the revision of provisions, various special sub-groups under the Drafting Committee listed the substantive revisions in the draft Basic Law for solicitation of opinions. However, the deletion of the word "term" was not mentioned, showing that it was indeed not a substantive amendment.

Thirdly, in the solicitation draft, the provision in relation to the Chief Executive said "each term of the Chief Executive shall be five years". In the draft, the word "each" was deleted, but it did not mean that it was a substantive revision. In the English version of the above drafts, "a new Chief Executive" also means "the Chief Executive of a new term".

According to the objective data already known, people who have received basic training in logical thinking would tend to agree that to amend "the Chief Executive of a new term" to "a new Chief Executive" was only a textual refinement but not a substantive amendment. If the Government is saying that it does not mean the beginning of a new term, I really do not understand what sort of logic it has adopted.

Madam President, the Government also tells us that we cannot look at individual article in isolation in understanding the Basic Law and that we must consider the Basic Law in its totality. Therefore, it suggests that as the term of the Election Committee (EC) which elects the Chief Executive is also five years, the term of the Chief Executive elected by the EC should not exceed five years. This approach is also not justified. In the first place, there is no logical relation between the term of the EC and that of the Chief Executive. More importantly, it is precisely after reading the entire Basic Law that we came to understand that the interpretation of remainder of the term is unreasonable. It is because in all the references to the Chief Executive in the Basic Law, the concept of remainder of the term is never mentioned. The Government has sought to insert the concept of remaining term by amending Article 53, thus creating a lot of difficulties in the implementation of the Basic Law.

Let me cite an example. The Basic Law stipulates that the Chief Executive may dissolve the Legislative Council only once in each term of his or her office. In this case, if our Chief Executive who left his post prematurely had already dissolved the Legislative Council once, is the Chief Executive taking office after him still vested with the power to dissolve the Legislative Council? We have not got an answer for this. However, according to his consistent policy, Mr Stephen LAM, the Secretary for Constitutional Affairs, would say that issues that are not absolutely essential will not be dealt with. As such, he would regard this issue as not essential to be dealt with.

In addition, the Government must be aware of another question, that is, in relation to the overall concept, its logic is erroneous. However, this question is regarded as not urgent by the Government. What exactly is this question? Mr Martin LEE and many Members have mentioned it earlier, that is, Article 46 of the Basic Law. It stipulates that "The term of office of the Chief Executive of the Hong Kong Special Administration Region shall be five years. He or she may serve for not more than two consecutive terms." How are we going to interpret "may serve for not more than two consecutive terms"? From its literal meaning, it looks very simple. If the Chief Executive has been in office for two

years, then he is returned again in an election, in that case, "may serve for not more than two consecutive terms" will mean two years plus five years as he is not allowed to serve more than two consecutive terms. Unless we distort the meaning by interpreting the remaining term of two years not constituting one term, then the Chief Executive returned will not be regarded as serving a consecutive term. As a result, he can serve two plus five plus five years. Is it the explanation? If we ask Mr Stephen LAM, he will say that we have asked this question many times. As they are issues not essential, they will not be dealt with. Although Mr LAM may think that it is not necessary to deal with the issue, in my capacity as a member of the EC, I hope the Secretary can assist me in dealing with the frustration I am facing.

In my opinion, Mr LEE Wing-tat is very capable. It will be a waste if he can not serve for two plus five plus five years. If I nominate him and he is elected — this is also as imaginative as the interpretation of the NPCSC — then how many years should he serve, two plus five years or two plus five plus five years? There are some ambiguities here. If the situation is so confused, it will be a waste for such a capable person to serve just for seven years. Anyway, I think he should at least serve for 10 years, or even 12 years. As such, though he has asked me to nominate him, I have still not made up my mind whether or not to nominate him now. If I nominate him, it will be a waste of his talent because he can only serve for two plus five years. However, Mr Stephen LAM told me that it was not the case. He is going to serve two plus five plus five years. If this is made clear, his talent will not be wasted. Likewise, I do not know how other EC members feel about Chief Secretary for Administration Donald TSANG. They may think that his talent should not be wasted. Mr Stanley HO also told us not to waste his talent. Thus, we should let him serve two plus five plus five years. If we nominate him now, we are not doing him any good. He can only serve two plus five years. If we nominate him next time, then he can serve five plus five years. What should I do?

However, there is another problem, that is, very few EC members have independent thinking like I do. *(Laughter)* As such, there should not be anyone who has thought about this issue. In fact, there is no need for them to think about it at all, because they know that ultimately they have to follow the instruction from a higher authority, thus it would be meaningless to say anything. It all depends on the thinking of the higher authority, and one just does as it likes. It simply does not matter to one at all. For this reason, under this system, there is indeed no need to have any independent thinking, which is correct. Mr Stephen LAM does not have to consider whether the term should be two plus five

or two plus five plus years, he can say whatever he likes. Yet, is the Secretary going to deal with this issue or not? From the point of view of an EC member, I think they would let Mr Donald TSANG serve two plus five years first, and on the seventh year, if the Central Authorities want him to serve for another term, they may resort to another interpretation of the Basic Law. They need not worry about that, the only important thing is not to allow the Court to have a hand in this. It is easy to bar the Court from intervening. Once there is an interpretation of the Basic Law, the Court cannot step in any longer. As such, according to their logic, since they can always resort to interpretation of the Basic Law, there is no need to deal with the matter. The Central authorities have the power to interpret the Basic Law. They always say that Article 158 of the Basic Law confers on them with such a power. Nevertheless, even if the Central Authorities have such power, can they use it whenever they like? Where is our "high degree of autonomy"? Yet, as they do not take these issues into consideration, I am just wasting my breath?

Madam President, as to the question of whether the term should be two years or five years, I feel that the Government is treating our law provisions as Buddha's teaching. "Such appearance of reality is not appearance in itself, therefore Tathagata says that it is named as 'appearance of reality'" As such, if the Basic Law says the term is five years, it does not mean that it is five years, but it is named five years. Like the four sutra in *Vajracchidika Sutra*, "all things born of contrivance" — it should be all things arising from the Basic Law — "are similar to dreams, illusions, bubbles, shadows, like dewdrops and resemble lightning, one should view them all as such matters." The rule of law in Hong Kong is indeed hanging in the balance, like dreams and bubbles. Fortunately, the name of our Secretary for Justice is Elsie and not Marilyn MONROE (dreams and dewdrops in Cantonese), otherwise it would indeed be like dreams and dewdrops. If our rule of law is in a dream or like dewdrops, it would really be a great tragedy. I hope the Government will treat this matter seriously, so that our rule of law will not be damaged. Thank you, Madam President.

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

MR ALBERT HO (in Cantonese): Madam President, I have waited several hours to see if there are any Honourable colleagues who support the Government

and argue in its favour, so that I can in turn refute their arguments. It came as a surprise that I have waited in vain. Now as the debate draws to a close, I am going to speak and put my words on the record. Later on some people may jump up at my words and speak, but that is not a bad thing. We have to see whether or not any Honourable colleagues will have the chance to speak again.

The spirit of the legislation on this occasion is clearly stated in the remarks made by Deputy Secretary-General QIAO Xiaoyang. The most important thing according to him is that a Chief Executive must be selected by 10 July. This is the overriding concern and all others must give way. Then many people ask why it would be so difficult to select a Chief Executive on 10 July. What are the difficulties that prevent us from selecting a Chief Executive on 10 July as scheduled? Would it be the judicial review filed by Mr Albert CHAN? Would it be the obstruction posed by the Bills Committee? Madam President, all the answers are no. Obstruction, if any, can be imposed right now by us.

Actually, there is a meaning between the lines in what I have said. Why? Article 53 of the Basic Law clearly provides that in the event that the office of the Chief Executive becomes vacant, a new Chief Executive shall be selected within six months. The Courts have no right to prevent the selection from taking place and it does not matter whether or not the term of office is two years or five years. No one can prevent this from happening for this is clearly provided in the Basic Law.

Where then do our worries lie? There is also a meaning between the lines in Mr QIAO Xiaoyang's remarks. The subtext is the original intention of his remarks — that is, the original intention as I understand it — is that the term of office of the Chief Executive selected on this occasion shall be two years. It shall be the remainder of the term of the preceding Chief Executive. This is the original intention implied in his remarks. There can be no other option. This is clear enough. If we resort to judicial review as filed by Mr Albert CHAN to solve the problem, the decision reached by the Court may be five years, or it may be two years. But it seems that the Central Authorities cannot accept an answer other than two years. That is why Hong Kong is not allowed to solve the problem by resorting to a judicial review.

Madam President, why must this be done? Honestly, we have no idea. Mr LEE Wing-tat has offered some explanation for this earlier. But the reasons suggested are only speculative. In any case, the aim of the remainder of the term of office is simple enough and, that is, to put him on probation, see if he can

do the job well before any commitment is made to support a particular candidate for the next term.

In such circumstances, the will and decision as held by the Central Authorities have become supreme authority, such that everything must give way. All laws must be construed in accordance with this preordained answer. No consideration will be given to whether or not this answer is reasonable or otherwise, or whether or not it is supported by any principles in law. In a word, anything which can be said must be put forward to support this foregone conclusion, no matter if it is a fallacy or not.

Madam President, why do we object to the legislation on this occasion? Why do we have such strong feelings? Why do we point out that the interpretation of the Basic Law will mean that the rule of law cannot be upheld and that the rule of law cannot be put into practice anymore? As a matter of fact, we are not sounding alarms. For if someone wishes to govern with such a mentality and if someone with such a mentality wields such great powers, then an order given by that person would be followed by everyone, all machines will be turned on and everything will have to make way for it. If that happens, where then is "a high degree of autonomy" in Hong Kong and how can we have the rule of law?

Madam President, Mr Ronny TONG quoted earlier a few lines from an article written by MAO Zedong. But if I tell him an anecdote, he may refrain from citing from the *Quotations of Mao Zedong* or any of his articles from this day on. It was after the Cultural Revolution had ended, and I believe it was sometime after the convocation of the Ninth National Congress of the Chinese Communist Party, an old friend of Chairman MAO, the famous American journalist Edgar SNOW met Chairman MAO and discussed with him how order was to be restored after the Cultural Revolution. Chairman MAO, who was advanced in years at that time, said to the effect that he was going to be a monk with an umbrella unfolded. The American journalist might not see the innuendos behind this remark by MAO and when he reached home he added a romantic touch to this remark. He depicted MAO as a solitary old man bearing an unfolded umbrella in the midst of the howling winds and pouring rain and he was ruling the country with a mind of steel. He failed to see behind the surface of the remark about a monk unfolding an umbrella is a quibble on the lack of law and order as the Chinese pronunciation of the words "hair" and "law" are quite similar. Chairman MAO was frank when he said that there was no law and order in him.

Ms Audrey EU cited a question asked by Mr PENG Zhen in the 1980s. It was on whether the party or the law was greater. After the torments of the Cultural Revolution, it was really a question that came from the bottom of PENG Zhen's heart as he reflected on the harrowing time. But he dared not give any answer to it, despite the fact that he was in charge of legal affairs. Why? If we look up the papers, we will find Mr TUNG Biwu, who used to lead the national organ on legal affairs in the 1950s, had a well-known saying and one which became his pet phrase. He said to the effect that the law was not meant as a fetter for those who rule, it was the supreme expression and embodiment of the will of the ruling class. This in fact is the model answer, the one and only correct answer.

The same thing goes today. The only difference is PENG Zhen did some soul-searching over the issue. Of course, nowadays when mention is made of ruling the country according to the law, I would think that we could be all thinking hard on it. Many people would be happy to hear that the country will be ruled according to the law. But what does this law mean? Is this law the same as the principle of the rule of law as we understand it? Is the law higher than the government or all the leaders? Do we have to follow all the principles so formulated? In addition to these, the rule of law also embraces many important values, such as restraints on power, respect for human rights, insistence on procedures, and so on. But law in the eyes of the Central Authorities does not mean these. It is only a tool. Law is reduced to a tool to translate the will of those in power into action.

Madam President, after talking about all these, I am convinced that there are lots of conflicts between the two systems in the cultural context and in the beliefs and values. Doubtless, given the present status of Hong Kong, it would be difficult for us to ask our country to launch any reforms, despite the fact that I would try my best to suggest these reforms as I have always been doing and the topic would be raised in the motion debate to be held later. I believe many Honourable colleagues are trying their best to resist this interpretation of the Basic Law by the NPC because they hope that they can at least defend the "high degree of autonomy" in Hong Kong so that the "one country, two systems" policy can really take roots in Hong Kong.

Although what we are doing seems to be dreaming the impossible dream and fighting the unbeatable foe, we know that this is still what we should do. For we hope that the people will come to realize that power does not mean truth. Mr CHIM Pui-chung has argued eloquently that there would be no use talking

about two years or five years, for all can be known by a show of hands. What we are doing is to make the arguments clear. We want people to know that having the power to exercise it does not mean that it will not be abused and what is lawful in appearance does not mean the same as meeting the standards of the rule of law. Therefore, we will try our best to make our arguments clear and have them put on the record.

Madam President, with respect to the host of legal problems that are caused by the interpretation of the Basic Law this time, many Honourable colleagues, especially those from the Article 45 Concern Group, have put forward arguments which point out where do the problems lie. After listening to their speeches, I do not think I have anything better to add.

Martin, that is, Mr Martin LEE, has talked about what he thinks on this issue. Speaking about law, I would like to raise an issue of yet greater significance and, that is, on the interpretation of the Basic Law. The power vested in the NPC to make such an interpretation is in fact a vital mechanism of power which lies at the point of intersection of the powers vested in the two systems under the grand framework of "one country, two systems". Many provisions in the Basic Law touch on this point of intersection of the two systems, especially those found in Chapter II of the Basic Law. On top of this, Articles 158 and 159 of the Basic Law also mention interpretations and amendments to the Basic Law respectively, while Article 160 stipulates the transitional arrangements.

The entire Basic Law is actually very clear and we can see the elaborate design on the relationship between the Central Authorities and the local government. It is clearly stated that the scope of power of the Central Authorities lies in affairs related to defence and foreign policy and not those which fall into the scope of "a high degree of autonomy". With respect to interpretation, though mention is only made in Article 158, other provisions in the Basic Law may have also touched on this issue. For example, the law enacted by this Council must be reported to the NPC for record and the NPC may return the law but shall not amend it and we will be informed that the law is not compatible with the provisions of the Basic Law. This is also a way of exercising the power to interpret the Basic Law.

I wish to stress one point and that is, at this point of intersection between the powers of the Central Authorities and the SAR, often times there are clearly-defined procedures specifying how such powers are to be exercised.

Article 17 mentions law enacted by the legislature of the SAR may be returned for deliberation again. The procedure described here is clear and likewise, the procedure for obtaining a certificate on questions of fact concerning acts of state is also specified. This imposes a restraint on our jurisdiction. When national laws are to be legislated for application in the SAR, it is clearly stipulated that these laws shall be listed in Annex III to the Basic Law. All these procedures are clearly specified.

Therefore, if Article 158 para 1 is to be properly understood, it must not be approached from the perspective that it is an expression of supreme power not to be restrained. For if this is the case, then there would have been no point in making such strenuous efforts to formulate Article 158 paras 2, 3 and 4 in the first place. I remember when Mr Martin LEE was a member of the Basic Law Drafting Committee, a lot of discussions were held on this issue and at that time he suggested that the NPC could only be empowered to interpret Article 158 while our jurisdiction would remain intact, that is, the Court of Final Appeal may reach a final decision all on its own. It would be another question if the NPC wishes to make an interpretation after the Court of Final Appeal has made a decision. But for Mr LEE, he hoped that our jurisdiction would remain intact. However, some old gentlemen in the Drafting Committee were of the view that this would not be possible, for the power to interpret the Basic Law is meant to ensure that sovereignty would be manifested. What should be done if our Courts have gone out of their mind and make an interpretation that can imply independence for Hong Kong or turning Hong Kong into a political entity?

At that time, LU Ping suggested that a small hole be bored. I still recalled how he said in Putonghua that a small hole be bored in Article 158 and how we were told to exercise this power very carefully, for it was just a very small hole. I remember this very clearly. Madam President, this small hole is no small hole now and it is big enough now for people to go in and out as much as they want, regardless of the time and circumstances, and regardless of whether or not any legal proceedings are in progress, an interpretation of the Basic Law can be made any time. After the interpretation, the legal proceedings will become null and void. Is this the spirit of Article 158 para 1? I do not think so, for if not, it would be difficult to implement "one country, two systems".

Another point is that even if an interpretation of the Basic Law is made, those most fundamental procedures and certain principles in methodology should

be respected. I have read quite a number of books published on the Mainland on the science of legislation and I have an impression that they do not differ too much from the stand found in our books. An interpretation of the law should not be made when there is no conflict in the express meaning of words and it is only when there are ambiguities and uncertainties that it should be made. However, is that so in reality? As we can see now, it is not the case. A proviso can be added and if this can be done, then there would be no cause for Edmund HO to harbour any fear. Why? Although it is said that a person can only serve as Chief Executive for two terms, if the NPC has great trust in a certain person, that person may be allowed to stay in office for an indefinite number of terms. This can be argued as the legislative intent and does not have to be expressly stated. This is called a proviso. If interpretations can be made indefinitely and when these are added to the provisos and exceptional cases, what significance is left in the original provisions?

In addition, what kind of information can be used in an interpretation? Are the relevant files accessible? Ms Margaret NG said that the information appeared only after interpretation. Can this be used? As Secretary Stephen LAM has training in law as well, he should know that contemporary evidence requires that information prevailing at that time be used. Why should these few persons be consulted about their personal memory and why am I not consulted about my memory? Since LIAN Xisheng is not a member of the Basic Law Drafting Committee, in the same way as I am not, why is he consulted? If these problems of methodology cannot be solved, it would be pointless to go on saying anymore. As a matter of fact, the interpretation made this time around is an insult to the spirit and principles in the science of legislation as practised on the Mainland.

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

MR ALBERT CHENG (in Cantonese): Madam President, the resignation of Mr TUNG Chee-hwa has indeed brought many hopes to Hong Kong people. The Hong Kong under TUNG Chee-hwa was boiling with grievances and socially torn apart. Everybody has been longing for his resignation for many years.

Since the reunification, the so-called "one newspaper, one magazine and two microphones" have been labelled as the behind-the-scene manipulators responsible for weakening the governance of Hong Kong. On my part, I am very excited and delighted to see the stepping down of TUNG Chee-hwa, the reason being that we are finally able to ask a person incapable of governing Hong Kong to give way to others with the ability and popularity required to run Hong Kong, to lead it into a new era and to bring fresh hopes to its people.

However, we must bear one point in mind, a point that many Members have already mentioned — the rule of law. What makes Hong Kong different from other Chinese cities? What has enabled it to become a world financial centre and such a metropolis? The most important reason is the rule of law it upholds. I am not a student of law, but this does not matter because I am convinced that if a student of law does not respect the law, he will not contribute much to the rule of law despite all his knowledge, and his studies will just be a waste of money. I despise this kind of persons.

Why is the Basic Law considered so sacred? We swore our allegiance to the provisions of the Basic Law, not to the booklet itself. The booklet is not expensive at all, as its printing cost is just a few dimes. Mr LEUNG Kwok-hung tore the booklet apart, but should this be regarded as a sacrilege of the Basic Law? I think the important thing is for us to respect and implement its provisions by clinging to "one country, two systems" and "Hong Kong people ruling Hong Kong". Compliance with the Basic Law is most important.

When it comes to the law, Members belonging to the Article 45 Concern Group are all experts. Their words have my total support. Their perseverance has my respect. I totally support the remarks delivered by Mr Albert HO, my good friend. Therefore, I shall not spend any more time on discussing the points again. I only wish to say that the law must never, never ever, allow any compromise in any way. The law must never be reduced to a tool of the rulers either.

In regard to the election of a new Chief Executive this time around, unlike Mr Albert HO, Mr LEE Cheuk-yan or other Members, I do not want to speculate on the motives behind, for any such motives are bound to be unholy. We must abide by the law and uphold the rule of law before we can ensure the continued implementation of "one country, two systems", "Hong Kong people ruling Hong Kong" and no changes for 50 years. I very much hope that the new

Chief Executive to be elected on 10 July can bring us fresh hopes, and I believe that he will be able to do so — as Members also know I do support Mr Donald TSANG. However, I must add that when it comes to the law, there must never be any compromise, which is why I oppose this Bill that deals with the election of the Chief Executive. Anyone who supports this Bill must be trampling on the rule of law in Hong Kong and must be held accountable in history.

I so submit. Thank you, Madam President.

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

MR JAMES TIEN (in Cantonese): Madam President, during our scrutiny of this Bill, which deals with the election of the Chief Executive, I notice that the Members who have spoken are especially concerned about the rule of law or legal justifications. As a Legislative Council Member, I naturally agree to all this because it is our primary duty to make laws. In regard to the question of remainder term of office, there are no clear-cut provisions in the Basic Law. What is clearly provided for in the Basic Law is that the term of office of any Chief Executive shall be five years. In regard to by-elections, nothing as clear is provided for. Admittedly, as pointed out in many arguments about jurisprudence, since there is no clear-cut provision on this in the Basic Law, and since the Basic Law only provides that the term of office of any Chief Executive shall be five years without specifying whether the term of office of a Chief Executive returned by a by-election shall be five years or just the remainder term of his predecessor, the term of office shall necessarily be five years. I do understand this argument.

However, I notice that none of those Members who have spoken today have mentioned the need to consider the actual situation in Hong Kong on top of legal justifications. In terms of operation, there is now a vacancy. Practically, following Mr TUNG's resignation on 10 March, he leaves behind two years and several months in his original term of office. As we all know, many Principal Officials in Hong Kong were appointed by Mr TUNG. When these Principal Officials accepted their appointments in 2002, their understanding was that their term of office should be five years. Naturally, they may make mistakes, and they may be forced to step down or resign of their own accord as a show of accountability, but all this is just the problem of individual officials. In general,

it is natural for Principal Officials to expect a five-year term of office. But after Mr TUNG has resigned, should they all step down? The point is that if the term of office of the new Chief Executive is five years instead of the remainder term of office of his predecessor, all the principal officials will have to be reappointed. This is not fair to them.

The convention in Hong Kong is that whenever there is any membership vacancy in the Legislative Council or District Councils, a by-election will be held to elect a new Member/member to serve out the remaining term of office of his predecessor. From the practical perspective, in regard to the question of two years or five years, many people also think that it is reasonable that the new Chief Executive should serve out the remaining two years in the term of office of his predecessor. There are understandably various other specific suggestions, such as the one that the new Chief Executive may as well be allowed to first undergo a probation of two years, and if he can perform well, he may be allowed to stay on, say, for five more years. In regard to the idea of allowing the new Chief Executive to serve for two years first, then five more years and yet another five years, the Liberal Party maintains that it is necessary to resolve this problem. Regarding the interpretation of the Basic Law this time around, the Liberal Party has all along made its position very clear: We do not wish to see any interpretation of the Basic Law, but we also accept that the Government does not have any other alternatives. According to the NPC, since the arrangements for by-election are not clearly provided for in the Basic Law, it has to make an interpretation to clarify the term of office. We in the Liberal Party support this. But we also hope that the Government will take steps to properly handle the issue of "six years and one month" and also the question of "2+ 5+ 5" raised by Mr LEE Cheuk-yan. We of course hope that the Government can conduct some internal consultations in Hong Kong, with a view to resolving all these problems internally among ourselves, instead of again doing something severely criticized by many Members — seeking yet another interpretation to determine whether it should be "2+ 5" or "2+ 5+ 5". Besides, there is still the question of "six years and one month". I hope that the Government can handle all these problems internally in Hong Kong instead of seeking any further interpretations from the NPC.

We do also understand that interpretations of constitutional documents are very rare in foreign countries because their constitutions are already the supreme state laws. But in Hong Kong, we first have the Basic Law and this is followed

by local legislation. Problems can easily be solved in foreign countries. Some Members therefore think that whenever there are any problems with our local legislation, we can amend the relevant ordinances. And, many Members think that the best approach will be amendment of the Basic Law. The Liberal Party is of the view that the Basic Law is a solemn but concise constitutional document. It is to be expected that a concise constitutional document cannot possibly cover all possibilities. We can see that all the Laws of Hong Kong stored in the Legislative Council actually add up to several dozen feet in width. If all details are included, there will of course be no loopholes in the Basic Law. But this is simply impossible in reality. For this reason, it is inevitable to see grey areas in the Basic Law. In foreign countries, when any problems are found with the laws, they will be amended, which is why many legal experts have advocated this. When there are any problems with the laws, meetings will be convened and amendments will be introduced after consultation. Interpretations of constitutional documents will not be sought. The Liberal Party also thinks that it is most undesirable to seek any interpretation of the Basic Law. But like it or not, there have been three interpretations due to the lack of any alternatives. The previous interpretations were requested by the Hong Kong Government, and the remaining one was given by the NPCSC of its own accord. We are worried as to how these problems are to be handled in the future. The Liberal Party does not wish to see too many such instances. It is hoped that the Government can pay serious attention to all these problems.

As I have repeatedly explained, it is only due to the lack of any other alternatives that the Liberal Party supports the interpretation of the Basic Law by the NPC and the current approach of the Government. Therefore, we will support the Bill.

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 reply. This debate will come to a close after the Secretary for Constitutional Affairs has replied.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, on 6 April, the Government introduced into the Legislative Council the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill (the Bill). The relevant Bills Committee was set up immediately thereafter. A total of 58 Members joined the Bills Committee. This fully reflected Members' interest in the Bill and the Chief Executive Election. During the scrutiny of the Bill, Members held in-depth and thorough discussion on issues relating to the Bill and have put forward valuable views.

I would like to express my gratitude to the Chairman, Mr TAM Yiu-chung, the Vice-Chairman, Mr Howard YOUNG, and all members of the Bills Committee. As the scrutiny of the Bill had to tie in with the arrangements for the election of the new Chief Executive, the Bills Committee worked under a very tight schedule. A total of six meetings were held. Views from the community were also collected. A total of 18 deputations and individuals put forth their views to the Bills Committee, most of which supported the proposals in the Bill. May I thank once again the Chairman and the Vice-Chairman for their leadership, all members of the Bills Committee for their active participation in the scrutiny process, and the Legislative Council Secretariat for their assistance. All these efforts contributed to the smooth and timely completion of the scrutiny of the Bill.

Madam President, the State Council approved on 12 March 2005 the request of Mr TUNG Chee-hwa to resign from the office of the Chief Executive of the Hong Kong Special Administrative Region (SAR). According to the relevant provisions of the Basic Law and the Chief Executive Election Ordinance (CEEO), a new Chief Executive shall be elected on 10 July.

As for the term of office of a new Chief Executive returned in a by-election to fill the vacancy in the office, the Secretary for Justice stated the Government's position on 12 March that the term of a new Chief Executive returned in a by-election should be the remainder of the term of the preceding Chief Executive. Therefore, we need to amend the CEEO to set out clearly in local legislation the term of office of a new Chief Executive returned in a by-election. Originally, I did not intend to reiterate the justifications in this respect. But since quite a few Members have raised a number of points in the debate, I need to mention certain aspects of our rationale once again.

There is no direct link between Article 53 para 2 of the Basic Law and Article 46. Instead, Article 53 para 2 specifically refers to Article 45 of the Basic Law. Article 45 refers to Annex I which prescribes the specific method for selecting the Chief Executive. Annex I to the Basic Law stipulates that the Chief Executive shall be elected by an 800-member Election Committee (EC). The duty of the current EC is to elect the second term Chief Executive whose term of office runs from July 2002 to end of June 2007. The Decision of the Standing Committee of the National People's Congress (NPCSC) made on 26 April last year specifically mentioned the election of the Chief Executive of the SAR for the third term to be held in the year 2007. The NPCSC has affirmed that the election of the Chief Executive to be held in 2007 is the election of the Chief Executive for the third term. According to the Government's proposal, the new Chief Executive election will fill the office left vacant by the Chief Executive for the second term. It is not an election of the Chief Executive for the third term. This is consistent with the interpretation of the term of office of the Chief Executive under the Decision; it is also consistent with the relevant provisions in Annex I.

When Article 53 para 2 of the Basic Law was first drafted, the wording "new Chief Executive" was used. It was subsequently changed to "the Chief Executive of a new term". But at a later stage, the wording was reverted to "new Chief Executive". This demonstrates that Article 53 para 2 does not provide for a new term to commence afresh.

The above justifications have been clearly set out in the explanations provided by Mr LI Fei, the Deputy Director of the Legislative Affairs Commission, to the NPCSC. There were also one or two Members who specifically mentioned whether the Secretary for Justice had changed her legal position merely because she had listened to the views of some former members of the Basic Law Drafting Committee and legal experts in the Mainland. In fact, apart from approaching and listening to the views of those who had participated in the drafting process of the Basic Law, the Secretary for Justice had considered in detail documents relating to the drafting history and the opinions of the Legislative Affairs Commission of the NPCSC. After these exchanges in the Mainland and having returned to Hong Kong, she had studied further the relevant issues according to common law principles with colleagues of the Department of Justice, before she reached the legal position as stated on 12 March.

Some Members have queried whether we still have to amend the local legislation after the interpretation of the Basic Law by the NPCSC. Madam President, we have in fact considered this issue. We are of the view that if such an amendment were not made, some might argue that the newly elected Chief Executive should serve for five years. This would contravene the latest interpretation by the NPCSC on Article 53 of the Basic Law. The CEEO should be suitably amended, so as to dovetail with the Basic Law and the latest interpretation by the NPCSC.

Therefore, to ensure that a new Chief Executive will be elected lawfully and in time on 10 July, the Acting Chief Executive submitted a report on 6 April to the State Council in accordance with Articles 43 and Article 48 para 2 of the Basic Law and proposed to request the NPCSC to make an interpretation of Article 53 para 2 of the Basic Law regarding the term of office of the new Chief Executive. The report was released to the public on the same day.

After studying the report submitted by the Acting Chief Executive, the State Council decided on 10 April to request the NPCSC to make an interpretation of the relevant provisions of the Basic Law. In accordance with the Basic Law and after consulting the Committee for the Basic Law and listening to views of different sectors of the Hong Kong community, the NPCSC adopted the "Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress" (the Interpretation) on 27 April.

According to the Interpretation, "Paragraph 2, Article 53 of the Basic Law stipulates, (and I quote) 'In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law.' The phrase 'a new Chief Executive shall be selected in accordance with the provisions of Article 45 of this Law' implies that both the method of selecting and the term of office of the new Chief Executive shall be as prescribed and determined by the said Article."

Moreover, the Interpretation also stipulates, (and I quote) "..... prior to the year 2007, when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of the Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as

prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the abovementioned method for selecting the Chief Executive could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive." (End of quote)

Madam President, I would also like to quote a paragraph from the interpretation by the NPCSC of Article 7 of Annex I and Article III of Annex II to the Basic Law in April 2004. Paragraph 4 of this interpretation provides as follows, (and I quote) "If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council and its procedures for voting on bills and motions as stipulated in the two abovementioned Annexes, the provisions relating to the method for selecting the Chief Executive in Annex I will still be applicable to the method for selecting the Chief Executive."

Madam President, I have quoted from these two interpretations as it is clear from their related content that the "remainder term" requirement will continue to be in effect unless and until amendments are made to the method for selecting the Chief Executive specified in Annex I to the Basic Law, in particular to the term of office of the EC.

We are now conducting a review of the method for selecting the Chief Executive in 2007. We will consider whether and how the method should be amended, taking into account the views of the community. We hope to make progress. However, at this stage, one should not and cannot assume that there will necessarily be amendments to Annex I to the Basic Law, or that the current arrangement of having an EC with a five-year term of office will necessarily be replaced.

The Bill provides that the term of office of a Chief Executive who fills a vacancy in the office of the Chief Executive that arises other than due to expiry of the term of office shall last until the expiry of the term of the preceding Chief Executive. This is fully consistent with the Interpretation made by the NPCSC on 27 April 2005.

Madam President, I would like to take this opportunity to respond to some other views raised by Members in the course of the scrutiny of the Bill and during the debate today.

Some Members sought clarification on the legal basis for the Acting Chief Executive to submit a report to the State Council to request the NPCSC to make an interpretation regarding the term of office of the new Chief Executive. In accordance with Article 43 and Article 48 para 2 of the Basic Law, it is lawful and constitutional for the Acting Chief Executive to make a report to the State Council and to recommend that the NPCSC be requested to make an interpretation of the relevant provision(s) of the Basic Law, if the Acting Chief Executive considers that such an interpretation is necessary for the effective implementation of the Basic Law. In a recent judicial review case concerning the term of office of a new Chief Executive heard by the Court of First Instance, the Court has confirmed that it is lawful for the executive authorities to make a report to the State Council to seek an interpretation. Furthermore, in accordance with the Constitution and the Basic Law, the NPCSC can make an interpretation on any provision of the Basic Law. Besides, the NPCSC can make an interpretation other than in the course of judicial proceedings in the SAR. These points were affirmed in previous decisions of the Court of Final Appeal.

Madam President, in scrutinizing the Bill, some Members have asked whether consequential amendments should be made to various provisions of the CEEO in the light of the proposals in the Bill. Consequential amendments are made to ensure legal consistency between new legislative provisions and existing legislative provisions. However, insofar as the Bill is concerned, we do not consider that consequential amendments are required, since there is no legal inconsistency between the provisions in the Bill and the provisions in the CEEO and other legislation.

In general, consequential amendments are made only under certain circumstances. For example, consequential amendments could be technical amendments, which are required in the overall package for effective implementation of the relevant clauses. In other situation, because of the nature of the amendment provisions, we need to make consequential amendments together with the main amendment provisions so that they could dovetail with each other.

The current Bill proposes a new subsection (1A) be added to section 3 of the CEEO. This would not cause any problem in dovetailing as mentioned above. The other provisions relating to the term of the Chief Executive could be regarded as separate issues. We need to study them further before deciding

whether relevant amendments should be required. This brings us back to certain issues raised by some Members during the scrutiny of the Bill which are outside the scope of the Bill. For example, the provision that a Chief Executive may serve for not more than two consecutive terms, and whether a by-election should be held in the event that a vacancy in the office of the Chief Executive arises shortly before the expiry of the term. These are important issues, but not urgent ones that need to be dealt with immediately. We will study them carefully and thoroughly. We will consider views from legal experts in the Mainland and Hong Kong, and listen to views from the community, before making the relevant decisions. We could address and commence discussion on these issues in Hong Kong in the second half of this year after the passage of the Bill.

Madam President, in scrutinizing the Bill, some Members raised certain issues relating to the method for selecting the Chief Executive in future, including whether an upper limit should be set on the number of subscribers required to nominate a Chief Executive election candidate, whether polling should take place even if there were only one candidate, and whether the current provision which disallowed a Chief Executive elected to retain his or her membership of a political party should be amended. These issues are outside the scope of the Bill, we may consider dealing with them in the context of the review of the method for selecting the Chief Executive in 2007.

Finally, I would like to respond to the issue of the term of office of EC members. The term of the current EC will expire on 13 July. In scrutinizing the Bill, some Members asked how we would handle the situation if a vacancy arose in the office of the Chief Executive after the expiry of the term of the current EC and before a new EC is constituted. The position of the SAR Government is that we will not form a new EC lightly, as this may hinder the review of the method for selecting the Chief Executive in 2007. In the event of the office of the Chief Executive falling vacant again before 1 July 2007, the SAR Government will act in accordance with the Basic Law and the CEEO. If necessary, we may consider forming a new EC, but the possible implications for the review of the method for selecting the Chief Executive in 2007 must be carefully considered.

Madam President, before concluding, I would like to respond to the point on the relationship between the recent interpretation of the Basic Law and the

judicial system and rule of law in Hong Kong. First, I would like to stress that it is part of our constitutional order that the power of interpreting the Basic Law is vested in the NPCSC. We should also appreciate that the Basic Law is a relatively new constitutional document. Therefore, it is natural that at its early stage of implementation, it may take some time before certain new issues are settled.

We should recall that the three NPCSC interpretations made in the past seven years have in fact resolved certain major issues in Hong Kong, and they basically reflected the concerns of the community on these issues. In 1999, the issue of right of abode was resolved through an interpretation by the NPCSC. This was accepted and supported by the Hong Kong community. This year we dealt with the issue of the term of office of a newly elected Chief Executive being the remainder term. Overall, the Hong Kong community accepts and supports organizing the by-election expeditiously in accordance with the Basic Law and local legislation. Last year, following the interpretation by the NPCSC and its decision on constitutional development, the Hong Kong community basically understood that on constitutional matters such as the development of political structure, according to the Constitution and the Basic Law, the NPCSC is the ultimate authority. Therefore, we should accept that it is part of the constitutional order for the NPCSC to exercise its power under the Constitution and the Basic Law to interpret the Basic Law.

Some Members, including Mr CHEUNG Man-kwong and Mr Martin LEE, stressed that we must preserve and safeguard the common law system. However, we have to bear in mind that, after the reunification in 1997, the common law system in Hong Kong has been preserved and there is room for it to develop further. This is also based on the Basic Law. The Basic Law allows that the laws previously in force in Hong Kong to be maintained. But the common law cannot prevail over the Basic Law. The Basic Law is a unique legal document. It was drafted and enacted under the legal system in the Mainland, and thereafter is to be exercised and implemented in Hong Kong, which is a common law jurisdiction. We should not consider the Basic Law solely under the principles of the common law. We need to consider the provisions of the Basic Law in a comprehensive manner. If required, we should study the drafting history and the relevant documents, and consider different views from legal experts, including those from the Mainland and Hong Kong.

If we look at the arrangements under the Basic Law, it is the NPCSC which has the final power of interpretation of the Basic Law. This power is vested in the NPCSC. However, the Basic Law also delegates powers to the Courts of the SAR in three aspects. First, the power of final adjudication on Hong Kong court cases. Second, the final power of interpretation of the common law in Hong Kong. Third, the final power of interpretation of local legislation. The manner in which these powers are arranged and delegated has manifested "one country" on the one hand, as the NPCSC has the final power of interpretation of the Basic Law, and "two systems" on the other hand, as cases arising in Hong Kong could be finally adjudicated in Hong Kong. Furthermore, our Court of Final Appeal and Courts in Hong Kong can apply and interpret the Basic Law in adjudicating our cases. Only in cases involving the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgements on the cases, the Court of Final Appeal of the SAR shall, before making their final judgements which are not appealable, seek an interpretation of the relevant provisions from the NPCSC. There is a restriction here. Therefore, the Basic Law has in fact given adequate powers and made suitable arrangements to allow the common law system in Hong Kong to be preserved and to continue to develop.

I hope that Members will understand and accept that the NPCSC has the final power of interpretation of the Basic Law. This will not affect and undermine the judicial system or the rule of law in Hong Kong. This is indeed part of our constitutional order. We should respect, and further our understanding of, this system.

Madam President, the Bill is to provide a solid and clear legal basis for the term of office of a new Chief Executive. The nomination period for the election will commence on 3 June. The Government and the Electoral Affairs Commission will, as always, ensure that the election will be conducted in a fair, honest and open manner, so that a new Chief Executive will be elected smoothly and in time for appointment by the Central People's Government. I appeal to Members to support the passage of the Bill. Thank you, Madam President.

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

Dr YEUNG Sum rose to claim a division.

PRESIDENT (in Cantonese): Dr YEUNG Sum 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.

Mr James TIEN, Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr

SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Mr Albert CHENG voted against the motion.

Miss TAM Heung-man abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 57 Members present, 33 were in favour of the motion, 22 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

Council went into Committee.

Committee Stage

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

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

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

CLERK (in Cantonese): Clauses 1 and 2.

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

DR YEUNG SUM (in Cantonese): Madam Chairman, in regard to this Bill, I wish to say a few words on casting votes of confidence. In the case of Macao, there votes of confidence are still required even if there is just one candidate. However, under the Bill, voting will be held only when the number of nominees is greater than one. Paragraph 5 of Annex I of the Basic Law reads: "The Election Committee shall, on the basis of the list of nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law." This means that even if there is just one nominee, an election must still be held to select him or her. The election to be held under such a situation must necessarily involve the casting of votes of confidence or no confidence. But if the sole nominee is to be elected *ipso facto* without any voting process, will there be the possibility that someone may apply for a judicial review, because there will be no voting at all to "elect the Chief Executive designate by secret ballot on a one-person-one-vote basis"? In contrast, it is clearly stipulated in the relevant regulations of Macao that there shall be votes of confidence or no confidence. However, in the Bill we are examining, voting shall be held only when the number of nominees is greater than one. We think this is a contravention of the Basic Law

CHAIRMAN (in Cantonese): Dr YEUNG Sum, I suppose this is about all you have to say. What you are talking about is not related to clauses 1 and 2. Members must now focus on clauses 1 and 2 in the debate.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no, Secretary for Constitutional Affairs, do you wish to speak?

(The Secretary for Constitutional Affairs shook his head to indicate that he did not wish to do so)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 and 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

CHAIRMAN (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes after which the division will start.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms

Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Mr Albert CHENG voted against the motion.

Miss TAM Heung-man abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 56 Members present, 33 were in favour of the motion, 21 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

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

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the

Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill

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

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

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

(Members raised their hands)

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

(Members raised their hands)

Dr YEUNG Sum rose to claim a division.

PRESIDENT (in Cantonese): Dr YEUNG Sum 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.

Mr James TIEN, Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr MA Lik, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Mr Albert CHENG voted against the motion.

Miss TAM Heung-man abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 56 Members present, 33 were in favour of the motion, 21 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill.

MEMBERS' BILLS

First Reading of Members' Bills

PRESIDENT (in Cantonese): Members' Bill: First Reading.

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERGER) BILL

CLERK (in Cantonese): Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill.

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

PRESIDENT (in Cantonese): As the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill presented by Dr David LI relates to government policies, in accordance with Rule 54(1) of the Rules of Procedure, the signification by a designated public officer of the written consent of the Chief Executive shall be called for before the Council enters upon consideration of the Second Reading of the Bill.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I confirm that the Acting Chief Executive has given his written consent for the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill to be introduced into this Council.

Second Reading of Members' Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

INDUSTRIAL AND COMMERCIAL BANK OF CHINA (ASIA) LIMITED (MERCER) BILL

PRESIDENT (in Cantonese): Dr David LI, you may now move the Second Reading of your Bill.

DR DAVID LI: Madam President, I move that the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill (the Bill) be read the Second time.

The Bill provides for the merger of the Hong Kong branch of Belgian Bank with Industrial and Commercial Bank of China (Asia) Limited (ICBC (Asia)). ICBC (Asia) acquired Belgian Bank and its subsidiaries in April 2004.

The principal asset of Belgian Bank is the undertakings of its Hong Kong branch. Merger of the branch with ICBC (Asia) will therefore help to rationalize ICBC (Asia)'s business in the increasingly competitive Hong Kong banking market.

The merger will not result in any material level of employee redundancy.

The human resources departments of ICBC (Asia) and the Hong Kong branch of Belgian Bank have consulted with employees to gauge their views on the merger. The employees are generally satisfied that the merger will result in a bigger bank with a stronger platform, which will in turn provide more opportunities for career advancement.

Customers have been informed of the approaching merger. The move is generally welcomed, with some customers of the Hong Kong branch of Belgian Bank anticipating that the combined organization will provide them with better banking support in China.

With the merger, the Hong Kong branch of Belgian Bank will surrender its banking licence.

Belgian Bank's operations in Belgium will be dealt with separately from the merger. The business relates to a number of offshore accounts held by Belgian Bank for customers of the local branch. Belgian Bank is preparing to migrate these accounts to an overseas branch of ICBC (Asia) registered in the Cayman Islands, subject to the consent of customers and in consultation with the relevant authorities in Belgium.

May I take this opportunity to alert Members that there will be two minor technical amendments to the Chinese version of the Bill, to ensure consistency in the use of terms. Notice of these amendments is included in the Legislative Brief sent to Members.

ICBC (Asia)'s acquisition of Belgian Bank is a clear demonstration of confidence in the local banking market. Furthermore, it highlights the synergies that can be obtained by combining a strong presence in Hong Kong, with an extensive banking network in China.

I therefore take great pleasure in recommending the Bill to the Council.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Industrial and Commercial Bank of China (Asia) Limited (Merger) Bill be read the Second time.

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

Resumption of Second Reading Debate on Members' Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Citibank (Hong Kong) Limited (Merger) Bill.

CITIBANK (HONG KONG) LIMITED (MERGER) BILL

Resumption of debate on Second Reading which was moved on 6 April 2005

PRESIDENT (in Cantonese): Mr James TIEN, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MR JAMES TIEN: Madam President, as Chairman of the Bills Committee on the Citibank (Hong Kong) Limited (Merger) Bill (the Bills Committee), I now report on the major deliberations of the Bills Committee.

The Citibank (Hong Kong) Limited (Merger) Bill (the Bill), which is a Member's bill introduced by Dr the Honourable David LI, aims to provide for the vesting in Citibank (Hong Kong) Limited (Citibank HK) of the retail banking business of Citibank, N.A. in Hong Kong now operated through a branch in Hong Kong (Citibank HK Branch). After the proposed transfer, Citibank HK would carry on the retail banking business while Citibank HK Branch would continue to carry on its corporate banking business, private banking business and any other businesses other than retail banking business.

The Bills Committee notices that the Bill is similar to other bills to effect bank mergers and reorganizations previously passed in this Council. Apart

from examining the impact of this Bill on the protection of customers' interests upon the transfer, we also exchanged views with the Administration on whether the present form of legislation is the best way to effect bank mergers and reorganizations.

On the impact of the Bill on customers, the Bills Committee notes that the proposed transfer is part of a wider reorganization process in relation to the business of Citibank, N.A. outside the United States. Citibank, N.A. is not seeking to limit its potential liabilities to customers through the transfer, and hence its contractual liabilities to claims made against the retail banking business in Hong Kong will be substantially the same as before the transfer. Since Citibank HK is a fully licensed bank subject to the direct supervision by the Hong Kong Monetary Authority (HKMA), it needs to comply with the HKMA's capital adequacy requirement for locally incorporated banks. As at 31 March 2005, Citibank HK has a paid-up share capital of \$2.7 billion which is substantially higher than the statutory minimum share capital requirement of \$300 million for locally incorporated banks. To reaffirm its commitment to Hong Kong, Citibank HK will increase its capital base from \$2.7 billion to \$5.4 billion as part of the transfer exercise and before the appointed day. The bank's capital base will also be reviewed from time to time to meet the capital adequacy ratio as regulated by the HKMA.

The Bills Committee also notes that the HKMA will have more leverage, from a regulatory point of view, over a locally incorporated bank.

In terms of consumers' rights and protection, we are assured that the proposed transfer should not impact on consumers' rights and protection as the contractual rights of customers would not be changed as a result of the Bill. Citibank HK also states that there will be no change to accounts, approved credit lines or other products and services provided to the customers of the retail business, as well as their relevant terms and conditions as a result of the Bill. By the proposed transfer, the level of regulation and governance to which retail banking operations will be subject to would be increased. Such regulation and governance have the primary objective of safeguarding the interests of customers.

On the question of the protection for dormant account holders, we are advised by Citibank HK that the bank has made much effort to contact these account holders. As at 29 April 2005, there are 518 dormant account holders

involving \$2.2 million. To ensure protection for these accounts, Citibank HK will maintain a matching escrow account of the same amount in these dormant accounts with Citibank HK Branch when these accounts are transferred to Citibank HK.

The Bills Committee has also enquired about the position of the staff employed by Citibank HK Branch upon the transfer. Citibank HK confirms that all relevant employees have consented to the transfer of their employment to Citibank HK. All staff is now employed by Citibank HK on terms no less favourable than before and there has been no reduction in the number of staff.

As for the best way to effect bank mergers and reorganizations, the Bills Committee has examined the need for the Administration to formulate a generic legislation governing bank mergers and reorganizations in Hong Kong. Some members take the view that given the degree of technicality involved, it is undesirable to effect these changes through Member's bills. We note that the matter is being studied by the Financial Services and the Treasury Bureau and HKMA in consultation with the banking industry. The findings will be reported to the Panel on Financial Affairs within the next few months.

When we reported back to the House Committee on 6 May 2005, there was a further question about the possibility of Citibank HK Branch private banking customers being reclassified as retail banking customers between the period from the enactment of the Bill and the appointed day. Citibank HK has subsequently confirmed that it will not reclassify any private banking customers as retail banking customers without the express written consent of the customers concerned.

Madam President, the Bills Committee supports the resumption of the Second Reading debate of the Bill. Thank you.

MR JAMES TO (in Cantonese): Madam President, the Democratic Party always scrutinizes with the utmost care and attention all private Members' bills (which will later become ordinances) on bank merger, because we know that their enactment will mandate direct certain legal consequences and rights. Before I go on, I should perhaps make a declaration of interest, or declare that I am a customer of Citibank (though just a minor one), because under one of the clauses of the Bill, the reorganization will affect certain types of accounts.

I must point out that the Bill involves a drastic fundamental change. For instance, in the case of a retail banking customer, his account is at present set up with a bank incorporated in the United States (that is, Citibank N.A.). And, matters relating to the banks' overall assets, statutory supervision and even its very scale are dealt with according to the laws of the United States. However, following the enactment of the Bill, the account of the customer will have to be transferred to Citibank (Hong Kong) Limited (Citibank HK), a separate legal entity incorporated in Hong Kong. Although we understand that there will be close connections between the Citibank N.A. headquarters in the United States and this separate legal entity in Hong Kong, we must still point out that there will be fundamental changes in overall asset value and statutory supervision.

Let us imagine what will happen in an extreme case. At present, before the enactment of the Bill, a customer suffering any losses can theoretically invoke certain laws in the United States and bring his case before the Courts there to claim protection. However, following the passage of the Bill, there will be a marked difference in protection, despite the claim of some lawyers that under the laws of the United States, the customers of a bank's subsidiaries may still receive a certain degree of protection. For this reason, in my speech today, I wish to inform all such customers that they do have a choice and they can make their own decisions. However, they must know what laws we have enacted. Besides, it is not my intention today to demean Citibank HK in terms of its reliability, services and asset value. The only thing is that there will really be some differences upon analysis.

Second, we are concerned about the possibility that following the enactment of the Bill, some bank customers, especially those of retail banking, may be unable to choose to cancel their accounts or have them transferred (that is, set up new accounts in the United States) due to one reason or another. The clauses of the Bill can solve some of the problems, such as the problem of dormant accounts. However, in the case of some customers, their accounts are not dormant. These may be accounts with some records of transactions in the past two to three years. Or, it may be that the bank has mailed correspondences to the customers concerned and the latter have received the correspondences. However, we understand that in some cases, the customers are unable to handle their accounts for one reason or another. The most obvious examples are those accounts belonging to people's estates. The customers concerned might have been handling their own accounts all along, but then they passed away later. In theory, the bank will not turn away the heirs, meaning that the latter can still

receive the banks' correspondences. However, for one reason or another, the heirs may have become unable to make any choices during the course of handling the estates. And, these accounts may not have been classified as dormant. Understandably, some customers may be living in other places of the world, and due to various reasons within or beyond their control, they cannot come to Hong Kong to cancel their accounts and make other choices (that is, if they so desire). However, I do not encourage anyone to do so.

Third, Mr James TIEN talked about retail banking accounts and accounts with substantial private asset values. We have been assured by the bank that nothing will be done to these accounts for the time being. As a result, there is some additional protection here. In my view, it is not the best way to use such legislation to regulate bank mergers or implement any mandatory measures. We have studied the relevant laws of other places and found that they all adhere to some special legal frameworks for the purpose. Unfortunately, although we have raised many legal problems in connection with this bank merger Bill, we are not quite sure whether the Government can hear our voices. The Government once said that it would conduct some studies, but it seems that the Government still wants to use private Members' bills as a means of dealing with bank mergers in different circumstances (though this is not the best means).

I must reiterate the position of the Democratic Party here, and I hope that the Secretary can listen to us. We maintain that a special legal framework must be established for the purpose. Why? We have actually dealt with many private Members' bills on bank mergers. In some cases, the banks belonged to the same group, meaning that it was a merger of banks of the same group. In other cases, Bank A might be acquiring Bank B, and the two banks were not necessarily the same in style of operation. In the end, customers were given a choice. However, as I mentioned just now, after the enactment of this Bill, some customers may be unable to make a choice for the time being or even after quite some time due to various reasons. This is not satisfactory, and I hope that the authorities can consider the establishment of a special legal framework as soon as possible.

Dr David LI has proposed another Bill for the banking sector. This will probably continue in the future. We therefore hope that the Government can heed our request. We have mentioned that the handling of some accounts is not

very satisfactory, and that customers may not have any choices for quite some time. However, after considering all relevant factors and the pros and cons, we have still decided to support the Bill. But I still hope that the Government can expedite the work of formulating the relevant laws.

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, the Government welcomes the Citibank (Hong Kong) Limited (Merger) Bill proposed by Dr David LI. We have always supported the consolidation or restructuring of our banking industry for this will not only enhance the competitiveness and upgrade the quality of the banking services, but also promote the long-term stable development of the banking system. We consider the case in this Bill consistent with the abovesaid policy and conducive to maintaining the status of Hong Kong as an international financial centre. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Dr David LI to reply.

DR DAVID LI: Madam President, may I take this opportunity to convey to Members the gratitude of Citibank management for the care and concern with which this Council has reviewed the Citibank (Hong Kong) Limited (Merger) Bill (the Bill).

This is the 10th bank merger bill considered by this Council since the year 2001. The pace of bank mergers has stepped up in recent years, due to the changing banking environment in Hong Kong.

The need for the Bill arose following a commercial decision by Citibank to merge its existing retail banking business in Hong Kong into a single locally incorporated entity. This business is currently split between Citibank N.A. Hong Kong Branch, and Citibank (Hong Kong) Limited.

The merger will result in a more logical structure for Citibank's local banking business. Further, it will simplify supervisory oversight by the Hong Kong Monetary Authority.

The merged retail bank will also be in a better position to capture commercial opportunities available to Hong Kong incorporated banks.

Although there are many similarities among the bank merger bills that have been brought before this Council in recent years, each merger bill also has its own unique set of circumstances. The comments by Members in respect of the Bill have been extremely helpful.

Two issues were of particular concern to Members: First, the position of dormant accounts following the merger, and second, the discretion in transferring accounts.

To address the first concern, Citibank has proposed to establish an escrow account with Citibank N.A. Hong Kong Branch, to hold a sum equivalent to that held in all dormant accounts when these accounts are transferred to Citibank Hong Kong. This arrangement has been made possible as Citibank N.A. Hong Kong Branch will continue to operate a banking business in Hong Kong following the merger, even though it will no longer engage in retail banking.

To address the second concern, Citibank has provided an undertaking in writing that Citibank N.A. Hong Kong Branch will not reclassify any private banking customers as retail banking customers without the express written consent of the customers concerned.

May I offer my thanks to all concerned for their hard work, co-operative spirit in bringing deliberations on the Bill to a successful conclusion.

Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Citibank (Hong Kong) Limited (Merger) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority 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.

CLERK (in Cantonese): Citibank (Hong Kong) Limited (Merger) Bill.

Council went into Committee.

Committee Stage

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

CITIBANK (HONG KONG) LIMITED (MERCER) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Citibank (Hong Kong) Limited (Merger) Bill.

CLERK (in Cantonese): Clauses 1 to 16.

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority 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.

CLERK (in Cantonese): Preamble.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That this be the preamble to the Bill.

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Members' Bills

PRESIDENT (in Cantonese): Members' Bill: Third Reading.

CITIBANK (HONG KONG) LIMITED (MERGER) BILL

DR DAVID LI: President, the

Citibank (Hong Kong) Limited (Merger) Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Citibank (Hong Kong) Limited (Merger) Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority 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.

CLERK (in Cantonese): Citibank (Hong Kong) Limited (Merger) Bill.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending seven items of subsidiary legislation tabled in this Council on 27 April 2005.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS MARGARET NG: Madam President, in my capacity as the Chairman of the Subcommittee to study the seven Orders relating to consular matters gazetted on 22 April 2005, I move the motion standing in my name on the Agenda.

As the Subcommittee is still in the process of scrutinizing the Orders and will hold its next meeting on 31 May 2005, members agreed that I should move a motion to extend the scrutiny period of these Orders to the Council meeting on 15 June 2005.

With these remarks, I urge Members to support the motion.

Ms Margaret NG moved the following motion:

"RESOLVED that in relation to the —

- (a) Consular Relations (Additional Privileges and Immunities) (United Kingdom) Order, published in the Gazette as Legal Notice No. 51 of 2005;
- (b) Consular Relations (Additional Privileges and Immunities) (United States of America) Order, published in the Gazette as Legal Notice No. 52 of 2005;
- (c) Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) Order 2005, published in the Gazette as Legal Notice No. 53 of 2005;
- (d) Consular Conventions (Application of Section 3) Order 2005, published in the Gazette as Legal Notice No. 54 of 2005;
- (e) Consular Relations (Additional Privileges and Immunities) (Vietnam) Order, published in the Gazette as Legal Notice No. 55 of 2005;

- (f) Administration of Estates by Consular Officers Ordinance (Amendment of Schedule) (No. 2) Order 2005, published in the Gazette as Legal Notice No. 56 of 2005; and
- (g) Consular Conventions (Application of Section 3) (No. 2) Order 2005, published in the Gazette as Legal Notice No. 57 of 2005,

and laid on the table of the Legislative Council on 27 April 2005, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 15 June 2005."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Margaret NG 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 and that is: That the motion moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee in respect of the time limits of Members' speeches. Since Members are very familiar with the time limits, so I will not repeat them here. I would just like to remind Members that I am obliged to direct any Member speaking in excess of the specified time to discontinue.

First motion: The 4 June incident.

THE 4 JUNE INCIDENT

MR ALBERT HO (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. Today, I will carry on the tradition started by Mr SZETO Wah in the Chamber of the Legislative Council in 1997: to conduct an open debate to seek a vindication of the 1989 pro-democracy movement. This is a tradition with great historical significance. The theme of this motion represents the dignity of our compatriots across China and an appeal to our conscience. Nowadays, we have to make good use of the only and valuable freedom of speech we enjoy in Hong Kong to speak for the numerous compatriots who cannot speak up and persistently demand a vindication of the 1989 pro-democracy movement until we attain our goal. Today, through this motion debate, I also want to mourn and pay tribute to Mr ZHAO Ziyang, who passed away at the beginning of this year.

More than 15 years have passed since the 1989 pro-democracy movement. The student movement of breathtaking proportions in that year was laden with freshness and hope. It was the dawn of a bright beginning. During a period of over 50 days, we witnessed scenes after scenes of struggle of epic proportions that still linger in our mind with great immediacy. We also heard a great deal of touching and gripping declarations and speeches made by the people. In the end, the crackdown on 4 June ended in tragedy, with bullets ricocheting and blood and flesh spattering. This inflicted intense agony, disappointment, shock and indignation on all our compatriots.

If we look back at history, the 1989 pro-democracy movement was at first branded as a turmoil. After the crackdown on 4 June, it was branded as a "counterrevolutionary rebellion". Later on, the Government in Beijing gradually changed the description of the crackdown on 4 June to "the 4 June

disturbance". Eventually, it was referred to as "the 4 June incident". The regime in Beijing obviously wants our compatriots throughout the country to put this piece of shameful and disgraceful history behind them and forget about it. Furthermore, those leaders who have got blood on their hands in the crackdown on 4 June also want to bury this piece of history, so that the case over the 4 June incident will never be reopened. People who reaped political benefits as a result of the 4 June incident also do not want to see the 4 June incident vindicated, in order to avoid rocking the foundation of their power.

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

Madam Deputy, in that year, all the events in 1989 occurred in the setting of a relatively tolerant environment for news coverage and reporting. At the time of the crackdown on 4 June, many members of the mass media worldwide had converged on Beijing. Therefore, it was not just our compatriots on the Mainland but many reporters of the mass media, including people from Hong Kong, who had gone to the Mainland to lend their support to the pro-democracy movement, who witnessed this historical incident. Madam Deputy, history is written by the people and the 1989 pro-democracy movement was obviously a spontaneous movement initiated by the people. The participation of students and citizens.....

MR JAMES TO (in Cantonese): Madam Deputy, a quorum is not present.

DEPUTY PRESIDENT (in Cantonese): Will the Clerk please do a head count to see if a quorum is present. If not, please ring the bell to summon Members back to the Chamber.

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

DEPUTY PRESIDENT (in Cantonese): A quorum is now present. Mr Albert HO, please continue.

MR ALBERT HO (in Cantonese): We believe that credible history is one that is compiled and written by the people, not by the Government. The 1989 pro-democracy movement is evidently a spontaneous movement initiated by the people. The students and citizens who participated in it had all along resorted to rational, peaceful, non-violent, legal and constitutional means and its nature was essentially the same as that of the May Fourth Movement, the anti-Japanese movement initiated by students on 29 January and even the April Fifth Movement in Tiananmen Square in 1976. The goals of the student movement and pro-democracy movement are clear and definite, namely, to oppose corruption and decadence and demand political reform, not to overthrow the Government, nor did anyone ever advocate the use of violence or incite any rebellion.

Precisely for this reason, the Secretary General at that time, Mr ZHAO Ziyang, and some other leaders believed that the students were patriotic instead of conspiring to foment a rebellion, that the contradictions between the Government and students should be resolved through democratic and legal channels. Had things turned out this way, not only would it have been unnecessary for the Government to resort to force and turn itself into an enemy of the people, thus making the Government and the people descend into confrontation and hatred, the Government could also have absorbed the advocates of reform into the establishment to make them a driving force in the anti-corruption effort and political reform.

Madam Deputy, tragedies in history are often created by totalitarian regimes and dictatorships because under such a system, the will of an individual can overturn collective decisions and individual preferences can trample on the rules of the system. The interests of the dictator or those of the minority that he holds in favour can override the interests of the country and its people and even the interests of the majority of citizens. The so-called organs in our country, from the Politburo to the Central Commission and even the Standing Committee of the National People's Congress and the National People's Congress (NPC), are all political tools that can be used when it suits the purpose but can be discarded when not suited to the occasion. Therefore, for this reason, those in power and the dictator in Beijing back then prevented the convening of the NPC to resolve the contradiction. Naturally, as well as sadly and despicably, the dictator at that time, DENG Xiaoping, cast aside Mr ZHAO Ziyang, as well as the democratic and legal courses of action that he insisted on, and adopted measures that would destroy democracy and the legal system, using armies

intended for national defence to carry out a bloody massacre, with guns loaded with live rounds and tanks, on unarmed ordinary citizens, thus writing the darkest chapter in the history of our people and even in human history.

The motion that I move today is intended to give the loftiest salutation to the students and people who strove for the future of our country and for their ideals, and to express my sorrow and remembrance for the noble-minded who sacrificed their valuable lives. In addition, although Mr ZHAO Ziyang, who was in an important public office at that time, could not defy the orders of the paramount dictator, DENG Xiaoping, he still abided by his convictions and principles at the most critical moment by striving to handle the student movement peacefully through democratic and legal channels. He acted fearlessly and disregarded his personal honour or gain. In the end, he was removed from office and put under confinement for the rest of his life on the groundless charge of "dividing the party". The contributions and mistakes made by Mr ZHAO Ziyang may be open to discussion, however, to the Chinese people or people who love peace and respect civilized behaviour, the towering courage, noble character and selflessness displayed by Mr ZHAO at the critical and historical moment of the 1989 pro-democracy movement and the crackdown on 4 June is exemplary for anyone who plays a role in politics and is devoted to serving the public. This is precisely the reason why we express our sorrow and respect for Mr ZHAO Ziyang here today.

Nowadays, the officials want us to put this piece of history on the 4 June incident behind us and forget it, saying that this is for the sake of enabling our country to develop its economy on a united and stable foundation. Therefore, they do not want us to look back at history but to look ahead instead. Is it not the case that the Government of our country has repeatedly called on the Japanese Government to reflect on its crimes of aggression against other Asian countries, to learn from history and build the future together? Is a government and country that is unwilling to face up to historical facts, unwilling to admit its past mistakes and unwilling to shoulder its historical responsibilities really capable of introspection and learning a lesson, of learning lessons from history and heading for the future? Does the Government really think that by dint of the passage of time alone, the historical wounds of the 4 June incident will heal? Leaving aside the fact that 15 years' time will not make the wounds inflicted by the 4 June incident heal, even 60 years have not made the wounds of the Nanjing Massacre disappear. These historical wounds can be healed only through just and humane treatment and approaches. This includes a full admission of the

historical facts, making sincere apologies to the victims, offering just compensations, ascertaining the responsibilities of the wrongdoers and teaching the next generation history properly to ensure that history will not repeat. The tragedies in history can often be transformed into positive forces for the progress of human civilization as a result of reflection. If those in power make a wrong choice and force its people into compliance by means of authority and use sheer power to steamroll generally acknowledged truths, the wounds in history will not be able to heal. With the collective memory in society, old wounds in society will open again at any time. In that case, will there really be unity and stability in our country and society? Why is the Government banning discussions on the 4 June incident even now? Does this not precisely reveal a lack of moral convictions, which makes it apprehensive and jittery?

Not matter how intransigent a regime is, the history of the pro-democracy movement in China will by no means be terminated because of the 4 June Massacre. The 1989 pro-democracy movement has carried on the long historical responsibility and tradition our people to engage in a continued and protracted struggle for empowerment of the Chinese people, for democracy in the country and for the freedom of its people. The motion debate held here today and the 4 June candlelight vigil to be held in Victoria Park later, as well as many other educational activities, and even our demand to put in place universal suffrage for Hong Kong, are the efforts that we make to carry on the pursuit of this common goal by our people.

With these remarks, I call on Members to support today's motion.

Mr Albert HO moved the following motion: (Translation)

"That this Council urges that: the 4 June incident be not forgotten, the 1989 pro-democracy movement be vindicated, and tribute be paid to the late Mr ZHAO Ziyang."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Albert HO be passed.

MR RONNY TONG (in Cantonese): Madam Deputy, recently, one incident has made me feel elated and envious. A historical taboo has recently been broken

in Shantou Municipality, Guangdong Province, with the construction of the first museum on the Cultural Revolution in the whole country. There are a total of 13 sections, 1 100 pictures and engravings and 240 000 words of texts in this museum. All of its displays carry the theme of "reflecting on the Cultural Revolution". It was reported that Mr LI Ka-shing of Hong Kong also donated \$300,000 to fund the construction of the museum. A retired old cadre responsible for planning the museum explained that the aim of building the museum is to "bequeath a place of caution to the Chinese people", saying that posterity can reflect on the doleful history of the Cultural Revolution.

The Cultural Revolution is not only a doleful memory in Chinese history, it is also a restricted area in the expression of opinions on the Mainland. Now, we can finally adopt an open and sincere attitude in facing this tragedy. This is some kind of progress for our country. However, in contrast, Japan has distorted the historical facts of its invasion of China and sidestepped the Nanjing incident in an attempt to deceive the next generation and the world. Such mendacious behaviour is an evasion of responsibility and historical facts. In this regard, our Premier, Mr WEN, once said that only a country that respects history and assumes responsibility for its past history could win the trust of the majority of people in Asia and in the world and assume greater responsibilities in the international community. State President HU Jintao also pointed out in his meeting with the Japanese Prime Minister, Mr KOIZUMI, that it was necessary to persist in learning the lessons of history earnestly and then look ahead, to know about history and come to terms with it correctly, and that self-reflection had to be translated into actions. All these remarks were directed at Japan's distortion of the historical facts of its invasion of China and its avoidance of such historical events as the Nanjing Massacre. However, I believe that such an attitude of facing up to history is also applicable to the history of our country.

In the past 16 years, the history of the 1989 pro-democracy movement has replaced the Cultural Revolution in the history of modern China as the taboo in the discussion of history among people on the Mainland. For many months, I have tried to conduct a search on the Internet for "4 June" and "1989", however, each time the search always turned up empty. It turns out that the thunderous pro-democracy movement that occurred as spring turned into summer in 1989 is only a blank in China's history.

What was also engulfed by this historical blank was the woeful tunes of the innumerable victims of the 4 June incident, the tear stains of the Tiananmen mothers, the yearning of exiled pro-democracy activists to return to their homeland, the shouts of people pursuing democracy and the torments of the suppression that they face, the solitary figure of the noble and upright Mr ZHAO Ziyang and his insistence on taking forward democracy. It is necessary for our country to address all these seriously, so that justice can be done and a just evaluation can be made of them.

History will not dissipate gradually like smoke. To Hong Kong people, the 4 June incident will always remain a heartrending chapter in Chinese history. There is no way to avoid this chapter. Sixteen years have passed, is it the case that we are still incapable of facing up to this unfortunate event in the past? Any government should have sufficient courage and liberality to face the judgement of history, not to mention a big and dignified country like China. What is more, accepting criticisms is a basic responsibility emphasized by the Constitution of our country.

Nowadays, our country is making progress and opening up and has outgrown its past. The leaders of our country also remind us time and again that the democratization of our country is the major undertaking at present. The 4 June incident is a chapter in China's pro-democracy movement, and pro-democracy activists reproach the country severely because they love it only too dearly. They are also intellectuals who are committed to their country. I believe they can still make contribution to the country and they also long to return to the fold of the Motherland early. The former director of the Institute of the Political Science at the Chinese Academy of Social Sciences, Mr YAN Jiaqi, recently said to this effect, "In going back, what I ask for is not that I can be smiling or can hold my head high, what I want is only that I do not have to lower my head on going back.". To allow pro-democracy activists to return to our country at an early date is the first step in facing up to historical facts and will also show the magnanimity of our country. This is my expectation on my country.

Another wish that I hold is that Hong Kong can follow the example of Shantou and establish a memorial hall for the 4 June incident to give expression to the remembrance of Hong Kong people for the 4 June incident. The memorial hall should display a tablet like that in the museum on Cultural

Revolution in Shantou and the inscription should read, "The ultimate authority in history is the people and not any 'authoritative person' with supreme status. Any authority that does not conform to the truth in history will not be able to hold its ground. It is not an authority that decides how history should be written but history that determines the place of an authority in history." It is my hope, the hope of Hong Kong people and the hope of all Chinese that our country can face up to historical facts and its people seriously.

I so submit. Thank you, Madam Deputy.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, time flies and 16 years have passed since the 1989 pro-democracy movement. To vindicate the 4 June incident remains the hope of the Chinese people.

Mr Albert HO has taken over this motion debate on the 4 June incident this year because Mr SZETO Wah is no longer a Member of the Legislative Council. As long as there are Members from the pro-democracy camp, this motion will continue to be moved, until the 4 June incident is vindicated.

Another subject matter has been added to the motion this year, that is, to pay tribute to Mr ZHAO Ziyang.

What is most respectable about Mr ZHAO Ziyang is that under the power politics pursued by DENG Xiaoping, he would rather resign than impose martial law and he would rather step down than crack down on the students. Because of this, he made his mark in history and he commands the reverence of the people.

Mr ZHAO Ziyang said in his memoirs, to this effect, "This is a road that I chose because I do not want to go down in history as owing the people any debt." Therefore, during the 15 years that he was under confinement, not only did he refuse to admit to having made any mistake, he even wrote to the Central Authorities asking for indication of the 4 June incident. Mr ZHAO Ziyang said, again to this effect, "It is better to resolve the issues concerning the 4 June incident sooner than later, it is better to take the initiative to resolve it than be compelled to resolve it; it is better to resolve it when the situation is stable than when trouble has occurred." This is a sign of his great wisdom on history.

From the historical viewpoint, Mr ZHAO Ziyang should feel no regrets when he passed away. It was only right that people mourned him. However, after Mr ZHAO Ziyang had died, only a small mourning hall could be set up within China's vast territory, in the study to which he had been confined for 15 years. Some of his friends were barred from paying tribute to him and some elegiac couplets were removed by officers of the Public Security Bureau, depriving the mourning hall for Mr ZHAO Ziyang of any peace. It also shows that political sympathies in China are always fickle, and the existence under totalitarianism is always worldly-wise. However, small though the mourning hall for Mr ZHAO Ziyang is, it is where public opinion resides. Public opinion is not the powers that be but it gives the most impartial assessments in history.

I do not know whether I should be proud or sad, but a small shrine set up by the Hong Kong Alliance in Support of Patriotic Democratic Movements of China in the Victoria Park turned out to be the location for the largest public memorial service throughout China. Over 10 000 people attended the public memorial service that night. Such is the public sentiment in Hong Kong, which will last until time immemorial and will never desert or betray. Even the request made by our Mr LEE Cheuk-yan to observe a moment of silence and pay tribute in this Council was ruled out by the President of this Council and the ground given for the rejection was that Mr ZHAO Ziyang was not a politician who had made great contribution to Hong Kong.

However, no one will fail to remember that Mr ZHAO Ziyang was the one who signed the Joint Declaration and that he represented China in resuming the sovereignty over Hong Kong. Before the return of sovereignty, even though Mr ZHAO Ziyang had stepped down, the documentary concerning the resumption of sovereignty over Hong Kong broadcast on the Mainland still included footage of Mr ZHAO Ziyang and Mrs Margaret Thatcher appending their signatures. How can we let Mr ZHAO Ziyang vanish from the history of reunification and how can we say that he did not make any contribution to Hong Kong?

Of course, the most indelible mark that Mr ZHAO Ziyang left in the memory of Hong Kong people is his visit to the fasting students in Tiananmen Square on the eve of 4 June. Holding back tears, he told the students, to this effect, "Students, I have come late. I am sorry!" At that time, the people who accompanied him included the present Premier, Mr WEN Jiabao. In China, virtually no leader would ever say sorry to the people. Such repentance came

direct from one's conscience and was a return to human nature. Even though 16 years have passed, people's memory is still vivid and they still feel agitated in their hearts. With the conviction that the 4 June incident must be vindicated, they mourn Mr ZHAO Ziyang and the youths who sacrificed themselves in the pro-democracy movement.

We are well aware that the road towards vindication of the 4 June incident is long, difficult and rugged, however, we will still forge ahead. This is a struggle between forgetting and not forgetting, and also an appeal to us made by our conscience and history. We also call on the Chinese Government to work towards vindication of the 4 June incident and do more to reconcile with pro-democracy activists, including releasing imprisoned pro-democracy activists, treating the family members of pro-democracy activists well, allowing exiled pro-democracy activists to return to the country, stopping all political suppression, and assuaging wounds in history, in order to show the goodwill of the Central Government and enable the country to disengage itself from the pain and the Government to reconcile with its people.

Madam Deputy, in the past, when the royalist parties debate the motion on vindicating the 4 June incident, the positions they took were invariably those of opposing the motion, abstaining from voting, being absent and disappearing. Even if they took part in the debate, the argument advanced was always to let history make its own judgement. However, the history of the 4 June incident is one of distinct right and wrong and the peaceful petition organized by students was surely not a capital crime. The Government's use of tanks and machine guns to kill young people is a sin against the people. History will not forgive this, nor will the people forget. I hope that in the face of this motion concerning the 4 June incident that requires us to act according to our conscience, Members of the Legislative Council can vote according to their conscience and remember the youths who sacrificed themselves for democracy and freedom, so that their souls can rest in peace in heaven.

Finally, I am proud of Hong Kong people. The patriotic pro-democracy movement, which has persisted for 16 years, has entailed deep emotional bonds, pain, patience and expectation. Sixteen years is a long period of time. Recently, when I watched an advertisement themed on the novel *The Legend of Condor Hero*, my heartstrings were touched. In *The Legend of Condor Hero*, which I read when I was young, Little Dragon Girl and YANG Guo inscribes the following lines on a rock when they bid each other farewell in the Valley of No

Passion: "Sixteen years hence shall we meet here again. The strong emotional bonds between husband and wife will make us keep our promise.". At that time, I felt that 16 years was too long a time and only Little Dragon Girl and YANG Guo could wait that long. However, Hong Kong people have already waited 16 years for vindication of the 4 June incident. Their deep emotional bonds and utmost sincerity are legendary. If Heaven had a feeling heart, it too must grow old. If we borrow the words of Little Dragon Girl, we can perhaps change it to: "Sixteen years later shall we meet in Victoria Park again. Our deep feelings for the 4 June incident will make us keep our promise."

With these remarks, Madam Deputy, I insist on the vindication of the 4 June incident and pay tribute to the late Mr ZHAO Ziyang. I also hope to meet members of the public again in Victoria Park on 4 June this year.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Deputy, early this year, Mr ZHAO Ziyang, former Premier of the People's Republic of China and former General Secretary of the Communist Party of China, who had been put under house arrest for 15 years by the Chinese regime, passed away. His family members said that he was finally free. At that time, we in Hong Kong also stood in silent tribute and mourned for Mr ZHAO Ziyang. In fact, on the other hand, we also feel glad that he could gain freedom again. We do not have the experience of losing freedom for 15 years and thus we will not know how he felt. Even when a person has been kept in prison for 15 years for a crime committed, he still would not have the feeling of Mr ZHAO Ziyang, as Mr ZHAO was put under house arrest for 15 years because he had been unwilling to open fire on the people. This is a case where there is no way to reverse a verdict, as the Court will not consider handling it. Therefore, when his family members said that he was finally free, it also carried the meaning of extrication. Not only was he free physically, he could also extricate himself spiritually. However, it is unfortunate his extrication came only after death. Not only is it the sorrow of Mr ZHAO Ziyang, but it is also the sorrow of all Chinese because we are facing together a Government which is not the least lenient to dissidents. What is more, not only does the Government suppress dissidents, but it also suppresses their family members.

Sixteen years have passed. Same as Mr ZHAO Ziyang, family members of those who sacrificed themselves in the 4 June incident also lose their freedom physically and spiritually. During the Ching Ming Festival every year when

they want to pay tribute to their family members, they will be under surveillance of the Government. For the better-known people who died in the 4 June incident, their family members are even unable to pay tribute. We really have to ask whether paying tribute to deceased family members is a basic right of individuals. Do they also have to be denied the freedom in participating in this kind of tradition or customary practice? What kind of mistakes have these family members of those sacrificed in the 4 June incident made? Is their mistake being failure to stop their sons and daughters from exercising the freedom and right of procession and assembly vested in them by the Constitution? If it really is the case, have they indeed done something wrong? Besides, the persons to whom they wish to pay tribute are not Class-A war criminals, but those young students who sacrificed themselves for the country, democracy and freedom. Why are they being treated as those who honour Class-A war criminals?

Madam Deputy, the loss of freedom physically is not as saddening as the loss of freedom spiritually. Family members of the dead have organized themselves into the Tiananmen Mothers' Movement. During the past decade, they have been working hard to fight for vindication of the dead. However, all along, not only is their work not recognized by the Government, but they are continually being suppressed by the Government. The relatives and family members concerned really find it distressing, because they only want to fight for vindication for their dead family members, but to no avail. This wound is very painful indeed. Not only does the Government not assuage the pain of the wound, but it sprinkles salt over the wound from time to time. In fact, many Members also asked earlier, "Why is their situation even more deplorable than that now being faced in Japan?" All along, the rightists in Japan have been denying the occurrence of Nanjing Massacre. They are just like the Chinese Government, refusing to face the truth and the history. Is that massacre a fabrication? A lot of media have already covered the 4 June incident. Why does the Chinese Government not accept this fact?

Madam Deputy, it is already the 16th time that this annual motion debate on the 4 June incident is being moved. What is special about this motion debate this year is that Mr SZETO Wah, who used to move this motion debate, is now retired. His place as the mover of this motion is now taken by Mr Albert HO. The switch between the old and new movers also demonstrates the importance to have a correct understanding of history. The debates over the past 15 years let us know clearly that some people are trying to remove the shameful page of

history with different kinds of expressions. If we do not move this motion again, and let the officials or pro-officials delete the history and memory from which the next generation can learn about the 4 June incident, I will find it a kind of regret to those who sacrificed themselves in the 4 June incident. We are worried that the family members of the dead in the 4 June incident will be just like Ms LI Xiuying, who has tried her very best to raise accusations in relation to the Nanjing Massacre, but finally succumbed to grief without any apology from anyone.

Madam Deputy, at the centre of Berlin, the German Government has erected a memorial which occupies an area of 190 000 sq m to commemorate the Jews persecuted in Europe. Why did Germany erect this memorial? The President of the Federal Assembly of the Parliament of Germany said that this was to manifest that after unification, Germany recognized its historical responsibility. On the one hand, it was to explicitly plead guilty to the victims during the war at that time. On the other hand, it was to solemnly show that Germany today shall split from the Nazi history completely. The Chinese leaders say that the administration is for the people and the power has to be used properly. However, one of the indispensable conditions is that they should have the breath of mind to admit the mistakes made as recorded in history. Only in this way can they remove the ill feeling of the mainland people towards the Government, can they rebuild the people's confidence in the Government so that they will work for the country together.

MR ALAN LEONG (in Cantonese): Madam Deputy, 16 years ago, a leader of great importance at the top echelon of China, who inspired respect and awe among the people, had no qualms in pawning his power, position and freedom in his effort to call for an end to the confrontation between the Government and the people. Unfortunately, the moral courage displayed by this extraordinary old man, Mr ZHAO Ziyang, could not move the other leaders who held the military power in their hands. As a result, the situation got out of hand and the army entered the capital. The confrontation between the Government and the people escalated, and it culminated in a bloody and tragic end of the movement.

Sixteen years ago, Mr ZHAO Ziyang, as the General Secretary of the Communist Party of China and Vice-chairman of the Central Military Commission, could have taken part in planning for the imposition of martial law, so as to stabilize the social situation before attempting to implement the major

political and economic reform programmes conceived by him again in the future. This is precisely the approach that Chinese leaders nowadays wish us to accept and approve of. They want us to believe that had the Chinese Government not cracked down on the pro-democracy movement in time and resolutely, Chinese society would not have stabilized and it would have been impossible to provide a stable foundation for the engine of reform and opening to run at full throttle.

However, Mr ZHAO did not succumb to the temptation of power and office, nor was he willing to settle for an ignoble existence. Moreover, he was worried how a regime that used violence on its people could rebuild the political legitimacy that reform required. He refused to use guns and tanks to suppress the passion of pursuing democracy, on the contrary, he was convinced that the best approach in pacifying the situation was to engage in dialogues with the people sincerely. To quote Mr ZHAO's own words, to this effect, "We have to inform the people of important issues and important issues have to go through discussion by the people.". Mr ZHAO also demanded that corruption and abuse of power be eradicated completely. At the most critical moment, Mr ZHAO Ziyang went into the midst of the people to persuade the students by appealing to their emotions. He would rather be subjected to physical confinement and would rather hold on tight to the freedom of the spirit than accept the conclusion of a so-called "political disturbance".

Sixteen years ago, the scene of Mr ZHAO persuading students late at night brought tears to the eyes of all beholders. For 16 years, Mr ZHAO lost his freedom because of his unwavering convictions. This cannot but make one feel regrettable. Now, if we look in retrospection at his life, he commands our reverence. If there is indeed paradise, I believe he is now reunited with the citizens and students of Beijing, whom he strove to protect 16 years ago but were killed in the night of 4 June. Having lived out his life, he has passed the ultimate test for people in politics. Between power, position, honour and gain and the love of the people, he chose the latter. I hope more people in positions of power in this world will follow the example of Mr ZHAO and eschew the use of force and naked power and replace them with love and justice.

The 4 June incident has brought the democratization of the decision-making process and the progress towards independence of the news media in our country, as advocated by Mr ZHAO, to a complete standstill. For 16 years, two safety valves to channel social contradictions have been missing in Chinese society, so that various types of social conflicts, such as those in villages,

those relating to workers in state enterprises and to the acquisition of land have all been bottled up and are difficult to resolve. I am afraid they will accumulate until the threshold of tolerance in society is exceeded and they will then erupt into situations even more unsettling to society. Those who want to negate this movement and are searching desperately for arguments to justify their stance may well give some seriously thoughts to the following question: Assuming that dialogue and reform are the final outcomes of the 1989 pro-democracy movement, would the progress in China's development be definitely worse off than that nowadays? Who dare say that the political system after reform would definitely not make the subsequent development in China healthier than that in the past 16 years, and that the fundamental interests of the public at large will not be catered to even better?

The remembrance of Hong Kong society for the 4 June incident has never waned. In particular, the fact that 1 million members of the public once threw their weight behind the 1989 pro-democracy movement made the Central Authorities harbour misgivings about democratization in Hong Kong and the liberal atmosphere in Hong Kong. The Basic Law has prescribed a pace of political reform like a snail's crawl and impeded it with numerous hurdles. The historical event 16 years ago also cast its long shadow in the form of Article 23 of the Basic Law, which requires a stringent national security law to be drawn up for Hong Kong. Even the local political landscape is generally made up of two major opposing camps, with one not accepting the official judgement on the 4 June incident and the other prevaricating on the nature of the 4 June incident. This issue has dominated the discussion on politics, the economy and even people's livelihood in Hong Kong.

Madam Deputy, we must face history squarely and solve the problem. The 4 June incident is a wound that has not yet healed in Chinese history. To sincerely address the plight of the family members of those killed, as well as the demands of the pro-democracy movement, will be conducive to the sustainable development of the Mainland and Hong Kong. Peace is the theme of the 21st century. Even the people of Israel and Palestine, who have been bent on killing each other out for 60 years, could extend olive branches to one another. Why can the Chinese people not exercise their wisdom and courage to assuage the wounds of their people and rebuild the mutual trust between the Government and its people? Only in this way can the Chinese put down their baggage and work hand in hand for the well-being and prosperity of the country.

With these remarks, Madam Deputy, I support the motion and express my wish that the Chinese people can put democracy and reconciliation into practice in the near future.

MR CHIM PUI-CHUNG (in Cantonese): Madam Deputy, when this Council debated this motion in 1998, I cast my vote against it. In 1999, when I was behind bars in Stanley, I heard Mr SZETO Wah ask: Where is the person who cast that opposing vote now? Today, I want to tell Mr SZETO Wah: I am back.

MR ANDREW CHENG (in Cantonese): Madam Deputy, although Uncle Wah is not in this Chamber today, I believe that had he heard what Mr CHIM has just said, he would wish in his heart that Mr CHIM will support this motion.

Madam Deputy, "Too much to remember but not daring to forget". Every year, when we propose this motion, it is not our intention to make anyone feel embarrassed, but rather, we hope that history can be respected. Recently, there have been strong and incessant calls on the Japanese Government to face history squarely and reflect on it. We often say that history has to be respected because only peoples who respect history will have a bright future and win the respect of the international community. It is really despicable that the Japanese Government does not respect history, and distorts the history in textbooks and the historical fact that it waged a war of aggression against its neighbours. However, should our Central Authorities not also face up to history and vindicate the 4 June incident at an early date?

Forget not the 4 June and vindicate the 4 June incident. To show respect to this piece of history, it is necessary to lobby for justice and a measure of dignity for the innocent who died or were injured in the 4 June incident, for those innocent jailed for no reason, for people forced to flee overseas and cannot return to their homes, for their family members, for the mothers of Tiananmen and for every heart that was afflicted.

More than that, it is even more important to commemorate this event, in order to educate the next generation of the Chinese people and let them know how laborious it is for China, a vast country with a 5 000-year-old civilization and a large agricultural country with 1.3 billion people, to open up a path leading

to modernization and democratization. In the late '80s of the last century, that is, 70 years after the May Fourth Movement, although this huge piece of Chinese land had, after going through a hundred years' of turmoil, embarked on the road towards modernization despite all difficulties, the phantoms of feudalism and autocracy still managed to make a strong comeback and forcibly suppressed the sprouting seedlings of democracy. The institutional reform that had just started was shelved and the monitoring power of civil society vanished. As a result, there was a resurgence of corruption and decadence, people with moral fibre could not survive and wealth disparity becomes greater and greater.

We have to remind our next generation to bear firmly in mind the lesson imparted by this bitter piece of history and not to forget or repeat the mistakes made in the past. Only in this way will our country see any progress. In particular, since we are talking about the dawn of a new century, and since our country has to converge with the international community and act according to the modern norms of the international community, it is all the more necessary for us to remember the 4 June incident because the mistake made that year has led to retrogression of our country for over a decade in the course of its modernization.

I really hope that the new leaders of our country will not make the same mistake again because we cannot afford to make any more mistakes and go backwards again.

Madam Deputy, recently, Mr LIEN Chen and James SOONG were able to meet and have dialogues with the leaders in Beijing, so it can be seen that even the decades-old grudges between the Kuomintang and the Communist Party could be reconciled. Some people in our pro-democracy camp could also make visits to Beijing and it seems that communication and reconciliation have been set in motion. This is of course something in which people can take consolation. However, communication should be founded on mutual trust and respect. If the Central Authorities consider that the 4 June incident will affect communication, then this kind of communication with conditions attached is superficial and not genuine.

We have all along been unable to accept the suggestion that to insist on our views on the 4 June incident is being unpatriotic and will affect communication. Do they mean to say that a Government will never make any mistake? Please take a look at the Cultural Revolution, which spanned a decade. The mistake

has been rectified now, however, was the mistake in those years not a very serious one? In pointing out the mistakes made by the Government in the past so insistently, it is not the intention of us in the pro-democracy camp to embarrass the incumbent leaders. We only hope that our country and people will make progress in modernization. If this is not patriotism, then what is it? On the other hand, to comply and agree blindly and not daring to point out mistakes is not patriotism but doing one's country wrong, or worse still, doing a disservice to one's country.

Today, the Central Government wants the Kuomintang and the Communist Party to reconcile with one another and hope that Taiwan will return to the fold of the Motherland, saying that as long as Taiwan agrees with the "one China" principle, then everything else is negotiable. We in the pro-democracy camp in Hong Kong have never doubted our identity as Chinese, however, we, descendants of China who sincerely hope that our country can disengage itself from its past mistakes and complexes, are being shut out of the country and banned from getting our Home Visit Permits. We were even accused of harbouring ulterior motives. This is indeed regrettable. What will our compatriots in Taiwan think when they see all this?

Madam Deputy, I hope that the Central Government can really reflect on history seriously, vindicate the 4 June incident and cast aside its complexes in this regard, so that reconciliation and communication can really take place and China can enter a new era in the new century.

Finally, I am also convinced that history will serve as a mirror. The true nature of those with short memories, who are silent or have changed tack, will be exposed by it. Although 16 years have passed, I believe that the day will come when history will do everyone justice. With our steadfast convictions, one day, we will surely harvest the fruits of democracy.

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

DR KWOK KA-KI (in Cantonese): Madam Deputy, the contents of the motion proposed by Mr Albert HO today is: "That this Council urges that: the 4 June incident be not forgotten, the 1989 pro-democracy movement be vindicated, and tribute be paid to the late Mr ZHAO Ziyang."

The motion is clear and concise, and the wording implies great wisdom. Sixteen years have passed, the 4 June incident has not been forgotten and the vindication of the 4 June incident is a ray of light at dawn that we have been waiting year after year. That year, the students in Beijing, inspired by the desire to love and save their country, staked their lives and shed their ardent blood to set in motion a grand student movement in Tiananmen Square. In the end, the hope of our people was steamrolled by tanks and shattered by gun-shots. Time and tide waited for no man and the land was shrouded in darkness. Many innocent young students and ordinary citizens, unarmed and taking part in peaceful demonstrations, were murdered eventually.

When I read the testimony of Dr JIANG Yanyong, even a surgeon like me, who is used to carrying out operations, could not stand the gory scene and the helplessness of having to save one dying or injured person after another, as well as the howls of the family members of the injured beseeching the doctors to save their dying children. Each year, on the eve of Mothers' Day, I would receive e-mails making their rounds on the Internet. We could feel that the mothers affected by the Tiananmen incident would never get over the pain during their life-time and we were also reminded of the tragic 4 June incident.

Freedom and democracy in China are keeping the souls of the dead company. Hovering above Tiananmen Square and Chan'an Boulevard, neither can they find a place where they can hold on to the soil and rest in peace, nor can they find any soil to sow their seeds or take root. On 17 January, Mr ZHAO Ziyang, who supported the students, succumbed to illness. We wanted to pay tribute to him and observe a moment of silence in the Chamber of the Legislative Council in Hong Kong, but this wish was not granted and ruled out by the President. In Beijing, the army and the police strictly limited the mourning activities among the people and they were prevented from going to the mourning hall set up for Mr ZHAO Ziyang to pay tribute to him. Why is it that even the normal display of emotions and open mourning for a former leader, Mr ZHAO Ziyang, who made contribution to the opening and reform of China, who advocated democracy, who abided by his conscience and in the end decided to stand by the citizens and students, were not allowed? In Hong Kong, such actions will attract accusations of being radical, but in Beijing, they are likely to be considered counterrevolutionary.

I find it most lamentable that Mr ZHAO Ziyang, who was a leader worthy of our respect, who abided by his convictions even in the final moment of his life,

who later on chose to pay a visit to the students in the square, was in the end forced to withdraw from the political stage. He chose not to play a part in the violent crackdown, but in exchange, he got 16 years of confinement. Up to the day when he died, freedom and democracy in China still cannot see the end of the tunnel. His daughter has made a remark that is most thought-provoking. On the day when his father passed away, she said that his father, Mr ZHAO Ziyang, could finally regain his freedom. Although this freedom could not be found on earth, nor could it be found among people, after Mr ZHAO Ziyang's death, this freedom has now enabled him to truly escape from the cordon thrown round the study in Fu Qian Alley and set him free from the prison confining his mind and will. However, we do not know when this spirit will be resurrected.

As Chinese, when will we be able to live without conceit or servility and as upright persons? In this Chamber of the Legislative Council, each of us was given the status of being a Member, in addition, the term "Honourable". However, we have to always bear in mind that we have to be persons with a conscience, approving of what is right and criticizing what is wrong. On 4 June every year, a candle light vigil is held in Victoria Park and tens of thousands of members of the public in Hong Kong will reminisce on the pro-democracy movement in a painful and mournful mood, testifying to the 1989 pro-democracy movement. I believe that the flame in people's hearts will not die, people will not forget and history will not just disappear.

With these remarks, I support Mr Albert HO's motion: "the 4 June incident be not forgotten, the 1989 pro-democracy movement be vindicated, and tribute be paid to the late Mr ZHAO Ziyang.". Thank you, Madam Deputy.

MR ALBERT CHAN (in Cantonese): Madam Deputy, Mr CHIM Pui-chung has just left the Chamber. Just now, he said he wanted to tell Uncle Wah that he is back. If Uncle Wah were here, I believe he would also welcome him back to this Council. Although he has returned from Stanley, it is possible that he will continue to oppose Uncle Wah's motion. Had he not served time in Stanley but in Qin Cheng prison, his political inclination would have been totally different. However, maybe he is not qualified to serve time in Qin Cheng prison and he probably does not have the opportunity to enjoy such treatment.

Madam Deputy, what is rather special about this motion today is that for a number of years in the past, this motion was proposed by Uncle Wah but Mr Albert HO has taken over the baton, and the place of Uncle Wah. This is of symbolic significance because no matter how the people in this Council come and go, I believe the objective of finding the truth and seeking a reversal of the verdict on the injustice surrounding the 4 June incident and on the 4 June massacre, so that the grievances can be addressed, will definitely be sustained in this Council. Today, Mr Albert HO has received the baton from Uncle Wah and in future, there will be tens of thousands of people to take the baton from Mr Albert HO, until the 4 June incident is vindicated.

Sixteen years have passed in a blink and the memory of the historical facts and details of the 4 June incident has become blurred. However, although the memory has become blurred, the emotions and feelings are still very clear and vivid. I know clearly that the grievances borne by the compatriots killed in the massacre and those who were wrongfully imprisoned must be addressed. This is the inevitable outcome, given the calls from our very nature of being human. The wounds of the 4 June incident still bring dolorous memories to hundreds of millions and even billions of compatriots. The Chinese attach great importance to history because only with feelings for and recollections of history will people find their roots and feel an attachment to their own people. When some people have forgotten history, or when their recollections have faded, their feelings and basis of being a member of a nation will gradually come loose and they may even gradually lose the sense of being a member of the nation. In fact, this is very dangerous. Today, you can forget the 4 June incident, tomorrow, you will forget your ancestors, the day after, you may forget your descent and roots. If we go one step further, then many norms and proprieties of being a human being can also be forgotten.

Concerning the 4 June incident, the injustice will be surely be righted and vindication will definitely come sooner or later. I hope and I am confident that following Mr HU and Mr WEN's ascent to power, there is great likelihood that the 4 June incident will be vindicated during their reign. We could see that soon after Mr HU and Mr WEN's ascent to power, TUNG Chee-hwa had to step down. This happened all of a sudden, so it can be seen that that there is something new in their approach to governance. As regards the Taiwan issue, many Honourable colleagues have mentioned that although the Kuomintang and

the Communist Party have contended with each another for several decades, LIEN Chen and James SOONG have both paid visits successively under the rule of Mr HU and Mr WEN.

In fact, vindicating the 4 June incident can be described as a decision that respects history and the people. If the 4 June incident can be vindicated under the rule of Mr HU and Mr WEN, this will represent an important milestone in the new administration of Mr HU and Mr WEN. This will show that not only is the new Government concerned about people's livelihood and economic development, this will also show that the Government has the liberality to respect history and the people. Not only will vindicating the 4 June incident signal to the 1.3 billion Chinese people that the present new Government has the confidence in governing China, this will also convey to all overseas Chinese the message that the new leaders have their own style and are introducing a new policy and a new form of governance. As members of the Chinese nation, this will show their respect for history.

Therefore, this subject will continue to be discussed this year, and it probably will also be discussed next year. However, I hope that in the near future, with the vindication of the 4 June incident, there will no longer be the need to raise this subject on the vindication of the 4 June incident in this Council for discussion. Today, I will continue to support this motion proposed by Mr Albert HO.

MS MARGARET NG (in Cantonese): Madam Deputy, I am grateful to Mr Albert HO for taking over from Mr SZETO Wah so that we can have a debate on forgetting not the 4 June incident and remembering the pro-democracy movement in 1989. With the inclusion of paying tribute to Mr ZHAO Ziyang this year, the significance of the motion this year is even greater.

Madam Deputy, a lot of people ask why we do not love our country. In fact, although a lot of people are sharing the fruits of economic prosperity in China, what we share and shoulder are the vicissitudes of the Chinese nation. This is not just a debate on history but also a very patriotic debate because not only are we concerned about enjoyment, but also about our responsibilities.

To commemorate the 4 June incident is in fact to commemorate the pursuit of democracy by the Chinese people, and the pursuit of democracy is a tradition passed on from one generation to the next among the Chinese people. The pro-democracy movement in Hong Kong nowadays is a sequel to the 1989 pro-democracy movement, and the 1989 pro-democracy movement was a sequel to the May Fourth spirit, whereas the May Fourth spirit was in fact the continuation of a spirit that had been passed on in the long history of China, that is, the quest of the Chinese people for a society of greater equity and kindness to its people. Therefore, in particular, I wish to express my approval of this debate today because Chinese people respect history and we also respect our responsibility for history.

Some people describe the 4 June incident as a historical burden. I do not consider it to be a burden. I believe that it is the responsibility of every Chinese and we are happy to shoulder this responsibility, even though sometimes, we have to pay an unreasonable price for such a responsibility.

Madam Deputy, the subject of paying tribute to Mr ZHAO Ziyang has been included in this motion. Among the people paying tribute to Mr ZHAO Ziyang, there was a person called NI Yuxian, who is the Chairman of the Party for Freedom and Democracy in China. I do not know him, but he made some comments on Mr ZHAO Ziyang. He said that a Party General Secretary, merely because he had not approved of killing people, had to pay the price of losing 15 years of freedom. What is the lesson behind this matter involving Mr ZHAO Ziyang? Frankly speaking, before the 1989 pro-democracy movement, would we have any particular reverence for the then General Secretary, Mr ZHAO Ziyang? Most likely we would not. No matter if he had adopted an opening policy or a conservative line in politics, he may have done so out of a desire to consolidate his own power and position. However, in the 1989 pro-democracy movement, a very special thing happened, that is, Mr ZHAO Ziyang had to pay the price of being confined for 15 to 16 years because he did not approve of cracking down on students.

(THE PRESIDENT resumed the Chair)

Madam President, in a person's political career, often, it is necessary to make many pragmatic decisions. However, a point will come when he has to make decisions either according to his conscience or make what are called

pragmatic and wise decisions. Precisely because Mr ZHAO Ziyang chose a road dictated by his conscience, we will always remember him. However, what is the most important thing about this issue? The most important thing is that Mr ZHAO Ziyang revealed his human side rather than considering power to be all important. Therefore, this incident involving him reminds us that it is not enough just to have good guys but we must also have a good system, that is, a democratic system.

A democratic system must be founded on the rule of law because the rule of law protects basic human rights. A person who ascended to a very high position in the power structure can lose in an election in a democratic system. Should he lose the support of the people, he will lose in an election, however, he will not lose his freedom because of this. The rule of the majority without respect for the rule of the law will in fact degenerate into mobocracy.

All along, the significance of the 4 June incident has always been to pay our tribute to the martyrs who went so far as sacrificing themselves for democratic ideals and the country, and to make it a point that we share the same aspirations for democracy. However, the death of Mr ZHAO Ziyang has deepened our mourning and respect, and given us another dimension, that we must remind ourselves of respecting human rights. For Hong Kong, the special significance of the 4 June incident lies in the fact that it is the only place in China where candle light vigils can be held to commemorate the 4 June incident every year. Today, Hong Kong is also the only place in China where a public memorial service can be held for the beloved former General Secretary of the People's Republic of China, Mr ZHAO Ziyang. We must persist until there is genuine democracy in China.

Therefore, today, I support the motion with all my heart. Thank you, Madam President.

MR SIN CHUNG-KAI (in Cantonese): Madam President, today is yet another day on which the debate on the 4 June incident is conducted. In the past, this motion would be proposed by Mr SZETO Wah each year. Uncle Wah has retired and in this term, the torch was passed on to Mr Albert HO, who has taken over the job.

Sixteen years is definitely not a short period of time, however, the memories of that year were all etched indelibly in my mind. There is a website

that I often visit and I still visit it sometimes. When I key in the term "4 June incident" or "1989 pro-democracy movement", I can find all types of information, as well as a wide spectrum of evaluations and comments airing different stances.

I remember that two years ago, when the same debate was held in the Legislative Council, I found that there were 60 000 search results after keying the terms relating to the 4 June incident into the search engine of < <http://www.google.com> > .

Today, I have conducted a search again. Searching with the term "4 June incident", the entries found have risen from 59 800 two years ago to 362 000; with "the 1989 pro-democracy movement", the entries found have risen from 13 800 to 50 100; with "forget the 4 June incident not", from 39 000 to 192 000; with "vindicating the pro-democracy movement", from 6 530 to 43 000. These figures show us clearly that people will not forget the 4 June incident.

Although the Internet is a virtual world, there is an all too real effort to collect information, create webpages, make use of information technology to disseminate information concerning the 1989 pro-democracy movement and inspire people to commemorate this patriotic pro-democracy movement.

What is more, many people on the Mainland were charged with the offence of subversion, detained, jailed or even disappeared because they had published the truths and records on the 4 June incident.

The world of the Internet can in some measure make up for the shortcoming of being unable to attain our ideals in reality. We cannot go to Tiananmen Square to lay flowers for those who died that year, but we can go to the website of "Tiananmen Mothers" < <http://www.fillthesquare.org> > to present a bunch of "June Fourth Roses" and spread the message by email.

Mr ZHAO Ziyang was under confinement for his insistence on democracy. When he died, we did not have the opportunity to go to the mourning hall set up for him to pay tribute and we could not even observe a moment of silence for him here. This being so, we can now also go to the virtual mourning hall at < <http://www.89-64.org/ZZY/signature.asp> > to leave our names and prayers.

Want to vindicate and rectify the name of this so-called "political disturbance at the turn of spring into summer in 1989"? We can visit the Rectify the name for June Fourth website at < <http://www.89-64.org> > to sign our names and leave our names for the respectable and righteous Dr JIANG Yanyong.

Want young children and students to have a clear picture of what happened that year so that they will not be fooled by the scant reference in their history textbooks? Here is a website called June Fourth Memo at < <http://www.64memo.com> > compiled by a student leader in the student movement in that year, FENG Congde. I found that since the site commenced operation in April 2001 to now, more than 7 million people have browsed the site, or more than 7 million visits have been made to this website. This is a website providing very comprehensive information and is supported by Human Rights in China.

There, you can look at the events that year, the people and incidents, original information and documents, audio recordings at the scene, video recordings and songs of the pro-democratic movement together with your kids, tell them about the history of the bloodbath in the capital that year and investigate some major controversies.

This website is just like a "June Fourth Museum" and the information is updated all the time. There are interviews of participants recently released from jail, memoirs of Qinghua University students at that time and the most truthful recollections are collected and compiled.

Of course, there are also some online forums which provide a liberal venue for people to continue to have debates to find out the truths about democracy. Looking at their discussions, we find that the people participating in the forums include compatriots on both sides of the Strait and those overseas. They discuss the 4 June incident and are also concerned about the progress of democracy, human rights in China and the unification of Taiwan and mainland China, as well as their commitment to and expectations on the country.

It is a pity that not many members of the public or young people from Hong Kong take part in these activities on the Internet. Even though these historic facts are preserved by means of the Internet and published for all to browse, very few people take the initiative to delve into them or access them.

The Internet is a world for the young people. Should we educate our next generation and foster in them the spirit of seeking the truth, teach them to make good use of such open venues as online journals and news groups, and instead of regarding the Internet simply as a pastime, treat it as a platform for caring about our country and discussing public affairs?

Another thing that I find regrettable is that most of these websites which commemorate the 4 June incident and fight for democracy are not registered on the Mainland. For instance, the Tiananmen Mother Movement website was registered in the United States. The websites mentioned just now, including the June Fourth Memo, the Rectify the name for June Fourth and the ZHAO Ziyang Mourning Hall were all registered in France.

Does this not reveal how sad it is to be Chinese? The truths about the activities commemorating the 4 June incident are not tolerated on Chinese soil, nor are they tolerated on the part of the Internet controlled by the Mainland. When will such a situation change?

Fortunately, on Chinese soil, Hong Kong is the only place where it is possible to openly commemorate the 4 June incident; and in the legislature of Hong Kong, it is possible to discuss the 4 June incident and publicly ask for vindication of the 4 June incident.

This year, some devoted Internet enthusiasts have dedicated their time and effort to producing an MTV called "Our Home Our Country, Forget June Fourth Not", which has been released on the Internet in the hope of attracting more young people to have a look.

Today, I hope that some of our Honourable colleagues can join us in remembering the 4 June incident and strive for vindication of the 1989 pro-democracy Movement. Let us contribute some effort towards democracy in China.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, we are discussing the vindication of the 4 June incident here. Nothing will happen to us afterwards. We will not disappear after leaving this place. But do Members know what the consequences will be if we do the same in the Mainland? There is a Mr HUANG Qi who has set up a website in Sichuan. He was

commended by the Public Security Bureau for helping hundreds of people reunite with their family. His achievement was reported in the Public Security News and he was also given an award for it. However, he had only disseminated through his website some information on the 4 June incident on its 10th anniversary. What happened to him in the end? He was consequently convicted of subversion and sentenced to 10 years' imprisonment.

Another friend named LI Hai, a student of Beijing University, was arrested for taking part in the patriotic pro-democracy movement in that particular year. After release, he collected information to compile a full list of victims who had been injured from being beaten up, persecuted, beaten to death and sentenced to jail because of the 4 June incident, and he was then considered to have disclosed state secrets for which he was sentenced to nine years' imprisonment.

I know that many prisoners of conscience who were jailed for the 4 June incident have been released one after another. It has been 16 years. How many 16 years does one have in a lifetime? Today, we carry on with the debate on this motion which used to be proposed by "Uncle Wah". We do not do this for no reason.

We all know that Mr JIANG Yanyong is known as the SARS hero. Without him, more people might have died in the ravages of SARS on human beings. His efforts to disclose that the Beijing Government had covered up the true conditions of the epidemic were praised by the whole world. But Mr JIANG Yanyong had "disappeared" for some time only because he had written a letter recalling how he had rescued university students who had been slaughtered by the army on the night of 4 June. Nobody knows whether or not he will "disappear" again in future.

There is also Ms DING Zilin, whose son, a high school student, was killed by the army on the night of 4 June. Ms DING Zilin was an Associate Professor of the People's University. What is the People's University? It is a university where the Communist Party trains its cadres. Ms DING Zilin suffered tremendous pain from losing her beloved son, but she did not immerse herself in grief and sorrow. Rather, she initiated the "Tiananmen Mothers" campaign with the families of other people who were killed in the 4 June incident, and bad luck has been with her since then. She is constantly followed, harassed or detained by public security officers on days or festivals relating to the dead. Even when the wife of Edgar SNOW who worked alongside with the communists

before the revolution visited Ms DING Zilin for she wished to take a look at the graves of those who died on 4 June was almost detained by the Public Security Bureau. What kind of a society is this?

Now, many colleagues have left this Chamber. They do not wish to bring up this incident. They may think that "Long Hair" and his friends are again stirring up even more troubles. Let me tell them that in the Communist Party there was a martyr called General YE Ting who wrote a poem when he was imprisoned by the Kuomintang. The last line of his poem is this: "I do not want freedom in a dog's hole. I do not wish to crawl out from the dog's hole." For people who have forgotten history, forgotten those people who died and forgotten those who had suffered injustice and are still alive, but who wish to make peace and to have freedom, that would be freedom for the dogs' kind, and I do not want it.

Mr LU Xun had written a poem to pay tribute to five martyrs of the Communist Party. I believe "Uncle Wah" very much likes to quote two lines of this poem. Perhaps he knows which two lines I am referring to because he may be watching the live broadcast of this meeting today. They are "enduring the sight of my friends turning into new ghosts" and "changing constantly is the King's flag on the city wall". When we saw those people being killed in the 4 June incident, although we did not know them personally, it was still saddening watching them turn into ghosts, into spirits and into "ghost heroes". By "changing constantly is the King's flag on the city wall", it means many people will sell their souls in return for personal gain. That is the meaning of "changing constantly is the King's flag on the city wall". Mr LU Xun wrote this poem with profound sadness.

Here, I call on all teachers and all parents to take part in the candlelight vigil to be held in the Victoria Park on the night of 4 June this year, in order to educate the next generation. I call on all compatriots in Hong Kong to encourage their colleagues, classmates, friends and relatives to join the massive rally on 29 May and the 4 June candlelight vigil to pay tribute to those who died in the 4 June incident, thereby showing Hong Kong people's conscience and dignity. Do what is right, and condemn what is wrong.

DR YEUNG SUM (in Cantonese): Madam President, I speak in support of Mr Albert HO's motion which calls for the vindication of the 4 June incident and

paying tribute to Mr ZHAO Ziyang. This motion used to be proposed by Mr SZETO Wah every year, but as he is retired now, Mr Albert HO of the Democratic Party, therefore, has taken over. We hope that Members in the pro-democracy camp can debate this motion in this Chamber of the Legislative Council every year.

Mr ZHAO Ziyang died at the age of 85. After he passed away, DING Zilin, a Tiananmen Mother, said the following to pay tribute to him. And I quote to this effect "ZHAO Ziyang is a great man of the 20th century. He left this world with deep affection for the people in his heart; he left this world with endless regret and profound helplessness from an unfinished business; he left this world with a heavy spiritual shackle on him."

Let us look at the "system of contracting production quotas to individual households" implemented in Sichuan in the '70s, whereby the production of food substantially increased and the livelihood of farmers significantly improved. At that time, ZHAO Ziyang was praised by farmers and there was this common saying: "If you need food, go find Ziyang". That was what happened after the Cultural Revolution. In the early '80s, he also assisted DENG Xiaoping in the implementation of economic policies which sought to reform and open China, and was renowned as a chief architect of the reform and opening of the country. In the mid-eighties, he also instructed his team of aides to study the theories of political reform, and thus he was regarded as a representative figure of democratic reforms. Certainly, Hong Kong people may remember most vividly that on 19 May 1989, he went to the Tiananmen Square in person to express his sympathy for students who had been on hunger strike for seven days and there, he made a remark that we still remember now. He said to this effect, "My students, we have come too late. I am sorry, my students."

Mr Louis CHA, whom Hong Kong people know well, also said the following when he paid tribute to the late ZHAO Ziyang. He said to this effect, "ZHAO Ziyang loved the country and the people throughout his whole life; he had made contribution to the country and justice will lie in the discerning public; he had made enormous contribution to the reunification of Hong Kong, and while DENG Xiaoping was the highest decision-maker — insofar as the reunification is concerned — ZHAO Ziyang was responsible for the actual implementation work and so, Hong Kong people should give credit to his contribution." I think his

life has set a very good example to us Chinese, particularly to politicians. At a critical juncture, and as we often say that integrity stands out in times of adversity, he did not flinch when confronted by the biggest test of life. His perseverance with the basic principles is worthy of learning by us politicians.

DING Zilin mentioned "a heavy spiritual shackle". It is like a handcuff, and this very handcuff constitutes a mental burden. Many people have told us to look ahead. They told the pro-democracy camp not to be so "stiff-necked" and opinionated, because China has already been reformed and is now open, and the standard of living of the people is much higher than that before, and as China is one of the places with the most robust economic development in the world and the whole world is opening up to the market in China, we should, therefore, look ahead. But we still think that as long as the shackle is not removed, we should not forget the 4 June massacre. We think that if we cannot learn a lesson from history and if we cannot address history squarely and face up to history, the situation will be very much like that of Japanese militarism which still has the tendency of resurrection. So, while we criticize the Japanese for amending history on the one hand, we must, on the other, urge the Chinese Government to face up to the history of the 4 June incident, to vindicate the 4 June incident early, to treat the victims properly by offering condolences to them and offering apologies and compensations to them. As for those people who have been in exile and who cannot return to their home for the last 16 years, they should be allowed to return to the country early and have their social role reinstated.

In order for the 4 June incident to be vindicated, I think we should let the one who imposed the shackle to lift it. I hope that as a new page has been turned in politics, the Chinese leaders can properly complete this task early. Under the new reign of HU and WEN, much emphasis is put on ruling the country from the angle of scientific development and ruling the country according to people-oriented policies and the law. I hope they can translate their words into actions and face up to history early, so as to unlock this spiritual shackle and help soothe the regret of the Chinese people over the 4 June incident. This will also enable China to learn a lesson from the 4 June incident and to understand that it must never resort to violence to brutally kill its own people, so that the country can move towards openness and democracy and in a direction which attaches importance to human rights. This is what every person with lofty ideals should do for his country.

Under the new leadership of HU and WEN, it is a must to rectify mistakes and squarely address this part of history. We hope that they will not just tell the people to look ahead, just as some of those from China have said in Hong Kong. We must bear in mind that looking ahead does not mean forgetting history. It does not mean not to learn a lesson from history.

The Democratic Party always hopes to foster a normal working relationship with the Central Authorities, but this will not be conditional on the Democratic Party giving up its position on the vindication of the 4 June incident. We will firmly uphold this principle. Before the 4 June incident is vindicated, our position on the vindication of the 4 June incident will never change. If the Democratic Party can establish a working relationship with the Central Authorities on this basis, I believe this is something that the people of Hong Kong would wish to see. Under the new administration of HU and WEN, communication between the Kuomintang and the Communist Party has now resumed. As we in the Democratic Party are so powerless, I believe the people would wish to see an opportunity of communication between the Democratic Party and the Central Authorities. But let me stress again that communication will not be conditional on the changing of our position on the 4 June incident.

Thank you, Madam President.

MS MIRIAM LAU (in Cantonese): Madam President, 16 years have passed since the occurrence of the 4 June incident. Over the years, relevant motions were moved by Mr SZETO Wah. This year, Mr SZETO was replaced by Mr Albert HO. Whoever the mover is, however, the Liberal Party's position remains unchanged as in the years passed.

I believe many Chinese people will concur that the 4 June incident is a tragedy. I also believe every patriotic Chinese will make every possible effort to avoid a repeat of a similar incident. As for the events leading to the incident *per se*, which eventually led to bloodshed, the Liberal Party is convinced that history will pass a judgement.

After the 4 June incident, China's success in grasping the opportunities of development and speeding up its pace of reform and opening has become a focus of world attention. In particular, its economy has continued to grow rapidly. Since 1993, its economic growth rate has averaged 9.2% per annum. With the

marked improvement in the people's living standard, China is moving into another stage of development, making an all-out effort to build a society in which everyone enjoys a decent standard of living.

Even the peasants, who enjoyed less benefit from the economic growth in the past, have seen their livelihood improved markedly. The announcement by Premier WEN Jiabao this year of a full waiver of various taxes for peasants has further upgraded the living standard of the people.

The new atmosphere of governance, seen everywhere since the establishment of institutions under the leadership of HU Jintao and WEN Jiabao, the decisive removal of two senior officials during the outbreak of SARS, the harsh punishment imposed on corrupt government officials, the visits to the poor to learn more about their plights, and the attention given to the living condition of the disadvantaged groups have left people with a very deep impression.

The "New Three People's Principles" advocated by President HU Jintao, that is, officials should use power for the people, sympathize with the people, and pursue benefits for the people, and the "people-oriented" and "governance for the people" policy objectives have succinctly demonstrated the new atmosphere under the leadership of HU and WEN.

On strengthening governance, the Government's accountability has continued to grow. In a government working report published in March this year, Premier WEN Jiabao for the first time put forward the request of building a service-orientated government and explicitly stated the request of "further expanding supervision of the citizens, community and press opinion over the Government and other departments" by vigourously promoting the accountability system under which "responsibility follows power, exercise of power is subject to monitoring, infringement must be compensated and law-breakers be investigated" and strengthening the Government's concept of administering according to the law. All these demonstrate the Government's sincerity in fully upgrading its level of governance and accountability.

The recent meeting between General Secretary HU Jintao and visiting Kuomintang chairman, LIEN Chan, and chairman of the People First Party, SOONG Chu-yu, in Beijing has greatly eased cross-strait relations and won favourable comment from the international community as well.

The Liberal Party is of the opinion that China must make a stable socio-political environment its foundation before launching any reforms. Only in doing so can a more democratic and prosperous community be created, the guiding principle of "peaceful development" be implemented more thoroughly, the country become even stronger, and the living standard of the people be upgraded more substantially.

Madam President, this year's original motion has inserted the wordings of "tribute be paid to the late Mr ZHAO Ziyang". The Liberal Party holds that Mr ZHAO is widely known to the people of Hong Kong for his active participation in the negotiations between China and Britain over the future of Hong Kong. His open-mindedness has also left a deep impression in the hearts of Hong Kong people. We feel sad and sorry about his departure.

I believe history will pass a judgement on the merits and demerits of what Mr ZHAO Ziyang has done throughout his life. Nevertheless, Hong Kong is a free society. The people will naturally pay tribute to Mr ZHAO in various ways should it be considered necessary. It is unnecessary for this Council to make such an appeal.

Madam President, I so submit.

MR FREDERICK FUNG (in Cantonese): Madam President, four years have gone by after four years, and another four years have gone by after another four years. This year is the 16th anniversary of the 4 June incident. It has been 16 years. We have not forgotten, and we dare not forget. On that very night, the deafening sounds of gunshots, the reverberations of the speeding tanks, and the cries of the injured who shouted themselves hoarse still resound like thunder and remain vivid before the eyes.

Early this year when the former General Secretary of the Chinese Communist Party, Mr ZHAO Ziyang, who had been put under house arrest, passed away in sorrow, it once again touched a chord in the hearts of Hong Kong people. On the television screen we saw once again the shocking scene: With a tired face and in a hoarse voice, he tried hard to persuade the students, and he said to this effect, "My students, we have come too late. We are sorry." On the night of 21 January this year, 15 000 people gathered at the Victoria Park in

Hong Kong, and while they had a thousand words to say and many feelings and thoughts to express, everyone remained silent and mourned his passing away.

Today, things have changed with the passage of time. A person's life is like a grain in the vast ocean. People died, but the things are still there. The pro-democracy movement in 1989 has played an important role in history. The Chinese people's aspiration for democracy and freedom, and Beijing's cold-blooded crackdown impacted tremendously on the world. It precipitated the fall of the Berlin Wall, the dynastic change in East Europe, and the complete collapse of the Soviet Communist regime. Its contribution to history has been recognized by many countries in the world. But we do feel sad, because the Chinese Government has continued to negate the 4 June incident and considered it a riot.

Today, China has gained an increasingly significant footing on the international stage and its economy is taking off rapidly. Tall buildings are seen everywhere, the streets are crowded and busy, the shopping malls are a feast for the eyes, and the standard of living of the people in the coastal regions has been greatly improved. The forthcoming Shanghai World Expo and the 2008 Olympics in Beijing have shown more clearly our country's growing national power. Perhaps we should be immensely proud of these changes.

Some people said that the robust development of the country is precisely proof that the crackdown by the Beijing Government was correct. In other words, the progress seen today would not have been possible without the crackdown and so, the crackdown was necessary. Some people said that since there is already an official evaluation on the 4 June incident, we should not look into what happened back then and we should put down this historical baggage and embrace this new era of the country before our eyes.

What exactly is the logic? First, we must ask: Behind a powerful and strong China, what is illusory and what is real? Is material civilization equal to spiritual civilization? In a country where there is suppression by despotic rule, where loyalty to the Party is overriding and where wanton suppression is considered natural, is the people's livelihood and freedom fully protected? Will we be misled by the dazzling lights of prosperity before our eyes, which blinded us to the shallowness behind the moral values in society and the emergence of the cult of money-worship?

All we need to look at is history of the West. The Enlightenment in the 17th and 18th centuries led to the liberation of the Europeans from theocracy and monarchy. The emergence of rationalism and humanism provided a solid foundation for such ensuing features of the West as human rights concepts, a political system underpinned by the separation of powers, the upholding of the rule of law in society and also social prosperity and stability. On the contrary, under the logic of "suppression being a matter of course" and "stability overrides everything", the political thinking of the people in China is still being severely suppressed; free thinking is stifled, and it is impossible for the spirit of humanism to grow. While recognition is given to superficial prosperity, is it a truly healthy state? When human rights are not protected and when the freedom of thinking is not protected in the country, and when the people do not have these concepts, for how long can such superficial prosperity sustain?

A stable and healthy society must adopt a dual-tracked approach in its development. While it is necessary to develop the economy, it is also necessary to develop the rule of law, democracy and freedoms, equality and justice, to care for the disadvantaged, to have tolerance for dissidents, to be persevering with humanitarianism and also to protect the ecology and the environment. Only this is the direction to truly maintain stability in the long run; only this is the way to become rich and strong as consistently longed for by Chinese people. The vindication of the 4 June incident is precisely a turning point. Only when the 4 June incident is vindicated that can China genuinely enter an era of enlightenment which belongs to the people, build up our national dignity and give recognition to humanistic values.

Madam President, speaking of the logic of putting down the historical baggage, I remember that at the meeting on 4 May this year, Honourable colleagues unanimously voted in opposition to the amendment of history textbooks by Japan. We called on the Japanese Government to squarely face up to history and the atrocities of its aggression and sincerely conduct soul-searching and offer an apology. I would like to point out explicitly that while we ask other people to have a correct understanding of history, some people are blindly swearing allegiance to those in power, trimming their sail to the political winds and choosing to put down the historical baggage of the 4 June incident or even burying it up or rewriting it. This "double standard" attitude is indeed mind-boggling! Can those colleagues who voted "yes" on that day act consistently on their conscience and vote in support of the vindication of the 4 June incident to squarely face up to our history and to squarely face up to the history of the Chinese people?

Madam President, the Chinese people like to cite the post-war Germany as an example to show the correct attitude that we should adopt to reflect on history, thereby condemning Japan's evil act of amending history. In fact, how does Germany think about China's attitude to history? According to the *Der Spiegel*, a German weekly magazine, when the President of the Federal Assembly, Wolfgang THIERSE, spoke at the Central Party School during his visit to China at the end of last month, an official asked for his views on Germany's positive attitude towards history after the war and Japan's refusal to reflect on history. Wolfgang THIERSE expressly pointed out that if a country would like other countries to reflect on their evils in the past, the best way to do so is for this country to set a good example by thoroughly reflecting on the painful past of its own, and only in this way can it stand on a moral high ground and make the opposite party feel ashamed and then repent.

"Forget not the 4 June incident, vindicate the 1989 pro-democracy movement". So long as we refuse to squarely attend to this historical wound, we cannot fearlessly condemn other people out of a sense of justice for amending and distorting history. We would only be teased as having adopted a double standard; we would never be able to raise our heads and we would never be respected by people in the world.

I so submit.

MR LEE WING-TAT (in Cantonese): Madam President, today in the place of Mr SZETO Wah who has retired, Mr Albert HO is moving this motion on the 4 June incident for yet another time. I support this motion.

This is the 16th year since the 4 June incident took place. The slogan used in the flyers for the memorial activities and the joint signature advertisement this year calls for learning the lesson of history and vindicating the 4 June incident. Some people may ask, "It is already 16 years since the 4 June incident, so why should we hold on to something which is history?" I believe the best answer to this question is to learn the lesson of history, vindicate the 4 June incident and face up to the future. I also agree with what Mr SZETO Wah said so many times when he spoke on the topic, that is, a nation who forgets its past does not have a future.

All through these 16 years and when it comes to the time before and after 4 June, all the major cities and universities on the Mainland will be on the highest degree of alert and guard for fear that disturbances may erupt. The slightest move would invite police to the scene; related news reports are impeded. How then can a government living in fear unite its people and build a stable society?

We demand that the Central Government confront its own history and learn from it, lest the same mistakes be repeated in future. When this Central Government of ours still refuses to face up to the 4 June episode in history and when it is still pretending that it does not see the deaths and injuries inflicted on the innocent during the pro-democracy movement in 1989, there will only be recurrences of more 4 June incidents in our Motherland, making it harder to face the world and build an open and progressive country with people at the centre.

At the beginning of this year, Mr ZHAO Ziyang who had left the political arena for 16 years passed away. As the news of Mr ZHAO's death broke out, the international political community was shocked. Foreign dignitaries who had been intimate friends of Mr ZHAO all expressed their condolences. One of them was the former soviet leader GORBACHEV. He pointed out that in the year 1989, Mr ZHAO was the Chinese leader at that time who was closest to the people. On the Mainland, many people also mourned his death and former senior officials jointly signed a statement to demand that ZHAO Ziyang be vindicated and public memorial service be held in commemoration.

XU Jiataun, the former chief of the Xinhua News Agency in Hong Kong pointed out that Mr ZHAO Ziyang was one of the initiators of reform and opening of China. The Chinese people and history will never forget his contribution to the people.

On the night of 19 May 1989, Mr ZHAO Ziyang went to see the students on hunger strike in Tiananmen Square. He said and I quote to this effect, "We have come late. Sorry....." This is a scene that will never go away in my mind.

Mr ZHAO Ziyang made immense contribution to the reform and opening of China and this must be remembered in history. He lost his freedom for 16 years as a result of the 4 June incident. We hope that at the end of the day the Central Government can give Mr ZHAO Ziyang a public and positive appraisal that he rightly deserves. It is also our hope that the Central Government can

vindicate the 4 June incident at the soonest, stop arresting dissidents and detaining them in custody and do justice to those who died on the Tiananmen Square as well as to their parents.

We also hope that the Central Government can address the demands put forward by students and workers during the pro-democracy movement in 1989, that is, to eradicate corruption and speculation by the officials and to let the people enjoy democracy. This will help the gradual building of an open and democratic China and enable the Chinese people to enjoy their basic human rights and liberties.

Thank you, Madam President.

DR FERNANDO CHEUNG (in Cantonese): Madam President, compatriots who personally experienced the 1989 pro-democracy movement and also the majority of Hong Kong people have been strongly calling for the vindication of the 4 June incident. However, apart from taking into consideration the wishes of the people, the evaluation made by the Communist Party of China on a political incident often hinges more on the decision of those in power on political expediency or whether their authority has been challenged. As some important figures involved in the suppression of the pro-democracy movement are still alive, and given the overriding need for stability, the fourth generation of leadership represented by HU Jintao and WEN Jiabao has no intention to reverse the verdict on the 4 June incident.

Although this is the political reality, we must not look on with folded arms and quietly wait for some favourable circumstances to emerge for the vindication of the 4 June incident by those in power. We must bear in mind that we, as Chinese, must, by our conscience, persistently voice these aspirations which are primarily fair and just!

I remember that Fernand BRAUDEL, a French historian of the annals school, wrote that understanding yesterday and understanding today is the same process. This also applies to people who are concerned about the fate of China.

Looking back on the Tiananmen Movement 16 years ago, we will see that given a lack of check and balance on powers, the bureaucrats became a huge interest bloc which was engaged in official profiteering and corruption with the

use of their powers under the tides of reform and opening of the country, thus triggering huge social conflicts. The people, therefore, came forth to express their dissatisfaction and demand democratic reforms. Regrettably, this Movement ended in a tragedy.

Today, the economic development and political reform in China are still seriously lagging behind. Social conflicts have again accumulated and the people are seething with anger. Let us take a look at the capital, Beijing. The number of people seeking redress from the Central Authorities because of resettlement problems has continued to increase. The reason is that local bureaucrats in different places have abused their powers and blindly earmarked land for carrying out the so-called "face-saving projects". In so doing, they can turn the investment in construction into GDP and subsequently, they will report such to the Central Authorities, so that the increase in the GDP will become a merit that will be helpful to their career advancement. During the process, they will usually collude with the greedy developers, while members of the general public will see their properties being taken away, their homes destroyed, and their personal rights denied.

Let us turn from the capital to the southwestern part of China where hydro-power engineering projects have been carried out blindly in recent years. Those who are stirring up troubles behind all this are, of course, the local bureaucrats who wish to turn the GDP into merits to their credit, and also some power companies aiming to make enormous profits. I wonder if Members have been to the Hutiao Gorge which is located at 60 km from Lijiang Province, Yunnan. Hutiao Gorge is the narrowest gorge along the Yangtze River. The narrowest sector of the Gorge is only 30 m wide. An ancient legend says that a tiger once leapt across the river from one side of the gorge to the other. The roaring of the torrents of river water has made it a world-famous wonder of the nature.

However, the endless roaring of river water at Hutiao Gorge will soon disappear due to black-box operation by the local government and some power companies which have built a dam there for power generation without authorization. The farmland in the vicinity has been inundated, but thousands of farmers have not been given reasonable compensation, and they have been forced to leave the land where they were brought up, land which belongs to their ancestors. It is indeed heartrending seeing this! That numerous electricity

projects have been launched hastily has done irrevocable damage to the environment of the magnificent mountains and rivers of our Motherland. Experts have all along questioned the accuracy of China's evaluation of its future electricity demand, but these power companies have long been lining their pockets and they are not accountable to the people who are eventually made to suffer badly. This is not sustainable development at all, and China is precisely facing these serious crises in its development.

Today, which is 16 years later, the enormous bureaucratic regime opposed by the people back then has become even more entrenched. Worse still, it has colluded with other interest groups. In the final analysis, it is because the check and balance of powers is very weak in the political system of China, the legal system is far from sound, and the media is still subject to restrictions thus making it difficult to monitor the Government comprehensively. Under the circumstances, bureaucrats can neglect the long-term interests of society in policy formulation, and they will only consider their own career prospects or carry out some "face-saving projects" hoping that they will be given a promotion, or even resort to corruption in order to make a lot of money. In calling for the vindication of the 4 June incident, the civil society in China aims to make those in power give a fair evaluation on history and also to call on them to address squarely the existing social conflicts.

Hong Kong people support the vindication of the 4 June incident. Regrettably, a small number of people who once condemned the atrocities of the Communist Party of China have now made an about-turn. They understand deep in their mind that it is unforgivable for the Government to shoot at its own people, but they are afraid of offending the bigwigs. That is why they said that history would make its own judgement in an attempt to muddle through. These people actually wish to hitch a ride on history, thinking that they can maintain their existing political and financial interests, and when things change in future and the 4 June incident is vindicated, they might then come forth to make comments with the benefit of hindsight and reap all the gains.

The people will despise those who bury their conscience and know only to cling to the bigwigs, and history will definitely hold them in contempt!

Madam President, I speak in support of the original motion.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, first of all, I thank Mr Albert HO very much for proposing today's motion for "Uncle Wah". We believe we will persistently propose this motion in this Chamber until the 4 June incident is vindicated. The vindication of the 4 June incident carries the symbolic significance that China is moving towards democracy, and this is where the well-being of all the 1.3 billion Chinese people lies. We do believe that if it is a world trend to move towards democracy, and China is the country that needs to move towards democracy most. We very much hope that democracy can truly be realized in China. We will persevere with this conviction, and we hope that this day will come soon.

This year, the theme of the commemorative activities organized by the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China (the Alliance) is this: "Learn a lesson from history, vindicate the 4 June incident". The trend this year is precisely to learn lessons from history. As we all know, amid the anti-Japanese movement, President HU Jintao said that we should learn lessons from history and face the future. When speaking on the historical facts about Japan's invasion of China, Foreign Minister LI Zhaoxing also said that we should learn lessons from history, condemning the Japanese Government for hurting the feelings of the Chinese people. Recently, the Cultural Revolution Museum has been opened. It is a non-government museum that also draws lessons from history. Inside it there is this famous line from Mr BA Jin: Only those who do not forget the past will be masters of the future. When President HU Jintao attended the celebration ceremony of the 60th anniversary of the victory of Russia's war of defence, he also said that it is all for cherishing peace and charting a new course for the future that we should remember history and should not forget the past. Learning lessons from history is a pet phrase of those in power in China now. But why do they choose only a part of history selectively and say that we should learn a lesson from it? Is it all the history? Does history consist of only the part of Japan's invasion of China? Certainly, the history of Japan's invasion of China is very important, but many other historical incidents are also very important. Those in power absolutely should not choose just a part of history selectively and then say that we should learn a lesson from that part of history. Otherwise, they would only be asking others to learn lessons from history, but not asking themselves to learn lessons from history, and this is absolutely unacceptable.

So, the Alliance proposes to learn lessons from history this year with the objective of reminding all Chinese people and all Hong Kong people that when we say that we should learn lessons from history, the history of the 4 June incident is a part of history from which we must draw a lesson. We must also remind those in power continuously that they must show an attitude towards their history and the mistakes they made, and they must expressly show a clear change in the direction. So, we will continue to call for the vindication of the 4 June incident, in order that this part of history will not become obscured as time goes by. Now, many people have said that we should look ahead, and I also heard Members say this earlier. They would say that we should look ahead whenever they talked about the 4 June incident, and they sounded as if the history of the 4 June incident is unimportant. I think we all should seriously reflect on ourselves, particularly people who think independently. Why should we not force those in power to face their own cold-blooded history? They must be held responsible, and we must pursue their responsibilities.

Many people said that many committee members of the Alliance or many democrats in Hong Kong still do not have a Home Visit Permit. We have heard LIU Yandong say that we must not oppose the Chinese Government, and some people also said that the democrats cannot go to the Mainland as long as they call for the end of one party dictatorship. I think we must make it clear that ending one party dictatorship and building a democratic China is for the benefit of China and for the benefit of the people, and we absolutely cannot make compromise and concessions. Those in power in the Communist Party of China often urge us to be patriotic, but I think that in order to be truly patriotic, we should not just do whatever the Government tells us to do. We should not forget the 4 June incident just because the Government tells us to. We should have our own principles and that is, we must know what is good to the country and what is good to the people, and democracy is absolutely good to our country.

Let me prove that putting an end to one party dictatorship is good to the Communist Party of China. I have this book with me now and it records what the Communist Party of China had said before 1949. It says to this effect, "Some people said that the Kuomintang has made contribution to the Republic of China and so, the Kuomintang rule cannot be ended for its strength would hence be undermined. But the truth is that the current weaknesses of the Kuomintang are precisely the result of it arrogating all political powers to itself, and when there is competition from other parties and factions, the Kuomintang will only work harder to recruit new members and summon up its spirits and hence make

continuous improvement. Therefore, ending the Kuomintang rule will not weaken the Kuomintang, but will make it stronger." It is entirely correct to replace all these references to Kuomintang with the Communist Party of China. Ending one party dictatorship is for the good of the Communist Party of China.

Moreover, as MAO Zedong said explicitly, two things are now lacking in China. One is independence, and the other is democracy. These are all remarks made by themselves. But after 1949, they have forgotten everything. They have forgotten that this is a promise they made to the people.

We very much regret that the Communist Party of China still has not looked back on this part of its history. They still have not looked back on the undertaking that they made to the people. However, we do not have any expectation for those in power. We will only pinch our hope on the people. So, let us make a final appeal to Hong Kong people and Chinese nationals who will be here in Hong Kong as free travellers. We hope that they will join the procession to be held at the Victoria Park at 3 pm on 29 May and attend the candlelight vigil to be held by us at the Victoria Park at 8 pm on 4 June, and let us fill the Victoria Park to the full. Thank you.

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

MR MARTIN LEE (in Cantonese): Madam President, the state leaders are actually very concerned about the European Union's weapon sales embargo on China, and have made great efforts in this respect. Why is there such a weapon sales embargo? It is precisely because of the 4 June incident in 1989.

When we look back on how the state leaders have handled things in many cases, including the funeral arrangement for ZHAO Ziyang and the question of pro-democracy Members in Hong Kong not being allowed to go to the Mainland, it makes people feel, and it also clearly shows that on this issue, even the state leaders themselves cannot put down the baggage. If so, how can they tell other people to put down their baggage? Therefore, I wish to take this opportunity to say this to our leaders: If they would like other people to put down this baggage towards their country, they should handle this issue first. In fact, a good way for them to do this is to admit the mistake that they know they have committed, and if they admit it, I believe however frustrated the people are, their resentment

could still be eliminated or removed. But so long as the country refuses to admit its mistake, it would be impossible to solve the problem. So, in order to solve the problem and if it is hoped that the European Union will lift the weapon sales embargo, the Chinese leaders should do something first.

Thank you, Madam President.

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

MS EMILY LAU (in Cantonese): Madam President, I speak in support of Mr Albert HO's motion.

Under the sovereignty of China, the only place where large-scale activities can be organized to commemorate the 4 June massacre is Hong Kong, a place where "one country, two systems" is implemented. I very much hope that many people will take part in the procession organized by the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China (the Alliance) for this purpose on Sunday. I also hope that many people, and perhaps you, Madam President, as well, will attend the candlelight vigil to be held in the Victoria Park next Saturday. We often say that many things have changed in Hong Kong after the return of sovereignty in 1997. We set up The Frontier in 1996 because even though we had no democracy, we were all the more worried about a retrogression in freedoms and the rule of law. But I think if large-scale activities are continuously allowed to be organized in Hong Kong to commemorate the 4 June Massacre, we can still say that there is a difference between Hong Kong and the Mainland. I also hope that, with regard to the proposal made by colleagues earlier of setting up in Hong Kong a museum using the 4 June incident as the theme, if such a museum can be truly set up, I believe it will certainly become a major tourist attraction. After all, we still cannot think of any new tourist attractions after racking our brains on it.

Speaking of museums, Madam President, I certainly have to talk about our Museum of History. There is an exhibition of "Hong Kong Story" in the museum, and I was really shocked after seeing it many years ago. Everybody is scolding Japan for amending history, and the Chinese Government certainly does not wish to evoke its memory of this bitter part of history of the 4 June incident. If Members have seen this exhibition of "Hong Kong Story", they can see that

the 4 June incident is mentioned, but there is only very small coverage on it. Having said that, however, even though Hong Kong had been under the colonial rule of Britain for 150 years, all that we can find there is just one or two oil paintings describing this fact. The Hong Kong Government and the operators of the museum are quite clever, because things that they do not wish to recall and need to be played down, will not completely disappear, just that they will be mentioned briefly, and this can already be considered very lenient in terms of the extent of their description.

Many colleagues mentioned earlier that amending history and playing down some bitter episodes in history will bring disgrace to the people and arouse public resentment in any country or place. So, I hope that Hong Kong people should think about it. Just when we are pointing our fingers at other people, can we tolerate attempts by our own museum to play down history? Disregarding from which perspective we look at it, the 4 June incident has certainly created a furore in the Mainland, and it is even a most distressing experience to many people. With regard to the response in Hong Kong, more than 1 million people took to the streets on numerous occasions, and this is also a memorable and moving incident in the history of Hong Kong. But if Members have visited our museum, they will know what those in power think about this incident. In the museum, many things of little significance can take up a lot of space, but what is the share of the 4 June incident? I only hope that we will not amend history.

Earlier on Members of the Democratic Party and Mr LEE Cheuk-yan mentioned the question of Home Visit Permit. I believe that all Members, perhaps including you, Madam President, do wish to go to the Mainland. But if Members will be allowed to go to the Mainland on the condition that we must not say too much or we should take one step backward or three steps backward, just as Mr TUNG advised me to do in 1998 — Mr TUNG has stepped down now, but is that still what the Central Authorities think? I believe other colleagues and I do wish to go to the Mainland, but we have our principles and position, and we will not give them up. I also do not see why Hong Kong, where "one country, two systems" and "a high degree of autonomy" are implemented, cannot express its views or why it cannot say anything to challenge the Central Authorities.

Now, I can see that the media, universities, professionals and even non-governmental organizations know better and better what they should do, and

that includes self-censorship by many schools. On some issues, they wish that we can remain silent and they even do not let us talk about them. And on some issues, it is still useless even though we have brought them up, for nobody would care to report them. But do not think that this can deceive Hong Kong people. I believe that on 4 June this year, many people will continue to go to the Victoria Park, and I all the more hope that hundreds of thousands of people will take to the streets in white clothes on 1 July this year. I hope that Hong Kong people will not be deceived by the media, those so-called intellectuals in universities, professionals and the business sector. I believe that in order to maintain continued prosperity and stability in Hong Kong, we must have freedom. We must have the freedom to say "No" to the Central Authorities, and even the freedom to challenge the Central Authorities. We are not putting up resistance with guns and cannons. Why should we be prohibited from expressing our views?

So, Madam President, I hope that people who are listening to the speeches of us democrats will understand that we are not politicoes. We have principles and position. If we have to trade in our principles and position, then we would choose not to go there. I am 50-odd years old this year. It does not matter if I am not allowed to go to the Mainland, and it is impossible for us to give up our principles. Madam President, I believe we will not give up our principles, and our names are not going to earn notoriety down the ages. I hope that the Central Authorities will understand that in Hong Kong, many politicians do have their convictions. I hope the Central Authorities will understand this. I also hope that a museum of the 4 June incident can be established here as soon as possible, so as to demonstrate to Hong Kong people as well as people all over the world the freedom that we can enjoy here.

With these remarks, I support the motion.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Albert HO, you may now reply and you have two minutes 27 seconds.

MR ALBERT HO (in Cantonese): Madam President, I thank the 19 colleagues who have spoken today. Only one of these 19 colleagues spoke against today's motion, and that is, Ms Miriam LAU, who spoke on behalf of the Liberal Party. As usual, the Liberal Party considers that history will make its own judgement, but they never dare to draw a conclusion of their own. Is it that they must wait for the Central Government to reach a conclusion before they can have their own view on the incident?

In fact, the Central Authorities have often asked the people to look ahead, laying emphasis on the country's economic development. They are actually telling everyone to be money-minded. But I will always ask: Even if a country has good economic development and abundant resources, can stability and peace be maintained in the long term without democracy, human rights and justice?

In fact, regarding the accountability system under the new Three People's Principles put forward by President HU Jintao, how can they be put into practice without democracy? If the 4 June incident is not vindicated, how can democracy make a start? As usual, colleagues of the Democratic Alliance for the Betterment and Progress of Hong Kong and the Hong Kong Federation of Trade Unions did not speak today. Even though they have raised a hue and cry about Japan recently to condemn Japan's attempt to amend history, they do not have the courage to face up to the history of their own country. However, I agree with what Mr SZETO Wah said. It is better for them not to speak and remain silent than make remarks which confuse right and wrong and sling mud at democracy fighters. But they still have to shoulder the responsibility for remaining silent when confronted by cardinal questions of right and wrong.

Madam President, I do believe that from the performance of those Members who oppose the motion, we can already see clearly that the moral aspiration for the vindication of the 4 June incident, like the tides of the history of democracy, is irresistible. I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Albert HO 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 Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes, after which the division will start.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted for the motion.

Dr LUI Ming-wah, Dr Philip WONG, Mr WONG Yung-kan, Mr Timothy FOK, Ms LI Fung-ying, Mr WONG Kwok-hing, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the motion.

Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew

CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mr 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.

Mr James TIEN and Mrs Selina CHOW abstained.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the motion, eight against it and eight abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 17 were in favour of the motion, eight against it and two abstained. 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 negated.

PRESIDENT (in Cantonese): Second motion: Regulating the handling of electronic wastes and promoting the electronic waste recycling industry.

REGULATING THE HANDLING OF ELECTRONIC WASTES AND PROMOTING THE ELECTRONIC WASTE RECYCLING INDUSTRY

MR KWONG CHI-KIN (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, I propose the motion today in the hope that it can motivate everyone into discussing and showing concern for the issue, so that the people can attach proper significance to the increasingly deteriorating ecological issue as well as the unemployment problem, which is still quite serious now. Some time ago, a Hong Kong green group, Greenpeace, had conducted a survey

and it was found that the local electronic waste problem was rather serious. The group pointed out that altogether 18 000 tonnes of electronic wastes had been dumped on Hong Kong soil in 2003. It is estimated that 300 000 sets of computers were disposed of in 2004. These figures have not taken account of other second-hand electronic products and spare parts transported into Hong Kong. Coupled with an acute shortage of land and a high density of population in Hong Kong, the issue of handling electronic wastes has now become an imminent problem to the territory that can brook no delay. The damage caused by electronic wastes to the environment and human bodies is even more severe than those caused by other solid wastes.

The various kinds of toxic substances emitted by electronic wastes could cause harm to various human organs, and in some extreme cases, such toxic substances would damage the nerve and blood circulation systems, the brain and even the memory of human beings. Such problems do not just affect people who have long-term and direct contact with electronic wastes, but they will also affect the environment around the electronic waste dumping grounds on a long-term basis as the toxic heavy metals contained in waste materials will be carried into soil by rain. The legislation of Hong Kong is relatively relaxed, for no laws are in place to explicitly spell out which kinds of goods are banned for import/export, nor is there any legislation prohibiting the import of second-hand electronic equipment into Hong Kong. These loopholes simply turn Hong Kong into an entrepot of electronic wastes. Large quantities of electronic wastes are transported into Hong Kong under the disguise of second-hand electronic products, and are shipped secretly into the Mainland after dismantling. It appears that it is necessary for the Government to amend the laws to ban the import of all electronic wastes into Hong Kong in order to prevent the unruly elements from exploiting the "legal loopholes".

In comparison, the laws of many places and those in the Mainland impose much better and more comprehensive measures for monitoring electronic wastes. On the international front, the Basel Convention and the Basel Amendment have already been enacted to restrict the transfer of electronic wastes on an international scale and ban the shipment of toxic wastes from countries of the Organization for Economic Co-operation and Development to other countries. However, these international treaties only contain tables listing certain toxic substances contained in electronic wastes, yet no further explicit definition of electronic wastes is provided. At present, apart from the provisions of the Basel Amendment, the Hong Kong Government has not taken any further steps

to include more relevant wastes into the scope of restriction, nor has it drawn up a more specific definition of "electronic wastes". Let us take Singapore and China as examples. Apart from listing a series of toxic substances as controlled substances under the Basel Amendment, they have also added some other wastes into the relevant legislation, so as to protect their respective local environments. Let us take the laws of the Mainland as an example. Apart from prohibiting the import of air-conditioners, refrigerators, computers and automatic data processing equipment, even second-hand electrical appliances are also prohibited. These measures are very helpful for protecting the environment in the Mainland.

Madam President, I hope we can really implement the concept of "sustainable development". Sustainable development refers to the mode of development which will jeopardize neither the future resources, nor our next generation. If we do not manage the problem of handling electronic wastes properly, electronic wastes will definitely bring about far-reaching and irreparable negative impact to Hong Kong and our neighbouring areas. On the contrary, if we can implement the concept of sustainable development in the handling of electronic wastes, we will be able to bring about a win-win situation for all parties concerned.

New electronic products replace older ones very quickly and the electronic waste problem will become increasingly severe. Therefore, while we are demanding the Government to step up the enactment of laws to regulate electronic wastes, we have also proposed to formulate a "producer responsibility scheme". We must advocate social responsibility. So, we request that, while the enterprises concerned make profits, they cannot keep damaging the ecology of the earth. The producer responsibility scheme demands the producers to take full care of the life cycles of their products. After having manufactured and sold the relevant products, they should also be responsible for managing such issues as the recovery, recycling and even disposal of the relevant products. Let us take the European Union (EU) as an example. With effect from August this year, all Member States of the EU have to implement a directive on the disposal of electrical and electronic equipment. The relevant directive stipulates that producers and importers must shoulder the financial responsibility for electrical and electronic equipment, and the enterprises concerned must pay the relevant fees for recovering electronic products produced by them, so as to solve the electronic waste problem. Meanwhile, Taiwan, Japan, Korea and even certain mainland cities are also studying ways of implementing the relevant legislation. Although the Hong Kong Government claimed that it had already

studied the producer responsibility scheme, so far no concrete action has been taken. I hope, with the support from Honourable colleagues for today's motion in this Chamber, we can urge the Government to implement the responsibility scheme as soon as possible, thereby demanding producers to shoulder the due corporate social responsibility.

In contemplating the problem of handling electronic wastes, why can we not turn the problem into an opportunity? Why can we not turn the difficulty into another transformation opportunity? In fact, I absolutely believe that Hong Kong possesses the capability and conditions of developing the relevant recovering industries. Let us make reference to the case of Singapore as an example. They have several recovering agencies specializing in recovering the wastes and extracting useful materials from them for recycling purpose. As more and more hi-tech products emerge in our time, consequently more and more electronic wastes will be produced as well. Actually, Hong Kong absolutely has the right conditions for developing the relevant industry. Each year, Hong Kong people replace thousands of electronic products such as computers and mobile phones, and so on. If the Hong Kong Government is willing to inject resources into developing the recovery and recycling industries of electronic products, I believe it can solve the employment problem of low-skilled workers in Hong Kong. The handling of electronic wastes requires some special expertise. Yet, if the relevant employees are provided with suitable training, Hong Kong will definitely have the manpower to cope with the relevant industries. Besides, be it in the proposed Recovery Park or in the river-loop zone along the border area, there must be sufficient land for the relevant companies to establish the hardware facilities. Therefore, as long as the Government is willing to attract investors to develop the relevant industries in the territory, I believe there must be sufficient talents and land in Hong Kong for the development of such industries.

Madam President, I hope all Honourable colleagues who are present today can visualize what would happen 10 or 20 years later. If we do not solve the worsening electronic waste problem, and if we just let toxic substances keep seeping into our soil, and if we just let Hong Kong become an electronic waste entrepot, what we are sacrificing now is actually the future of our next generation. Therefore, I hope all Honourable Members can support the motion proposed by me today.

Madam President, I so submit.

Mr KWONG Chi-kin moved the following motion: (Translation)

"That this Council urges the Government to amend the legislation relating to the regulation of the disposal as well as the import and export of electronic wastes, and to step up law enforcement in order to eliminate the environmental hazards posed by electronic wastes to Hong Kong and other places; at the same time, the Government should implement a producer responsibility scheme and establish a comprehensive recycling system to promote the recycling of electronic wastes, with a view to creating employment opportunities."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr KWONG Chi-kin be passed.

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

PRESIDENT (in Cantonese): I now call upon Mr Tommy CHEUNG to speak and move his amendment.

MR TOMMY CHEUNG (in Cantonese): Madam President, I move that Mr KWONG Chi-kin's motion be amended, as printed on the Agenda.

Madam President, with rapid technological advances, sophisticated electronic products keep emerging in the market at an alarming rate. Consequently, while we keep abreast of the latest trends, large quantities of electronic waste are readily produced. As electronic products are usually manufactured with a lot of toxic substances, once disposed, they will pose severe environmental pollution problems, thereby causing serious and far-reaching harms. Therefore, the proper disposal of electronic waste is an issue that really deserves our attention.

In fact, both the European Union (EU) and mainland China have formulated legislation to ban the import of electronic waste. However, at

present, Hong Kong does not have explicit legislation prohibiting the import of rubbish of this category. We are obviously more backward than the Mainland in terms of legislation in this regard. For example, according to the Waste Disposal Ordinance, electronic rubbish can be freely imported into and exported out of Hong Kong, as long as it is claimed that such electronic rubbish is re-usable or are unpolluted second-hand electronic products.

Besides, the Index of Goods Banned for Importation and the Index of Banned Categories of Goods for Processing Trade were implemented in the Mainland in 2002 and 2004 respectively to strictly prohibit the import of many items of electronic waste and even second-hand electronic products. Therefore, large quantities of electronic waste originally heading for the Mainland as their destination is now dumped in Hong Kong instead, so as to exploit the legal loophole here.

The Environment, Transport and Works Bureau has also confessed earlier on that there are altogether 91 electronic waste workshops in the territory. All of these workshops are located in the New Territories, with about half of them being found in the North District and the rest in Yuen Long, Fan Ling and Ku Tung, and so on. The authorities said this type of workshops are just used for storage of abandoned or second-hand electronic products and no dismantling processes will be undertaken on-site, therefore they will not cause any pollution problems. However, green groups discovered that electronic waste would be damaged after prolonged exposure to heat and rain, and as a result, toxic chemicals would be emitted. When tests were conducted on soil samples, the lead concentration was found to be five to 10 times higher than the normal level.

Although there are already four Ordinances regulating such workshops, namely, the Air Pollution Control Ordinance, Noise Control Ordinance, Water Pollution Control Ordinance and Waste Disposal Ordinance, during the past 16 months including the last month, only seven cases have been successfully prosecuted by virtue of these environmental Ordinances. According to some green groups, the inspection visits conducted by the authorities were very sloppy. The officers concerned would conclude their visits by only walking around the outer parameters of the individual workshops once if they could not gain access to them. They would not assess seriously whether such electronic waste would pollute the environment or whether it would constitute any environmental hygiene problems.

Therefore, I think it is necessary for the authorities to step up their inspection visits and enforcement actions and amend the relevant legislation, so as to curb the problem at source by taking specific actions against the dumping and import/export of this category of toxic electronic waste.

On the issue of producer responsibility, I must point out that, in advanced countries, the responsibility of recycling the products does not fall solely on the shoulders of producers; instead, such a responsibility is shared between the producers and the consumers. With specific reference to the Hong Kong market in which most products are imported, today I would propose an amendment on behalf of the Liberal Party to advocate the implementation of a comprehensive responsibility scheme encompassing the producers, importers and users. In other words, all the different parties should share the responsibility, the rationale of which is the same as the stance taken recently by the relevant officials in mentioning the producer responsibility scheme.

Let us take Germany as an example. It is stipulated that the people cannot casually dispose of electronic waste. When they dispose of old electrical appliances, they must hand them over to dedicated recycling centres. In this process, a consumer has to pay 10 to 30 euros (about HK\$100 to HK\$300) to cover the transportation costs incurred, or he may choose to deliver the waste electrical appliances to the collection centres or the recycling points. The recycling centres have the responsibility to categorize, process and recycle such waste electronic products.

The EU will soon implement the Directive on Waste Electrical and Electronic Equipment (WEEE), and it will introduce the Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (ROHS) next year. This year, regulation governing producers has been stepped up, and strict requirements on the manufacture and disposal of electronic products have been enforced, so as to prevent causing damage to the environment.

In February this year, when Mr Andrew LEUNG of the Liberal Party moved a motion on environmental industries, he already mentioned that it was necessary to establish a systematic, comprehensive and effective recycling system, in order to prevent large amount of recyclable products from eventually being dumped at landfills. Take the present three-coloured waste separation bins as an example. I believe few will agree that it is a very effective recycling system. Therefore, the amendment I proposed today is nothing more than a

reiteration of what advocated by us in the past, thus complementing the original motion. Otherwise, any recovered electronic products will just end up as a heap of rubbish for display.

If our recycling system is developed properly, it will help the development of our environmental industries. For example, the Recovery Park to be launched in Tuen Mun can play exactly such a role. If it is operated successfully, it will get rid of the present backward image of the local recycling industry which just focuses on the recovery of waste metals, scraps of paper boards and old newspapers, and at the same time, it will provide more employment opportunities to the residents of Tuen Mun.

With these remarks, I beg to move.

Mr Tommy CHEUNG moved the following amendment: (Translation)

"To delete "producer" after "the Government should implement a" and substitute with "comprehensive"; to add "encompassing the producers, importers and users," after "responsibility scheme"; and to add "and effective" after "and establish a comprehensive"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Mr KWONG Chi-kin's motion, be passed.

MR FREDERICK FUNG (in Cantonese): Madam President, today's motion is on electronic wastes, but what in fact are electronic wastes? Are electronic wastes toxic? Actually, the answer given by all green groups is unanimous. Electronic wastes are computer wastes with an extremely high toxic content. Moreover, they contain a huge amount of heavy metals which will damage our nerve system. Therefore, under the Basel Convention, electronic wastes are dangerous wastes by international standard and very high standards must be met in processing them.

However, the strange thing is that all along, the Hong Kong Government has not regulated the trading of computer wastes. This is because, according to the Government, those are second-hand computers and not computer wastes.

The Environmental Protection Department has made it clear that since there is no evidence to show that second-hand goods are in fact wastes, they are not subject to supervision under the Waste Disposal Ordinance. In that case, how do we define whether an old computer is a piece of waste or a second-hand commodity? Does it mean that so long as this computer still has a trading market, no matter whether it will eventually be sent to an electronic waste workshop in northern New Territories or back to the Mainland, we can only helplessly witness it becoming ultimately the prime culprit of polluting the land and jeopardizing human health?

In fact, at present, Hong Kong has an informal system of recycling. Right in my constituency, Sham Shui Po, there is a very well-known computer-recovery market around Apliu Street and Ki Lung Street where a lot of people and shops are engaged in the business of recovering computers. However, information of Greenpeace indicates that in order to increase market share, computer manufacturers are always putting new models on the market, thus leaving a small room for the real second-hand computer market in Hong Kong. Actually, most of the computers are sent back to the Mainland or even poor regions like Africa. Upon arrival, these computers will be dismantled by the locals under no protection. The materials which can be sold at a price will be removed, but since they will release toxic substances, the health of the locals will be directly jeopardized, and the air and water there will also be polluted.

In recent years, such electronic waste workshops for storing old computers have begun to spring up in the New Territories of Hong Kong. To date, there are already 91 sites all over the northern district, Yuen Long and Fan Ling. These wastes pose a threat to the land, water sources and ecology of Hong Kong. Hong Kong has the responsibility of not polluting the environment of the other places and not jeopardizing the health of others, but the problem of electronic wastes is already very imminent. It is incumbent upon the Government to do something in this respect.

This August, the EU will implement a set of standards for processing wastes of electrical appliances and electronic products, requiring the manufacturers to collect, recover, separate and recycle disposed electronic wastes. As the cost for processing is very high and the technologies involved are complex, the manufacturers thus have to try their best to dovetail with the principle of recycling in their design. Of course, the most fundamental method

is to introduce a "producer responsibility scheme", eliminating excessive production at source. However, so long as Hong Kong fails to tighten its control over the import of computer waste, abandoned computers from Europe will be imported into Hong Kong or through Hong Kong into the Mainland on the pretext of recovery, aggravating the existing problem of computer junk yards in northern New Territories, or continue to play the role of an accomplice in polluting the environment of other places.

Therefore, the Government must tighten the ordinance on the import and export of electronic wastes soon, barring the lawless people from exploiting the legal loopholes to import or export computer waste as second-hand commodities. Secondly, since Hong Kong has 450 000 used computers annually and the annual capacity of our informal recovery system is only 380 000, this is proof that there is a need to process computer waste locally. The Government has the responsibility to assist the local recovery system; set up recovery points at various districts; introduce the work processes and skills for processing electronic wastes; encourage and subsidize the development of the trade, so as to absorb people of different strata into the relevant industries — transport industry for example — to create more job opportunities. This can on the one hand make up for the lack of direction of the present recovery system, and create some low-skill occupations to improve the poverty situation on the other.

Of course, the Government should also follow the example of the European countries to require the manufacturers to recover abandoned computers and electrical appliances, and compel the manufacturers to assume corporate responsibility to reduce excessive production in the process of manufacturing as well as to make recycling their prime consideration in designing products. Then, wastage can be cut from the beginning and this can dovetail with the concept of sustained development. It is only by so doing that we can make sure resources of the earth will not be wasted or depleted. It is only by so doing that we will not become an accomplice in polluting the land or water resources of the others.

With these remarks, I support the motion.

MR MARTIN LEE (in Cantonese): Madam President, the amount of electronic wastes in Hong Kong has been increasing in recent years. According to information provided by the Environmental Protection Department (EPD), in

2003 alone, landfills in Hong Kong received 18 000 tonnes of electronic wastes. With the increase in electronic wastes, the number of yards processing and recovering such waste has also seen a substantial increase: from only four to five of them three or four years ago, rising sharply to the present 91.

The major reason for this rampant proliferation of electronic waste is the failure of existing legislation to regulate them effectively. In Hong Kong, electronic wastes are mainly regulated by the Waste Disposal Ordinance, but there are many loopholes in it. First, on the issue of hazardous electronic wastes, the Ordinance only aims at regulating glasses and used batteries of "cathode-ray tubes". As for other electronic wastes, such as printed circuit boards, they can be imported at any time so long as they are claimed to be uncontaminated and are for the purpose of "reprocessing, recycling, recovery or reuse". There is no need for applications to be made to the EPD for permits. Second, second-hand electrical appliances do not come under the Ordinance. Therefore, even if they are second-hand computers and monitors containing hazardous metals with radioactive effects on human, they will not be regulated by the Ordinance.

Third, the Ordinance has only defined the term "contaminated", stating that the content of a certain substance "renders the waste hazardous", without explaining what "renders hazardous" means. As a result of such a vague definition, a lot of second-hand electric appliances which virtually cannot be reused and which contain hazardous substances find their way into Hong Kong on the excuse of "recycling or recovery". Information of the Port Import and Export Reporting Services indicates that between January and July 2004, the United States exported 4 000 tonnes of electronic wastes to Hong Kong. Other countries, for example, the Netherlands and Japan, have also been discovered to have illegally exported electronic wastes to Hong Kong. These wastes will first be dismantled, and the parts which are worth something will then be sent to the Mainland. The remaining parts which are useless will be left accumulated in Hong Kong. By and by, Hong Kong has become a transfer station for electronic wastes.

Actually, witnessing the harm done to the environment by electronic wastes, many overseas countries have imposed strict legislation to regulate the import and export and processing of electronic wastes. For example, in Australia, the Hazardous Waste Act strictly controls the export of all electronic wastes which cannot be directly reused. Moreover, if the lead content and the quantity of other hazardous substances of printed circuit boards exceed local

testing standard, they will also be subject to regulation immediately. As for the European Union (EU), the two directives relating to electronic wastes, that is, the Directive on Waste Electrical and Electronic Equipment (WEEE) and the Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (ROHS) will be implemented this July and next August respectively. The first Directive, the WEEE, requires that manufacturers of electronic equipment and electronic products for export to member states of the EU shall recover and process abandoned products, and that their responsibilities be determined according to the market share of the various manufacturers. Meanwhile, the other Directive, the ROHS, prohibits the use of hazardous substances such as lead, mercury, cadmium, and so on, which will jeopardize the human body, in electronic products. In fact, in cracking down on electronic wastes, the Mainland has more foresight than Hong Kong. Since 2000, the Mainland has imposed a comprehensive ban on the import of electronic wastes. Starting from last year, they have even banned the import of all abandoned, worn and torn electronic products and second-hand electrical appliances. With reference to the legislation of the various countries mentioned above, we cannot but question why the relevant legislation in Hong Kong is so obsolete and backward, inviting a large quantity of electronic wastes to pour into Hong Kong.

The Democratic Party urges the Government to implement strictly the spirit of the Basel Convention, and amend the legislation concerned as soon as possible to regulate the import and export and disposal of electronic wastes, so that Hong Kong will not become a dumping ground for imported electronic rubbish. In addition, the departments concerned should also step up law enforcement. As reported, last year, only a few yards have been prosecuted after investigation, out of the complaints received by the EPD in relation to sites for storing and disposing electronic wastes. In our opinion, only if the departments concerned take serious law enforcement action can the problem of electronic wastes be effectively tackled.

Finally, I urge the Government to make reference to overseas experience, and to introduce and implement the "product responsibility scheme" to reduce electronic wastes and enhance the recovery of wastes. For example, Japan has an act on the recovery of domestic electrical appliances, obliging manufacturers to recover domestic electrical appliances, while in California, the United States, the levy of a recovery charge is required on customers at the sale of certain kinds of commodities. In order to encourage the industry on the recovery and recycling of electronic wastes, some qualified recyclers can recover a portion of

the recycling cost through the Electronic Waste Payment System. The Government should complete as soon as possible the study on the "product responsibility scheme" for abandoned electrical appliances and electronic products and consult the public. I believe this Council will act in unison with the Government and expedite its work of legislation for an early resolution of the problem caused by electronic wastes.

The Democratic Party supports the original motion and the amendment. Thank you, Madam President.

DR RAYMOND HO: Madam President, computers and many other electronic products have become indispensable to our daily life nowadays. For example, we need computers to store information, analyse data and communicate with people in different parts of the world, and we need television and radio for entertainment. We have improved our work efficiency and enhanced the quality of our lives with the availability of many electronic products. However, if electronic waste is not treated properly, it will do much more harm than otherwise. Unfortunately, we are exposed to this danger because of the loopholes in the existing Hong Kong laws.

In February this year, Green Peace, an environmental group, conducted a test on the soil of two computer dumps in Fan Ling. It was found that the lead content of some soil samples from these sites were five to 10 times above internationally accepted standards. Lead is harmful to our blood circulation and our nervous system. It is highly toxic to human beings, animals and even plants. The investigation result has aroused our concern about the management of electronic wastes in Hong Kong.

In my opinion, the alarming investigation result was found not without reasons. First, there are loopholes in the Hong Kong laws governing the import of electronic waste. Electronic waste can be imported without the permission of the Environmental Protection Department as long as a declaration is made that it is imported for recycling purposes. Second, the existing Waste Disposal Ordinance does not cover the management of most of the electronic waste except for cathode ray tubes. If we want to prevent Hong Kong from being further polluted by electronic waste, it will be necessary for our Government to tighten up the existing regulations on electronic waste management and introduce other measures such as producer responsibility scheme to reduce electronic waste generated locally.

In 2001, Japan enforced a legislation requiring producers to recover discarded home appliances. Similar legal measure will also be in force in Europe in August this year. To catch up with this trend, it is imperative for the Hong Kong Government to enact similar legislation as soon as possible. Besides, it is also necessary for the Government to promote the development of the recycling industry in Hong Kong and educate the public about the concept of recycling in order to reduce electronic waste production.

Since electronic waste can have a great impact not only on the environment but also on the health of Hong Kong people, all measures should be implemented as early as possible. On the other hand, Hong Kong being an international city, it is no way for it to lag behind in environmental protection. I hope that the Government will bear this in mind when formulating relevant policies.

Madam President, I so submit. Thank you.

MS LI FUNG-YING (in Cantonese): Madam President, earlier, I read a news report featuring Guiyu, a town in Guangdong Province, as a notorious dumping site for electronic wastes in the world. Both the water and soil there have been contaminated by toxic electronic wastes. The residents of the town, be they men or women, old or young, earn their living by picking such toxic electronic wastes. All these made me feel very uncomfortable. I was particularly sad when I learnt that some of these wastes might have been sent from Hong Kong. In end March, a green group in Hong Kong pointed out that many places in Fan Ling in the New Territories were used as open processing sites for electronic wastes. This not only contaminates the soil but also makes Hong Kong a major transfer station for the world's electronic rubbish. For this reason, I fully support today's motion.

I do not think that the problem of regulating the transshipment of electronic wastes can be solved easily. We all know that the current computer and information technologies are developing at a rapid pace, and the cycle between two generations of products has been greatly shortened. Rich countries with a high penetration rate of information technology (IT) keep on renewing their high-tech products. To the developing or poor countries, such replaced products are important resources that help their connection with the IT world. We are now facing this situation: On the one hand, we wish to send the good-conditioned second-hand computers and IT products to the Mainland or

other developing regions to help the poor get on the IT train, but on the other, we have to be careful not to let the unscrupulous merchants contaminate the environment of our country and make our people suffer by transferring the electronic rubbish claiming that they are second-hand computers.

At present, the guidelines on the regulation of the import and export of second-hand electrical appliances and electronic products formulated by the Environmental Protection Department (EPD) are very unclear. Under the guidelines, those second-hand electronic products which can no longer operate normally or which cannot be directly used for their original purpose are deemed electronic wastes, and a waste import/export permit issued by the EPD must first be obtained before they can be imported or exported. However, the guidelines also stipulate that if the genuine purpose of the wastes under transfer is for recycling or reuse, they will not be subject to such control. Consequently, the Government is criticized by the green groups for allowing the transshippers to freely import and export electronic wastes in an unrestrained manner under the pretext of recycling. Meanwhile, some traders and organizations engaged in the trading of second-hand electrical appliances have complained to me that their second-hand electronic products to be sent to the Mainland for use were detained by the EPD.

As such, in order to ensure that second-hand electronic products sent from Hong Kong to the Mainland will serve their purpose, I suggest that the guidelines on the import and export of second-hand electrical appliances and electronic products be reviewed, so as to regulate the hazardous electronic wastes and clear the grey areas as far as possible. Then, the unscrupulous merchants will not be able to take advantage of the loopholes of the guidelines to import and export electronic wastes for making profits and stifle the healthy development of the sector at the same time. More importantly, exchange of information between Hong Kong and the Mainland should be enhanced, so that concerted efforts can be made to crack down on the transshipment of electronic wastes by unscrupulous merchants.

Madam President, I do not agree with the EPD's current practice of handling electronic wastes. This January, I raised a question in this Council on the storing of abandoned electronic wastes on sites in the New Territories. In response, the Government official stressed that as the electronic wastes were enclosed in metal or plastic casings, they would not pose any immediate risks to the environment or the health of nearby residents. In March, however, some

green groups pointed out that many open sites for processing electronic wastes in Fan Ling in the New Territories had become transfer stations for mainland electronic rubbish, contaminating the environment of the New Territories. What the EPD did was to test the soil samples taken from the sites for processing electronic rubbish, and refuted the green groups on the grounds that the content of heavy metals in the soil was within safety levels. It considered that no regulation action was required. The EPD still remains indifferent although heaps of electronic wastes have been piled up in various regions in Fan Ling and are exposed to the elements. I am not sure when the EPD will start to impose regulation. What else has it done apart from discovering that the soil samples contain heavy metals? However, when the toxic content of soil at the waste-processing sites exceeds the safety levels, it will be too late even if the EPD takes any remedial actions. The silent earth will have already recorded our short-sighted bureaucratic evil acts and penalized us.

Madam President, I so submit.

MR WONG KWOK-HING (in Cantonese): Madam President, recently there is a very popular comic about the concept of "exchange at equal value". It means that for whatever thing that has been done or achieved, one has to pay a price at the equal value of it.

The real life situation is actually the same. In reality, money has to be invested for each piece of product produced. Manufacturers have to pay for their workers' wages. They have to pay for the materials and rent, whereas consumers have to pay in order to buy the products. But in some cases, the disposal of the products can pose serious hazards to the environment, and the price is nevertheless paid by the earth and our descendents. Electronic products are among the seriously polluting products. As a result of technological advancement and promotion by manufacturers, the life cycle of electronic products has become shorter and shorter, and the quantity of electronic products being thrown away is ever increasing. Many countries have realized the seriousness of pollution by electronic wastes and have, therefore, dealt with it in various ways.

Many countries, such as the United States, have adopted the strategy of exporting such wastes by exporting them to countries and places where the legislation is less stringent. But as the level of technology of these countries in

treating electronic wastes is relatively low, serious environmental pollution is thus resulted. China, for instance, used to be a country that received electronic wastes, and it was only after the import of electronic wastes was banned in 2002 and the processing of imported electronic wastes was further prohibited in 2004 that the situation has been slightly improved. But unscrupulous businessmen are still smuggling electronic wastes into China by various means, and Hong Kong is one of the transshipment centre.

In China, pollution by electronic wastes has been very serious. Reports show that half of the pollution of underground water by heavy metals in the country is caused by electronic wastes that have been buried directly without being treated or decontaminated. Hong Kong is part of China, but Hong Kong should not be an accomplice in polluting the land of our country. Moreover, when the electronic wastes pass Hong Kong, they will also do harm to the local water and land and to the health of workers, and as the electronic waste workshops mostly take on illegal workers, they will at the same time aggravate the problem of "illegal workers".

Although the Government will enact laws on the Basel Ban in the context of the Waste Disposal (Amendment) Bill 2005, the definition of hazardous wastes in the Basel Ban is comparatively vague and so, it is necessary for the SAR Government to draw up a list of hazardous wastes for regulating the import and export of electronic wastes, in order to eliminate the environmental hazards posed by continued import of electronic wastes into Hong Kong and China.

At present, many countries refuse the import of electronic wastes, and the implementation of the Basel Ban has prohibited the export of toxic wastes by member states of the Organization for Economic Cooperation and Development (OECD) to non-OECD countries. Therefore, electronic wastes must be treated at the place where such wastes are disposed of. This is indeed a big headache to certain countries or places. But after all, this is actually a business opportunity and an opportunity to create jobs.

In fact, electronic wastes, if properly handled, will not pollute the environment, and we can even extract useful materials from them for recycling. In this connection, Hong Kong can play an active role in the recovery and recycling of such wastes in the region. Such processes as the recovery and dismantling of electronic wastes can provide a vast number of job opportunities to grass-roots workers. In this regard, the Hong Kong Federation of Trade

Unions has advocated the promotion of the recycling industry over the years because the recycling industry is labour-intensive and the level of technology required is entirely manageable to Hong Kong. This can precisely create job opportunities for grass-roots workers, alleviate unemployment and underemployment in Hong Kong and mitigate the problems of unemployment and excessively low wages due to a surplus of grass-roots labour.

In fact, in such advanced countries as Singapore and France, there are enterprises that specifically collect electronic wastes from places all around the world for recycling and reuse. The SAR Government should not refrain from actively exploring ways to do the same on the excuse that Hong Kong lacks the conditions for treating such wastes. I think the SAR Government should draw up stringent legislation and rules to regulate the import and export of electronic wastes, and laws should also be made in the direction of developing an electronic waste recycling industry, so that Hong Kong can alleviate unemployment and at the same time shoulder its global responsibility of protecting the environment and reducing pollution.

In fact, I think Members do understand these points, and the question is whether the SAR Government has actively carried out promotional work and whether it has drawn up measures, methods and the timetable. Our Government often stresses the executive-led principle. As a matter of fact, to enable the reuse and recycling of electronic wastes, the executive-led SAR Government must first have the intention and draw up measures. So, I hope the Secretary, in responding to Members in this debate today, can give us some active proposals and a timetable, so that we can truly see that the SAR Government has the ways, the ability and the determination to take forward the recycling of electronic wastes. Thank you, Madam President.

MS AUDREY EU (in Cantonese): Madam President, after a highly controversial debate and a profoundly heavy motion, I am glad that there is now an opportunity for us to speak on a motion with a strong consensus. However, it does not mean we can treat this motion in a light-heartedly manner. Actually, this question on regulating and handling electronic wastes is an extremely thorny issue that must be addressed as a matter of urgency. The refuse disposed of by Hong Kong people every year in landfills can fill up 1 000 Olympic-sized swimming pools. As mentioned by Mr Martin LEE earlier, 18 000 tonnes of the refuse is electronic waste. The threat posed by electronic wastes is

primarily twofold: First, if not handled properly, they will produce harmful substances through decomposition and contaminate soil and river courses; second, the quantity of electronic wastes is intimidating. In Europe, for instance, the growth rate of electronic wastes is between 3% and 5%, three times as high as that of general municipal waste. In developing countries, computers and mobile phones have a service life of only two years on average.

Electronic wastes include hazardous waste that easily releases heavy metals and toxins. As mentioned by many colleagues before, China as a signatory of the Basel Convention has enacted legislation to prohibit the import of hazardous waste. The Hong Kong Government also has recently proposed a bill to incorporate the Basel Ban into our law.

According to the existing legislation, only the glass panels of monitors and abandoned batteries are considered hazardous wastes. However, there is a wide range of electronic wastes that will, if not handled properly, release harmful substances. For this reason, the European Union has recently required manufacturers of imported electrical appliances and electronic products to be responsible for undertaking most of the recovery, handling, recycling and disposal work.

Although we will not import hazardous wastes, we still have to face three categories of waste problems. First, electronic wastes imported under the pretext of recycling, as pointed out by Ms LI Fung-ying in her speech earlier, for re-export to the Mainland where the wastes, not yet properly disposed of, have created pollution problems; second, unlawfully abandoned imported electronic wastes; and third, locally-produced electronic wastes.

Of course, it would be most satisfactory if wastes can be recycled locally to develop the recycling economy. However, in the short term, before we can successfully develop an effective recycling economy, Hong Kong still lacks adequate technologies to handle electronic wastes, such as discarded rechargeable batteries. Before better options are available, we can only transport the wastes to overseas places which are capable of or have the technologies required for handling such wastes. After all, this is better than disposing of the wastes in the landfills in Hong Kong.

Meanwhile, the Government should closely monitor the export of wastes to prevent unscrupulous businessmen from, as mentioned by Ms LI Fung-ying earlier, polluting the backyard of someone else under the pretext of recycling.

The town of Guiyu in Guangdong Province, as mentioned by Ms LI earlier, is seriously polluted by electronic wastes. I think it is worthwhile for us to take this example as a note of caution.

In 2003, 18 000 tonnes of electronic wastes was sent to landfills in Hong Kong. As our long-term goal, no untreated electronic wastes will be allowed to be disposed of in landfills or burned. To achieve this goal in the long run, the product responsibility scheme must be implemented expeditiously. Both the representatives from the Hong Kong General Chamber of Commerce and the Federation of Hong Kong Industries agreed in principle in a meeting held by the Panel on Environmental Affairs days ago that this scheme should be implemented in Hong Kong.

Today, the Liberal Party has proposed an amendment to amend the producer responsibility scheme to a "comprehensive responsibility scheme encompassing the producers, importers and users". Under the comprehensive responsibility scheme, the producers, importers, retailers and users of a commodity have to assume shared responsibility. In overseas countries, it is called "Extended Producer Responsibility" scheme. The reason is very simple: responsibility corresponds with ability. Producers are capable of improving the design and production materials of their products and know how to reduce unnecessary packaging, stop using toxic substances, and make the best use of recycled products. On the other hand, importers, retailers and consumers have to co-operate too because recycling has to count on the joint efforts of partners from all sides before better results can be achieved. In this respect, I therefore fully support the amendment proposed by the Liberal Party.

Implementing the producer responsibility scheme is an important means to reduce electronic wastes. Such schemes have been implemented in the European Union and Japan. China, a major producer of electronic products, is also preparing to enact legislation. In Hong Kong, the producer responsibility scheme is still at an infancy stage. We are now talking about rechargeable batteries, and consultation will be held on vehicle tyres. I wonder how long it will take before the study of electrical appliances, electronic equipment, beverage containers, and so on, can be completed.

I personally seldom change my mobile phone and computer. However, for young people, it is undeniable that mobile phones, personal digital assistants, video game players, MP3 players, and so on, are trendy products that keep

changing. The electrical appliances we are using at the moment will very soon become electronic wastes. Therefore, I really hope the Government can, as stated by Mr WONG Kwok-hing earlier, act with determination and in a more proactively manner in tabling appropriate bills to this Council on this issue about which there is consensus for the swift passage into law.

On behalf of the three other Members of the Article 45 Concern Group, I support both the original motion and the amendment. Thank you, Madam President.

MISS CHOY SO-YUK (in Cantonese): Madam President, electronic wastes are the fastest-growing waste in the world. They have brought us crises not only because of its rapid growth in terms of quantity, but also because the large quantity of mutation-inducing and carcinogenic toxic substances released by them, including lead, mercury, cadmium and brominated flame retardants, posing a serious threat to our environment and health.

It is imperative to find ways to properly dispose of the enormous amount of electronic wastes. Regrettably, the SAR Government's attitude is far from proactive. Coupled with the numerous loopholes in the existing regulations and systems, the situation continues to be not regulated.

The electronic waste problem confronting Hong Kong can be divided into two major aspects, namely local electronic wastes and the problem arising from imported electronic wastes.

Let me start with local electronic wastes. The biggest problem is that the Government has failed to set up an effective separation and recycling system to collect and dispose of these harmful wastes. The reasons are not more than two. First of all, the absence of centralized separation facilities has resulted in exorbitant transport costs for waste collection. Owing to the extremely diverse sources, even if there are different forms of source separation schemes, it would still be very difficult to establish a cost-effective recycling channel. Furthermore, emphasis so far is still placed on the recovery of electronic wastes by the public without employing financial means to simultaneously complement the efforts. As a result, however vigorous the Government publicizes and however anxious environmentalists and the industry are, the recycling of electronic wastes continues to get half the results with double the effort.

The DAB is of the opinion that, with the introduction of economic incentives, the market will naturally develop a comprehensive and effective recycling system. It is therefore imperative for the Government to, targeting certain large electronic products and electrical appliances, such as televisions, computers, refrigerators, and so on, put in place a recycling deposit system. Under the system, deposits would first be levied on producers and importers and, after deducting administrative expenses, the deposits will be returned to those individuals or organizations returning electronic wastes. Provided that benefits are offered, coupled with the implementation of a source and centralized separation system, the difficulties with recovery would be overcome easily.

Madam President, another problem relating to electronic wastes is that the ordinance governing the disposal of electronic wastes is too lax. It is inconceivable that Hong Kong, hailed as Asia's world city, could have yet to formulate a landfill directive to block the access of certain harmful materials to landfills. It is even harder to understand why personal computers and electronic products for domestic use, even if they contain chemical substances, are only regarded as ordinary refuse and allowed to be dumped at landfills indiscriminately?

Given that recycling is not rewarded and no price needs to be paid for dumping, how can the Government convince the public to continue recycling?

To prevent profound impact on the environment, the DAB urges the Government to follow the examples of other places by immediately formulating a set of directives applicable to the landfills in Hong Kong, spelling out which harmful materials are barred from disposal at the landfills.

In the long run, it is essential to start with electronic products in order to tackle the harm caused by them by minimizing as far as possible, or even prohibiting completely, the use of toxic substances. To achieve this goal, the Government must actively examine introducing rules similar to the WEEE and ROHS, requirements laid down by the European Union (Mr Tommy CHEUNG spelt them out in full in detail earlier), set up a mandatory mechanism for handling electronic waste recycling, and require that electrical appliances and electronic products manufactured in or imported into Hong Kong must use cleaner materials and work procedures in production such that manufacturers will have to give more consideration to the environmental performance of their

products at the design stage so as to put the principle of "extended producer responsibility" into actual implementation.

Madam President, another major issue needs to be addressed concerns the import and export of electronic wastes. Although the Basel Convention was introduced into Hong Kong in 1996 to, as mentioned by a number of Members earlier, control cross-boundary transfer of hazardous wastes, the existing movement restriction can be considered completely useless in exercising control on, with the exception of the most crucial electronic wastes such as kinescopes and batteries, other electronic wastes such as circuit boards and obsolete mobile phones, which contain such hazardous substances as heavy metal materials, fire-proofed materials, and so on. Intentional businessmen can, under the pretext of recycling, avoid all application procedures and indiscriminately import or export second-hand electrical appliances or electronic products containing toxic materials for re-export to other developing countries for profits.

Actually, allowing electronic wastes to move freely not only poses health threats, but also represents an ignorance of international and social ethics as the responsibility of disposing electronic wastes would then be shifted from advanced countries to developing ones.

What happened in Guiyu on the Mainland years ago is one of the numerous notorious examples. On this issue, the Hong Kong Government has adopted an indifferent attitude of non-interference. Is it the case that Hong Kong wishes to strive for the best to become another Guiyu?

In order to plug the loopholes, it is imperative for the Government to expeditiously amend legislation to prohibit anyone from continuing to, under the pretext of "recycling for production", import or export discarded electrical appliances and electronic products so as to prevent Hong Kong from becoming an entrepot for electronic wastes. Actually, the Mainland has moved ahead of us a long time ago. With effect from last year, the import of 21 categories of discarded electrical and mechanical products under the pretext of recycling, such as computers, monitors, printers, microwave ovens, and so on, is prohibited.

Lastly, the fact that the land of a number of electronic waste yards in the New Territories is found to be polluted has also exposed the loopholes in the

local laws. Under the current system, junk yards used for storage purposes or not involving dismantling processes are not required to obtain licences or even conduct environmental impact assessment. For these reasons, the DAB urges the Government to strengthen control and expeditiously formulate policies on controlling land pollution as well as relevant legislation.

Madam President, I so submit.

MR ALBERT CHAN (in Cantonese): Madam President, a warning issued by Green Peace earlier indicated that China would face the crisis of becoming a gigantic rubbish bin for the world's electronic wastes.

The beautiful, natural rivers in lots of places in China I saw on the television years ago are now littered with electronic wastes, including computers and circuit boards, and the entire ecology has been seriously devastated as a result. It is terrifying to see that the originally scenic mountains have now turned into mountains of electronic wastes. Some science-fiction films even depict scenes of chemicals flowing into the rivers, turning fish 10 times bigger than before. Even dinosaurs can almost be found too. It is actually very probable for these scenes to appear near the dumping grounds of electronic wastes.

Due to the close relationship between Hong Kong and the Mainland, Hong Kong has always been regarded as the gateway to China. The wide range of electronic wastes accumulated in China will definitely endanger the ecology and the lives of the people. I wonder how much of the wastes has been transported to China through the gateway of Hong Kong.

I understand that lots of containers have constantly delivered electronic wastes via Hong Kong to our Motherland. Very often, they are shipped to the Mainland as second-hand electronic items. I wonder if the Government has any data on this. Yet, I believe, over the years, the quantity of the wastes should be calculated in terms of tonnes, 10 tonnes, and even thousands or tens of thousands tonnes. Should this picture be real, I would be extremely worried that it could be profoundly terrifying. I hope the Government can strengthen its control in this area. Policy-wise, the transshipment of electronic wastes via Hong Kong to the Mainland must in no circumstances be allowed. The Government is obliged to monitor this situation.

Insofar as the handling of electronic wastes is concerned, a businessman who once operated an electronic waste business in the United States contacted me about a year ago. I arranged the staff of the Environmental Protection Department to hold a meeting with him because he hoped to set up an electronic waste disposal business in Hong Kong. He told us that some machinery in the United States was capable of separating different kinds of electronic wastes, such as mercury, lead, iron, and so on. The only problem was that the machine would release gases in the process. Yet, the machine had been widely used because the standard of the gases released had been accepted in the United States. Unfortunately, the standard there seems to differ from ours. As a result, the Hong Kong Government is uncertain as to whether this electronic waste processing machine, though widely used in the United States, can be used in Hong Kong. Consequently, the development plan met numerous obstacles. Otherwise, the machine could have been widely used in Hong Kong. Of course, this is not the only obstacle.

There are actually lots of obstacles to the development of electronic waste disposal businesses in Hong Kong. One of the obstacles is land. As large plants are required to dispose of electronic wastes, even industrial estates are not necessarily suitable. Despite the attempts by some interested companies to explore the suitability of industrial estates, the reply received in the end was still extremely doubtful and no certain reply could be given. The fact that many formalities have to be completed has put off investors.

Besides, there are many problems with policy criteria, as I mentioned earlier. I do not know if this has anything to do with the former British Hong Kong Government or what. According to my understanding, other countries have started disposing of electronic wastes. So, why do we not apply some of the criteria already adopted in other advanced countries to Hong Kong to make things smoother for investors interested in investing in this business here? Should the Government be able to lend a helping hand in land use, lots of obstacles could be removed.

Another problem with electronic waste disposal is that there is a lack of space for collecting and handling electronic wastes (including computers, circuit boards, and so on) in local communities. In the Tsuen Wan District, to which I belong, some voluntary organizations, such as the Caritas, have attempted to designate certain places in housing estates to collect computers, circuit boards, and so on. However, a lot of problems have been encountered in finding larger

and more convenient places to collect these items. The Government should indeed do something as encouragement.

During the discussion held by this Council on the Tsing Yi Chemical Waste Treatment Centre earlier today, some Members mentioned that more than \$360 million had been spent over a period of five years on handling waste oil. But why is it that on such a serious issue as the handling of electronic wastes, the Government appears to have made no effort at all in promoting development in this area? If we talk about the impact on the environment, ecology, and society, the impact produced by electronic wastes would very probably be 10 or 100 times greater than that produced by waste oil. I hope the Government can promote the relevant policy and expeditiously come up with and implement clear and effective measures to ensure that electronic wastes can be disposed of locally. At the same time, the Government has to ensure that Hong Kong will not become a transshipment centre for electronic wastes, and will not deliver its electronic wastes to other places by a quasi-illegal means.

Thank you, Madam President.

MR WONG TING-KWONG (in Cantonese): Madam President, pollution problems will in fact impact on the business environment. Recently, people from the trade associations of the industry said that they hoped the new Chief Executive to be elected could attach special significance to problems in four areas. Besides, in the World Competitiveness Yearbook 2005 recently released by the Swiss-based International Institute for Management Development (IMD), Hong Kong ranks second among 60 regions and countries assessed, an upward improvement from the sixth of last year. Among the over 300 items for assessment of competitiveness, Hong Kong ranks first in 29 aspects such as business efficiency, legal and regulatory framework and stock market capitalization, and so on. However, on the other hand, Hong Kong was assessed as relatively weak in about 20 areas, including the pollution issue.

In the past, a lot of vacant agricultural lands in the New Territories were stacked with tall piles of containers and abandoned vehicles, and such phenomena have become local characteristics. Now, we have the new addition of electronic waste workshops. According to the information of the Environment, Transport and Works Bureau, there are altogether 91 electronic waste workshops in Hong Kong, situated in regions such as Yuen Long, Fan

Ling, Tak Ku Ling and so on, storing a total of over 2 000 tonnes of electronic wastes. Green bodies conducted an inspection tour to Fan Ling and Pat Heung in March, and taken some soil samples for examination from the area around an electronic waste workshop in Hung Lung Hang, Fan Ling. The result revealed that the soil contained a lead concentration of 51 to 142 mg/kg, which is five to 10 times higher than the standard of 10 to 30 mg/kg, as fixed by that organization in such studies. It is believed that some of the lands in the New Territories have already been contaminated by electronic wastes. From the samples, brominated flame retardants from computer circuit boards have also been detected. It is reported that such substances can be vaporized into the air and affect the endocrine system of the human bodies and will interfere with the hormone levels of human beings.

The existing Waste Disposal Ordinance just stipulates that such electronic wastes as kinescopes and batteries cannot be imported into Hong Kong under any pretext if they have not been issued with permits. However, circuit boards and used mobile phones can be shipped into Hong Kong without permits on recycling grounds. So, certain unscrupulous businessmen would make use of the loophole in the Ordinance and import or export abandoned electrical appliances or electronic products with substances that are detrimental to the environment. Besides, certain electronic waste workshops found in the New Territories are not required to apply for a licence because they are used just for storage purpose, and do not involve any chemical waste disposal procedures. As such, such storages are not required to be licensed, so there is no way for the authorities to exercise any supervision over them.

At present, many countries in the world have already implemented product responsibility schemes; they include countries in Europe, Japan and even the Mainland. In this aspect, Hong Kong lags far behind other regions. Hong Kong only implemented a product responsibility scheme as late as 2002, with demonstrations to manufacturers on practicable ways of recovering used computers and electrical appliances, so as to make them shoulder certain environmental responsibility by making recycling arrangements. As for the costs involved in recovering the wastes, they may be shared by the customers, if necessary, with such costs added to the retail prices of the products. The first electronic waste recovering target is mobile phone batteries. The Environmental Protection Department (EPD) encouraged the voluntary participation by manufacturers. However, the response has not been as good as originally envisaged. It appears that the SAR Government has to work even

harder in order to make it work. Recently, many local commercial and industrial organizations have indicated their support of the product responsibility scheme.

In order to keep abreast of the major trend, the Government should ensure that all the legislation or measures formulated must dovetail with the international standards. Just now many Members mentioned that the directive of the European Union (ROHS) on restricting the use of certain hazardous substances in electrical and electronic equipment will officially come into force on 1 July next year. This directive specifies that all electrical and electronic products to be imported into the European Union in future must not contain six hazardous substances, namely lead, mercury, cadmium and hexavalent chromium and so on. The ROHS covers 10 major categories of products including domestic electrical appliances, IT and communication equipment and electronic toys, and so on.

With these remarks, Madam President, I support Mr KWONG Chi-kin's original motion and Mr Tommy CHEUNG's amendment.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, today's question is about regulating the handling of electronic waste, promoting the electronic waste recycling industry, and creating employment opportunities. Actually, a similar discussion was conducted in February this year; today's discussion is different in that it is focused on the more toxic electronic wastes.

I still remember that, during the debate on this question in February, I raised the point that discussing this issue would only make us extremely unhappy. Madam President, why did I say that? Because every time when consultation was held on the Budget over the past several years, we would persistently raise the issue pertaining to recycling to the Financial Secretary and he would be requested to consider ways to promote the development of the green industry. Developing the industry will not only contribute to environmental protection but, more importantly, resolve the unemployment problem as well.

It is a great pity that, although three Financial Secretaries have succeeded one another in handling our fiscal problems, for the holder of the post of Financial Secretary has kept changing, from Mr Donald TSANG to Mr Henry TANG today, and we have kept raising this issue in the past years, it can be said

that almost no improvement has been made to recycling or the green industry. I am particularly upset as this issue was raised again today, albeit it has been mentioned again and again for years. Why does the Government still act like it is totally unconcerned?

The Government might probably deny that it has not done anything. Moreover, it would say that some proposals have been made. For instance, a 20-hectare Recovery Park will be built in Tuen Mun. However, Madam President, it has been almost five years since this proposal was raised in 2001. Except for the plan to build the Recovery Park, nothing about other matching measures has been mentioned. Furthermore, although the construction of the Recovery Park has been discussed for five years, the project is still not actually launched. We have learned from today's document that the construction of the Recovery Park will commence in 2006 and it is expected to be completed by end 2006, but why has the project to be procrastinated for such a prolonged period?

I remember Secretary Dr Sarah LIAO told me during a discussion that it was only that I probably did not understand. She even added that the Government had no intention to procrastinate on the matter, only that the Recovery Park involved litigation and hence the delay. Madam President, I wish to ask this question: As we had spent such a long time on site selection, why could the Government have failed to notice the litigation problem involved before the site was selected? The authorities might probably say that this is not what they can anticipate and that there is nothing they can do. Even if we cannot anticipate that litigation will be involved, Madam President, the Government is now telling us that it will take only one year to resolve the land issue before construction can be commenced. Such being the case, could the Government consider proceeding with its work on other sites when it knew that the land in question involved litigation instead of focusing on this 20-hectare site in Tuen Mun? Actually, this reflects that the Government is not so serious and sincere in handling this issue. It has only adopted an attitude of letting nature take its course in dealing with everything. The Government has impressed people that this is precisely its mentality.

Perhaps I am gauging the heart of the Government with my own mean measure, or I have been thinking in a relatively negative manner, and the Government is actually not thinking in this way. However, on the entire recycling issue, the Government has failed to implement the proposal of identifying land to promote the green industry. What is more, I have found it

most worrying and unhappy that the Government has, on the one hand, stated that it will vigorously promote recycling but, on the other, continued to co-operate with consortia in building incinerators. Members should know what would happen after incinerators are built? Will recycling still be possible? Definitely not. Nothing would be left after the incineration process. How can recycling be conducted? As such, I cannot see any determination on the part of the Government in promoting the recycling policy. What the Government wants to do is to dispose of waste by burning.

Besides burning, what other options do we have? The answer is disposal at landfills. Members should be aware that the situation in landfills has kept worsening. Such being the case, how can the Government deal with the problem? As a result, it has come up with another solution — I think it is throwing the baby out together with the bath water — as indiscriminate disposal of waste at landfills is allowed, the Government would rather impose charges as raising the charges can reduce the amount of refuse as far as possible. However, not all the problems can be resolved by raising charges alone. As some wastes must be disposed of, what can be done if they are not thrown away? Even if the Government raises charges, who will be benefited? Probably only the coffers. As a matter of fact, wastes will still have to be disposed of at landfills. As such, not only is it impossible for the waste problem to be resolved, the disposal of waste at landfills remains a problem to be solved sooner or later. Despite the repeated emergence of the problem, the Government has resorted to either burning the refuse or disposing it at landfills. It has never promoted recycling properly. In the final analysis, I want to ask the Government this question: How determined is it in promoting the green industry?

Actually, the most crucial problem with promoting the green industry is prospect. This is often one of the major problems facing the industry as a whole. However, it is very strange that, Madam President, as Members are also aware, wages are high and land is also expensive in Western European countries, but why is it that these countries can promote the green industry, and yet only Hong Kong cannot do it and neither is there any prospect here? A major difference is that the governments of Western European countries will provide assistance, subsidies and support, thus making the situation hugely different. However, when I mentioned government assistance, support or subsidies, the Government would say "no" and ask: How could the Government subsidize industries? Subsidizing this kind of industries would be unfair and unjust to others; this is why the Government will definitely not do so. Of

course, the word "subsidies" might not sound too good, as it appears unfair and unjust for the Government to provide subsidies. However, can the issue be considered the other way round? Actually, discarded refuse must be disposed of. We might as well not consider this sum of money as a subsidy, but see it as a fee for assisting in handling waste. Can Members come up with more ways to promote the development of this industry rather than set up some frameworks to impede or restrain ourselves? Should the Government fail to alter this mentality, strategy or direction, the problem of the recycling industry can never be resolved.

As such, I think that the most crucial, major direction in today's motion debate concerns whether the Government can make up its mind and demonstrate its sincerity. Instead of acting perfunctorily, as it did in the past, it must concentrate all of its energy and develop the green industry wholeheartedly.

Madam President, I so submit.

MISS CHAN YUEN-HAN (in Cantonese): In recent years, Madam President, information technology (IT) can be said to have created enormous wealth for the world. With the acquisition of more IT, a country will become more capable of developing its economy in the IT area. It can be said that in the contemporary world, even some backward countries like India are developing towards IT. Hong Kong appears to be moving in this direction as well. Actually, when the world is developing towards IT, have we seen that the production of computers and electronic products carries the hidden production of some substances harmful to planet earth? It can be said that the most advanced place of IT is producing the largest amount of products hazardous to humans. If not handled properly, the substances created by us, human beings, will possibly poison us in the end.

Actually, it is evident that the wastes generated in this area or discarded substances are multiplying rapidly in various parts of the world. Electronic wastes have become the most rapidly-growing waste tumour in Hong Kong or some highly industrialized countries in the world. I believe this has to be a matter of concern to all advanced countries and cities. Hong Kong is considered one of the so-called advanced places where IT is developing rapidly. The SAR Government has time and again considered it essential for Hong Kong to develop into a high-technology economy and pursue further development in

the IT industry, and much effort has been made in this connection. However, in implementing these policies, has the Government as a whole considered ways to handle the wastes thus produced which will affect human beings? Obviously, the Government has not followed up developments in this area.

When my colleague, Mr KWONG Chi-kin, indicated his intention of proposing this question, I pondered the matter for a while. When he discussed with us subsequently, I very much agreed that he should propose this question. Next, we have to face future development — What measures will the Government take in order to address the dark side of the policy, that is, to tackle the large amount of wastes that will damage human beings? Problems will arise should we fail to deal with this issue. Coupled with the fact that no regulatory measures have been taken on this so far, other countries can transport such wastes to Hong Kong. Some of them may even do so under the pretext of presenting the computers to Hong Kong as a gift but, actually, they are all damaged or useless. What preparations has Hong Kong as a whole made? Of course, the Secretary will probably feel extremely unhappy after hearing I say something like this. Although the Secretary is an expert in this area, we have fallen far behind other countries in terms of our policies in this area, so what can we do?

Madam President, when it comes to this point, I believe that even when we sometimes encounter something we greatly resent, we still have to face it and make every possible effort to resolve the problem thus caused. So, what should we do? The solution would be similar to the "polluter pays" principle often mentioned by us. Of course, we can deal with or discard the wastes generated in Hong Kong on our own. However, we have to think of ways to block the wastes from other countries or see if the wastes can be disposed of. Faced with this situation, I am not trying to force the Government to do anything. It is only that we have repeatedly discussed the development of the recycling industry and the recovery of materials. As such, we hope that the Government can implement its plans. If these industries can be developed properly, can all these problems be resolved?

Madam President, the fall in the unemployment rate to 5.9%, as revealed in the number of the unemployed published by the Government last week, may sound very pleasing, but I still hope the Government can pay attention to the fact that the size of the labour force published in this statistic has actually shrunk.

As such, the slight drop in the unemployment figure does not imply that it is actually falling. As a matter of fact, many people in Hong Kong are still unable to secure a job. In my opinion, if we are to develop in the direction mentioned earlier, we must resolve the problem created by the wastes generated by every possible means. One of the solutions would be recycling. Recycling has to start with ourselves because polluters have to handle their own wastes under the "polluter pays" principle. Actually, such efforts should be complemented with corresponding policies and measures in order that the problem can be resolved. Secretary Dr Sarah LIAO is an expert in this area. As such, I hope she can take swift actions. The heaps of waste disposed of in the New Territories will affect not only farmlands, but also cleaners who might come into contact with the waste, and even everyone. I earnestly hope the Government can swiftly formulate policies in this respect. In doing so, not only can the wastes generated by ourselves be tackled, the relatively serious unemployment problem in society can be resolved as well. In order to achieve results in both areas, it would be most important for the Government to implement appropriate policies, including establishing a Recovery Park, formulating a recycling policy and relevant taxation policy, and so on, to enable existing problems pending solution to be truly resolved.

Madam President, I believe if Hong Kong can synchronize the efforts made in all these areas, both Hong Kong and our neighbours will stand to benefit. I therefore earnestly hope the Secretary can, upon the completion of our debate, give us a reply as to what policies and measures will be formulated and what preparations be made to address these problems.

I want to remind the Government in particular that it has planned to build some logistics parks for recycling purposes and has agreed with the separation and reception of materials. However, has the Government prepared properly in terms of human resources and training for the reception of electronic waste? I hope the Government will give consideration to this. At the same time, I hope it can give some thought to, as I said earlier, the importance of providing tax concessions, in addition to land and training, if this plan is to proceed. These might also serve as a very important channel for the Government to assist us in promoting further development in this area or give impetus to enable issues in this area to be addressed and dealt with.

Madam President, environmental protection has become a major global trend. Given that Hong Kong is now a world-class city, I believe our

competitiveness will diminish should our Government hold on to its old mentality. Hong Kong will also lose its qualification to be an international city should it care only about the development of certain industries while failing to think of ways to handle waste generated and substances which are poisonous to humans.

MR ANDREW LEUNG (in Cantonese): Madam President, Miss CHAN Yuen-han stated just now that although Hong Kong is an international financial centre and a top world city seemingly occupying a leading position in many areas, we have evidently lagged far behind other countries in terms of formulating legislation on environmental protection.

Environmental protection concerns every citizen in Hong Kong. Every one of us is responsible for protecting the environment and will stand to benefit as a result. The Government is obliged to formulate up-to-date legislation for the purpose of plugging loopholes; it is also obliged to formulate and take forward policies ardently supported by the public to alter their awareness of the environment and habits as well as enhancing their knowledge of environmental protection. At the same time, producers and consumers do have responsibilities of their own. As such, various parties should attend to their work and assume shared responsibilities or be collectively responsible so as to create a better tomorrow for our next generation. As a representative of the industrial constituency in this Council, I am absolutely duty-bound to assume the responsibility of promoting the producer responsibility scheme and environmental protection work to the industrial sector and producers.

I proposed to the Government to implement the producer responsibility scheme when moving a motion here on promoting the policy on the recycling industry in February this year. To date, however, I have still not seen any drastic moves by the Government. Members should also note that although the industrial and business sectors are willing to assume their due responsibilities, this does not mean that recycling is the sole responsibility of producers. Instead, this should be treated as a typical example of shared responsibilities between producers and consumers. Actually, the products sold in Hong Kong are mainly imported. Therefore, the producers, importers, and consumers each have their own responsibilities when it comes to the handling of electronic wastes. This comprehensive responsibility scheme, a product of a comprehensive study made by advanced overseas countries, is indeed a fair and reasonable role-sharing system.

In Japan, for instance, a household electric appliance recycling law was implemented in 2000. Under the law, producers of household electrical appliances are required to recycle old electrical appliances. At the same time, consumers have to bear a relatively large proportion of the cost of recycling. When discarding old electrical appliances, consumers have to purchase "recycling vouchers" to pay for the recycling expenses, ranging from \$200 to \$300.

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

Actually, producers and consumers can assume their responsibilities in different modes, not necessarily by way of paying charges. In Germany, for instance, its citizens are not allowed to discard electronic wastes indiscriminately under the law. For the convenience of the people, the municipal enterprises directly established in various urban areas are responsible for recycling old electrical appliances. The citizens have to take the initiative to liaise with the agencies responsible for recycling, which will send staff to collect the electrical appliances from their homes. Of course, a transportation fee has to be paid for this purpose. People who do not want to pay can bring their old electrical appliances to designated recycling centres. Furthermore, people in Switzerland have to pay a green tax when purchasing any electronic products. Depending on the price of each commodity, the tax levied will range from hundreds to thousands of dollars, which is not cheap at all. Generally speaking, shopping in Switzerland is quite expensive. However, this has affirmed the establishment of an apportionment of responsibilities scheme for handling electronic wastes in many countries around the world. As such, different people are playing different roles.

Madam Deputy, Members have pointed out, and I have also heard, that electronic wastes containing a lot of heavy metals will directly damage the ecological environment and the health of human beings. In this connection, the European Union has formulated the latest environmental protection standard and is prepared to fully implement a ROHS directive next year. According to this directive, electrical appliances containing harmful substances, such as lead, will be prohibited from importing into European Union countries. In order to meet this new criterion, Hong Kong producers have to switch to more expensive raw materials, and even installed more facilities for conducting laboratory tests on

their own products, thus resulting in a substantial increase in costs. However, in order to meet the need of the markets, and for the sake of environmental protection, they have been very willing to fully support the relevant policy. The fact that the Federation of Hong Kong Industries and the Hong Kong Productivity Council have made vigorous efforts in promoting green manufacturing and production is also a manifestation of their acceptance of the producer responsibility scheme.

I have kept saying how far Hong Kong economy will be benefited from developing the recycling industry. Today, I will not be long-winded anymore. However, I still have to emphasize that it is very important for recycling procedures to be carried out in a systematic and organized manner in order that work in this area can be conducted properly. As such, the Recovery Park will play a vital role in the recycling industry and the handling of electronic wastes. I hope the Government can step up its efforts in speeding up the construction of the Recovery Park to enable the relevant plan to be implemented expeditiously. What is more, I hope the Government can separate waste at landfills to make the best use of waste of recycling value and thus add value to the future recycling industry.

Madam Deputy, it is actually extremely worthwhile for the SAR Government to refer to the overseas experience and relevant legislative measures mentioned by me earlier and the opinions of other Members. I hope the Government can carefully consider this matter and actively formulate policies to prevent our environmental legislation from continuing to lag behind those in other countries.

With these remarks, Madam Deputy, I support Mr Tommy CHEUNG's amendment.

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, Mr Martin LEE has presented the views of the Democratic Party on today's motion. What I want to say is that today's motion is on the regulation of the import and export of electronic wastes. I believe the kind of regulation proposed by Mr KWONG Chi-kin is not a complete ban. He sought only to specify the use of imported or exported electronic wastes. Actually, some producers would recycle electronic wastes. I know that a couple of large computer producers have taken the initiative to recycle electronic wastes and transport them to Singapore and

Australia. In fact, production costs in these two countries are relatively high, but still they manage to promote the recycling industries. As such, Hong Kong should really ponder why we cannot do this and consider implementing appropriate measures. This point has been raised by Mr Andrew LEUNG in previous motions too. Insofar as regulation is concerned, the Government should not hinder the producers from taking the initiative to engage in recycling.

Of course, we disapprove of the practice of some unscrupulous businessmen of transporting electronic wastes back to the Mainland for dumping purposes or disposal at landfills, as mentioned by some colleagues earlier. This is of course not good. Besides, I think it is worthwhile for the Government to carefully examine the two directives, namely WEEE and ROHS, as mentioned by many colleagues earlier. Of course, the requirements imposed to implement this policy by way of legislation are quite stringent. From another angle, however, European countries will raise their production requirements and, as a result, their imported products will become more environmentally-friendly. Should this method be adopted in Hong Kong, a negative impact might possibly be produced on our consumers. We have to understand that the choices of products might diminish immediately. Nevertheless, I believe all of us have to pay the price.

As for the producer responsibility scheme, I think we must act carefully, particularly in policy implementation. The methods we can possibly consider include imposing a levy or tax, though both of them are not necessarily good. This is because some producers might have a programme covering the entire process, from design to production, including the number of minutes needed to dismantle the products so that the useful materials can be recycled and the useless ones crushed for further recycling. While the good producers would do so, those who are not so good would prefer paying tax at a rate of, for instance, \$5 or \$10 per item. Such being the case, producers would lose the impetus and incentives to engage in recycling on their own. After collecting the tax, the Government would only continue its practice of disposing of waste at landfills. Therefore, we must not consider the policy of implementing the producer responsibility scheme solely from the angle of taxation. Instead, the producers must adopt a more environmentally-friendly approach throughout the design and production processes and, at the same time, take the initiative to recycle waste. I believe this is more important. At least, the recycling industry must not be subject to impact. Producers who are now engaging in recycling would

certainly be impacted should the Government adopt the simple approach of imposing a levy or taxation policy. It is our hope that producers prepared to recycle waste would not be impacted by the policies launched in future. It would be very easy to implement a policy if taxation is the only means. Administratively speaking, things will be relatively simple for only an AO is required to come up with a means to levy tax for the relevant Bureau Director. This is relatively easy to implement. On the contrary, it would be more difficult to think of ways to make producers recycle waste.

The last point is also the most difficult to achieve. As mentioned by other colleagues, even if we have implemented measures to regulate the import of electronic wastes and raised our level to match WEEE and ROHS, or even with the assistance of the producer responsibility scheme, Hong Kong still has to offer incentives to promote green industries. In the past, we probably had the concept that green industries should be operated in places where production costs were relatively low. This is actually not the case. A large computer maker — a very large global one, though I am not going to disclose its name — has chosen to recycle electronic wastes in the two places I mentioned earlier, namely Singapore and Australia. Frankly speaking, I believe the production costs in these two places are not cheap. So, is it not really necessary for Hong Kong to seriously examine why we are incapable of luring large producers to station in Hong Kong to operate their recycling businesses? I suppose the Secretary should consider these observations.

I also wish to correct an Honourable colleague, Mr Frederick FUNG, for he said in the debate earlier that electronic waste was no different from computer waste. Computers are definitely a kind of electronic waste, but not all. Actually, the scope of electronic waste is huge. Refrigerators are also electronic. Computers might refer to what we are using at the moment. As such, the electronic wastes referred to by Mr KWONG Chi-kin today actually cover an extremely wide area, not only computers. Of course, I very much share the viewpoint he raised earlier (this is what we should not combat even in future). Should Members visit Apliu Street at around seven or eight o'clock, that is, the time now or some time earlier, they would see a lot of people of different nationalities (I am not an advocate of racial discrimination) buying electronic products there. Evidently, they buy the electronic products not for dumping. I believe they buy the second-hand electronic products for their friends back in their homeland. These people may not be licensed recyclers,

but they are helpful to the environment for they collect second-hand electrical appliances. Although their recycling is unorthodox, at least it is a way of recycling.

With these remarks, I hope the Government can consider these details when implementing the policy.

MR JEFFREY LAM (in Cantonese): Madam Deputy, in the old days, electrical appliances would be used very carefully. When they failed to function, we would get them fixed. They would be replaced only when they could no longer be repaired. Nowadays, however, as society becomes increasingly affluent, old models of electrical appliances are quickly replaced by new ones, at an even cheaper price. Quite a number of people possess such products as MP3 players, digital cameras, personal digital assistants and plasma televisions and replace them very frequently. Many young people would even replace their mobile phones several times a year. Although all this is a manifestation of the robustness of the economic and market activities, a huge quantity of electronic wastes is produced simultaneously. We must deal with this problem properly. It is also an environmental protection problem that calls for the concern, attention and shared commitment of manufacturers, importers, users and the Government.

New electronic products, though making our lives a lot more convenient, would contaminate soil, water resources, and even the vegetable we grow, and subsequently our health, if safety is neglected or they are not handled properly in the course of manufacture, use or disposal. Actually, electronic products have a high recycling value. A lot of their components can be dismantled and then reassembled for re-use while many can yield different types of raw material. Instead of discarding electronic wastes and thus polluting our living environment, we should actually make the best use of them by promoting the electronic waste recycling industry. As such, manufacturers should also take into account the overriding principle of recycling at the design stage.

Promoting the recycling industry can also resolve the problem with the import of electronic wastes from overseas. I would like to point out that the Waste Disposal Ordinance deals with electronic wastes containing or contaminated by hazardous substances only. Therefore, it is feared that overseas countries would, taking advantage of such a lax ordinance in Hong Kong, export a huge quantity of electronic wastes to Hong Kong under the

pretext of recycling. In particular, producers in Europe will be required to recycle all of their electronic products starting from the middle of this year. From then on, the New Territories would even be more likely to become a dumping ground for electronic wastes from European countries. Furthermore, we see that the Mainland will probably tighten its legislation and, as a result, electronic wastes originally re-exported to the Mainland would eventually be forced to, like the Vietnamese refugees in the past, be stranded in Hong Kong for disposal by us at our landfills. However, it would still be very difficult for our landfills to digest the electronic wastes even after they are completely filled up.

(THE PRESIDENT resumed the Chair)

Under such circumstances, why do the authorities not, in addition to amending legislation, immediately seize the opportunity to promote a recycling electronic industry? Today's question is actually cognate with a proposal made by Mr Andrew LEUNG in February this year of vigorously promoting the high value-added recycling economy. On developing the recycling electronic industry, both the Liberal Party and I share the view that the authorities must get rid of the present "junk collector" image of our recycling industry in order to match the creative and sophisticated technology possessed by Hong Kong industries. If the recycling policy can be implemented in a more comprehensive manner, the Recovery Park be completed earlier, and tax and land concessions be offered to manufacturers at starting their business, I believe a new employment and trade market can definitely be created in Hong Kong. I hope Secretary Dr Sarah LIAO can, in delivering her speech later, give a brief account of the latest progress of the Recovery Park. I also hope she will give us some exciting good news.

While the Government can enact legislation on environmental protection and recycling and build the Recovery Park, the recycling economy, as an industry, depends on the close interaction between the Government, producers and consumers. Therefore, it is necessary to vigorously promote the "producer responsibility scheme" and "polluter pays" principle as well. For instance, producers have to be responsible for manufacturing products designed to facilitate recycling as well as providing "scrapping services". In other words, the producers are obliged to recycle and properly dispose of scrapped electrical appliances or electronic products from the consumers to prevent contamination

of the environment. Of course, the operation cost will thus be slightly raised. The consumers' environmental protection awareness is therefore also crucial to promoting the green economy.

Actually, in overseas countries, the initiative of the people, to a certain extent, has a part to play in the process of recycling electronic wastes. For instance, under a household electric appliance recycling law implemented in Japan in 2000, producers of household electronic products are mandated to recycle old appliances. In discarding their old appliances, the consumers are also required to pay recycling expenses in the form of purchasing "recycling vouchers". The charges imposed on different electrical appliances range from approximately \$190 to \$330. In other words, recycling expenses are largely borne by the consumers.

Madam President, overseas countries indeed have infinite experience in protecting the environment. However, the Government has to, in referring to overseas experience, understand Hong Kong's unique situation.

Madam President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): Madam President, frankly speaking, I do not know much about this topic. Many of the terms used by Honourable colleagues are strange to me. But I do have one story to tell, a story about my experience of re-using an abandoned domestic electrical appliance. One day, when I was walking in the street below my residence, I saw a television set, and I took it home. But then, when I was watching a soccer match, the television set suddenly exploded. Although it was just a very small explosion, I was still very scared, because there were sparkles in the explosion. Actually, doing something like this is very dangerous. But since I did not have any money for a television set, or precisely, since I did not want to spend my already meagre income on buying a television set, I decided to take the abandoned television set home for use. I do not know whether any other Hong Kong people will do something like this.

My purpose of telling this story is to point out that first, abandoned electrical appliances or electronic products can be very dangerous, and second, some spare parts of this type of abandoned articles can in fact be taken out and then re-used. Actually, whether something is valuable or whether anyone is

willing to collect it for recycling will largely depend on its practical value or exchange value, that is, whether it can be exchanged for something else.

For instance, in civilized human societies nowadays, no one will collect human wastes (that is, faeces or urine) for any uses. But in places with no chemical fertilizers, such wastes will be much sought after as fertilizers. My point is that if no profit can be gained from collecting a certain material, no manufacturers will be interested in its recycling. I suppose there is just one feasible way out — holding manufacturers responsible for the environmental pollution caused by the products they manufacture. Manufacturers cannot evade their responsibility because they are the root cause of the problem. Why do we, especially the business sector, frequently point an accusing finger at manufacturers? The reason is that not too many Hong Kong manufacturers are engaged in the production of these goods. That is why the business sector supports the idea of bringing pressure to bear on manufacturers. However, it will be more difficult to hold import agents or distribution agents of these goods responsible, because there are such businessmen in Hong Kong. I do not intend to accuse any colleagues, but the problem remains that we can notice two features in the various recycling policies. First, who should shoulder the costs of recycling? I believe that if the rent-seeking activities connected with lands in Hong Kong continue, no one will be interested in this kind of business. The profits from both the collection and recycling of waste are much too low, so no one will be interested in them. Second, if lands continue to be used as a means of rent-seeking to increase the wealth effect, no one will be interested in the business either, and the only way out will be for the Government to exercise its public authority and allocate lands for the purpose. If manufacturers or distribution agents are held responsible for the recycling of their products, there will not be such a problem. However, they may of course question whether this is at all possible in Hong Kong, which is so small and densely populated. In Europe, in Germany, for example, there are many types of recycling bins which come in practically all colours of the rainbow. But in Hong Kong, there are just three types of recycling bins, and there are already so many problems. The shortage of land is therefore a problem here. The Government therefore needs to consider in detail how it can offer financial assistance to recycling activities or formulate appropriate policies on making it mandatory for manufactures or distribution agents to recycle the wastes.

The pollution problem caused by electronic or electrical products is not new. Practically every new invention of mankind is accompanied by an

undesirable by-product. London, for example, used to be called the Capital of Fog, and the fogginess of the city was described in many novels of Sherlock HOLMES. We once also thought that the London fog was caused by climatic factors. But in fact, the real reason was the presence of too many factories coupled with the lack of any regulation. This accounted for the fog. I am of the view that Hong Kong as an advanced city after all needs to develop new types of industries to solve the unemployment problem. I therefore hope that the Government can allocate lands on Lantau Island or in other places for the establishment of a recycling park. I also hope that laws can be enacted to make it mandatory for manufacturers and import agents to set up waste recycling centres inside the recycling park. I propose the Government to formulate a detailed and systematic policy on the recycling industry, so as to turn harmful substances into useful materials.

For all these reasons, I support Mr KWONG Chi-kin's motion and hope that other Members can do the same. Thank you, Madam President.

MR PATRICK LAU (in Cantonese): Madam President, nowadays, in the 21st century, technology is advancing by leaps and bounds, bringing lots of comforts and conveniences to mankind. However, technological advances have at the same time come to impose a much heavier burden on our children. Peoples all round the world have become ever closer as a result of advances in the dissemination of information, but the information explosion has on the other hand caused increasing indifference among members of individual families.

The rapid development of advanced technologies has brought about shorter product life cycles. I have the feeling that in the past, electrical appliances were more durable and could still function well even after a very long time. In contrast, it seems that electrical appliances nowadays develop problems very easily, or they may become outmoded very soon. Sometimes, we may need to replace an electrical appliance due to its incompatibility with new products. Therefore, we may sometimes buy a new electrical appliance not so much because we have been lured by the new to discard the old or we want to be trendy, but rather because we are more or less forced to do so.

Owing to the shortening life cycles of electrical products, electronic waste has come to affect us at an almost galloping speed. Designer Paul BONOMINI once reckoned that the electronic waste discarded by a man in the modern age

may be as much as 3.3 tonnes, which is enough to build a robot with a height of 7 m (that is, 21 ft). Since the quantities are so huge, even the recycling, or second-hand, market is unable to absorb all electronic waste.

Huge quantities of electronic waste release toxic pollutants which accumulate in the human body and the environment. This will not only affect our health but will also inflict irreparable harm on our future generations as time passes, resulting in an increasingly serious situation. Several Members have already mentioned this point. These toxic substances are lead (found in monitors and circuit boards), cadmium (used in semi-conductors), hexavalent chromium (found in batteries), and so on. They will respectively damage our neural systems, memory and lungs and kidneys, in addition to causing chronic poisoning and cancer.

Many countries have therefore enacted laws to subject the collection and disposal of electronic waste to stringent control. Information of Greenpeace shows that in Switzerland, a law was enacted in 1998 to make it mandatory for manufacturers of electronic products to collect and dispose of their products. In the Netherlands, manufacturers are required to collect large electrical appliances and computer products under a law enacted in 1999. And, Japan also passed a law in 2001, whereby consumers are required to surrender refrigerators, air-conditioners, television sets and washing-machines to the relevant manufacturers for disposal.

With effect from August this year, the European Union shall implement the Directive on Waste Electrical and Electronic Equipment, under which manufacturers are held responsible for the collection, separation and recycling of abandoned electrical appliances and electronic equipment. In the United Kingdom, a new environmental protection law will come into effect in 2006, whereby people shall be prosecuted for any illegal disposal of electronic or electrical appliances.

Foreign countries aside, the Chinese Government also started to impose import restrictions on electronic waste as early as 2000. Last year, the restrictions were extended to most second-hand electronic products.

In Hong Kong, however, there is just the Waste Disposal Ordinance enacted in 1996 to regulate electronic waste containing hazardous substances or pollutants. There is no import/export regulation on electronic waste declared

for recycling purposes and also second-hand electrical appliances. This has indirectly encouraged the massive import of electronic waste into Hong Kong, resulting in a very odd phenomenon — the emergence of some 90 electronic waste sites all over the New Territories — which poses a grievous threat to our ecological environment. Madam President, in the Town Planning Board, I often have to handle the issue of temporary land uses, and I must say that this phenomenon will affect our plan on improving the land use planning and landscape of the New Territories.

The imperfection of our legislation has led to the importation of electronic waste from countries with legislative control on this kind of waste. In the case of the United States, for example, more than 4 000 tonnes of electronic waste was imported into Hong Kong during the period from January to July last year. And, between 2001 and 2003, electronic waste was imported illegally into Hong Kong from at least 13 countries for onward transshipment to various mainland cities.

In the past 12 months, most of the unsuccessful prosecutions initiated by the Hong Kong Government were attributable to the lack of clarity in our laws. For this reason, we should mend the loopholes in our laws as quickly as possible lest Hong Kong may be reduced from a Shoppers' Paradise to a Haven of Electronic Waste.

Madam President, in order to prevent any massive influx of electronic waste from Europe following the full implementation of electronic waste recovery by the European Union in August this year, and also to tie in with the commissioning of the Recovery Park in 2006, the Government should, as soon as possible, put in place a package of integrated ancillary measures, including, among other things, the formulation of relevant laws to subject the disposal and import/export of electronic waste to strict control. Besides, an effective recovery system and disposal procedure should also be established to prevent Hong Kong from being used as a reception centre or transit point of electronic waste, lest our image might be affected.

Since the disposal of electronic waste requires exorbitant costs and complex technologies, many European and Asian countries have started to require manufacturers to adopt the principle of product recovery and recycling in the design process as far as possible. I think Hong Kong should follow suit. In addition, the authorities may also consider the idea of requiring manufacturers to provide warranty on the availability of spare parts and accessories. This can achieve additional effects in

PRESIDENT (in Cantonese): Mr LAU, time is up.

MR PATRICK LAU (in Cantonese): Thank you, Madam President.

MR LI KWOK-YING (in Cantonese): Madam President, consumers nowadays have a liking for novelties and trendy goods. Owing to such an atmosphere, electronic waste is the natural consequence in any technologically advanced society. Faced with the threat posed by electronic waste, governments all over the world have formulated their policies on bringing the import/export of electronic waste under stringent control in a bid to prevent damage to the environment.

Unfortunately, the Government of the Hong Kong Special Administrative Region (SAR) has so far failed to put in place any satisfactory policy on handling both local and imported electronic waste, thus making it possible for unscrupulous traders to transport local and even imported electronic waste to mainland provinces and cities by taking advantage of the loopholes in our laws. As a result, Hong Kong, originally a free port of commerce, has become a free port of hazardous electronic substances.

As a matter of fact, Hong Kong lags far behind other countries in respect of the legislation on regulating electronic waste. In many countries, the import/export of electronic waste is already brought under stringent regulation. As mentioned by Mr Patrick LAU, the import of electronic waste has been banned in the Mainland since 2000. In contrast, the SAR Government has been far less active in the regulation of electronic waste. Its only means of regulation is the Waste Disposal Ordinance. Under this Ordinance, import/export permits are required only for such electronic waste as monitors and batteries; all other kinds of electronic waste such as circuit boards and used cell phones can be transported freely into and out of Hong Kong on recycling grounds. As a result, the legislation on regulating electronic waste is reduced to a mere nominal existence.

Loopholes in the law aside, the absence of a satisfactory system for the recovery and disposal of electronic waste in Hong Kong has resulted in a complete lack of control over electronic waste, whether discarded locally or imported from overseas. Currently, the people of Hong Kong discard as many as 1.5 million electrical appliances and electronic products a year, some examples being computers and printers. It is true that since 2002, the

Government and various voluntary agencies have implemented a recovery programme with the aim of transferring used electronic products to those in need in Hong Kong, but so far, the number of electronic products recovered annually has just been some 20 000. This is really a very small number, just a drop in the ocean, when compared with the 1.5 million electronic products discarded annually.

By launching a recovery programme for rechargeable batteries last month, the Environmental Protection Department has taken the first step towards the recovery of electronic waste in Hong Kong. However, it is disappointing to note that no recovery channels have so far been created for other kinds of electronic waste such as dry-cell batteries. The Government has explained that in the case of dry-cell batteries, for example, the costs of recovery are high but the recovery value is very low. It is indeed true that besides dry-cell batteries, many other kinds of electronic waste are also very low in recovery value. But this is definitely not an excuse for refusing to recover these products. Since we know that dry-cell batteries contain heavy metals that are detrimental to the environment, and that they will increase the pressure on landfills, we are obligated to recover these electronic products and encourage consumers to choose other alternatives that are more environmentally-friendly. Any selective recovery of electronic products based on recovery value is definitely not in line with the spirit of product responsibility.

Actually, electronic waste recovery is not necessarily unprofitable. If this was really the case, no unscrupulous traders would have bothered to find the loopholes in the law and transport electronic waste to developing countries for profits. In some countries and places, because of financial needs and technological backwardness, people often have to handle electronic waste with bare hands, without any safety protection. This has inflicted grievous harm on both their health and the environment. Guiyu, a small town in the Mainland, is a good example. The root cause of the electronic waste pollution in Guiyu — in the words of some mainland environmental experts — is that the people of this town have been handling the high-tech products of the 21st century in a much too primitive manner, employing methods of the 19th century. Having said that, I must add that given appropriate technological support, the electronic waste recovery industry may still become a high-tech and high value-added industry. According to the statistics of the International Association of Electronics Recyclers, there are 400 electronics recyclers in the United States. Together, they have an annual turnover of US\$700 million, handling as much as 1.5 billion tonnes of electronic waste a year. One of these recyclers even earned a handsome profit of US\$40 million last year. This is a living example showing

us that even electronic waste recovery can become an environmental protection industry with economic benefits.

In conclusion, faced with the deluge of high-tech products nowadays, the Government must squarely address the problem of how best to handle electronic waste in huge quantities. If the Government turns a blind eye to this problem and fails to put in place a satisfactory regulatory mechanism, and also if it allows Hong Kong to degenerate into a free port of hazardous electronic substances instead of investing any resources in the vigorous development of the recovery industry, then it will not only affect the health of the local people and those living in developing places, but will also smash the image of Hong Kong as a world city.

With these remarks, Madam President, I support the original motion of Mr KWONG Chi-kin.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr KWONG Chi-kin, you may now speak on Mr Tommy CHEUNG's amendment. You have up to five minutes to speak.

MR KWONG CHI-KIN (in Cantonese): Madam President, I wish to thank Mr Tommy CHEUNG for his amendment. As a matter of fact, his amendment and my original motion share the same direction. I advocate that producers should be held responsible, and Mr Tommy CHEUNG's amendment supplements my motion by suggesting that apart from producers, importers and users (consumers, in other words) should also be responsible. I agree to this opinion. Since the amendment and the original motion share the same direction, I shall support Mr Tommy CHEUNG's amendment. Thank you, Madam President.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, I am glad to hear many Honourable Members propose some methods for handling electronic wastes as well as the various methods for handling ordinary wastes in Hong Kong, including their application

of technology, management and industrial use as well as the responsibility of users and producers. I have also heard many Members support the "polluter pays" principle and a product responsibility system. Generally speaking, they strongly support the provisions in the Basel Convention. As for environmental protection industries, many Members have even shown their concern and support from the perspective of employment. In fact, this is the approach of recycling economy, which I have always advocated. However, I also feel very disappointed because I have heard many Members make their speeches just on the basis of some fragmentary press reports on one single incident highlighted by Greenpeace. In the websites of both the Environmental Protection Department (EPD) and the Environment, Transport and Works Bureau, a lot of information is available, but no one seems to have read it. Maybe we need to improve our websites, and before we have the next debate on a relevant motion, maybe we do need to highlight such information, so that Members can make reference to it.

Many Members said they were very disappointed. So did Mr LEUNG Yiu-chung. But I am very disappointed with him too, because every time when I deliver my reply, he would invariably be absent from this Chamber without listening to my reply. Therefore, every time he does not know what the Government has done. He said that we had done nothing in recovering wastes, that we just planned to dispose of all the rubbish by incineration, with absolutely no inclination of recycling them. He was also of the opinion that the introduction of a levy was not an efficient approach, and the continued use of landfills was just a negative measure. As a matter of fact, the "polluter pays" principle is very important because human beings are dictated by their own nature. It is by no means easy to change one's own character. For this reason, it is commonly agreed by all those involved in social work and anthropological studies that the adoption of financial means is effective in initiating changes to human behaviour. Therefore, I hope Members can have a better understanding of the realistic situation through participating in more discussions and browsing our websites more so as to obtain more information.

First, I would like to respond to the aspect on our legislative control over the import and export of electronic wastes. According to the Waste Disposal Ordinance, electronic wastes that contain hazardous substances or that have been contaminated by hazardous substances are hazardous electronic wastes. Schedule 7 of the Ordinance has listed some general hazardous electronic wastes, such as old computer monitor panels, cathode-ray tubes in television sets, waste

batteries as well as all waste parts that contain mercury, lead, nickel and other toxic heavy metals. They are all included, not just the two items (including computer monitor panels) that I have just read out. The import and export of all these wastes are regulated by the granting of permits.

The above hazardous electronic wastes contain toxic hazardous substances, and they do adversely affect human bodies and the environment, so they are subject to control by the Basel Convention. However, all the signatories of the Basel Convention exercise regulatory control over the import and export of such wastes. China is one of the signatories, but the United States, being a major economic country, is not. Many of our wastes have their origin in the United States. European countries are signatories. So there are less waste imported from Europe. The Basel Convention also encourages recycling and re-using. Therefore, recyclable products are not subject to regulation. However, such products must not contain toxic or hazardous substances. Therefore, we can see that the regulatory control is rather comprehensive. In Hong Kong, the regulatory control of the Convention is implemented through the Waste Disposal Ordinance. Before the relevant products are imported or exported, application for permits must be lodged with the EPD. Failure to comply with such a requirement constitutes a breach of the law, and the offender will be liable to a fine of \$200,000 and imprisonment for six months. Repeated offender will face a maximum penalty of \$500,000 and imprisonment of two years. During the past three years, we have not issued any import/export permit for any electronic wastes that are toxic, contaminated or that contain hazardous substances.

Last week, we tabled the Waste Disposal (Amendment) Bill 2005 which seeks to incorporate the Basel Ban into the Waste Disposal Ordinance. This move conveys a strong and effective message to the international community that Hong Kong is committed to enforcing this international ban. In November 2004, we also issued some regulatory information on second-hand electrical appliances, electronic products and toxic and hazardous electronic wastes, in which a series of guidelines was formulated for the reference of everyone.

With regard to legislative control over the handling of electronic wastes, the dust, noise, sewage and waste generated by electronic waste workshops are all subject to regulatory control by four ordinances, namely, the Air Pollution Control Ordinance, the Noise Control Ordinance, the Water Pollution Control Ordinance, the Waste Disposal Ordinance and the relevant subsidiary legislation.

Besides, workshops handling dismantled electronic wastes that are classified as chemical wastes (such as cathode-ray tubes in television sets just mentioned by us) have to apply for a licence. The design of such workshops must strictly comply with environmental protection requirements, and the operators have to submit an operation proposal on the relevant workshop to describe in detail the standards of its *modus operandi*, management, facilities, training, environmental protection and safety, and so on. The EPD will regularly dispatch its staff to inspect such licensed workshops, and it will demand the licensees to submit reports in accordance with the licence conditions, so as to ensure that the operation of such workshops meets the required standards. Operators who fail in compliance are liable to a fine of \$200,000 and imprisonment of six months, and repeated offenders may face a fine of \$500,000 and imprisonment of six months.

Insofar as we understand it, many private lands which store electronic wastes in open air are old leased agricultural lands. The block lease terms of such lands have not stipulated that such private land lots cannot be used for open storage purpose. Therefore, private land lots in this category have not violated their lease terms. Of course, if government lands are illegally used for storing such electronic wastes, the Government may take action by invoking the Land (Miscellaneous Provisions) Ordinance.

Besides, according to the provisions of the Town Planning Ordinance, the land use/development in all rural development permission areas, unless already existed before gazettal of the relevant statutory plan or is a usually approved land use, or has already secured the planning permission of the Town Planning Board (TPB), is an illegal development. The Planning Department may take enforcement and prosecution actions against such illegal development in accordance with the Ordinance.

With regard to the regulation over the handling of electronic wastes classified as chemical wastes, the EPD has issued, in accordance with the provisions of the Waste Disposal Ordinance, a series of guidelines for compliance by collection agencies in handling wastes. To date, this measure still yields some effect.

Under the Basel Convention, the authorities concerned in Hong Kong have been working with countries from which the wastes are exported, and they have also reached a consensus with the relevant mainland enforcement departments

for the establishment of a notification and co-operation mechanism in a bid to crack down on illegal transfer of hazardous electronic wastes. In June 2003, the EPD, the Customs and Excise Department (C&ED), the Environmental Protection Bureau and the mainland Customs had jointly conducted an operation to crack down on illegal transfer of electronic wastes. The EPD had also worked with the Hong Kong Marine Police and the C&ED to intercept hazardous electronic wastes which were being illegally transferred. In 2004, we conducted altogether 83 joint operations against the import of electronic wastes, in which a total of 1 500 tonnes of hazardous electronic wastes were seized. In this connection, the EPD has issued 52 notifications of prosecution to the relevant importers, and the majority of the illegally imported wastes has already been returned to the places of origin for proper handling in accordance with the provisions of the Basel Convention.

With regard to regulatory control over the export of electronic wastes, the EPD and the Marine Police have also conducted some joint operations, resulting in successfully issuing nine summons. The offenders were convicted of exporting computer monitor panels and sentenced to imprisonment of two months and fined \$5,000 and \$10,000 respectively.

We have many overseas partners, such as Japan, South Korea, Singapore, and the Netherlands, Australia, and so on. We also have some joint intelligence networks to facilitate joint raids on cross-boundary transfer of hazardous electronic wastes.

With regard to regulatory control over electronic waste dismantling workshops, the EPD has successfully issued since 2004 nine summons to workshops in breach of the requirements, seven of which were convicted, while the proceedings of others are still ongoing. The EPD has acted jointly with the Planning Department since August 2004 in launching investigations against the above workshops which are situated within the rural development permission areas in the New Territories. The findings of the investigations reveal that there are 21 illegal developments as defined by the Town Planning Ordinance.

Apart from prosecutions, many Honourable Members have mentioned in the debate a product responsibility scheme and a recycling system. Part of Mr KWONG Chi-kin's motion deals with a product responsibility scheme, a recycling system and the electronic waste recycling industry. The recovery rate of old electrical appliances and electronic products reached 67% last year. Old

electrical appliances and electronic products that could not be recovered and had to be transported to the landfills amounted to approximately 18 000 tonnes, accounting for 0.3% of the total amount of solid waste of last year. We shall actively seek to implement the product responsibility scheme and establish a recycling system. The amendment moved by Mr Tommy CHEUNG proposes that, under the product responsibility scheme, producers, importers and users should share the responsibility after the products have been used. We agree to this point. Producers may manufacture the products by adopting "green production", thus reducing the use of toxic and hazardous materials. This will enable the people to minimize the conflict with the environment in the final disposal of the products.

There are relatively less producers in Hong Kong. Importers and retailers also have the responsibility in choosing the products for import. Of course, there are certain balanced ways of handling the issue. In the debate, some Members mentioned that, after standardizing the specifications of certain products (that is, the materials used by the products), we may reduce the types of products available. But in a shopping paradise like Hong Kong, any attempt to standardize products will inevitably face pressure. So, insofar as the product responsibility scheme is concerned, we shall first launch some pilot projects. The first project is the rechargeable batteries recycling scheme. Under this scheme, importers of such products have to meet the cost. As there are no facilities for recycling rechargeable batteries in Hong Kong, all the importers have to contribute some money for the establishment of a comprehensive recycling system by the Government. At present, recycling bins have been placed at hundreds of supermarkets and electrical appliance shops on a free-of-charge basis. Some Members said that the effectiveness of the scheme had been far poorer than expected. In fact, what has happened is exactly the opposite. Our experience of last year showed that the scheme had achieved great effectiveness. So we have now extended the scheme by introducing hundreds of additional recycling points in Hong Kong and Kowloon and the response has been very good too. In the process of formulating responsibility schemes for recycling products, all the countries would first launch them as pilot schemes so as to test the response of the people. Such schemes are worth launching even if the people's response is just as low as several percentage points. As so many people are willing to participate in the pilot scheme even when it is entirely voluntary, so when the responsibility scheme is officially launched, it is definitely practicable. We may also tell the importers or retailers that the consumers have shown positive response.

With regard to the disposal of wastes by the people, we are considering some degree of public involvement. For example, with regard to the recycling of tyres, apart from the parts to be played by producers and importers, we hope to incorporate an incentive into the product responsibility scheme — that members of the public may get some reward at delivering abandoned tyres to dedicated collection centres. This is similar to the old practice in our childhood days when we got refund of the deposit for the soft drink bottles after returning them to the shops. In this way, we may enable users to participate in the scheme. We have made reference extensively to the experience of overseas countries, and we are still studying the issue. With reference to domestic and commercial electrical appliances in Japan, they have a recycling law. Initially, they had planned for a recycling rate of 40% to 60%. However, after implementing the scheme, they found that the rate could reach 90%. Therefore, with rapid technological advances, we feel that we can make reference to their recycling law and adapt it.

Regarding electronic wastes, starting from January 2003, the EPD has commissioned the Caritas Hong Kong and the St. James' Settlement to implement a pilot scheme for recycling computers and electrical appliances. We first assess the operational difficulties in re-using the collected computers and electrical appliances. Next, we proceed to study how we can support the long-term implementation of the scheme from the perspectives of finance and other policies, so as to develop some long-term strategies for handling waste computers and electrical appliances, and at the same time, see how much the people support the scheme. Mr LEUNG Kwok-hung said earlier that an explosion had taken place at his home in using an old electrical appliance picked up from the street. This was indeed a dangerous practice. Unfortunately, Mr LEUNG Kwok-hung is not in this Chamber now. In fact, he can go to a Caritas Centre or the St. James' Settlement to request provision of some old electrical appliances. Each year, they collect and process as many as over 40 000 items of re-usable electrical appliances, all of which would be given away to the needy after they are repaired by people of these organizations. As for electrical appliances unsuitable for repairs, they would sell the parts and materials to recycling firms, and they can obtain usable parts and materials in the process. The EPD has witnessed the success of this scheme. So we hope to establish an electrical appliances and electronic equipment regional collection centre at the Kowloon Bay Refuse Transfer Station in the fourth quarter of 2005, so as to

complement the overall source separation of waste recycling scheme which has been launched. This latter scheme has now seen participation by dozens of housing estates. Apart from collecting plastic bottles, metal cans, aluminum cans and paper, we shall also collect clothing, shoes, socks and electronic products on a regular basis (such as weekly or monthly). We shall make arrangement to collect different categories of things at different periods of time, so as to encourage the participation of the people. The response has been very enthusiastic. Therefore, if we set up an electronic equipment collection centre, the people will make good use of it.

With regard to recycling electronic wastes, we would collect over 6 000 tonnes of recyclables every day. At present, we rely on the recyclers for the collection of such products. There are altogether over 460 such companies, directly employing a total of 3 500 persons. Of course, the operating costs in Hong Kong are higher than those in the Mainland. Therefore, after some simple separation and packaging procedures, about 90% of the collected recyclables will be transported directly to the Mainland or other places for recycling. In 2004, the export value of recyclables was about \$3.4 billion. In our opinion, if more such materials can be recycled in Hong Kong, their value will rise substantially and more employment opportunities will be created. For example, if a recyclable product can become a semi-finished product, or a re-usable product, it will have a very good value. However, one problem has emerged in Hong Kong, which was also mentioned by an Honourable Member just now. A recycler of electronic products had visited Hong Kong, but he could not set up a plant here because of the problem of emission of exhaust air. As a matter of fact, there are a lot of advanced technologies that can be employed for processing large quantities of electronic wastes which comprise mainly of circuit boards. The process mainly involves the separation of metals, namely, gold, silver, potassium, nickel and lead. We have also studied the proposal in great detail. The problem currently faced by Hong Kong is, though we feel that there is a lot of rubbish in Hong Kong, the great share being electronic wastes, companies in our recycling industry still cannot operate in a way that can enable them to enjoy economies of scale. So, to a certain extent, as mentioned by several Members, since our production costs are rather high, especially the premium and our staff costs, the adoption of advanced technologies may directly reduce the manpower requirement. Therefore, we have to consider the issue from several perspectives: Is it necessary for the Government to provide subsidies in this regard, thus making the recycling industry a viable industry?

We have actively planned for the establishment of the 20-hectare Recovery Park in Area 38 of Tuen Mun, in the hope of providing some matching facilities for environmental protection industries in the long run. We shall also support the development of such industries by way of providing concessionary premiums. Apart from all this, we also need to achieve economies of scale, that is, we need to have a sufficient quantity of wastes. For example, do we need to import old computers or old electronic products, thereby enabling the environmental protection industries to achieve economies of scale? All these subjects are being studied by us because we must assure the recyclers of a steady supply of wastes before they can commit to making long-term investments.

As for the product responsibility scheme, we hope to consider providing financial incentives to the entire recycling industry, so as to promote the recycling of products. As the products have already included a fee, so the recycling process is made financially viable.

Apart from our aspiration of seeing that the development of the environmental protection industries, I believe everyone would also like to see that they can bring about some positive effects in the creation of employment opportunities. The recycling industry will play a positive role in the long-term development of Hong Kong. The EPD and the Environment, Transport and Works Bureau are actively taking forward relevant initiatives. In conclusion, we have adopted the same stance as Honourable Members do. Today, I am very glad indeed because we do strongly agree to both the original motion and the amendment. We also hope that, when we put forward proposals in different areas in the future, for example, if we need to put in place some special policies, be they related to legislation or administration, or should they be related to the policy aspect or environmental protection industries, we can all enjoy the support of Honourable Members in an open, transparent and fully informed manner. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Tommy CHEUNG to Mr KWONG Chi-kin's motion, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Mr KWONG Chi-kin, you may now reply and you have seven minutes 38 seconds.

MR KWONG CHI-KIN (in Cantonese): Madam President, I hope it will not take that long. I shall be as brief as possible.

The meeting today has continued for a very long time. I am most grateful that, although it is already so late in the night, many Members are still here for the debate. Nineteen Members in total have spoken on my motion. The enthusiasm demonstrated by them is indeed beyond all my expectation, good proof of their concern for the motion topic.

I wish to draw a simple conclusion. I feel that Members present are quite unanimous in their opinions. First, everybody noted that electronic wastes are toxic and should not be disposed of indiscriminately. Second, the opinions of most Members were very different from those put forward by the Secretary a moment ago, that is, nearly all Members were of the view that there are loopholes in our laws, especially in the regulation on the import and export of electronic wastes. The Secretary naturally made some fair remarks, and she even cited some subsidiary legislation, explaining that while import/export monitoring is available under the law, there is also a system of import/export permits. But why is the general perception of Members so very different from the positive picture painted by the Secretary just now? This really warrants thorough consideration by the Government.

Even though Members (including myself) may be incorrect over some technicalities, our concern is nonetheless still very important. We are

concerned about whether or not Hong Kong will be turned into a dumping ground of electronic wastes following the tightening of legislative control by the European Union. I am delighted to hear from the Government that the Basel Ban will be written into the laws of Hong Kong, and this can dispel our worry that Hong Kong may be turned into a collection site of electronic wastes. Then, a logical inference is that since electronic wastes are toxic and their import and export is strictly controlled, it stands to reason to conclude that we should be obligated to recover and properly dispose of the electronic wastes generated locally in Hong Kong. Members' opinions in this respect are unanimous.

In contrast, the Secretary's speech was lengthy and is thus difficult to summarize. She is an expert in this field, and I simply cannot argue with her. Personally, I very much respect Secretary Dr Sarah LIAO and do not think that there should be any question about her sincerity as an environmentalist. However, she appeared rather upset by the criticisms of Members and Greenpeace, which is just a non-government organization. I do not think that she should be so upset anyway. Honestly speaking, I never expected that so many Members would speak, nor did I anticipate any bad feelings from the Government. I have always thought that both the Government and the people should share the same opinions on this issue. Am I correct? We have made criticisms because we hope that the Government can make improvements. Even though the Government is already doing very well, can it do still better? This is actually what I mean.

If the Government is already doing very well, how can one isolated incident make all the 19 Members feel so worried? I agree that the criticisms of Greenpeace are not fair. However, I am very grateful to Greenpeace for conducting a study which has aroused our concern, and most Members have quoted this study. I was actually prompted by this study to move my motion. I had some discussions with the people of Greenpeace, and I studied many of their opinions. Some criticisms made by this non-government organization are not unfounded. The isolated incident it mentioned was also true, not fabricated. Is it really true that an isolated incident cannot illustrate the problem? Many Members mentioned earlier that there are 91 such sites in the North District. If the Government can now inspect each one of them, will it still say that this was just an isolated incident? It will at least find that the problem is found in all these 91 sites.

The stacking of hazardous wastes in agricultural lots in the New Territories really warrants our concern. Why are all these wastes stacked in the sites? The answer must be that people are waiting for opportunities of smuggling. I will not blame the Secretary, for this problem is outside her portfolio. However, I must still say that I strongly disagree to her remarks just now. Although this is outside her portfolio, the Secretary is after all the representative of the Government here. She seems to be saying that the Government cannot possibly do much to deal with the open stacking of wastes because it is not an offence to stack any articles in old scheduled agricultural lots and private lots. I of course also know that it is not illegal, but the stacking of articles in open areas will definitely lead to problems. Should the Government thus explore whether there are any remedies? Although it is not illegal, people's health will suffer immensely. But the Government simply says that it cannot do anything. In this way, how can it protect the health of people?

What is the purpose of stacking huge quantities of electronic wastes in the sites? According to the Secretary, the authorities did initiate quite a number of prosecutions, and she also pointed out no export permits had been issued over the previous three years. But all this cannot change the fact that electronic wastes are still stacked in open areas, in blatant violation of the law. But is it really true that the Government cannot possibly do anything? I do not want to make any severe criticisms, but can the Government adopt a more positive and constructive attitude?

Mr LEE Wing-tat may think that my criticisms are very severe, but I do not think so. They are already very mild because I have tried to tone them down as much as possible. *(Laughter)* I do not think that Secretary Dr Sarah LIAO should be the only one to blame, but there is definitely something wrong with the attitude of the Government. The agricultural lots in the New Territories should not be used improperly for the stacking of containers and toxic electronic wastes. The stacking of containers is already bad enough as it affects the landscape and "fung shui", but the stacking of electronic wastes is even worse, for they are toxic. The Government simply should not sit on the problem by saying that it is not against the terms of these old scheduled agricultural lots.

I have broken my promise. I promised that I shall be very brief. Madam President, I hope that the Government, the Legislative Council, non-government organizations and members of the public can all join hands to

remove the hazards we are facing, that is, the hazards posed by electronic wastes. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr KWONG Chi-kin, as amended by Mr Tommy CHEUNG, be passed.

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

(Members raised their hands)

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

(No hands raised)

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

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 1 June 2005.

Adjourned accordingly at twenty-six minutes to Eleven o'clock.