

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 13 July 2006

The Council continued to meet at Nine 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.S.,
S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, S.B.S., 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, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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 TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

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

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

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

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

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

THE HONOURABLE MA LIK, G.B.S., J.P.

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is lacking now. Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): A quorum is now present. The meeting shall now start.

BILLS

Council went into Committee.

Committee Stage

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

FINANCIAL REPORTING COUNCIL BILL

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

CLERK (in Cantonese): Clauses 1, 4, 6, 8, 9, 11, 12, 15, 16, 18, 19, 20, 23 to 27, 29 to 33, 37, 38, 42, 43, 45, 46, 55, 57, 58, 60, 64 to 73, 75 and 78 to 81.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 7, 10, 13, 21, 22, 28, 34, 35, 36, 39, 40, 41, 44, 47 to 54, 56, 59, 61, 62, 63, 74, 76 and 77.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now as printed in the paper circularized to Members. I would like to briefly talk about the major amendments.

I move that clause 2 of the Financial Reporting Council Bill be amended to the effect that the definitions of "associated undertaking" and "relevant undertaking" will include "subsidiary undertaking" as referred to in Schedule 23 to the Companies Ordinance. I also propose the addition of the definition of "public officer" in clause 2 to facilitate the interpretation of the relevant clauses of the Bill.

Clause 7(1) of the Bill provides that the Financial Reporting Council (FRC) shall comprise not more than 11 members. In addition to two *ex officio* members and three members appointed by the Chief Executive based on nominations by the Securities and Futures Commission (SFC), the Hong Kong Exchanges and Clearing Limited (HKEx) and the Hong Kong Institute of Certified Public Accountants (HKICPA), the Chief Executive can appoint four to six other members to the FRC. We have accepted the view of the Bills Committee, and we will provide for a further guideline to specify that the Chief Executive shall appoint these other members from amongst persons with professional experience in accounting, auditing, finance, banking, law, administration or management. Also, similar amendments will be proposed to clause 39 of the Bill in respect of the appointment of the Financial Reporting Review Panel.

Clause 34 provides that the Magistrate may issue a warrant authorizing entry by investigators to specified premises to search, seize and remove the relevant records or documents. In general, the records or documents removed may be retained for a period not exceeding six months beginning on the day of their removal for investigation purposes. The amendment serves to provide that if the relevant records or documents are required for any criminal proceedings or any proceedings before the Market Misconduct Tribunal or any disciplinary proceedings under the Professional Accountants Ordinance, the records or documents removed may be retained for such longer period as may be necessary for the purpose of such proceedings.

Clause 35 provides for the preparation of an investigation report by the Audit Investigation Board after the completion of an investigation. The amendment provides that if, before the investigation report is adopted by the FRC, any person named in the report may be adversely affected by the publication of the report, the person shall be given a "reasonable opportunity of being heard", similar to the protection provided under common law. The FRC, when deciding whether or not to publish an investigation report, is required to take into account the following considerations: (1) Whether or not the publication may adversely affect any criminal proceedings, any proceedings in an inquiry of the Market Misconduct Tribunal, or any disciplinary proceedings under the Professional Accountants Ordinance; (2) Whether or not the publication may adversely affect any person named in the report; and (3) Whether or not the report should be published in the interest of the investing public or in the public interest. Having considered the views of some deputations and legal academics on hearsay evidence, we will carve out from the amendment the admissibility of the investigation reports in criminal proceedings as evidence of the facts stated therein. This amendment regarding the investigation report also applies to clause 47 which provides for the preparation of an enquiry report by the Financial Reporting Review Committee (FRRC) after completion of an enquiry.

Clause 40 provides that the FRC may appoint a FRRC for the purpose of enquiring into accounting irregularities in the financial report of a listed entity. The amendment explicitly stipulates that the FRRC shall consist of a Convenor of the Financial Reporting Review Panel (FRRP) and at least four other members of the FRRP, and that the FRRC shall act in accordance with its specified terms of reference. We accepted the view of the Bills Committee and will propose an amendment to require the FRC to notify the listed entity concerned of the names of the members of the FRRC, with a view to enhancing the transparency of the enquiry.

In response to the view of the Bills Committee, we have made reference to the relevant provisions in the United Kingdom Companies Act 1985 and proposed amendments to the drafting of clauses 49 and 50. These amendments seek to reflect that the FRC may, upon the completion of an enquiry, give a notice to the relevant listed entity requesting it to make voluntary revisions to its financial report. If the listed entity fails to revise its report in accordance with the notice or give a satisfactory explanation in respect of the report, the FRC may apply to the Court for a declaration of non-compliance in the relevant

financial report and for an order requiring mandatory revisions to the financial report by the listed entity.

Clause 51 includes secrecy provisions prohibiting FRC members and other persons who perform functions of the FRC from disclosing information which comes to their knowledge in the course of investigation except for the purpose of performing any function of the FRC or under specified circumstances when they are exempted from such requirement. Having considered the view of the Bills Committee, we will amend subclauses 3(b)(ix) and 3(c), so that the FRC may, under specified circumstances, disclose information to the Official Receiver and the liquidator or provisional liquidator of the listed entity concerned.

Under clause 52, if, in the course of performing a function of the FRC, a person is required to consider a matter in which he has an interest, he shall immediately disclose the nature of the interest to the FRC. The amendment to subclause (3) seeks to more clearly reflect what interest of a person in a listed corporation or collective investment scheme will constitute an "interest" that must be disclosed. The amendments to subclauses (5) and (6) will state explicitly that if the person concerned is to be excluded from a meeting of the FRC after a disclosure of interest, the person is not to be given any document or record of the meeting. At the suggestion of the Bills Committee, we also propose the addition of subclause (6A) to specify that if it is determined that the person concerned is not to be excluded from a meeting of the FRC, the FRC shall notify the auditor, reporting accountant or listed entity under investigation of such determination to ensure procedural fairness.

We propose to amend clause 53 to the effect that a person who provides information to the FRC in compliance with the requirement under the ordinance and who performs a function of the FRC in good faith will be exempted from any civil liability incurred.

Clauses 61 to 64 are consequential amendments to the Companies Ordinance, which empower directors of a company to voluntarily amend accounts. The Bill proposes to add sections 359A(3) to (5) to empower the Chief Executive in Council to make subsidiary legislation to provide for the application of the Companies Ordinance in relation to revised accounts and the relevant reports. We propose to add section 359A(6) to the Companies Ordinance, so that the subsidiary legislation may provide for the penalty for

non-compliance with the regulations or the Companies Ordinance in respect of revised accounts and the relevant reports.

Clause 77 includes consequential amendments to Schedule 1 to the Companies Registry Trading Fund, subsidiary legislation, to more clearly spell out our policy intent, so that the Companies Registry Trading Fund can make contributions to the FRC, whether in cash or in kind, to sponsor the FRC in performing its functions.

Madam Chairman, all the amendments have the support of the Bills Committee. I hope that Members will endorse the amendments moved by me. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 3 (see Annex II)

Clause 5 (see Annex II)

Clause 7 (see Annex II)

Clause 10 (see Annex II)

Clause 13 (see Annex II)

Clause 21 (see Annex II)

Clause 22 (see Annex II)

Clause 28 (see Annex II)

Clause 34 (see Annex II)

Clause 35 (see Annex II)

Clause 36 (see Annex II)

Clause 39 (see Annex II)

Clause 40 (see Annex II)

Clause 41 (see Annex II)

Clause 44 (see Annex II)

Clause 47 (see Annex II)

Clause 48 (see Annex II)

Clause 49 (see Annex II)

Clause 50 (see Annex II)

Clause 51 (see Annex II)

Clause 52 (see Annex II)

Clause 53 (see Annex II)

Clause 54 (see Annex II)

Clause 56 (see Annex II)

Clause 59 (see Annex II)

Clause 61 (see Annex II)

Clause 62 (see Annex II)

Clause 63 (see Annex II)

Clause 74 (see Annex II)

Clause 76 (see Annex II)

Clause 77 (see Annex II)

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

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of the Secretary's amendments.

As I mentioned last night, we convened a total of 20 meetings during the scrutiny of the Bill and the authorities have accepted many of the amendments proposed by Members. I am grateful to the authorities for their receptiveness.

I wish to say a few more words on the Secretary's amendment to clause 7(1)(c)(iv). We hope that some sort of regulation can be set down for the appointment of the four to six lay members of the FRC by the Chief Executive. Chairman, it is because there are still more than 1 000 members of various committees who have served in their present capacities for more than six years, and over the years, the authorities have given us the impression of nepotism in making appointments. Even the members recently appointed to the HKEx and other organizations are selected from among the same old group of people. We therefore hope that some channels can be established for the nomination of appointees. But the Secretary did not accept this proposal. In the end, the Secretary chose to adopt the drafting approach of the Deposit Protection Scheme Ordinance, specifying that appointees shall be selected by the Chief Executive "from amongst persons who either because of their experience in accounting, auditing, finance, banking, law, administration, or management, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for such appointment".

Chairman, this is just the same as setting down no criteria. Since the scope is so wide, it can cover practically any candidates favoured by the Chief Executive. I think this is largely meaningless. Although we have no alternative but to pass the Bill today, I nonetheless remain convinced that some criteria should be set down for this power of making appointments. Such criteria should not be limited to this ordinance. Rather, all future appointments must be seen by the public as fair, impartial and unbiased in any way, not reflecting the personal liking of the Chief Executive or any top government officials. I hope that the authorities can go back and consider this message.

Yesterday, I already expressed my worry about the people appointed on the basis of such criteria. And, I share the worry of Mr Albert HO. If the wrong persons are appointed, the appointees will only harbour one another, making it impossible for the FRC to perform successfully. If the public and

other countries find out that the so-called enhancement of corporate governance claimed by this international financial centre is just empty talk and weak in effect, great trouble will ensue. I therefore really hope that, first, thoughts can be given to regulating the appointment mechanism in the future; and, second, future appointees can show us, as mentioned by Mr HO yesterday, that they can really "hunt the big tigers".

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you need to speak?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I would like to respond to what Ms Emily LAU said earlier. It has been the Government's policy to make appointments on a person's ability, rather than his closeness to the Government. In making appointments, we will certainly consider their experience, such as their professional experience in accounting and corporate management. Ms Emily LAU said that we always tended to appoint the same group of people. That is because we must identify people with experience to be members of such an important body. Would a fresh graduate of university have the ability to take up this role? So, please do not take it to heart seeing the same names. It is not true that the Government often turns to this group of people for assistance, as suggested by some Members. That is not the case. Our consideration is purely based on their experience and their commitment to public service. So, I can assure Members that this has been the policy of the Government and will remain so in the future. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): I wish to make a very brief response only. The authorities must of course appoint people with professional expertise and

experience in order to make sure that the criteria are met. But if only such a small number of people in Hong Kong are considered experienced enough, if only the same group of 10 or 20 people are appointed over and over again, Hong Kong will be very miserable, and one will simply wonder how it can be called an international financial centre. I hope that the Government can cast a wider net in making appointments. We in the various political parties and groupings will provide more lists of candidates for the Government's consideration. The Government should cast a wider net instead of always appointing those who frequently dine and play ball games with government officials.

MR SIN CHUNG-KAI (in Cantonese): Chairman, the Government and the Secretary should really consider the Nolan's Principles of appointment adopted in the United Kingdom. Although such appointees are not salaried employees, they must still be appointed through open recruitment. The Secretary's radar does not cover a very wide scope; as a result, beyond the range of his radar, there are bound to be people who are interested in serving the community. An adoption of the Nolan's Principles will give them a channel to volunteer for the FRC. The Government can then select the suitable candidates from among the volunteers. But a selection process may then be required.

Why has this happened in the United Kingdom? The reason is that during the final few years of the prolonged Tory rule spanning 16 whole years from Mrs THATCHER to John MAJOR, the British Government has become very corrupt. Therefore, although their government was elected (The incumbent Chief Executive is even worse as our Government is not elected), the British still started to demand the establishment of such a mechanism for appointment of public office-bearers. Consequently, the Parliament formulated a mechanism based on the so-called Nolan's Principles. Members may browse the website and they will find out a report is published annually. Actually, about two to three months ago, we also discussed such an appointment system at a certain meeting, but the Secretaries present all focused on their respective portfolios instead of looking at the overall situation. Such a more liberal system can in fact bring forth revolutionary changes, training up more talents and enlarging the radar scopes of all Secretaries and even the Chief Executive. In our society, any appointee who is a bit more outspoken at the meetings of his committee may well have to leave even before his six-year term of office expires. The Secretary is smiling, so he obviously knows that things are like this. I believe the Secretary should really consider altering the present system of appointment.

The Secretary can actually look at the situation the other way round. Suppose only committee members are vested with the power of monitoring the performance of administrative staff, new appointees will definitely ask questions on many issues and they will want to know the answers in detail. But those who have served for a very long will take everything for granted. Chairman, although this issue has been discussed many times before, there has been no outcome. The Secretary still prefers using the "old batteries".

I so submit.

MR ALBERT CHAN (in Cantonese): Chairman, I originally did not intend to speak on this issue. However, I was startled at hearing the Secretary say that appointments were based only on abilities instead of closeness of relationship. To begin with, the Secretary's claim flies in the face of the truth. Second, I do not know whether his claim will contradict the Chief Executive's affinity theory.

For many years, the Government has been giving people a strong impression that the system of appointing committee members is just a mechanism of "pie sharing", especially when it comes to the financial sector. By "pie sharing", it is of course meant that those on intimate terms with the Government are accorded priority. Besides, the whole system is also like an old men's club. As pointed out by the Secretary, appointees may be old men with rich experience in the financial sector. Many retirees of certain companies are appointed. After the expiry of their terms of office, they will be reappointed and they will be reappointed to higher positions. Besides, many of the appointees have very close connections with the families of certain plutocrats in Hong Kong and some of them were even the directors of the consortia concerned. People thus think that this is simply a transfer of benefits in disguise, not only in the real estate sector but also in the financial sector.

There is a promising young man sitting beside the Secretary. This young man may well make a mark in the Government in the future. However, we can rarely see any young people like him among the members of the committees connected with the financial sector. The Secretary has remarked that appointments are based on abilities. It is indeed true that in some cases, a handful of university lecturers or senior lecturers are appointed as members. Speaking of financial expertise, since there are experts in academic institutions and as much as tens of thousand dollars or even \$100,000 a year can be paid to

the members of the committees concerned, why does the Government not appoint a greater number of such academics, given its sole emphasis on abilities?

The Town Planning Board (TPB) has seen quite a drastic change over the past few years. In the past, the TPB liked to appoint the employees of companies or consultancy firms directly or indirectly related to certain consortia. However, there has been some degree of liberalization since the last two terms, more academics are now appointed. Apparently, this can at least give people the impression that these academics are not so directly connected with any consortia. We of course know that certain academics are in fact the spokesmen for large consortia. The views expressed by a couple of academics on Route 3 and Route 10 at the relevant panel meetings sounded very objective, but all of us knew very well that all their arguments were meant to protect the interests of Sung Hung Kai.

When it comes to the financial sector, if the Secretary truly insists on and believes in the principle of making appointments based on abilities, and if he truly wants to implement this principle, I hope that he can include more academics on the list of appointees. His failure to do so will be tantamount to slapping the eight universities in Hong Kong across the face, or an insult to these institutions and their academics. It will be the same as saying that all these institutions and academics do not even compare with those on intimate terms with the Government. And, people in the financial sector will also think that the appointees do not possess any special expertise. Speaking of abilities, I suppose Mr CHIM Pui-chung, who is not yet here this morning, may not necessarily agree with the Secretary entirely, right? The reason is that the Government has never appointed him to any committees connected with the financial sector over all these years. Chairman, I do not think that Mr CHIM will buy the Secretary's arguments just now.

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

MS EMILY LAU (in Cantonese): Chairman, the Secretary has said that great importance is attached to experience and appointing people on the basis of ability. As Mr Albert HO has said, there should be a larger number of people with abilities than this. There are already more than 1 000 people who have served more than six years and the number in the past used to be more. Some

of these people might serve a term of a few decades. Earlier on Mr Albert CHAN said that some of the members in some advisory bodies in the financial sector have been there for more than 20 years. He has also said that they can do this as long as they are representatives of the sector. This is simply unfair.

Chairman, the authorities have set down a rule themselves, that is, the so-called "six-six" rule. But do the authorities not contradict themselves when they lay down such a requirement? If there are so few talents in Hong Kong and candidates will have to be looked for appointment to these committees after six years, why is such a rule laid down? If we go out and consult people of the sector of their opinion about this, we will only shake our heads when we hear their views.

Mr SIN Chung-kai pointed out just now that the Panel on Financial Services of this Council had discussed this issue recently and he was right in saying that. We can see an example in the Listing Committee of the HKEx where some people really have not abided by this rule and they have been reappointed repeatedly. Our Honourable colleagues therefore call it inbreeding, which means those who are close to each other are allowed to serve there like forever and a day. Hong Kong is a cosmopolitan business city and we say that we have a level playing field, but what we have now is totally no good to us. I therefore hope that the Secretary will listen to our views, and what we say is backed up by figures. As I said yesterday, as at March 2005, of the some 7 000 people there, there are still 1 408 people whose term of office exceeds six years. Why? I hope such things will not happen when appointments are made on the next occasion, though such things are not prescribed in the existing laws.

Apart from this six-year rule, the requirement about six committees is also very important. These people are all very busy and if they are asked to join many such bodies, this could spell trouble. Since the Government identifies candidates from such a small pool, it is hard to find the right persons.

Chairman, I notice that recently the SFC has stated that it could not find a chairman for it. This is reported in the media. I am against LEE Yeh-kwong as the chairman. I have talked about this many times. As they could not get the right person for the job, so they asked LEE Yeh-kwong but he was not willing to take up the job. Then they had to beg Marvin CHEUNG to take up the job. These people are all members of the Executive Council. They have all taken up many posts and some of them like to play ball games and they may

be too busy playing these and so they cannot serve in these committees. This will not do. I hope the authorities will really be more open-minded and be convinced that there are still thousands of professionals in Hong Kong who can help and certainly they are not limited to such a handful of people.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Does the Secretary for Financial Services and the Treasury wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, let me say a few words in response to Members' points one by one. I would like to tell Mr SIN Chung-kai that the Government often receives letters of self-nomination. We have dealt with these letters very seriously. If Members know anyone who, in their view, has the talent in this respect, they are very much welcomed to give us his name, and we will consider it with an open mind. What I would like to say is that we do not just choose from among our friends and "playmates". As far as I can remember, absolutely none of my playmates has taken up any public service. So, please do not make it sound like a fact. That is actually not true. This is the first point.

Second, I wish to respond to Mr Albert CHAN. Perhaps he really does not know the financial services industry very well. Nor does he know that there are actually representatives from the academia in many financial institutions. Take the SFC as an example. One of its Non-Executive Directors is Prof LIU Pak-wai of The Chinese University of Hong Kong, who is a Pro-Vice-Chancellor. Prof Edward CHAN, who is also a Vice-Chancellor, used to be a member of the SFC too. If there are members of the academia who have knowledge in this respect, we will certainly appoint them to be members on their merits and ability. It is not the case that we do not like people from the academia. That is absolutely not true.

As for the comments made by Ms Emily LAU earlier, I have already given a response. We will do our utmost to identify the most suitable candidates to

take up public service. As for the "six-six" rule, while it is the policy of the Government, we must still allow flexibility, and this is the reason why we will oppose the amendments proposed by Miss TAM.

Thank you, Madam Chairman.

MR ALBERT CHAN (in Cantonese): Chairman, the Secretary has distorted my meaning. I was not saying that there were no people from the academic circles serving in the financial bodies. He only gave one name, but for those who are related to the consortia, members may look at the name list and see for themselves how long the list is. Most of the people there are old people and the rest of them are closely related to the consortia and the *zaibatsu*. Could the Secretary tell me that in these committees related to the financial sector, are there more people from the academic circles or people who are related to the consortia? I can give a definite reply to the Secretary — later on he will rise and speak to oppose what I have said — that there are more people who are related to the consortia.

It is claimed that only people of abilities are appointed. But do these abilities in fact refer to money or capabilities? If it is about people's capabilities, then I think one person should be appointed from each one of the eight universities. The reason is that there are many people with abilities in business and finance in the universities. However, the fact is not like that. The Government has appointed more people who bear some relationship with the consortia. I hope the Secretary will later rise and make a clarification or provide information after the meeting as to the percentage of members in these committees which are related to the post-secondary institutions as well as the relationship of the remaining members with the consortia. I hope the Government will not give the people an impression that although the Government says that talents will be highly regarded, only one or two persons are appointed to serve window-dressing purposes while most of the members in the committees are related to the *zaibatsu* in one way or the other.

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

MS EMILY LAU (in Cantonese): Chairman, I agree very much with Mr Albert CHAN for what he has said. Much to my surprise, I was appointed by the

authorities to serve in a committee on employment and it was later renamed as the Economic and Employment Council (EEC). Then the EEC was disbanded later. The Chairman of the EEC was the Financial Secretary. Who were members of the EEC? They were mostly the big developers and some of them even attended the meetings themselves. Some of the members were professionals working with these developers.

Now the EEC has been disbanded and in its place there is a Business Facilitation Advisory Committee (BFAC). I am the Deputy Chairman of the BFAC. Who is the Chairman? It is a developer. The BFAC was set up because the progress of works projects has been too slow and it was felt that a committee should be set up to look into the problem. As this is a committee for the initial stage of works projects and so we were allowed to join if so we wished. This was why I joined. I think all the other people were taken by surprise because all of them were so closely related to each other as if there was inbreeding among them. Not only were they all developers but they were also the few biggest ones as well as professionals working closest with them. It followed that when I showed up at these meetings, I was speechless with surprise and so were they when they saw me.

Mr Albert CHAN was right when he said that Hong Kong was monopolized by a few families. Sometimes they would get some professionals with whom they have a very close relationship. But actually these professionals are all controlled by the same group of people. How can we avoid this? Would there be a fair competition law later so that when the authorities are to make appointments, we can avoid the manipulations exercised by the developers? Chairman, I think this is a very serious issue and Mr Albert CHAN was not making an unfounded comment when he raised it.

As for the many committees in existence, I think the academia can do some research to sort out the intricate relations that exist between members of these committees. Besides, in the academic circles, are people not appointed only because they are very close to you and they share the same views with you? Had they made the slightest criticism, I doubt if they can ever be admitted into these committees.

Yesterday, some reporters told me this singling out of who is close and who is not applies even to those meet-the-press sessions. You will not be invited if you are a critic of our sales tax. And even if you come, you are not

allowed to write any criticisms. Only the positive aspects can be reflected because the bad things need to be covered up in order that a policy can be launched successfully. Given this mentality, how can the Government be willing to appoint people who are open both in what they say and what they think.

The Secretary should give a reply by all means. However, he knows perfectly well how long the list is and what people are found on it. There may be people who are capable, but their service may never be wanted. For even if they do not oppose the authorities on every occasion, they are bold enough to speak out their minds at crucial moments and point out what is wrong with the authorities. Therefore, I do not think these people will ever be accepted.

MRS SOPHIE LEUNG (in Cantonese): Chairman, I have no intention to join this battle of words, but I wish to tell the truth. Ever since the 1980s I have been taking part in many of these committees. I would just want to speak my mind out. I think we should not generalize things so easily. Notwithstanding the fact that there are really such people as Members have said, from what I have seen for more than 20 years, they are not large in number. Of course there are flatterers in these committees, but there are also people like me who tell the truth in a discreet manner. (*Laughter*) Ms Emily LAU knows very well that I would speak my mind out, but I would not take people to a fight every time, for there is no need for it. Life is short, so why spend time on quarrels?

Those of us who take part in the work of such committees are actually like what Ms Emily LAU has said, that she had joined a committee because she had heard people say that anyone who was interested might join in. And there may be people who join in because they keep an interest in these matters. As for some knowledgeable persons, they do not join because they may not be aware of them. They can only blame themselves for it. On the other hand, we also notice that ever since the reunification, the knowledgeable persons in Hong Kong feel that there is a need to upgrade the culture of governance in Hong Kong and groom more people with the qualities of a director and put into practice the principle of Hong Kong people ruling Hong Kong. Therefore, we set up The Hong Kong Institute of Directors in 1996. We hope that more people can join the Institute to increase their knowledge in such matters and enhance self-training. The Institute has pooled a lot of talents. We have done a lot on this. I hope the Government can pay more attention to the development of this Institute.

I drafted an e-mail to the chairman of the Institute today and said that we should promote the culture of governance to all organizations and thus enhance the concept of the culture of governance in Hong Kong. Only by doing this we will not miss the development of a forest while our eyes are focused on a particular tree. I think we can work together for improvement from this perspective and we should not put up any arguments which do not put the issue in a full picture.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services, do you want to speak?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, we have actually spent a lot of time on this question, but I really cannot accept Ms Emily LAU's remark just now, that the Government had rejected people who are outspoken, which is entirely not true. As we all know, Ms Emily LAU is among those who are most outspoken and the Government has appointed her to the — she mentioned it earlier and as I do not have the honour to serve on that committee, I am not sure about its name — to be the Deputy Chairman of the Business Facilitation Advisory Committee. If the Government does not wish to listen to so many opposing views from outspoken members, why was Ms LAU appointed as the Deputy Chairman? From this example we can see that the Government has not adopted the policy of rejecting people who are outspoken, as suggested by Ms LAU.

As for the EEC mentioned by Ms LAU earlier, Members may recall that I used to be one of its members. The EEC actually comprises members from a diversity of sectors, including several Members of the Legislative Council, former Members of the Legislative Council, representatives of chambers of commerce, representatives of the business sector, and representatives of the academia. Its composition is actually very well balanced. I remember that the first remark made by Ms Emily LAU was: "It mainly comprises businessmen."

This is absolutely not the case in reality. I only wish to clarify this point here, and I do not wish to argue with Ms Emily LAU on this point anymore. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 7, 10, 13, 21, 22, 28, 34, 35, 36, 39, 40, 41, 44, 47 to 54, 56, 59, 61, 62, 63, 74, 76 and 77 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 14.

MR RONNY TONG (in Cantonese): Chairman, I move the amendments to clause 14.

Chairman, ever since the occurrence of the Enron case in the United States, the community is very much concerned about the quality and transparency of corporate governance. The Government insists that the proposal to set up a FRC is aimed at giving the public and investors a clear and accurate picture of the financial situation of the corporations. With respect to this aim, I do not think anyone would raise any objection. What is most worrying about the Financial Reporting Council Bill (the Bill) is the possible duplication of investigations. There may be disruption and discontinuity in work in undertaking an investigation, collecting evidence and even in initiating a prosecution. However, these worries are nothing when compared to the impact on constitutional matters and the rule of law.

Clause 14 of the Bill proposes that the Chief Executive be given great powers to intervene in the investigations of the FRC, to the extent of requiring it to undertake or discontinue an investigation or even vary its decisions made in respect of an investigation. To remind Members, I would like to read out the original text of clause 14:

- (1) After consultation with the Chairman of the Council, the Chief Executive may, on being satisfied that it is in the public interest to do so, give the Council such written directions as he thinks fit with respect to the performance of any of the Council's functions,
- (2) The Council shall comply with any direction given under subsection (1).
- (3) If a direction is given under subsection (1), a requirement under an Ordinance that the Council shall, for the purpose of performing any of the functions to which the direction relates:
 - (a) form any opinion;
 - (b) be satisfied as to any matter (including the existence of particular circumstances); or
 - (c) consult any person,

does not apply for any purpose connected with the performance of functions pursuant to, or consequence upon, the direction.

Chairman, in other words, "any of the Council's functions" include to:

- (i) decide to undertake an investigation;
- (ii) not to undertake or discontinue an investigation;
- (iii) vary the decisions made in respect of an investigation; and
- (iv) submit the decisions of an investigation to the law-enforcement agencies for the initiation of a prosecution and such a prosecution may include judicial proceedings and disciplinary proceedings on professional code of ethics.

We do not understand why the law has to give the Chief Executive such a power to be above the law. It is perfectly in compliance with the principle of the rule of law for a person to be under investigation or even be prosecuted if he has broken the law. Furthermore, the Chief Executive as the head of the executive should respect the constitutional order under the Basic Law and he should never meddle with judicial proceedings.

Clause 14 attempts to invoke public interest as a justification for the Chief Executive to intervene in an investigation. But how should public interest be defined? Often times this is a most controversial question and more so public interest can never become a pretext to neglect the principle of the rule of law and the constitutional order.

Members may recall the Sally AW Sian case. The scandal of the Sally AW Sian case was centred around the exaggerated sales figures of the *Sing Tao Daily* and *The Standard* in a conspiracy to defraud clients who placed advertisements in the newspapers. In the end, only the senior executives were prosecuted and Sally AW Sian who was the chairman of the group, was not prosecuted. Ms Elsie LEUNG, the then Secretary for Justice, invoked the ground of the public interest of causing unemployment to justify her decision not to prosecute. The Bill now vests in the Chief Executive the power to discontinue any investigation undertaken by the FRC. This is tantamount to a

wholesale attempt to forestall prosecution and it is not different from the Sally AW Sian case.

In view of this, we have examined the similar laws in Australia, the United Kingdom and Singapore. In section 3 of the Companies (Audit, Investigations And Community Enterprise) Act 2004 of the United Kingdom, mention is made of the powers and functions of the Secretary of State for Trade and Industry in the Financial Reporting Council of the United Kingdom. But nowhere in the entire Act can the word "Prime Minister" be found. In other words, in this law of the United Kingdom, the FRC does not have to be answerable to the Prime Minister at all and the Prime Minister is not empowered to intervene in the operations of the FRC, not to say discontinue an investigation like the Chief Executive of Hong Kong.

Also, in the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 of Australia, in section 22 of Schedule 1, it is provided that the Prime Minister of Australia may give a direction about the role of international auditing standards in the Australian auditing system and the Australian FRC must comply with any such direction given. However, what is worth noting is that before this can take place, the Australian FRC must submit a detailed report to the Australian Government on the desirability of giving the direction and the Government must consider such a report. In other words, the Prime Minister of Australia may exert a certain degree of influence at this very technical level but this is worlds apart from ordering that an investigation be discontinued or decisions made in respect of an investigation be varied.

Even in section 200 of the Companies Act of Singapore, reference is made to the Minister for Finance of Singapore who may express views on the operation of the country's FRC and even take part in the actual operations of the FRC under certain circumstances. However, what is worth noting is that Singapore's FRC has only part of the functions like overseeing the financial reporting of different companies in a group or, like the Minister for Finance and Administration in Australia, demanding the Australian FRC to adopt a certain set of standards which is different from all other standards generally used in the country. This is also a big difference from clause 14 of our Bill under which the Chief Executive is empowered to intervene in investigations and prosecutions.

In the laws of the abovementioned three countries, we cannot find any law which is like clause 14 of the Bill in Hong Kong which vests such great powers in the Chief Executive. I believe no democratic country in the world which respects the rule of law will give such absolute powers to the executive like this and what is more, our Chief Executive is not returned by any popular suffrage.

Even in the existing Independent Commission Against Corruption Ordinance, it is only stipulated that the Commissioner may comply with the direction given by the Chief Executive, but no statement is made that the Chief Executive can be empowered to require the ICAC to discontinue an investigation into any person. The capital market in Hong Kong is the second largest in Asia and ranks among the top 10 in the world, why in such an economy which stresses so much on being open and liberal can permit the law on its FRC to give such feudal powers to the Chief Executive? Just imagine how international investors would regard our system. If a law like this can be passed in the Legislative Council, it will be the greatest laughingstock in the world. Coming back to the Enron case, had there been an FRC in the United States at that time and had the United States President the same kind of supreme powers as our Chief Executive and had the former exercised these powers to forestall the exposure of the Enron case and stop the investigations, what kind of protection would this give to small investors and international investors alike?

Lastly, I must point out that the amendment moved by me will not in any way affect the operation of the FRC. The Bill may achieve the same objectives that are expected of it. The only difference is that the Ordinance so enacted will be in full compliance with the spirit of the rule of law. The amendment moved by me seeks to confine the powers of the Chief Executive to requiring the FRC to undertake an investigation after a serious and apparent error has been discovered. The reason for this is that there is a vast difference between requesting the FRC to undertake an investigation and requiring it to discontinue an investigation. To request the FRC to undertake an investigation is an appropriate way of handling things, whereas to discontinue an investigation is a suspicious act and it may lead to suspicions of collusion between business and the Government. Our view is that amending clause 14 is the only and most important issue to be addressed in the entire framework of the FRC.

I hope Members can give serious thoughts to this. I know that the Liberal Party and the DAB have during the deliberations of the Bill expressed the view that the Bill does not require amendment. However, I hope they will pay

attention to the important factors which I have just mentioned. These include the fact that Hong Kong owes its success to the rule of law. Of greater importance is that Hong Kong is an international financial centre and the reason our maintaining such a position is that we have the spirit of the rule of law and respect for the constitutional order. If we abandon these fundamental principles, I think our position as an international financial centre will be lost in no time. So I hope various political parties and groupings in this Council will put aside their preconceived ideas and support my amendment.

Thank you, Chairman.

Proposed amendment

Clause 14 (see Annex II)

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

MS EMILY LAU (in Cantonese): Chairman, I support the amendment moved by Mr Ronny TONG. As I said in the debate yesterday, there is no reason why a law like this which gives such powers to the authorities should be enacted in present-day Hong Kong.

The Secretary cited some other ordinances which carry similar powers yesterday. Actually, the Government should introduce a Bill to this Council to remove all of those powers for they are not necessary. The Secretary will say later that these powers have never been exercised. Since they have never been exercised, they are unnecessary. But he will say no, that they are necessary.

As Mr Ronny TONG has said: Who are the people for whom the Government will stop an investigation? Who are the people whom investigations into them must stop even if they have started? Should an investigation into the richest person in Hong Kong be stopped? Or should investigations into other tycoons be stopped? These are in no way acceptable. We always say that we want to bring ourselves on par with the international financial sector, but this is where things are derailed. No such provisions are found in other countries, and so what are we trying to bring in line with? When asked this question, the Government will say that this is something of our own

making and as things are so vulnerable here that there is a need for the Chief Executive to step in should anything happen.

However, this kind of intervention will directly affect the independence of the FRC, for no one will know under what kind of circumstances the Chief Executive will intervene and no announcement will be made on this afterwards. I said in the Bills Committee that if such a power was exercised, it should be made public even if it was a sensitive moment at that time and even if it was considered that no announcement should be made for fear of affecting the market. However, such impact would only be limited to the prevalent circumstances and after the sensitive times are over, a public announcement should be made. But the Government refused. It is bent on doing whatever it likes to do. This is totally unacceptable.

This amendment by Mr Ronny TONG is really making a big compromise. Such a thing should never have happened. What Members want is to do the best they can to make things better even in very adverse circumstances. I hope Honourable colleagues can give their support and do not allow the authorities to keep on bringing the colonial mentality and way of doing things into this Bill. Despite claims made by the Government to turn Hong Kong into an international financial centre, what it has done in such an important Bill by adding a provision like this is really a blemish.

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

MR ALBERT HO (in Cantonese): Chairman, I said yesterday during the resumption of the Second Reading debate of the Bill that the Democratic Party would support the amendment proposed by Mr Ronny TONG today.

Despite the fact that we had said in many debates in the past that such a kind of provision should never exist in similar laws, especially those laws about bodies which we expect them to exercise their monitoring powers in an independent and fair manner. Honestly, I cannot see why the Chief Executive should possess this imperial sword as a tool of last resort to direct this body which we hope can play its regulatory role fairly and independently. In my opinion, there is absolutely no need for it. The Government may tell me that in the absence of this provision, should the FRC run into a major incident, it will be at a loss as to what it should do and it will cease to function properly or it may

even do something that is damaging to Hong Kong. But the logic of such an argument is simply inconceivable.

Even if the Secretary says that consistency is needed, I think each time.....So, enacting laws is very important. Every time when we pass a law like this, another precedent will be set. This is what the Financial Reporting Council Bill will do this time around, like similar provisions in the Securities and Futures Ordinance last time.

The amendment today is in a situation of what we call "fallback position", that is, our opinion is that the provision is not sound and it is unacceptable. However, if we make such an amendment, at least the powers of the Chief Executive can be restricted by a great measure. In addition, if something happens and this causes a great public outcry and it is felt that the FRC should conduct an investigation, the Chief Executive may make a decision based on his judgement. But please remember, at the end of the day it is still the FRC which will conduct the investigation. What is the difference about it? Our worry is the kind of choices it will make in future about the subjects of investigation when resources of the FRC are limited.

I said yesterday that my greatest worry is the FRC only hunting those small flies type of companies in society which make a very slight impact. The reason for the FRC to do this is to let the public know that we have such an organization in place and we are on the par with other financial centres in the world. So should such problems arise, the FRC will pursue the matter. But for some multinational companies and for those companies which are backed up by an immense political power, the FRC will not dare to conduct any investigation. With respect to this, the Chief Executive may at least face some public demands in this respect and he may respond to them. In any case, such kind of power is very limited. If it is said that directions can be given to make the FRC stop an investigation that is being conducted or allow anything to be done in any way which is above the law to make way for some other decisions, then I think the tragic outcome is total destruction of the entire system and credibility. For this reason, we will support the amendment moved by Mr Ronny TONG.

CHAIRMAN (in Cantonese): Mr Ronny TONG, do you wish to speak now? You will have a chance to speak in the end.

MR RONNY TONG (in Cantonese): I would just like to respond to the remarks made by Ms LAU earlier. However, I can save them until some other time later.

CHAIRMAN (in Cantonese): All right, there is actually no limit as to the number of times a Member can speak at this stage. Please make the best use of the speaking time.

MR SIN CHUNG-KAI (in Cantonese): Chairman, recently when we discussed the Securities and Futures Ordinance, we found that section 11 of the Ordinance was very similar to this part and that was about the direction given by the Chief Executive. At that time, the public officer Kevin HO raised a point, and he said that many of the foreign laws concerning this kind of regulatory bodies did not include provisions on directions given by a chief executive, president or prime minister, very much like laws in other places cited by Mr Ronny TONG earlier. However, he said that as a general rule, there could be some kind of reserve power in the constitutional system, that means a president or a prime minister might give some kind of so-called executive order which could target some regulatory bodies.

I have been pondering this issue in the last couple of days and that is: Whether or not in similar laws in Hong Kong, irrespective of whether they are section 7, section 17 or section 14, the Chief Executive should be vested with such power, or should this power of the Chief Executive to give directions to these regulatory bodies be limited to one piece of legislation, or should this power be removed altogether?

However, Chairman, the focus today is in fact whether or not the Chief Executive should possess such a power. This is open to question. Given such a power and when it is written down like in this Bill, it is clear that the Chief Executive is very powerful indeed. What the Chief Executive can do to these chairmen of listed companies who are members of the Election Committee is that he can just summon them to meet him or if he does not feel like it, he can send someone to probe into their companies or check their books. If the Chief Executive feels like it, he may order that investigations be stopped. Chairman, why can our Government do such things? If it does not do these things, then there is no need to put such a provision in the law. Do you not think so? If such a power is in place — of course we will object to it as we support Mr Ronny

TONG's amendment — on every occasion after such a power is exercised, can a clear account be given to the public? This is in fact what the Chief Executive should do to make himself accountable to the people.

I cited earlier the case of a democratically elected president overseas, what will he or she do after exercising this power? If these countries allow the existence of a reserve power like ours, which when put simply means that no mention is made of the so-called direction from the Chief Executive in every piece of legislation but there is a kind of executive order which the Chief Executive can give under the constitutional system and which can be given to these bodies, then there should definitely be some kind of checks and balances in place. These checks and balances may include the requirement that an explanation must be offered to the public or a report or debriefing be made to the legislature by a certain time. But what our Government is doing is nothing but retrogression. We have been striving for greater openness and transparency in the Government, but the attempt to enact this piece of legislation will on the contrary give the Government a tool to enable it to curb, suppress and eliminate dissidents.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Administration opposes Mr Ronny TONG's amendment to clause 14 of the Bill.

Mr Ronny TONG's amendment seeks to considerably narrow the scope of written directions that may be given by the Chief Executive. The Government considers that this may preclude the Government from exercising the reserve power as provided for in clause 14 to protect public interest in the most pressing and special circumstances.

I wish to tell Mr Ronny TONG that unlike what he has said, this clause does not violate the rule of law. Rather, it serves only to perform the Government's constitutional duty to regulate the market as a whole, because the protection of public interest will certainly be the first and foremost consideration of the Chief Executive in exercising this power. These circumstances include failure of checks and balances, improper performance of duties by the FRC, and sudden and unexpected threats to the financial stability of Hong Kong or the reputation of Hong Kong as an international financial centre. These are circumstances under which the Government urgently needs the support of the FRC and other financial regulators, in order to take appropriate actions.

Mr TONG's amendment specifies only one of the circumstances where the reserve power may be invoked. The amendment is not inclusive of all the circumstances that may possibly arise, and there are circumstances which have not even come to our knowledge at the moment. That is why it is necessary to maintain this reserve power, so that the Chief Executive can exercise this power in the public interest, for public interest is of the utmost importance.

I wish to emphasize again that as I said last night, the objective of clause 14 is to ensure effectiveness in the overall operation of the regulatory structure. Under Articles 109 and 110 of the Basic Law, the Government of the Hong Kong Special Administrative Region has the duty to maintain Hong Kong's status as an international financial centre, formulate the relevant policies and regulations, and regulate the relevant operations in accordance with law. While the functions of the FRC and the discharge of these functions are within the purview of the FRC, insofar as the overall regulatory structure is concerned, the Government still has to shoulder the ultimate responsibility and the public will also have reasonable expectations. Therefore, under the constitutional system and regulatory structure of Hong Kong, the check-and-balance arrangement provided under clause 14 is necessary and appropriate, and will help the Government perform this duty.

We all know that in fact, this provision is not novel, for there is a similar provision in the Securities and Futures Ordinance, Deposit Protection Scheme Ordinance and Clearing and Settlement Systems Ordinance. Certainly, the Government appreciates that the power given to the Chief Executive to give directions to the FRC must not be abused. As I said last night, the Chief Executive has never exercised such power before. Some Members then said that since it had not been invoked before, this provision would be unnecessary. This is not right. Why? It is because such a need may arise under some unknown circumstances, right? For example, Mr Ronny TONG may have many bank accounts but he has never used the deposits and such being the case, he might as well donate all the deposits in them for charity purposes. But Mr TONG would say that the deposits are saved for a rainy day. So, Members cannot say that it is unnecessary to make this provision because this power has not been invoked.

Moreover, I think in this debate, the so-called conspiracy theory is manifested to the fullest. For instance, Members said that the Chief Executive might use this power to serve some purposes. In fact, Members just have to

read the provision and they will see that the Chief Executive can invoke this power only to protect public interest. What does "public interest" mean? It means the overall interest of Hong Kong, not doing something only to help certain people, as suggested by some Members earlier, which is sheer conspiracy theory. As the head of the Government of Hong Kong, the Chief Executive will certainly uphold the people-oriented principle and work in the overall interest of Hong Kong. So, regarding the conspiracy theory advanced by Members earlier, Members can express as many views as they like and I will understand. But I do not look at this provision from a political perspective. I would look at it purely from the practical situation — to protect Hong Kong's status as an international financial centre. Over the years, this provision has existed in all major securities legislation, but unlike what Mr TONG has said, it has not affected Hong Kong's position as an international financial centre. I have been to many countries and the officials there have never told me that there are problems with this law or the Chief Executive has often messed up the financial sector. Never ever has this happened. We all know that Hong Kong is a place where the rule of law prevails. We abide by rules and regulations and so, I think it is unnecessary for Members to propose any amendment to this clause.

I think the biggest problem is that Members often do not trust the Government at all. Yet, I can see that the public has more trust in the Government. So, I hope we can foster our communication with each other, so as to gradually narrow the gap between us. I do not wish to argue about whether or not this is a question of the rule of law or the constitutional system. This is actually a simple question. Members must believe that we in Hong Kong have a well-established system and this power conferred on the Chief Executive is only a reserve power. The Chief Executive will be very careful in exercising this power. If that is not the case, the two Chief Executives should have invoked this power during the past nine years but in reality, this power has never been invoked before. From this we know how much importance the Government has attached to the use of this reserve power, and the Government will not press the button easily. So, I urge Members to oppose Mr Ronny TONG's amendment to clause 14 and endorse the original clause of the Bill.

Thank you, Madam Chairman.

MR RONNY TONG (in Cantonese): Chairman, like some members of the public, I must admit I am a bit disappointed with this assembly honestly. This

is because for a topic which is so very important, which is related to the rule of law and finance matters in Hong Kong, not much debate has been aroused in this Chamber. What we hear are government officials saying that they will oppose the amendments. No wonder the people in Hong Kong are a bit disappointed with the Legislative Council.

I would like to respond to the remark made by Ms Emily LAU earlier that this was a big compromise. Ms LAU, to me this is no great news because this is what I experience almost every day in this Council. On this occasion, I do not think that it is really a big compromise as such as there is a distinction between directing that an investigation be undertaken or discontinued. After the FRC is established, any person in Hong Kong may ask the FRC to undertake an investigation and every citizen should be given this right, including the Chief Executive himself. However, as he is the Chief Executive and as he occupies such a lofty position, his power in this connection may be somewhat greater. I can accept this point, but if he has other powers to impede an investigation or even vary the decisions about an investigation, or prevent the submission of the decisions about an investigation to law-enforcement departments for prosecution, then I consider this kind of power totally unacceptable.

The response made the Secretary to this point is in contrast not so agitated. The arguments advanced by him have all been mentioned previously. It seems that the Chief Executive fails to listen carefully to my arguments. My point is the Chief Executive must not be given in the name of public interest a power that transcends the principle of the rule of law and surpasses constitutional obligations. Everyone can use public interest as their pet phrase and what we are doing every day is in fact arguing over the question of what constitutes public interest. A good example is the Bill on wiretapping. The Sally AW Sian case is a good lesson to be learned for it tells us that the Government was advancing a ground for its decision of not to prosecute in the name of public interest. The unfortunate results were that the rule of law could not be brought into play and justice not seen to be done. Given such events, Members of this Council can have but very little confidence in the Government. This I must admit. At the same time, the Secretary should face up to the stark truth that is widely recognized over the world and that is, the most credible power is that given to a government by universal suffrage. We do not have a democratically elected government and we have no democratically elected Chief Executive, hence the Government should not blame the people or Honourable colleagues in the Legislative Council for having so little trust in it.

The Secretary has said that this power is meant only for contingencies and he has also said that I have many bank accounts. I do not have many bank accounts. Even if I have many bank accounts, it does not mean that I am rich. This contingency argument must meet some basic principles and one must never say that owing to contingency reasons, all political leaders in the world should be given such a power and we should never worry. As we are an international financial centre, how then will the international community look at our system? How can we convince other people that there will be no collusion between the Government and the business? These basic principles are always there and they will never change.

If it is said that since some exceptional circumstances may arise and so the Chief Executive should be vested with some special power, then the best way to handle this in law drafting will be to set out these circumstances whereby the Government considers that the Chief Executive may exercise such a power and how it should be exercised. However, as the provision is written in such a loose manner and the Chief Executive may exercise his power to direct the FRC to do or not to do something in the absence of any prescribed framework, the scope of his actions is thus far too undefined.

I agree that the Chief Executive should have the power to direct that an investigation be undertaken, but what can be done to prevent other people from forming an impression that our Chief Executive has a power which transcends the rule of law and how can we avoid giving people a wrong impression that there is collusion between the Government and business? I cannot see any contingency which can convince people that the exercise of this power by the Chief Executive is really for the good of Hong Kong. Irrespective of whether a person under investigation is guilty or not, if an investigation is discontinued by the executive authorities, this is bound to be a bad thing. I fail to see any good whatsoever that can come out of it. If there were such examples, could the Secretary just cite one such example? All he needs to do is to cite one example to tell me that discontinuing an investigation is beneficial to Hong Kong as a whole and to our image as a financial market. Would the Secretary give one example to tell me under what circumstances when the Chief Executive prevents the FRC to discharge its functions and submit the decisions of an investigation to the law-enforcement officers to initiate a prosecution would do good to Hong Kong and to our status as a financial centre? I hope the Secretary can think carefully and give us an example. If the example is convincing enough, I may withdraw my amendment.

We have pondered over this issue for a very long time, but we cannot come up with any solution. This is because we think there is yet a greater principle which is beneficial to Hong Kong as a whole, that is, we must highlight the nature of the FRC as an independent regulatory body and it should have sufficient credibility to convince international investors that our financial market will not come under any reckless intervention from the executive authorities. This is a very important point.

Another principle is one which I have mentioned many times and that is, the rule of law and the constitutional system. One may say that the rule of law and the constitutional system are very idealistic principles, but our position as a financial centre is very concrete. On the importance of the position of Hong Kong as a financial centre, I talked about it yesterday that there is a provision in the Basic Law, that is, Article 109, which expressly states that prescriptions in law must be undertaken to consolidate and maintain the position of Hong Kong as a financial centre. However, clause 14 of the Bill is precisely challenging this idea.

So I hope the Chief Executive can think carefully and give us one or two examples to tell us under what circumstances he would think that the exercise of this power by the Chief Executive is beneficial to Hong Kong. I hope Members will put aside their preconceived ideas and support my amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Ronny TONG be passed. 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 begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr Ronny TONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 13 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the clauses, Schedules or the remaining amendments of the Schedules of the Financial Reporting Council Bill, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the clauses, Schedules or the remaining amendments of the Schedules of the Financial Reporting Council Bill, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

(As the Chairman was about to put the question on clause 14 standing part of the Bill)

MR ALBERT HO (in Cantonese): May I make a short speech?

CHAIRMAN (in Cantonese): I beg your pardon.

MR ALBERT HO (in Cantonese): May I make a short speech at this moment?

CHAIRMAN (in Cantonese): The question now is on clause 14 standing part of the Bill. Do you wish to speak on clause 14.....

MR ALBERT HO (in Cantonese): Yes, I wish to speak on the inclusion of this clause to the Bill.

CHAIRMAN (in Cantonese): All right.

MR ALBERT HO (in Cantonese): I just wish to state briefly that since the amendment moved by Mr Ronny TONG is not passed, so I hope Honourable Members will oppose the inclusion of this clause in the Bill. If this clause is included, this is like conceptually turning the FRC into an executive agency of the executive authorities. I think since the amendment concerned is not passed, we should oppose the inclusion of the clause in this Bill.

MS EMILY LAU (in Cantonese): I agree with what Mr Albert HO has said. When the Secretary made a response earlier on, he did not respond to this point. The most important problem is not a political one but practical problems and those related to finance. A system like this is not found anywhere else in the world. Why should we have it? Moreover, this clause will affect the independence of the FRC and hence it should not exist. I therefore call upon Members to vote against the inclusion of this clause in the Bill.

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

MR SIN CHUNG-KAI (in Cantonese): The Secretary said that this is based on the ground of public interest, but the directions given will not be disclosed actually, then how can the public challenge this ground of public interest? If a direction is disclosed, at least after the Chief Executive has exercised this power, the public can apply for a judicial review to see if this complies with public interest. But now this channel is not available. I hope the Government can make a clarification as to how a disclosure will be made when the Chief Executive exercises this power. In addition, when the Chief Executive exercises this power in public interest, does the public have any right to apply for a judicial review?

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

MR RONNY TONG (in Cantonese): Chairman, when I spoke earlier, I invited the Secretary to give us an example for consideration, but he chose not to reply to my question. Just now Mr SIN Chung-kai has asked the Secretary to speak again. If the Secretary chooses not to speak again, there is nothing we can do, right? But if the Secretary chooses to speak, I hope he can respond to my remarks.

MR JAMES TO (in Cantonese): Chairman, putting aside things of a distant past, let us talk about a recent case. On the use of a vague provision like this, such as in the ruling given yesterday about Mr LEUNG Kwok-hung on the Interception of Communications and Surveillance Bill, vague words like "in the public interest" found in the Telecommunications Ordinance were used. Actually, the Court has referred to this in detail and the Court considers that this is very likely to contravene the rule of law and the Basic Law, that is, it is quite arbitrary and may be open to wilful use or abuse. So regardless of the results, the Government should conduct a thorough review. For if not, even if a provision like this can produce some sort of a vague deterrent effect or power, or it may make the Government think that it has fulfilled some sort of obligation and hence it can put its mind at ease, in future it is very likely to be challenged.

MR JEFFREY LAM (in Cantonese): Chairman, we agree that this provision should stand part of the Bill because Honourable colleagues who are opposed to

its inclusion cannot cite any examples either to explain why this provision should not be included. For things that have happened, we can draw reference from them, but no one can tell what will happen in future. Can you tell us what things that will happen in future will cause any problem to the giving of directions by the Chief Executive? I do not think any one can cite such examples. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, I think Mr LAM is contradicting himself. If he had been sitting in this Chamber earlier on, he should have heard me cite an example and that is, the Sally AW Sian case. That was in the past and as for the future, I can cite an example off hand right now. For example, about the sale of a listed media company that is the talk of the town now and it has caught much attention from the newspapers and televisions, if in its transaction an important commercial principle is violated, such as some inaccurate information has been disclosed to the public of Hong Kong and the FRC is going to make an investigation, but Mr TSANG, the Chief Executive, says, "Sorry, there can be no investigation because I think the disclosure is accurate." If this happens, what kind of protection will the people of Hong Kong get? And what kind of protection will international investors get? Will this cause a public uproar? I think a public uproar will be caused at once. I think such examples can be seen everywhere. Conversely, I have requested the Secretary to cite an example, but he cannot cite any.

DR PHILIP WONG (in Cantonese): Chairman, I wish to raise a point of order. We are to vote on whether or not clause 14 shall stand part of the Bill and at this stage, should any Honourable Member engage in a debate? Would you please rule on this?

CHAIRMAN (in Cantonese): Fine. As the question that has been put is that clause 14 stand part of the Bill, and since clause 14 has not been included in the Bill, I can permit Members to express their views on clause 14 if they want to. What Members have done earlier is that they may have concentrated too much on the amendment proposed by Mr Ronny TONG on clause 14 and a debate has ensued and as a result, they have not expressed their views on the original clause 14 sufficiently.

MR JEFFREY LAM (in Cantonese): Chairman, there are many people in the world who claim to be prophets, but is what they say in the interest of the people of Hong Kong and the public? I think Members can judge for themselves. We can never tell what will happen in future. If there are some very urgent events or emergencies that will affect the financial market of Hong Kong, we should have a system to handle them at once. For the proposal made by the Government in clause 14, we support it. As for the proposal made by Mr Ronny TONG, what he says today is nothing new and it is not different from what he said in the Bills Committee. Yesterday, he asked why we did not make a decision after listening to what he had to say, but there is nothing new about his arguments and he is only repeating himself. Therefore, we in the Liberal Party do not support his proposal.

CHAIRMAN (in Cantonese): I wish to point out that there is no need to discuss Mr Ronny TONG's amendment for it has already been negated. Now the question put is only on whether the original clause 14 stand part of the Bill.

MRS SELINA CHOW (in Cantonese): Chairman, this is a very special power exercisable by the Chief Executive and we all know that this is special and it is a power that the Chief Executive can exercise under very exceptional circumstances and in the public interest. Unless the Chief Executive is like what Mr Ronny TONG has said, that he will use this power recklessly, that is another matter. However, if under some exceptional circumstances the Chief Executive has to exercise some power, he should be allowed to do so. This is not only found in this legislation. I am sure Mr Ronny TONG knows much better than us that there are many ordinances in Hong Kong which have this power provision stating that under exceptional circumstances which pose a great risk to the public, the Chief Executive may exercise such a power to protect the public.

Of course, you may say that you have no trust in him whatsoever and so he should not be allowed to have this power. But if he does not have this power and should these very exceptional circumstances arise, then the damage done to the public could be very great indeed. So Members should take this situation into consideration. This provision is not a very special one, found only in this legislation, why do Members always ask him to prove that he needs to have such

a power and what circumstances in the past warranted the exercise of such a power? This only proves that no such special or exceptional circumstances happened in the past and he had not abused this power or used it recklessly.

I believe that this power is meant to protect the public and in very exceptional circumstances where the public is placed under a great threat that it is necessary for the Chief Executive to exercise this power to address these exceptional circumstances for the protection of the public and safeguard their interest. Thank you, Chairman.

MR ALBERT HO (in Cantonese): Chairman, in this debate which has continued for almost one hour, many Honourable colleagues have talked about the need or otherwise for clause 14. Earlier on, many Honourable colleagues were not in attendance, so I would like to say it once more briefly and that is, what we are discussing is the overseeing power by a regulatory body which operates in an independent and autonomous manner. We must not turn this power into an administrative power and this regulatory body into an extension of the executive and an agent of the executive to assist it in exercising its power. If the argument that the Chief Executive should take control of everything and he should embrace all powers to protect public interest in Hong Kong stands, then this argument could well be extended to say that the powers of the Chief Executive should override those of the Courts.

The point over which I oppose the separation of powers is exactly the reason why they are against the independence of the Judiciary, that is, the ground of public interest. This is precisely the situation on the Mainland. They oppose the separation of powers by the three branches of government because of these reasons. What we are discussing is an independent overseeing power and we are not discussing administrative powers exercisable by the executive or its agents, for in that case, it would be another issue. The existing clause 14 permits the Chief Executive to interfere with an independent investigation and vary the results of an investigation or declare that they are annulled. This is disregarding all the fair procedures as prescribed by this legislation and it is not acceptable.

I would therefore not repeat. If a Bill like this can still be accepted, this will give people an impression that there is no independence at all. Where then

is the credibility of this so-called independent regulatory body? I therefore call upon Members to oppose this clause standing part of the Bill.

CHAIRMAN (in Cantonese): Mr Albert HO, you should place your mobile phone outside. Yesterday your mobile phone rang once during the meeting and today it has rung once again.

MR JAMES TO (in Cantonese): Chairman, the remarks made by Mr Jeffrey LAM and Mrs Selina CHOW just now sound very familiar to us. Why? Leaving aside things of the distant past, I would just like to comment on the case of Mr LEUNG Kwok-hung. I have just got information on the ruling of that case given yesterday. Why can the information serve as good reference material? I hope the Chairman will allow me to say something on that. It is because the same applies section 33 of the Telecommunications Ordinance and it is about the use of public interest.....

CHAIRMAN (in Cantonese): Sorry, Mr James TO, I am afraid I have to stop you because we will discuss this issue on 2 August.

MR JAMES TO (in Cantonese): No, Chairman, let me explain it to you.....

CHAIRMAN (in Cantonese): Then please explain it clearly. You should be concise for much time has been spent on discussing this part already.....

MR JAMES TO (in Cantonese): No, Chairman. I would not talk about the law on wiretapping. I just wish to say that under the same principle, many people will say that the provision can be drafted in a broader and more general manner in order that it can include a broader scope and encompass a greater diversity of situations and contingencies. This point is clear as we can see in many laws including those that have proved to not work.

Now the problem is not that some kind of power would have to be used under some clearly defined situations. Members may recall Mr Frederick MA,

the Secretary for Financial Services and the Treasury, making an interesting point earlier about the amendment moved by Mr Ronny TONG which is already something of the past, that the amendment only referred to one of the possibilities. There were other possibilities as well. So the Secretary went on speaking that it was only fulfilling the overall responsibility of the Chief Executive who had to take care of stability in society and protect the reputation of Hong Kong under special circumstances. These are some of the two, three, four or five examples that can be listed. Then the Secretary said something like this: However, we do not know what other situations are. This is how things are. If some known situations can be defined, then for those unknown situations, can they be described in some language as appropriate and relevant? If this cannot be done, this must be vague and this will have to be related to public interest. This explains why so many cases in the past were proved that it would not work this way.

What I mean is that the main idea of the Government's response should be on those few major situations and descriptions, instead of vague grounds like public interest. For example, we can come up with some vague ground of public interest because of some foreign affairs considerations. Is public interest involved here? Or if there is some very sensitive relationship, would it be considered public interest? I have no idea what the real situation can be like, I am just giving some examples. In the Sally AW Sian case, someone said that if the prosecution of Sally AW Sian were to proceed, that would mean many people would be forced out of their jobs. Was public interest involved in this? It was considered that as public interest was involved, so she should not be prosecuted. If this is the case, then things are really too bad. For if we prosecute a certain billionaire, the result may be the dissolution of his company and many of the staff would lose their jobs and tens of thousands of people in Hong Kong may become unemployed. Is public interest involved? Based on the way of thinking of the Government after 1997, I think those in the top echelons of the Department of Justice may think that public interest is involved.

Therefore, if only public interest is written in the law, I do not think this ground can pass any objective and non-arbitrary test, while it is one that is prescribed in the law. This is the main thrust of my argument and what I mean when I say this clause should not stand part of this Bill.

CHAIRMAN (in Cantonese): Members should sit down after they have finished. They should go on speaking if they have not.

MR JAMES TO (in Cantonese): Sorry, I have missed a sentence and, that is, it should not be included in the Bill.

CHAIRMAN (in Cantonese): I know.

MS EMILY LAU (in Cantonese): Chairman, I would like to speak in response to the remarks made by Mr Jeffrey LAM and Mrs Selina CHOW. The problem is that they too want Hong Kong to be an international financial centre and bring Hong Kong on par with international standards. We know that no clause of such kind is found in similar arrangements in the international community and Hong Kong can be considered the only exception. But the Secretary cannot give any explanation for this. All the Secretary has been saying is that some possible situations may arise. But what are they? If these things can happen in Hong Kong, they too can happen overseas. Why should be, after spending so much time looking at overseas experience, decide not to draw reference from their provisions? There is no such clause in other countries. Does the Secretary think that these countries do not have any power to handle contingencies? Of course, they have. But they do not add such a clause in this kind of laws. Mr Albert HO said earlier that this is an independent FRC and if this clause is added, this is making a direct impact on its independence and the result is that its independence will be undermined because the Chief Executive can put his hand in matters he thinks are important behind closed doors. So if Honourable colleagues from the Liberal Party, the DAB or The Alliance want to support this Bill, they should think about why such kind of clause is not enacted in other countries and why we want to have it. The Secretary has said that this clause has never been invoked but it should be enacted first so that it can be invoked later when necessary. But why do other countries not do this? How can we be brought on par with these countries?

Therefore, Members should consider the point that they should not make Hong Kong the only place in the world that requires such a clause. If this is the case, then legislation would be a very simple matter. The Legislative Council Secretariat will not have to draw reference from overseas experience, for what is the point if this is done? It is no big deal if the Chief Executive does not have this power. Why do they have to jump up and protect this power? I agree that a review should be conducted. I will also ask oral questions on what laws stipulate that there should be such a power. Should a wholesale review be conducted of this? No, this power should not be there. It belongs to the bygone colonial era.

CHAIRMAN (in Cantonese): Ms Emily LAU, please face me when you speak.

MS EMILY LAU (in Cantonese): Chairman, I am sorry.

MR RONNY TONG (in Cantonese): I will also be very brief. I just wish to remind Honourable colleagues that what we are discussing now is no ordinary regulatory body. Why am I saying this? This is because what we are discussing is an investigative body, that is, something has happened and this body will undertake a review to see if anyone has done anything wrong. This review is to be undertaken after something has happened. So Chairman, it really baffles me when the Secretary said that some contingencies would arise.

I can see his point if it is an ordinary regulatory body like the SFC as the contingency may mean sudden and serious market fluctuations. But what we have now is after something has happened and a post-event review is to be conducted, like an autopsy, with the aim of trying to find out who is guilty and what kinds of situation or exceptional circumstances will affect our financial market, and so on. Why do I say that I cannot figure out what are these situations? I must admit that I am not that smart and as the Secretary is much smarter than I am, perhaps he could enlighten me on this. He has said that there may be contingencies. But such things will not happen because the nature of this body, unlike what the Secretary has said, is not a body that regulates or oversees our market. There is a great difference between the two.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, then I will see if the Secretary for Financial Services and the Treasury wishes to speak.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, with regard to these issues, Members have put forward many opinions. I only wish to express my views briefly.

First of all, Mr Ronny TONG, being such a famous barrister, must be a very intelligent man. He said earlier that I am cleverer than him. I must say that this is too high a praise for me.

I just wish to say that the financial market is changing rapidly and considerably. Today, it is still beyond our wisdom to envisage what will happen in the future. From my experience in the financial service sector for several decades, I have seen many things that I would never have thought of. So, today, we have talked about the need to impose restrictions or to confine the power to certain circumstances or to think about some possible scenarios. I think insofar as the financial market is concerned, it is indeed very difficult for these to be done, because many things will be changing and many unforeseeable situations will arise. This is why we do not hope to make this reserve power too narrow, so that the Chief Executive can exercise it flexibly.

In any case, I must make it clear that the Chief Executive will certainly exercise this power in the public interest. Besides, over the years, we can see that this power has never been exercised. In other words, we have been very careful with it. During the nine years after the reunification, there was the financial turmoil in Hong Kong but still, this power has not been invoked. So, Members can see that this power will not be exercised easily and lightly.

We have argued about this point for a long time. It is all because we hold different views, and I absolutely respect Members' views. I hope that insofar as my views are concerned, this Council will make a decision. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 14 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 one minute, after which the division will begin.

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 LUI Ming-wah, Mrs Selina CHOW, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, 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, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG and Miss TAM Heung-man voted against the motion.

THE CHAIRMAN, MRS RITA FAN, did not cast any vote.

THE CHAIRMAN announced that there were 43 Members present, 23 were in favour of the motion and 19 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): Members, I would like you to listen to a few words from me. In fact, when Members debate an amendment to the Bill, you

debate not only the pros and cons of the amendment, but also the relevant clauses of the Bill. So, when Mr Albert HO indicated his wish to speak earlier on, I gave him my permission and in his speech he also stated clearly that he would oppose clause 14 of the Bill. Other Members also spoke subsequently, but some only repeated the points they had previously made. I hope that this will not happen again.

When Members debate the clauses, apart from the amendments, they should also express their views on the original clauses of the Bill. I hope that Members will not repeat their arguments in the next stage of the debate. Of course, I will not stop any Member from exercising his or her right to speak, and as a matter of fact, I have the duty to protect your freedom of speech. However, I hope that Members can exercise restraint in their speeches.

CLERK (in Cantonese): Clause 17.

MISS TAM HEUNG-MAN: Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill, I move the amendment to clause 17 of the Bill as set out in the paper circulated to Members.

Under clause 17, the Financial Reporting Council (FRC) is required to submit estimates of the income and expenditure of the Council for the next financial year to the Secretary for Financial Services and the Treasury for his approval. Given that the Government is one of the parties which will contribute to the funding of the FRC, some members of the Bills Committee consider it necessary to enhance the transparency of the FRC's expenditure so as to enable the public to know how the public moneys involved are to be used. An amendment is therefore proposed to clause 17 to require the Administration to cause the approved estimates of the FRC's income and expenditure to be laid on the table of the Legislative Council. This amendment is modelled on section 13 of the Securities and Futures Ordinance, which provides that the Financial Secretary shall cause the approved estimates of the Securities and Futures Commission (SFC) to be laid on the table of Legislative Council.

The Bills Committee notes that the Administration considers the original provision in clause 17 to be appropriate, taking into account the fact that no funding approval by the Legislative Council is proposed for the FRC. The

Administration also points out that the other three funding parties of the FRC do not support the amendment to clause 17.

Members of the Bills Committee have diverse views on the amendment. The Bills Committee has decided by a majority of the members present that I should move the amendment on behalf of the Committee. I urge Members to support the amendment.

Thank you, Madam Chairman.

Proposed amendment

Clause 17 (see Annex II)

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

MR SIN CHUNG-KAI (in Cantonese): Chairman, earlier on when the Secretary spoke on clause 14, he made a remark to the effect that the Government was ultimately responsible for the FRC. Since this is an ultimate responsibility and this responsibility includes financial responsibility, so the FRC should cause its estimates to be laid on the table of the Legislative Council. On the question of modelling on the Securities and Futures Ordinance, in the debate yesterday, our Honourable colleague, Mr CHAN Kam-lam, said that there was no need for it. I would like to mention that the existing Securities and Futures Ordinance provides that financial estimates should be laid on the table of the Legislative Council. In my opinion, this regulatory body is the most important one among all the regulatory bodies. There is already a precedent for this practice, therefore, other regulatory bodies should model on it. I hope that the Government can support the amendment moved by Miss TAM Heung-man.

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

MS EMILY LAU (in Cantonese): Chairman, I speak in support of the amendment proposed by Miss TAM Heung-man on behalf of the Bills Committee.

I think we should set a good example in the Legislative Council and that means the financial estimates of the related committees and statutory bodies should be submitted to this Council for examination. Chairman, you are aware that I am most concerned about the Hong Kong Monetary Authority. Though it is said that the funds involved in the FRC would not be very substantial, as I said yesterday, I am worried that its funds may not be sufficient and if that happens, the Secretary may ask the few parties concerned to contribute more in order that the FRC can run smoothly.

Moreover, I also want to see clearly how it is to use its funds. As the Secretary has said, they would look into how every dollar is spent and they are very stringent about money matters. This Council should have the power and the responsibility to take a good look at these financial estimates. I do not see why the authorities oppose such a simple matter. I do not see why they should oppose. What does it think has been challenged? Why is it so difficult? I hope the Secretary will change his mind and support this amendment.

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

MR ANDREW LEUNG (in Cantonese): Madam Chairman, the FRC to be established and regulated by the legislation will have a sound governance framework. As a member of the Bills Committee, I must point out that the legislation has provided that the FRC shall submit its financial estimates each year to the Secretary for Financial Services and the Treasury for approval. A report on the activities of the FRC for the financial year, a statement of accounts and an audit report on that statement shall be laid on the table of the Legislative Council. These two arrangements will serve to ensure that the operating funds contributed by the Government are used properly. Moreover, the stakeholders will keep a keen interest in the operation and operating funds and such matters of the FRC. It can be seen that the operation of the FRC is subject to many layers of scrutiny. In view of this, there is no need for the FRC to cause its financial estimates which have been approved by the Secretary to be tabled before the Legislative Council.

As for the amendments proposed by some members of the Bills Committee at the final stage of the deliberations by the Bills Committee, I can see that the Administration had made a swift response and consulted the three related

stakeholders, namely, the SFC, the HKEx and the HKICPA. The result is that all of them indicated that they would not support this amendment proposal. Would this Council be trying to do more than it is necessary by insisting on this amendment?

Among members of the Bills Committee, there is a representative from the accounting profession and I do not see why before the consultation exercise that representative did not communicate with the profession and explain the situation clearly to members of the profession. Then that representative asked that the Government should conduct a consultation and after the profession had been consulted and when it indicated that it would oppose the idea, the representative insisted that an amendment should be proposed.

Madam Chairman, on behalf of the Liberal Party, I wish to state that we will not support this amendment.

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

MR CHAN KAM-LAM (in Cantonese): Chairman, I stated during the resumption of the Second Reading of the Bill that we were opposed to this amendment proposed by Miss TAM Heung-man. Although this amendment is proposed by Miss TAM on behalf of the Bills Committee, we all know that during the deliberations on the Bill, there was no consensus on this issue. Even though Mr SIN Chung-kai proposed at that time that a consultation should be conducted, the parties concerned such as the HKICPA or other stakeholders, that is, those who will contribute money, all thought that there was no need to cause the financial estimates to be laid on the table of the Legislative Council. So with respect to this issue, actually it is also very clear, and that is, there is no need for it. We should not think that things which we in the Legislative Council want should be submitted to us by the other parties.

Moreover, this sum of \$10 million can be considered a very small sum. Of course, the point is not whether this sum is large or small but whether or not there is any mechanism in place to exercise supervision because the money is to be contributed by four organizations. I believe these four organizations will look very carefully at how the money will be spent, for if it is not used properly,

it is likely that more funding is required. So these organizations will keep close watch on the situation and there would be no need for the Legislative Council to offer any help in monitoring.

Of course, another issue is that their annual report will be tabled before this Council. As Members all keep things under close review and if things done by the FRC leave Members with an impression that there are some irregularities and should Members note from its annual report that it is spendthrift, I believe even though it will only submit its annual report, we will make our views known. Likewise, the Government will keep a close eye on the FRC and if it spends money recklessly with the result that these organizations will need to contribute huge sums of money each year, I am sure they will show their disapproval. The Government will not sit back and do nothing. As for us, we will state our views. Therefore, we consider that there is no need to require the FRC to cause its financial estimates to be laid on the table of this Council. Thank you, Chairman.

(Miss TAM Heung-man indicated a wish to speak)

CHAIRMAN (in Cantonese): Miss TAM Heung-man, you will have a chance to speak again later on. Do you wish to speak now first?

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, yes, and my response will be very brief.

I would like to speak in response to remarks made by an Honourable colleague in this Council who said earlier that I had not consulted the sector for its opinions. I would like to state that I consulted some Council members of the HKICPA and they also assisted me in my examination of this Bill. Every time when I wished to consult their views on any amendment proposed by the Bills Committee, I would explain the amendment to them in person and let them read the relevant papers. I also consulted their views on the amendments. Representatives from the HKICPA told me that they did not have any opinion. I also discussed with the former president of HKICPA, Mr Edward CHOW, and asked him about the views of the sector on the amendments. The sector indicated that they were all right.

So I wish to clarify that as the representative of the accounting profession I have consulted the profession of its views and I have worked closely with the HKICPA to speak out for the profession. I hope Honourable colleagues will understand this point.

In addition, with respect to finance, as Members of this Council, especially me being a representative of the accounting profession, we have the responsibility to oversee the use of public money. This applies especially to the present case because of the money involved, a quarter will come from the public coffers. I therefore feel obliged to keep close watch on this set of accounts.

I hope Members can support my amendment. Thank you, Madam Chairman.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government opposes the amendment proposed by Miss TAM Heung-man to clause 17 of the Bill.

The FRC is funded by the Companies Registry Trading Fund, the SFC, the HKEx and the HKICPA. Its funding does not involve appropriation from general revenue of the Government, because the provision from the Companies Registry Trading Fund is not made out of the Government's general revenue. Besides, the FRC does not have the power to impose a levy on market operators and participants. The four funding parties of the FRC are not required to seek annual funding approval from the Legislative Council for their operation.

It is worth noting that the Companies Registry Trading Fund, the HKICPA and the HKEx are not required to table their financial estimates to the Legislative Council. Clause 20 of the Bill provides that the annual report on the activities of the FRC, its annual statement of accounts as well as its annual audit report shall be laid on the table of the Legislative Council. I believe this has already ensured a high degree of transparency in the financial position of the FRC. We have also made reference to the arrangements in other Ordinances, such as the Mandatory Provident Fund Schemes Ordinance, Deposit Protection Scheme Ordinance, Hong Kong Science and Technology Parks Corporation Ordinance and Urban Renewal Authority Ordinance. These Ordinances do not require the tabling of their financial estimates to the Legislative Council.

Mr SIN Chung-kai mentioned the Securities and Futures Ordinance (SFO) earlier on. The case of the SFO is actually a bit different. Section 14 of the SFO provides that the Government shall provide funding to the SFC out of the general revenue subject to the approval of the Legislative Council. Under the law, the Legislative Council has the power to approve making provision to the SFC out of the general revenue, and it is against this backdrop that section 13 of the SFO provides that the financial estimates of the SFC shall be laid on the table of the Legislative Council. But as I explained earlier on, the source of funding of the FRC is different from that of the SFC. Therefore, the manners in which their financial estimates are handled cannot be mentioned in the same breath.

Madam Chairman, when the Bills Committee further consulted the public on the Bill, market participants, the industry and other respondents did not propose that the financial estimates of the FRC shall be tabled to the Legislation Council. When we consulted the three funding parties at the request of the Bills Committee, they also did not express support for the amendment proposed by Miss TAM Heung-man. In response to Mr SIN Chung-kai's letter (the reply letter is dated 11 July, which is very recent), the accountancy profession represented by Miss TAM Heung-man stated that the HKICPA considers it unnecessary to include additional provisions for monitoring purposes, which means that it is unnecessary to add other provisions on top of clause 20. I do not know about communication between Miss TAM Heung-man and the HKICPA, and I think communication in this respect is good, but this letter has stated in black and white their view that they consider additional provisions unnecessary.

So, with regard to Miss TAM Heung-man's amendment, as far as I understand it, and as Mr Andrew LEUNG has just said, it does not have the support of all members of the Bills Committee. Therefore, I urge Members to oppose Miss TAM's amendment and endorse the original clause of the Bill.

Thank you, Madam Chairman.

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, I would be quick. I have just talked about each of the main points and I would not repeat them again. I had discussed the matter with the Council members of the HKICPA and I also consulted them with respect to the issue and asked them if

they had any disagreement to this amendment. I therefore would not repeat this point. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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 one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM,

Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung and Mr Patrick LAU voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Mr Alan LEONG voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr LI Kwok-ying voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 12 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 17 stand part of 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 51A Protection of informers

New clause 61A Section added

New clause 70A Disciplinary provisions

New clause 72A Section added

New clause 75A Public bodies specified for purposes
of definition of "public servant".

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move that the new clauses read out just now, as printed on the paper circularized to Members, be read the Second time.

The new clause 51A is proposed in response to the views of the Bills Committee, so as to provide in the Bill the protection of the informers' anonymity under common law. This amendment is modelled on similar provisions in section 30A of the Prevention of Bribery Ordinance and section 57 of the Dangerous Drugs Ordinance.

The new clause 61A serves to include section 336A in the Companies Ordinance to empower directors of an overseas company to make voluntary revisions of accounts. As the provisions on non-Hong Kong companies in the Companies (Amendment) Ordinance 2004 have not yet come into effect, the new clause 61A will be a transitional provision providing a legal basis for overseas companies to make voluntary revisions to irregularities in their accounts before the coming into effect of the Companies (Amendment) Ordinance 2004.

The new clauses 70A and 72A are drawn up in response to the views of the Bills Committee in consultation with the HKICPA. The two clauses are consequential amendments to the Professional Accountants Ordinance. The new clause 70A seeks to amend section 34(1)(a) of the Professional Accountants Ordinance to the effect that a certified public accountant, a firm of certified

public accountants (practising) and corporate practice will be subject to disciplinary proceedings for failing to comply with the information-gathering requirement imposed by the FRC for investigation purposes.

The new clause 72A expressly provides that the HKICPA is required to refer to the FRC any irregularity in relation to an auditor and reporting accountant of a listed entity for investigation purposes. Under such circumstance, the HKICPA shall not constitute an Investigation Committee under the Professional Accountant Ordinance to investigate into the same matter, in order to avoid duplicate investigation or overlapping.

The new clause 75A serves to include the reference to the FRC in Schedule 2 to the Prevention of Bribery Ordinance to ensure that members of the Audit Investigation Board which is responsible for executing the functions of the FRC, the Financial Reporting Review Committees and other committees set up by the FRC are covered by the definition of public servant in the Prevention of Bribery Ordinance and hence governed by the relevant provisions of the Ordinance.

Madam Chairman, these new clauses have the support of the Bills Committee. I hope that Members will endorse this motion. Thank you, Madam Chairman.

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

MS EMILY LAU (in Cantonese): Chairman, I speak in support of the amendments proposed by the Secretary. I wish to speak especially on clause 51A on the protection of informers' anonymity. I think the Secretary knows that we are very much concerned about this, for if protection is not sufficient, no one will dare to come forward and report irregularities. This will affect the operation of the FRC and the investigations it conducts.

Chairman, there is one thing I wish to mention and that is, during our discussion, Members thought that it might not be sufficient if only section 30A of the Prevention of Bribery Ordinance was introduced. What the amendment now proposed by the Secretary can do is only to prevent the identity and particulars of an informer from being elicited in cross-examinations. The Legal

Adviser to the Council agreed that the proposed amendment might not provide comprehensive protection. At that time, we also discussed other proposed amendments in detail. There was a view that if other amendments were proposed, the completeness of the evidence a witness might give in Court might be affected. The Legal Adviser considered that balancing the pros and cons of the effect of the proposed amendment, it might be preferable to retain the original wording of the new clause proposed by the Secretary. But he also pointed out that the authorities should consider, outside the context of this Bill and from a policy perspective, how, in the context of good corporate governance, the system for the protection of whistle blowers could be enhanced.

I hope the Secretary can get this message. This is because we are worried that though a compromise is made, what we get may not be a comprehensive protection. If this system is unsound, I think not many people will be encouraged to provide information. This is all I wish to say. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you need to speak?

(The Secretary for Financial Services and the Treasury shook his head to indicate that he did not need to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 51A, 61A, 70A, 72A and 75A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed additions

New clause 51A (see Annex II)

New clause 61A (see Annex II)

New clause 70A (see Annex II)

New clause 72A (see Annex II)

New clause 75A (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 4, 5 and 6.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to Schedules 1, 4, 5 and 6 as printed on the paper circularized to Members.

The new section 1B of Schedule 4 and section 2 of Schedule 5 provide for the arrangement for the removal of members of the Audit Investigation Board (AIB) and the Financial Reporting Review Panel respectively. We have accepted the proposal of the Bills Committee and will include the provision that the notice of removal shall be published in the Gazette.

I also move to add section 1A to Schedule 4 to provide for the arrangement for appointing temporary members to the AIB. In response to the view of the Bills Committee, I move the amendments to section 2 of Schedule 4 and section 1 of Schedule 6 to provide for the quorum of the meeting of the AIB and a Financial Reporting Review Committee (FRRC), and to empower the AIB and FRRCs to determine the procedure of meetings and transact their business by circulation of papers subject to the ordinance and any direction of the FRC.

Section 3 of Schedule 6 is amended in response to the view of the Bills Committee, so as to provide in the ordinance that when the FRC appoints a member of a FRRC to fill a vacancy, the FRC shall notify the listed entity concerned of the name of the newly appointed member, in order to enhance the transparency of the enquiry. All the amendments have the support of the Bills Committee.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex II)

Schedule 4 (see Annex II)

Schedule 5 (see Annex II)

Schedule 6 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 4, 5 and 6 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to sections 3, 5 and 6 of Schedule 2 as printed on the paper circularized to Members.

Section 3 of Schedule 2 concerns the acting arrangement for the Chairman of the FRC. Under the original clause, the Chief Executive may appoint a person to be the Acting Chairman if, because of absence from Hong Kong or any other reason, the Chairman of the FRC is unable to perform the functions of his office as Chairman. The amendment will include another scenario and that is, the Chief Executive may make the same acting arrangement when there is a vacancy in the office of Chairman.

I also move an amendment to section 5 of Schedule 2 which is about the arrangement for the removal of members of the FRC. We have accepted the proposal of the Bills Committee and will include the provision that the notice of removal shall be published in the Gazette. All the amendments have the support of the Bills Committee.

Thank you, Madam Chairman.

Proposed amendment

Schedule 2 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

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

MISS TAM HEUNG-MAN (in Cantonese): Yes, Madam Chairman.

(When Miss TAM Heung-man had not moved her motion)

CHAIRMAN (in Cantonese): Miss TAM Heung-man, you will move the amendment to section 2(2) of Schedule 2.

MISS TAM HEUNG-MAN: OK. Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill, I move the amendment to subsection (2) of section 2 of Schedule 2 to the Bill as set out in the paper circulated to Members.

Section 2 of Schedule 2 provides that the appointed members of the Financial Reporting Council (FRC) are to be appointed for a term not exceeding three years, and they are eligible for reappointment. Some members of the Bills Committee consider that as a good governance practice, there should be a maximum term for the appointed members of the FRC. Given the current policy guideline that non-official members of statutory bodies should not hold office for more than six consecutive years, some members of the Bills Committee consider that such policy guideline should be clearly set out in this Bill, same as the approach adopted for the Construction Industry Council (No. 2) Bill passed by the Legislative Council on 24 May 2006.

The Bills Committee notes the Administration's view that the context of the Construction Industry Council (CIC) is entirely different and there is no apparent need to follow the approach adopted for the CIC. The Administration indicates that it will follow the prevailing policy guideline on tenure of appointed members of statutory bodies, but it does not consider it necessary to prescribe in this Bill rigidly the maximum number of terms an appointed member may serve so as to allow flexibility for reappointment under the exigency of circumstances. Some members of the Bills Committee are concerned that in the absence of

express provisions in this Bill in this regard, what constitutes the "exigency of circumstances" would be subject to the interpretation of the Administration. Given that the Administration has already amended the Construction Industry Council (No. 2) Bill to set out clearly that an appointed member of the CIC may not serve continuously for more than six years, members of the Bills Committee could not see why the same policy guideline should not be set out in this Bill.

Members of the Bills Committee have diverse views. The Bills Committee has decided by a majority of the members present that I should, on behalf of the Bills Committee, move a Committee stage amendment to subsection (2) of section 2 of Schedule 2 to this Bill to the effect that an appointed member of the FRC may not serve continuously for more than six years. I urge Members to support the amendment.

Thank you, Madam Chairman.

Proposed amendment

Schedule 2 (see Annex II)

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

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of Miss TAM Heung-man's amendment, and I also wish to commend Secretary Dr Sarah LIAO once again. Miss TAM Heung-man's speech just now covered nothing particularly new. The issue was already brought up for discussion at our meeting on 24 May this year, and there was unanimous support from Members.

However, Chairman, what is most noteworthy is that it was the Secretary herself who suggested the need for amendment at the meeting. I therefore fail to understand why the same executive authorities should hold several different views on the same issue. What is so wrong with setting down a clear provision in the legislation anyway? Miss TAM Heung-man pointed out just now that the authorities wanted to reserve some room for handling certain exigency of circumstances. What kind of emergency situations are they talking about? Are the situations really so urgent that nobody else in all of Hong Kong can be considered suitable, with the result that the same handful of people must be appointed again and again? Is this the reason for allowing them to serve for

more than six years? Some Members might not be present just now, so I must remind Members once again that of the 7 761 existing appointees, 1 408 have already served for more than six years.

We therefore think that there should be a clear provision in the legislation. That way, there can be no possibility of any alternative arrangements. Some civil servants have in fact told me that if there is a clear provision in the legislation, they will never allow such a practice because it is unlawful for them to do so. In the absence of a clear provision, the Government may continue to resort to urgent needs and emergency situations as an excuse. This explains why we think that there should be a clear provision in law.

We have commended Secretary Dr Sarah LIAO, but we at the same time hope that we can also commend Secretary Frederick MA. We hope that the authorities can adopt the uniform practice of setting down such a requirement in any similar Bills in the future. Chairman, the purpose of specifying that a term of office must not exceed six years is to allow the participation of more people and prevent the appointment of the same group of people all the time. The Secretary remarked just now that their appointment policy was very open, as evidenced by the appointment of a person like me, Emily LAU. Yes, I can hold public office, but Mr Albert HO has described how he looks at this Bill, saying that he does not wish to see any embellishment. We also hope that more people can be appointed and they are not meant as embellishment. As a saying goes, the sighting of just one swallow does not necessarily mean that summer has arrived.

MR ALBERT HO (in Cantonese): Chairman, the "six-six" rule was actually initiated by the Government. But it has not adhered to it, thus leading to many exceptions under the excuse of flexibility. All this is of their own making. If their track records are not like this, we will not request the inclusion of a clear provision in the legislation. Since Secretary Dr Sarah LIAO can do so, I fail to understand why Secretary Frederick MA cannot. I hope that he can take our well-intentioned advice and follow the example of Secretary Dr Sarah LIAO. Thank you.

MR CHAN KAM-LAM (in Cantonese): Ms Emily LAU and Mr Albert HO both think that the construction industry and the accounting profession are the

same in nature (especially in respect of the FRC). But they are in fact entirely different.

As Members know, the FRC is responsible for investigation. What are the disadvantages of setting down a clear provision that rigidly limits a member's term of office to six years as advocated by Ms Emily LAU? There are many. For example, once the term of office is set down in black and white, there will be no possibility of any alternative arrangements. It will not be possible for the Government to alter or even slightly lengthen a member's term of office because it is unlawful to do so. However, as Members are aware, members of the FRC may frequently have to conduct investigation work. Suppose the investigation into a case is not yet completed when the members must leave upon the expiry of their terms of office, how can it be possible to carry on the investigation? It can thus be seen that the whole investigation will be impeded.

Besides, this amendment proposed by Miss TAM is not based on the unanimous consensus of the Bills Committee. Honestly speaking, therefore, we think that we must oppose it. What is more, the investigation work of the FRC will indeed take time and such work must be conducted by people with experience in accounting (especially forensic accounting and auditing). The indiscriminate addition of more members will not work. The addition of more members may not serve the purpose because they may not possess the expertise required. I naturally agree that since there are many talents in society, the Government should cast a wider net and engage more people in public service. But experience is also very important, and so are professionals with special expertise.

I hope that the Government can treat the six-year tenure as a kind of guideline and reference instead of a rigid "deadline". It is impracticable to replace a member immediately upon the expiry of his six-year term of office. I hope that the Government can note this point in the course of operation in the future. But I am against the idea of rigidly limiting the term of office to six years.

Thank you, Chairman.

MR ALBERT HO (in Cantonese): Chairman, I only wish to give a very brief response. Following Mr CHAN Kam-lam's line of reasoning, that is, if the

financial industry and the construction industry are totally different from each other, it will be advisable to abolish the "six-six" rule for all appointments connected with the financial sector. I believe that even the Government will not buy this line of reasoning. This type of "convoy" is simply overboard.

Another point mentioned by him concerns whether or not investigation work will be affected. In fact, we already discussed this question in the Bills Committee. The restriction we have in mind will affect members of the FRC only. The FRRCs under the FRC As far as my understanding goes, the FRRCs will not be affected by this amendment. Consequently, members of the FRRCs can carry on their work. This means that if a person is concurrently a member of the FRC and a FRRC, he can still carry on his work as a FRRC member when his membership of the FRC expires. I cannot see any problem here. Therefore, operational reasons are no justifications for opposing the amendment.

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

MS EMILY LAU (in Cantonese): Chairman, I am very surprised at Mr CHAN Kam-lam's remarks. The "six-six" principle is the Government's own policy, and everybody thinks that it should be adhered to.

Mr CHAN seemed to suggest that the principle should be used only as a kind of reference, and that compliance or otherwise should be discretionary. It is small wonder that more than 1 000 people have been appointed again and again. This is frankly not advisable. He may choose not to support this amendment, but he must not apply such laxity. We have been voicing our grave concern about this issue in the Panel on Home Affairs or on other occasions, and the Legislative Council has also been raising questions on it, requesting the Government to comply with the "six-six" principle. Even Secretary Dr Sarah LIAO has set down a clear provision in the relevant ordinance, which explains why we are asking Secretary Fredrick MA to follow suit. But Mr CHAN now advises us to "back step", saying that the authorities should regard the principle as a kind of reference only. Many reasons for this, such as the lack of talents and trustworthy figures in the financial sector, have been advanced to justify the repeated appointment of certain people. This is frankly not advisable. I hope Secretary Frederick MA can note that many

Members actually want them to enforce the "six-six" principle or even set down a clear provision in law.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government opposes Miss TAM Heung-man's amendment to section 2(2) of Schedule 2.

As mentioned by Members, the "six-six" rule is an internal guideline of the Government. Under this rule, a non-official member generally should not serve for more than six years in the same post. In making these appointments, the Government has all along acted in accordance with this guideline as far as possible, but this is not a hard and fast rule. I have taken up public service in many committees or statutory bodies. From my observations, if the six-year rule is applied to each and every post, some very experienced members may sometimes have to leave and this will lead to problems. I do not wish to name the organs concerned. But I can tell you that I have come across such a situation in at least several organs.

If we enforce the "six-six" rule rigidly, problems will arise. These organs are not general advisory committees, but statutory bodies of substantive operation. To maintain the operation of the statutory bodies, the six-year term may be extended under exceptional circumstances. I have seen this in one or two cases before, and the allegation made by some people using the conspiracy theory that the Government has treated these people differently because of their closeness to the Government is simply not true. In fact, some Members of the Legislative Council are also members of these committees. We all know what has actually happened. I just do not wish to name them here.

We must allow flexibility, and we cannot make it rigid. If this is enforced rigidly, it may create an adverse impact on the operation of the organs. So, I only hope that I can convince Ms Emily LAU, Mr Albert HO and Miss TAM Heung-man of the need to allow flexibility in our work. If all the rules must be enforced rigidly, it might not do any good to Hong Kong.

Earlier on, Ms Emily LAU praised Secretary Dr Sarah LIAO. I believe Secretary Dr LIAO would be very happy on hearing these praises today, and she might not even be able to sleep tonight for having been praised by Ms Emily

LAU. This is certainly something to be put down into a person's memoirs for his lifetime. I have no plan to publish a memoirs and so, I think I could not possibly be given any praises by Ms Emily LAU. All I can say is that according to my beliefs, and from my decades of experience working in the community, I consider it necessary to allow flexibility.

However, there is indeed this stipulation in the internal guideline of the Government, and all officials must comply with this "six-six" rule by all means. Therefore, I understand that while Ms Emily LAU and Mr Albert HO have particularly expressed appreciation for Secretary Dr Sarah LIAO, they may hold a grudge against me, because I do not support them. But I can do nothing about it, because I must have faith in what I believe. I cannot go against my beliefs in this issue for the applause of one or two Members of this Council. I do consider flexibility necessary. So, I am sorry that I will still call on Members to oppose Miss TAM Heung-man's amendment and endorse the original clause of the Bill. Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Chairman, I have already commended the Secretary. I already did so yesterday, so I do not think that I should commend him yet again in my memoirs. Chairman, I had been so quick to commend him because he was prepared to accept many amendments. But he should have done still better in many areas. We hope that he can do better than Secretary Dr Sarah LIAO.

The Secretary hummed and hawed just now, saying that certain people were indispensable to some organizations. Chairman, no one, including you, is indispensable. Even without you or any Members, the earth will continue to rotate as usual. Even if the State President of China or the United States President is gone, the system will continue to operate. No one on earth is indispensable. If there is really such a person, I hope the Secretary can tell us who he is. Is it Secret Agent Cheung Kong No. 1? We do want to know.

He also said that it was just an internal guideline and went on to play down its role. But I want to point out that it is actually a policy guideline. I believe that a policy guideline should be different from an internal guideline. Although it may not be a legal requirement, it is still a policy. I have met with officials of the Home Affairs Bureau several times in the office of the Bureau. They said

that they would frequently inspect other bureaux and would advise them to adhere to the guideline in case any violation was detected. Therefore, they did not treat the matter as lightly as described by the Secretary. They did not mention the need for flexibility and the indispensable role of anyone.

Chairman, why are we so concerned? The reason is that there are as many as 1 400 such appointees. If there are just 10 or so cases of violation, it will still be alright because there must be some flexibility after all. But when there are as many as 1 400 such appointees, there must be something wrong with the system. A number of Secretaries and Directors have even told us that some particular appointees have been working for them for eight or 10 years, and that it would be best if they could continue to serve for 20 or 30 years more. We therefore want to solve all these problems for the Secretary.

I hope that the Secretary I very much hope that I can commend him, and it will not be too difficult for me to do so I hope that he can heed our well-intentioned advice instead of arguing that the operation of all these statutory bodies will be affected. How can their operation be affected? Why should anyone be indispensable? We are not talking about six days. Rather, we are talking about six years, during which there will be ample opportunities to make alternative arrangements, to appoint a successor well before the expiry of an existing appointee's term of office. I have become even more worried after hearing the Secretary's remarks today. I believe that officials of the Home Affairs Bureau will be more worried than I am. They are worried that when they inspect the Financial Services and the Treasury Bureau in the future and ask the Secretary how many of the appointments he made are in breach of the "six-six" rule, he will simply ignore them, saying that the rule is just an internal guideline, and that he needs some flexibility. But I must say that he is actually acting contrary to his own policy guideline. I do not think that this is desirable.

MS AUDREY EU (in Cantonese): Chairman, having heard the Secretary's remarks just now, I must rise to tell him something I personally heard. The Secretary remarked just now that he was convinced that the Government must be able to exercise flexibility because it would do no good to set down a rigid rule. His remark reminds me of a large-scale international seminar that I attended many years ago. The guest who officiated at the seminar was the then Filipino President, Corazon AQUINO.

The seminar was truly very grand in scale, attended by many guests. When Corazon AQUINO entered the seminar venue, all the guests rose to their feet and received her with their warm applause. She is no longer the Filipino President now, but she was highly popular at that time. In her speech, she mentioned that as her term of office was drawing to a close, many people had advised her to amend the constitution of the Philippines, so that she could be elected for another term. People wanted her to do so because her performance was so good that no one could possibly replace her. In other words, she was considered indispensable. How did she respond? She said, to this effect, "I told them that there were just too many irreplaceable people on earth. If you go to the cemetery, you will see that there are just too many of such people." Many guests gave her yet another round of warm applause after hearing her remark. She was an excellent President, but she insisted that she should not seek any re-election. She was of the view that the constitution of the Philippines should not be amended either for herself or even for the Philippines.

The Secretary talked about his beliefs just now, arguing that there must be flexibility. But I hope he can understand that in many cases, adherence to the established mechanism is even more important, not least because the Government frequently mentions the need for nurturing a greater number of political talents. If the Government continues to uphold the beliefs mentioned earlier on, saying that some people are just irreplaceable, then how can the Secretary make the people of Hong Kong believe that the Government really wants to nurture political talents? I hope the Secretary can remember what Corazon said — there are just too many irreplaceable people in the cemetery. Thank you, Chairman.

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, I suppose Secretary Frederick MA will probably be sleepless tonight because Ms Emily LAU has sung him her personal praises in the Chamber. I therefore hope that he can hear the voices of Members this time around. What is more, since Ms Emily LAU has rarely commended the Secretary, he should be very delighted.

Ms LAU has made it very clear that the "six-six" rule is actually a government policy. The Government itself has also pointed out at this meeting that they will follow the "six-six" rule as a policy guideline. I am of the view that even the formulation of a clear provision on this rule in the ordinance will not, as claimed by Mr CHAN Kam-lam, preclude the possibility of alternative

arrangements. There are so many elites in the accounting sector, many experienced accountants. There are as many as 26 000 members in the HKICPA. Since there are so many elites, so many experienced accountants and auditors, how can anyone say that there are no other suitable candidates? How can anyone justify the repeated appointment of the same group of people? It is therefore hoped that the Administration can heed the voices behind our amendment today and render its support.

Thank you, Madam Chairman.

MRS SOPHIE LEUNG (in Cantonese): Chairman, since so many Honourable colleagues have talked about due adherence to the "six-six" rule and its underlying principle, I suppose no one will raise any objection.

I only wish to point out one thing. Since Members think that this is a government policy, why do we still need to add such a detailed provision? Since this is a government policy, isn't it already enough as long as this policy can be upheld resolutely by all in society? In this connection, however, I have observed over the years that things may not be so simple. I very much agree with Ms Audrey EU that the cemetery can indeed give us lots of enlightenment. We should really go to the cemetery more often. But should we argue about such a triviality?

But such lofty enlightenment aside, I think that we must also bear in mind the actual situation. The reason is that contrary to what Miss TAM Heung-man said, the Bureau cannot possibly make any indiscriminate appointments. There are of course many professionals, especially in the accounting sector. But it is still necessary for us to check whether there are any intricate networks of interests at stake. Or, we must even check whether we will be censured for making wrong appointments, for perpetuating collusion between the Government and business or collusion among businesses themselves. This is an even more important point.

Another point is that we should look at the case of the Equal Opportunities Commission a few years ago. Did the then outgoing Chairperson really want the successor to have a proper take-over or do a good job in leading the next generation? All these are questions we must consider deeply. This explains why there must be no rush.

Finally, Chairman, I wish to reiterate that since it is a government policy, we should only uphold it more vigorously as such instead of forcibly adding any specific provision to the legislation. Thank you, Chairman.

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

MR ALBERT HO (in Cantonese): Chairman, I wish to give a brief response. As Members know, the manner in which the "six-six" rule has been enforced has indeed disappointed many Members. Many Members have raised questions on this. I hope Mrs Sophie LEUNG can read the relevant minutes of meeting and the written question asked by Ms Audrey EU. After doing so, she will find out the number of appointments in violation of this rule. Some appointees have been serving for 20 years, I mean, 20 years. One of them is of course Dr David LI of the banking sector. The Government may argue that he is the representative of his sector. But I must point out that under the present appointment system, it is not mandatory to appoint a representative of a sector. He is not the only appointee who has served for more than 20 years. In other cases, the appointees concerned have also served for 10 to 20 years. It is due to such a poor record that we have repeatedly demanded the Government to make improvements. But the Government has failed to do so.

When it comes to the Bill today, I have to say that the only thing we can do is just to exercise the power vested in us, in the hope of forcing the Government to act. Since the Bureau with policy responsibility for construction can do it and it is accepted by the Government, the idea is not at all impracticable. I also believe that the implementation of the "six-six" rule will only make the Government more determined to appoint a greater number of new personalities and inject more fresh blood. We must not be constrained by the thinking that the only safest way is to appoint people with experience. That we should always appoint people who have been performing well for more than a decade is an outdated mindset, one which will hamstring society in making progress.

I therefore think that the translation of this policy into law is warranted by present-day circumstances. We are actually compelled to act after seeing the behaviour of the Government.

MR JEFFREY LAM (in Cantonese): Chairman, an international financial centre like ours must handle a wide variety of matters. And, in many cases, we

simply do not know when any incidents will happen, or what incidents will happen.

It is very important to prepare for foul in fair weather. In case the six-year term of a member expires in the middle of an enquiry — we have also been scrutinizing this Bill for a year or so, having held some 20 meetings — and it is necessary to appoint a replacement, will the progress be slowed down? The new member may not know the full story. The Government has put in place the "six-six" guideline and I think this is already enough. In the case of certain committees, there must be flexibility, but such flexibility is given only under very special circumstances. We are not saying that all committee appointees must serve for more than six years, and that they should be allowed to serve more than six committees all at the same time. I believe that under some special circumstances, a certain degree of flexibility can be tolerated. Thank you, Chairman.

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

MS MARGARET NG (in Cantonese): Chairman, since there is no time for lunch anyway, I may as well say a few more words. Actually, like the debate this morning, this debate is also about the difference between the rule of law and the rule of man. Should we believe in any individuals, or should we believe in institutions? We have always maintained the position that we must believe in institutions and at the same time seek to perfect them continuously. We do not want any enlightened despot who will make decisions for us when we do not even know what the public interest is. All civilized societies lay emphasis on institutions, instead of imposing all responsibilities on any individuals.

I have heard many Members express their worry about an excessively rigid rule, questioning us what should be done if the work is just half-done. Chairman, an institution can either be flexible or inflexible. The important thing is for us to build flexibility into the institution. For example, in many other ordinances, there are already similar provisions on what should be done if any committee members must be replaced in the process of conducting hearings, making rulings and handling applications or appeals. There is in fact a standard practice and our systems already cover all these circumstances. If any member's term of office expires when his task is not yet completed, we will

adopt the usual practice of allowing him to complete the task despite the expiration of his term.

Chairman, I wish to say these simple words because I think that this issue is very important, and that we should not regard flexibility and institutions as mutually exclusive. Institutions can actually be flexible. But how can we perfect our institutions continuously? This is actually our most formidable task. If we hasten to give up our institutions whenever we come across any flexibility problems, we will end up in mutual exclusivity. In other words, when there is flexibility, there will be no institutions and *vice versa*. This kind of argument simply cannot stand.

Chairman, I also wish to say a few words in this very important debate because the principle concerned is simple yet significant. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, first of all, I wish to say that we do have an institution in place, and we only oppose incorporating it in law as a statutory provision. So, there is no question of not having an institution in place.

Secondly, I entirely agree with Ms Audrey EU, that nobody is indispensable. But insofar as the operation of these committees is concerned, from our experience, it is sometimes necessary to provide some degree of flexibility because of the need for transitional arrangement or, as Mr Jeffrey LAM said earlier, when following up a particular issue. I fully share the view of Ms Audrey EU, and I hold the same view that to a company and government department, redeployment or reshuffling of staff is nothing uncommon at all. But to these committees, we will sometimes give them more time to ensure

smooth transition and in order not to affect their operation. It does not mean that the person concerned will serve in a committee for his whole lifetime, just that more time will be allowed for a smoother handover, and that is all. Therefore, we do need this flexibility.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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)

Mr Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM and Mr Andrew LEUNG voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Mr Alan LEONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr LEUNG Kwok-hung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, six were in favour of the amendment, 13 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 22 were present, 12 were in favour of the amendment, eight against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

MISS TAM HEUNG-MAN: Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill (the Bills Committee), I move the amendment to section 7 of Schedule 2 to the Financial Reporting Council Bill (the Bill) as set out in the paper circulated to Members.

Pursuant to section 7 of Schedule 2 to the Bill, the Financial Reporting Council (FRC) may transact its business by circulation of papers via a written resolution approved by all the members of the FRC present in Hong Kong (being not less than the number required to constitute two thirds of the members of the FRC). To prevent abuse of this provision, some members of the Bills Committee consider that a Committee stage amendment should be moved to section 7 of Schedule 2 modelling on the Committee stage amendment moved by the Administration to the Construction Industry Council (No. 2) Bill on 24 May for regulating the transaction of business by circulation of papers. The effect of the Committee stage amendment is that any member of the FRC may, upon receipt of a paper issued to him by circulation, give notice in writing to the chairman requiring that the business to which the paper relates be transacted at a meeting, and the chairman shall convene the meeting accordingly.

The Bills Committee notes that the Administration does not consider the Committee stage amendment necessary.

Members of the Bills Committee have diverse views on the Committee stage amendment. The Bills Committee has decided by a majority of the members present that I should move the Committee stage amendment on behalf of the Bills Committee. I urge Members to support the amendment.

Thank you, Madam Chairman.

Proposed amendment

Schedule 2 (see Annex II)

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

MR ALBERT HO (in Cantonese): Chairman, one of the most important aims of this amendment is that in case a member of the FRC was not present in Hong Kong when a written resolution was signed, he may still request the convening of a meeting if he holds very different views and believes that he can persuade other members to change their views. Of course, he will put forward such a request only when he estimates that he can return to Hong Kong. I therefore fail to see why the Chairman of the FRC should refuse to convene such a meeting and why he should continue to transact the relevant business by circulation of papers via a

written resolution approved by all the members present in Hong Kong. Actually, there is no unanimous approval from members. The reason is that some members not present in Hong Kong can come back shortly and request the convening of a meeting in the hope of changing other members' views. I think this is a democratic practice, a show of respect for meeting procedures and rational discussions. I therefore think that there is a practical need for this amendment. I do not understand why the Government should even oppose such an amendment and insist on the transaction of business by circulation of papers via a written resolution approved by all the members present in Hong Kong. I do not think that this practice is satisfactory.

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of Miss TAM Heung-man's amendment. In this connection, I must commend Secretary Dr Sarah LIAO once again because the arrangement concerned has received the unanimous support of the Construction Industry Council and the Legislative Council.

I frankly cannot understand why the authorities, particularly Secretary Frederick MA, should find the whole thing so difficult. This is only a minor matter. As mentioned by Mr Albert HO just now, procedures will thus become clear, and the proposed practice is most fair and not at all difficult to enforce. Upon a member's request, a meeting can always be convened. What difficulties are there anyway? Why should it be specified that only two thirds of the members can already transact business? We are worried about abuse of such a provision.

It is actually not necessary to spend such a long time on debating this amendment because it is a very good one, because the whole Bill is about the enhancement of corporate governance and the adoption of good practices. This is something that should be done but then you oppose it. I think you are contradicting yourself. Thank you, Chairman.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government opposes Miss TAM Heung-man's amendment to section 7 of Schedule 2.

The original clause is modelled on section 6 of Schedule 2 of the Deposit Protection Scheme Ordinance and so, it is supported by justifications. It strikes

me as strange that Mr Albert HO is opposed to this provision today. Why? It is because Mr Albert HO was the Chairman of the Bills Committee on Deposit Protection Scheme Bill back then but today, he is of the view that this provision is wrong and warrants amendment.

Frankly speaking, I think some Members may feel puzzled as to what exactly we are arguing here. What we are arguing is actually a practical, procedural matter. We consider that the law has clearly set out the important principles and it respects the spirit of parliamentary assemblies, that is, the majority rules. If a resolution is endorsed by two thirds of the members in writing, the resolution can be considered as being endorsed. I really do not see the need to complicate the matter and to write into the Bill more complications. So, I am sorry that I again could not get any praises from Ms Emily LAU. Secretary Dr Sarah LIAO may get more, for she has been praised twice today. This is also a record. Even if Secretary Dr LIAO cannot hear these praises today, I will tell her when I see her.

I only wish to point out that these are practical and procedural matters and amendment is unwarranted, for it would only complicate the matter. So, I hope that Members will oppose Miss TAM's amendment and endorse the original provision of the Bill.

Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, honestly speaking, whenever we as legislators scrutinize any Bill, we should discard the mentality of rigidly following any established practices. We must not refrain from conducting further examination and listening to new opinions, thinking that all things handed down from the past must be rigid absolutes which are totally desirable. Why is it so important to inject new blood into the legislature? The reason is that many opinions are in fact put forward by new Members. New Members bring with them new viewpoints and ideas. What we did in the past may not always be absolutely good or unchangeable.

Every Bill contains several hundred clauses. We may just be able to focus on a very small number of them because one's energy is after all limited. After tackling the major issues, we may be unable to consider many details carefully and thoroughly, and no one can offer any better ideas. In the case of the Bill today, a colleague or a new colleague advanced a better idea in the

process of scrutiny. The idea is well justified. A resolution may be approved by two thirds of all of the members present in Hong Kong, but it is possible that a member not present in Hong Kong may just be in Macao or playing golf in Zhuhai, and he intends to stay there for only one or two days. When he learns of the resolution and if he thinks that there are problems with it, he may wish to convene a meeting. He may shorten his vacation and come back to Hong Kong to give his views, hoping that a decision can be made only after holding rational debates and discussions in the meeting. This is the very spirit of holding a meeting. One should not think that the convening of a meeting will complicate the matter and bring forth more troubles and disputes. I do not think that we should handle things that way. If we are to handle things that way, why should we still convene any meetings? Why should we still establish any such committees?

The establishment of such committees is meant to resolve problems through the normal channel of convening meetings. The Secretary must bear in mind that written approvals should not be regarded as a conventional practice. This is not a normal practice despite the approval given by two thirds of the members. Why? The reason is that given some significant issues, discussions and debates must be held. If all are prepared to focus on facts and listen to reasons, they should adopt an open attitude and check whether they should re-examine or change their own viewpoints. I think the Government also wants members to behave like this instead of wanting them to become rubber-stamps. For this reason, why should the Government oppose the amendment? The Secretary must realize that the one who requests the convening of a meeting is obligated to rush back for the meeting. That being the case, what is the problem anyway? Why must we insist on the simple solution, on written approvals? And, why does the Government think that this simple method is better than convening a meeting? Will the convening of a meeting impede the operation of the entire FRC?

To sum up, we should not say that because there are some existing provisions, because such provisions were passed by us, we must not change anything now, or else we will be contradicting ourselves. We must not look at things that way. We should always heed good advice. Every day, we will examine the work we did the day before and check whether there is any room for improvement, innovation or reform. If there is any good advice, we must treat it with an open attitude. I hope the Secretary can also adopt such an attitude. If everybody simply follows old practices rigidly, the situation will be very bad. Following practices is not necessarily desirable because day after day, society will turn increasingly inert, failing to make any progress.

MR CHAN KAM-LAM (in Cantonese): Chairman, Mr Albert HO has just talked about the need for adopting an open attitude. I naturally hope that Members can all adopt an open, impartial and pragmatic attitude towards this issue.

It is of course not desirable to follow old practices rigidly. Consequently, it is equally undesirable for Miss TAM Heung-man to model her amendment to this Bill completely on the relevant provisions of the construction-related legislation. Similarly, Mr Albert HO seemed to be saying that even if a member expressed any written disapproval, the Government would not allow the convening of a meeting. But this is not quite the case in reality. Under the existing legislation, in case two or more members request the convening of a meeting, the Chairman must comply. Therefore, the question now only involves whether a request is to be made by one member or two members. I do not think that we will run counter to any principles of a democratic, open and civilized society even if this amendment is not adopted. The question now only involves whether a request is to be made by one member or two members. I am of the view that if two or more board members find it necessary to convene a meeting on a certain resolution, the Chairman must then convene a meeting for the purpose. This is an appropriate practice.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you need to speak?

(The Secretary for Financial Services and the Treasury shook his head to indicate that he did not need to speak)

CHAIRMAN (in Cantonese): Miss TAM Heung-man, do you need to speak?

(Miss TAM Heung-man shook her head to indicate that she did not need to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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)

Mr Albert HO rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Mr Alan LEONG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Mr LEUNG Kwok-hung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, six were in favour of the amendment, 15 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 were in favour of the amendment, seven against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendment to Schedule 2 moved by the Secretary for Financial Services and the Treasury, the question now put is: That Schedule 2, as amended, stand part of 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedule 3.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, I move the amendments to section 1(3), as well as sections 2 and 4 of Schedule 3, as printed on the paper circularized to Members.

Section 1(3) of Schedule 3 is amended to provide for the effective date of the notice of resignation given by the Chief Executive Officer of the FRC. Section 2 of Schedule 3 concerns the acting arrangement for the Chief Executive Officer of the FRC. The original clause provides that if, because of absence from Hong Kong or any other reason, the Chief Executive Officer is unable to perform the functions of his office as Chief Executive Officer, the Chief Executive may appoint another person to act in the place of the Chief Executive Officer. The amendment serves to add another scenario and that is, when there is a vacancy in the office of the Chief Executive Officer, the Chief Executive may make the same acting arrangement. Section 4 is amended at the suggestion of the Bills Committee by adding a provision on the gazettal of notice in respect of the arrangement for removal of the Chief Executive Officer. Madam Chairman, all these amendments have the support of the Bills Committee.

Thank you, Madam Chairman.

Proposed amendment

Schedule 3 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MISS TAM HEUNG-MAN: Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill (the Bills Committee), I move the amendments to subsections (1) and (2) of section 1 of Schedule 3 to the Financial Reporting Council Bill (the Bill) as set out in the paper circulated to Members.

Section 1 of Schedule 3 provides for the tenure of the Chief Executive Officer (CEO) of the Financial Reporting Council (FRC) and the arrangement for him to resign from office. In examining this section, the Bills Committee is advised by the Administration that an open recruitment will likely be conducted for the appointment of the CEO. Some members of the Bills Committee consider it necessary to add an express provision in the Bill to make it clear that the CEO is to be recruited openly. However, the Administration does not see the need to do so and it considers the expression "recruited openly" unclear. Some members of the Bills Committee consider that the meaning of the expression should be well understood as the expression is commonly used.

Members of the Bills Committee have diverse views. The Bills Committee has decided by a majority of the members present that I should, on behalf of the Committee, move a Committee stage amendment to section 1 of Schedule 3 to set out clearly that the CEO is to be recruited openly. I urge Members to support this amendment.

Thank you, Madam Chairman.

Proposed amendment

Schedule 3 (see Annex II)

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

MS EMILY LAU (in Cantonese): Chairman, I support the amendment moved by Miss TAM Heung-man. This amendment also represents the views of many colleagues, which explains why we requested her to move it for us. Actually, this amendment does not contradict the policy and thinking of the authorities.

The authorities also want to do this, but they may not necessarily do so Do not say that I am exposing the secret The authorities also say that they may do so. Very often, the internal operation of the Government is very indirect. Maybe, when the authorities can identify a suitable candidate, everything will be alright. We think that the most capable person should be appointed and the best means to achieve this end is open recruitment. Therefore, we have proposed that if the Government raises no objection, it will be best to set down a clear provision on this.

Some have understandably raised one question. If open recruitment is adopted, should there be another open recruitment when the term of office expires? At that time, we decided to seek advice from the Legal Adviser. According to him, although there is open recruitment for the first appointment of a candidate, flexibility may be applied the next time and it is not absolutely necessary to conduct an open recruitment again. In this regard, we also emphasize flexibility and we understand that there will be a governance committee by that time, so those involved will be able to make their own decision. Consequently, we accepted the advice of the Legal Adviser. We think that this arrangement is acceptable. We hope that the Secretary can really take our well-intentioned advice. Whether or not he supports this, I still hope that the Secretary can tell us clearly that there will be open recruitment for this post. Thank you, Chairman.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government opposes Miss TAM Heung-man's amendment to subsections (1) and (2) of section 1 of Schedule 3.

We oppose the amendment mainly for two reasons. First, while it is the Government's intention to conduct recruitment openly under general circumstances (in fact, I cannot think of any post of any important statutory body that was not recruited openly in the past few years), we think that this should not be made a rigid provision in the legislation, because this matter is administrative in nature and it is unnecessary to provide for this in the legislation. Our recruitment exercises have all along been conducted in an open and transparent manner. Therefore, we do not see that there is a need to do so.

Second, the wording of "recruited openly" used in the amendment. It is because from the angle of law enforcement, this is not clearly defined and may easily lead to more complications. Moreover, the Government also said at

meetings of the Bills Committee that the expression "recruited openly" was unclear and that it would be best not to use this expression. We have also looked at the laws of Hong Kong and we do not find the expression of "recruited openly" in any other ordinance. Mr Albert HO might say that there is a first time for everything anyway and so, why can it not be done? However, we are worried that if this is expressly written in law, it would give rise to more problems. Some people may argue about the meaning of "recruited openly". Does it mean "recruited openly" if an advertisement is put up only in the Government's or the FRC's webpage? Is it that an advertisement has to be put up in every corner of the world in order to be considered as "recruited openly"? Many unnecessary problems may arise. Madam Chairman, we must understand that these posts are funded by a number of organizations, and they would hope that the best candidates can be identified. The conspiracy theory and the theory of black-box operation mentioned by Ms Emily LAU will not happen. She does not have to worry about it, for this involves not only the Government, but also a number of organizations. Miss TAM Heung-man is the representative of the accountancy profession. We believe that the HKICPA, being one of the funding parties, will certainly ask that the best candidate be identified. So, it is basically unnecessary to incorporate these administrative matters into the law.

If it is necessary to make provisions on everything in law, I think the Legislative Council might have to hold meetings for 12 months a year. If it is necessary to include everything in law, I think that does not quite meet the need of practicality. For these reasons, the Government sincerely hopes that Members will oppose Miss TAM Heung-man's amendment and endorse the original clause of the Bill. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Miss TAM Heung-man, do you wish to speak again?

MISS TAM HEUNG-MAN (in Cantonese): What I want to say is very simple. Since the Government says that there will be open recruitment, and that the recruitment exercise will be conducted in an open and transparent manner, I think there will not be any problem for us to make everything clear in the ordinance. What is more, open recruitment will enable many professionals to join the FRC. I hope the Government can support such a practice.

Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Chairman, the Secretary remarked just now that there were very few statutory bodies which did not adopt open recruitment in the past few years. But did the Equal Opportunities Commission conduct any open recruitment? And, was there any open recruitment for the post of Privacy Commissioner for Personal Data? All these are statutory bodies and both the salaries and posts in question are very high. I do not know anything about the case with the Airport Authority. But we can see that in many cases, there is no open recruitment.

This explains precisely why I want everything made clear in the legislation. But even so, I am still worried. Chairman, as you are also aware, although the salaries involved are very low, we must still conduct open recruitment when we want to take on any personal assistants. Therefore, in many cases, the relevant requirements have all been stipulated clearly. Consequently, I hope the Secretary can search the records. Maybe, when he does so, he will find out that there are actually more cases with no open recruitment. This is exactly the reason for Members' worries, for their request for a clear provision in law.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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 one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the amendment, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 13 were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MISS TAM HEUNG-MAN: Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill, I move the amendment to add subsection (2) to section 3 of Schedule 3 to the Bill as set out in the paper circulated to Members.

Section 3 of Schedule 3 provides that the terms and conditions of employment of the Chief Executive Officer (CEO) of the Financial Reporting Council (FRC) are determined by the Chief Executive. Some members of the Bills Committee highlight the public concern that senior executives of some statutory public bodies are overpaid and objective criteria are not in place for determining pay increases for the senior executives. To ensure that the CEO of the FRC is remunerated at a reasonable level, the members consider that a mechanism should be provided in this Bill for determining the remuneration for the CEO. They therefore suggest that a Committee stage amendment be moved to add subsection (2) to section 3 of Schedule 3 to the effect that the remuneration of the CEO is to be determined with reference to the remuneration of public officers of comparable level by an independent committee appointed by the FRC for such purpose.

The Bills Committee notes that the Administration does not consider it appropriate to prescribe rigidly the pay level of the CEO in the legislation, so as to allow flexibility for the Chief Executive in determining the remuneration packages of individuals after taking into account, among other things, their background, capability and performance, together with the pay trends and levels in comparable bodies. The Administration also points out that the FRC may, like the Securities and Futures Commission, set up a Remuneration Committee to make recommendations on the remuneration packages of its senior executives. On drafting, the Administration considers it unclear what the expressions "public officers of comparable level" and "independent committee" refer to. Some members consider that the expressions are sufficiently clear.

Members of the Bills Committee have diverse views on the Committee stage amendment. The Bills Committee has decided by a majority of the

members present that I should move the Committee stage amendment on behalf of the Committee. I urge Members to support the amendment.

Thank you, Madam Chairman.

Proposed amendment

Schedule 3 (see Annex II)

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

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of Miss TAM Heung-man's amendment.

As I remarked yesterday, many of the deputations that presented views to us, especially the Chamber of Hong Kong Listed Companies, do support the idea of making everything clear. Actually, many companies are gravely concerned that the FRC may become a "spendthrift". As a result, this amendment establishes two principles. First, salary levels must be in line with those of public officers. Besides, an independent committee must be established to handle this matter. The authorities say that they do not understand what is meant by an independent committee. Actually, the members appointed by the authorities are all independent. If an independent committee is established, we will accept the arrangement whereby the Chief Executive or the FRC can appoint certain persons. These people can be professionals from the accounting sector or academics. After this, studies should first be conducted to determine the linkage of posts with comparable levels in the public sector before any decision is made. This will allow huge flexibility and establish some rules.

The problem now is that in the absence of such rules, I really do not know how much money the authorities will spend, or how much the authorities say will have to be paid to these people. We have tried to put forward amendments repeatedly, and the only reason is that we want to see some sort of regulation in the system. But I cannot understand why the Secretary has just kept on talking about flexibility. Every time, he will just say that they must be given greater flexibility — they may or may not conduct open recruitment, and they may offer very high salaries.

I thus hope that Members can support Miss TAM Heung-man's amendment.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Government opposes the amendment proposed by Miss TAM Heung-man. The amendment seeks to add subsection (2) to section 3 of Schedule 3 of the Bill. I have listened to the arguments of Miss TAM and Ms LAU earlier. The reasons of the Government in opposing Miss TAM Heung-man's amendment are, in fact, also very simple.

Firstly, insofar as administrative matters are concerned, it is better for the governing board of the FRC to make decisions, rather than making provisions in law. It is because under a good corporate governance framework, I believe the FRC will also have such structures as a remuneration committee and nomination committee. The Government does not oppose setting up these structures, for it is also the wish of the Government to improve the standard of corporate governance. These structures have also been set up in the MTR Corporation Limited as well as in many other organizations. It is basically unnecessary for us to make a decision on pitching the remuneration at the pay level of civil servants. Even if it has to be linked with the pay of civil servants or reference be made to their pay level, with which pay level should it be linked? Should it be D8, D9 or D4? This will nonetheless give rise to endless arguments. Such being the case, insofar as this issue is concerned, it is better to make a decision in the light of the actual situation at the time.

Moreover, Members can put their mind at ease because the FRC will be funded by a number of organizations, including the SFC, the HKEx and the HKICPA, which should be keeping watch on this even more keenly than Members. They will ensure that the remuneration will not be pitched at too high a level. Ms Emily LAU said yesterday that she was worried that the remuneration would be very high, but as she said yesterday, the whole budget would only be \$100 million. Could it be that a CEO would be hired at \$100 million? So, there is already a limit. I think when we discuss this issue, we should not argue for the sake of arguing. There is already a limit, and many people will be watching this too. If everything should be rigidly written in law, as I said earlier, the law book might become a few more inches thicker.

So, I think I am not stubborn. Please do not say that I am stubborn. I am a very flexible person. I think under such circumstances, we cannot accept that this should be written in law. Furthermore, frankly speaking, when appointing the CEO, the Chief Executive will see how much his remuneration is.

So, this is consistent with our spirit. I, therefore, hope that Members will oppose Miss TAM Heung-man's amendment and endorse the original clause of the Bill.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Miss TAM Heung-man, do you wish to speak again?

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, I hope that the Secretary can heed Ms Emily LAU's advice. Her points are nicely put. She is guided by her own principles. And, companies can also enhance their corporate governance as a result. Therefore, the inclusion of a clear provision will not contradict anything. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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 one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr Ronny TONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendment.

Mr LEUNG Kwok-hung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, six were in favour of the amendment, 14 against

it and one abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 12 were in favour of the amendment, seven against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

CHAIRMAN (in Cantonese): As the amendment to add subsection (3) to section 3 of Schedule 3 moved by Miss TAM Heung-man has been negated, I have given permission for Miss TAM Heung-man to revise the terms of her other amendments to section 3 of Schedule 3, so as to remove the reference to subsection (3) in the proposed subsection (1).

CHAIRMAN (in Cantonese): Miss TAM Heung-man, you may now move your revised amendments to section 3 of Schedule 3.

MISS TAM HEUNG-MAN: Madam Chairman, on behalf of the Bills Committee on Financial Reporting Council Bill, I move the revised amendment to add subsection (2) to section 3 of Schedule 3 and the remaining amendments to that section, as set out in the paper circulated to Members.

Some members of the Bills Committee consider that arrangements should be made to govern the post-termination employment of the Chief Executive Officer (CEO) of the Financial Reporting Council (FRC) to guard against possible conflict of interest. In this connection, the Bills Committee notes that all directorate civil servants are required to seek prior permission from the Government if they wish to take up outside work during their final leave period and/or within a specified control period after they have left the Government. For directorate officers below D8 level or equivalent, the control period is one year for those who have left the Government after less than six years of continuous service, and two years for those who have left the Government after six or more years of continuous service. In the light of this arrangement, some members of the Bills Committee suggest that a Committee stage amendment (CSA) be moved to add a provision in section 3 of Schedule 3 to the Bill to the effect that the FRC should set comprehensive arrangements for the post-termination employment of the CEO, including a control period of not less than 12 months commencing from the date of termination during which the CEO shall not take up any remunerative employment without the prior written approval of the FRC.

The Bills Committee notes the Administration's view that the arrangements governing post-termination employment should be set out in the appointment letter and not in the Bill. On drafting, the Administration considers it unclear what the expressions "any remunerative employment" and "control period" refer to. The Bills Committee notes its legal adviser's view that both expressions are sufficiently clear as the provision is meant to set out the principles to be followed by the FRC which could fill out the details. As regards the expression "control period", the same expression is used by the Administration in its papers presented to the Panel on Public Service on its policy governing the post-service employment of former directorate civil servants.

Members of the Bills Committee have diverse views on the CSA. The Bills Committee has decided by a majority of the members present that I should move the CSA on behalf of the Committee. I urge Members to support the amendment.

Thank you, Madam Chairman.

Proposed amendment

Schedule 3 (see Annex II)

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, the Administration opposes the amendment moved by Miss TAM Heung-man, which seeks to add subsection (2) to section 3 of Schedule 3 of the Bill.

The reason of the Government in opposing the amendment is very simple. It is because we already included in the Bill sufficient statutory safeguard to ensure that there will not be conflict of interest on the part of the CEO of the FRC when performing the functions of the FRC and after the CEO has ceased to hold office.

The secrecy provisions in clause 51 of the Bill are worthy of attention. Under this clause, members and employees (including the CEO) of the FRC

must keep confidential all matters that have come to their knowledge in the course of performing the functions of the FRC and must not disclose any such information to any other person except in the performance of the functions of the FRC or when they are exempted from the requirement and hence allowed to disclose such information. This secrecy requirement will continue to apply even after the termination of the appointment of the CEO. Any person, including the CEO who has ceased to hold office, in breach of the secrecy provisions is liable on conviction on indictment to imprisonment for two years and to a fine of \$1 million. I wish to reiterate that the Government certainly understands Members' concern, and in deciding on the terms and conditions of appointment of the CEO of the FRC, the Chief Executive will consider the best arrangements, and we will be glad to convey Members' concern to the FRC, so that administrative measures will be drawn up to ensure good governance. However, we do not think that these administrative safeguards should be incorporated into the Bill. This is consistent with the spirit concerning remuneration and open recruitment which I have just mentioned. So, I hope that Members will oppose Miss TAM's amendment and endorse the original clause of the Bill.

Thank you, Madam Chairman.

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in opposition to the Secretary's remarks just now. I will support Miss TAM's amendment.

We already discussed this issue in the Bills Committee and also studied the relevant secrecy provisions. But we were worried that these clauses could not provide adequate safeguard. Therefore, we propose to establish a committee to handle the matter. The CEO concerned is not actually barred from taking up other jobs after his departure from the FRC. He is just required to seek prior permission. This is the rule. I think this is a very effective way to ensure good corporate governance. I mean, it is good to list clearly all the types of jobs that may lead to conflicts of interests.

From the press, we often read news stories about top government officials joining private-sector companies immediately after their departure from the Government. We fear that government information may be leaked to their new employers. The Government claims that there are secrecy provisions. But I simply do not know how effective they are.

In some cases, however, if there is a committee, people will be able to ask questions and clarify doubts. For example, the committee may specify that some types of jobs will not involve any conflicts of interest and the persons concerned can accept such jobs. And, in case there are any conflicts of interest, the committee can also expressly state their unsuitability. We hope that there can be clear provisions as safeguards.

I support Miss TAM's amendment.

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, I strongly support Ms Emily LAU's remarks. And, I hope that the Secretary can listen to Members' views because this provision is conducive to corporate governance. There will be greater clarity. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss TAM Heung-man be passed. 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 one minute, after which the division will begin.

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.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG and Mr Ronny TONG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendment.

Mr LEUNG Kwok-hung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 19 were present, six were in favour of the amendment and 13 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 12 were in favour of the amendment, seven against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendment to Schedule 3 moved by the Secretary for Financial Services and the Treasury, the question now put is: That Schedule 3, as amended, stand part of 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 a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

FINANCIAL REPORTING COUNCIL BILL

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

Financial Reporting Council Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Financial Reporting Council 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)

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

CLERK (in Cantonese): Financial Reporting Council Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Supplementary Appropriation (2005-2006) Bill.

SUPPLEMENTARY APPROPRIATION (2005-2006) BILL

Resumption of debate on Second Reading which was moved on 14 June 2006

PRESIDENT (in Cantonese): Does any other 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 Supplementary Appropriation (2005-2006) 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Supplementary Appropriation (2005-2006) Bill.

Council went into Committee.

Committee Stage

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

SUPPLEMENTARY APPROPRIATION (2005-2006) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2005-2006) Bill.

CLERK (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

SUPPLEMENTARY APPROPRIATION (2005-2006) BILL

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

Supplementary Appropriation (2005-2006) 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 Supplementary Appropriation (2005-2006) 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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Supplementary Appropriation (2005-2006) Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance in relation to amending subsidiary legislation.

First motion: Amending the Deposit Protection Scheme Ordinance (Amendment of Schedules 1 and 4) Notice 2006.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I move that the resolution set out on the Agenda be passed.

The resolution seeks to amend the Deposit Protection Scheme Ordinance (Amendment of Schedules 1 and 4) Notice 2006 tabled before the Legislative Council on 24 May 2006.

Before the introduction of the Deposit Protection Scheme (DPS), the Hong Kong Deposit Protection Board has to amend Schedule 1 to the Deposit Protection Scheme Ordinance to clearly provide for the exclusion of structured deposits from the scope of the DPS. In response to a question raised by the

Subcommittee set up under the Legislative Council to study four items of subsidiary legislation under the Deposit Protection Scheme Ordinance, the Hong Kong Monetary Authority examined the samples of the terms and conditions of foreign currency deposits in banks and noted that the banks had the power to repay foreign currency deposits by Hong Kong Dollar according to the prevailing exchange rates. To avoid foreign currency deposits from being mistakenly included in the definition of "structured deposit", thereby rendering foreign currency deposits unprotected, it is now proposed that the definition of "structured deposit" be slightly amended in accordance with the content of the resolution.

To achieve consistency, it is also proposed that the term "general holiday" be amended as "public holiday" in the Deposit Protection Scheme Ordinance (Amendment of Schedules 1 and 4) Notice 2006.

I move that the resolution be passed. Thank you, President.

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

"RESOLVED that the Deposit Protection Scheme Ordinance (Amendment of Schedules 1 and 4) Notice 2006, published in the Gazette as Legal Notice No. 107 of 2006 and laid on the table of the Legislative Council on 24 May 2006, be amended —

- (a) in section 2(3), by repealing the new section 2A(a)(i) and substituting —
 - "(i) in another currency to be converted, at an exchange rate specified in terms of a ratio at the time when the loan of money was made, from the currency in which that loan was made; or";
- (b) in section 2(3), in the new section 2A(b), by repealing "a currency that is different from that in which the loan of money was made" and substituting "another currency to be converted, at an exchange rate specified in terms of a ratio at the time when the loan of money was made, from the currency in which that loan was made";
- (c) in section 3(1), in the English text, in the new definition of "specified date", in paragraph (b), by repealing "general" where it twice appears and substituting "public"."

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

MR SIN CHUNG-KAI (in Cantonese): Madam President, a Subcommittee was formed at the meeting of the House Committee on 26 May this year to study the four items of subsidiary legislation published in the Gazette as Legal Notices No. 107, 108, 109 and 110 and tabled before the Legislative Council under the Deposit Protection Scheme Ordinance on 24 May this year. I now speak in my capacity as the Chairman of the Subcommittee.

In short, the Subcommittee supports these four items of subsidiary legislation. First of all, the Subcommittee supports the Deposit Protection Scheme Ordinance (Amendment of Schedules 1 to 4) Notice 2006, which serves to clarify that structured products are not protected by the Deposit Protection Scheme and provides for miscellaneous amendments to improve the operation of Schedules 1 and 4 to the Ordinance. In response to the view of the Subcommittee, the Administration agreed to amend the provisions of the Notice to ensure that foreign currency deposits would not inadvertently be captured under the definition of "structured deposit" and thereby excluded from deposit protection. The Administration also agreed to introduce an amendment to the drafting of the English text of the Notice to ensure consistency in terminology used. The Subcommittee supports these amendments.

Moreover, the Subcommittee also supports the other three items of subsidiary legislation.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no Member wishes to speak, Secretary for Financial Services and the Treasury, do you wish to reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam President, I only wish to thank Mr SIN Chung-kai and other

Members here for their speeches on the motion. During the scrutiny of the subsidiary legislation relating to the Deposit Protection Scheme (DPS), the Subcommittee led by Mr SIN Chung-kai offered us a lot of valuable opinions. The amendments proposed in the motion are supported by the Subcommittee. I do not have anything further to add. I hope Members will support the motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury 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 of the Members present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Amending the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): President, I move that the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006 (the Amendment Regulation) be amended as set out on the Agenda.

The Electoral Affairs Commission (EAC) has made the above Amendment Regulation to ensure the smooth conduct of the coming Election Committee (EC) subsector elections to be held in December 2006. The amendments involved are basically technical in nature. Apart from consequential amendments arising

from the latest provisions in the Chief Executive Election Ordinance, the Amendment Regulation also includes amendments to align the electoral procedures for EC subsector elections, where appropriate, with those for the Legislative Council Election, and to rationalize certain existing electoral arrangements.

The Amendment Regulation, together with two other pieces of amendment regulations, was tabled in the Legislative Council on 24 May 2006. A Subcommittee was subsequently set up by the Legislative Council to examine these regulations. The Subcommittee has completed the scrutiny process. The Administration now puts forward proposed amendments to the Amendment Regulation, in response to Members' views on the Chief Electoral Officer's power to revoke the appointment of electoral staff. We also propose amendments to further refine the drafting and presentation of the English version of section 77 of the Amendment Regulation, and the Chinese version of section 100 of the Amendment Regulation, so as to make these provisions even clearer.

All the proposed amendments as set out in the motion are supported by the Subcommittee. I would like to sincerely thank Mr Howard YOUNG, the Subcommittee Chairman, and the other members of the Subcommittee, for the valuable comments they made during the scrutiny process.

Thank you, President.

The Secretary for Constitutional Affairs moved the following motion:

"RESOLVED that the Electoral Affairs Commission (Electoral Procedure) (Election Committee) (Amendment) Regulation 2006, published in the Gazette as Legal Notice No. 114 of 2006 and laid on the table of the Legislative Council on 24 May 2006, be amended -

- (a) in section 5(2), in the proposed section 34(3), by repealing "may at any time" and substituting "may, at any time, with reasonable cause";
- (b) in section 14(2), in the proposed section 65(4), by repealing "may at any time" and substituting "may, at any time, with reasonable cause";
- (c) in the English text, by repealing section 16(2) and substituting -

"(2) Section 77(1) is amended by repealing "The votes recorded on the following ballot papers are" and substituting "Upon counting of votes, a ballot paper of any of the following descriptions is not to be regarded as valid and the vote recorded on the ballot paper is".";

- (d) in section 22(2), in the Chinese text, by repealing everything after "修訂，" and substituting "廢除“或銷毀或”而代以“該選舉廣告，亦可銷毀、塗掉或”。"。

PRESIDENT (in Cantonese): I now proposed the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs be passed.

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

MR LEE WING-TAT (in Cantonese): I thought the Chairman of the Subcommittee would rise to speak, but he is not going to speak, is he?

President, I had taken part in this Subcommittee, and its discussion was mainly about technical amendments. I have no strong views about these amendments. However, I made two points in this course. Firstly, it was about definition, or definition of political organizations or political parties. Indeed, there are often many debates on this point, because the definition of the so-called political organizations will involve the organizations behind the candidates contesting the election; these organizations do not call themselves political parties and yet, one of their functions is to take part in elections. In fact, I did remind the Government that this would happen more often as more and more elections would be held in future. As far as I know, it is not the case that there is completely no such definition at present, for the Government does have an objective definition. I was just putting forward this point for discussion.

Second, in many elections, there is sometimes the case that the use of loudspeakers may extend into the no canvassing zone. In fact, I did mention this problem, and Mr Howard YOUNG was also aware of it. It so happened that a by-election was held for the Central and Western District Council earlier and so, I went there to help. In fact, this has happened before and that is, many

political parties, candidates or their electioneering teams do not know — I wonder if they genuinely do not know about it or they just pretend that they do not know about it — that it is against the law to emit sound — not just sound from loudspeakers — that can be heard in the no canvassing zone.

When I was in Centre Street on that day during the District Council By-election, I had an experience and that is, I saw a candidate making a speech using a loudspeaker outside the no canvassing zone, but the sound could still be heard in the no canvassing zone. To earnestly practise what I advocate, I requested the Returning Officer to exercise his powers of enforcement. It took a total of 45 minutes from my lodging the complaint with the Assistant Returning Officer to the completion of law enforcement. President, in this complaint, insofar as the time taken for law enforcement is concerned, my acquaintances in other electioneering teams told me that law enforcement in this case was already very efficient. That is, it was already very efficient to complete law enforcement in 45 minutes. It was because I am the Chairman of the Democratic Party and a Member of the Legislative Council, and it was also because I had kept on asking the Returning Officer whether he knew this law. He said that he knew it. I asked him whether he was going to enforce it. He said that he would. I asked him how he would do it. He said that he would discuss it with the persons concerned. Throughout this incident, I had been following that friend very closely and it was only 45 minutes later that he turned down the volume of his loudspeaker in order that the sound emitted could not be heard in the no canvassing zone.

In fact, I often take part in election activities. With regard to the rules and regulations on election activities, they are already quite good, comparatively speaking. In saying that they are quite good, I mean that broadly speaking, Hong Kong has been doing quite a good job in the conduct of elections. But in respect of law enforcement, especially when the problem that I have just mentioned arises, the law actually has not been enforced since the official establishment of the Electoral Affairs Commission (EAC). Every time when this happened, the Returning Officer and Assistant Returning Officer have to come forth to deal with it and they often have to seek assistance from the police. Very often, it makes people feel very frustrated and dejected, because the candidate concerned is apparently in breach of the law and the Assistant Returning Officer is also aware of this breach; and on that occasion, it was me who came forth to bring up the problem and it still took 45 minutes. So, I think if it was an ordinary electioneering team which raised the problem with the

Assistant Returning Officer, perhaps no action could be taken for an entire morning. This is a most unhappy experience to me, and when scrutinizing the regulations, Mr Howard YOUNG had also raised this point. Representatives of the Constitutional Affairs Bureau replied that they would handle it and take enforcement actions.

This experience is what actually happened in reality. We have raised and I do not think that much improvement will be made. In fact, I think even though the provisions are endorsed, it still does not mean that the problem will be over. Certainly, we all know that it is against the law if, in the course of an election, the use of a loudspeaker outside the no canvassing zone has caused the sound emitted to be heard in the no canvassing zone, in which case the Returning Officer and the police would have to take enforcement actions, or else it would give the impression that the law is not enforced even though it is there.

President, as for the third point, I already talked about it when examining the bill. The Legislative Council election in 2004 was a rather "sloppy" process — perhaps I should not describe it as "sloppy", but what had happened was enough to be a laughing stock in the international community. When voters cast the ballot papers into the ballot box, the ballot box was easily filled up, prompting the Returning Officers to make telephone calls for assistance. President, your constituency was particularly problematic. On that day, in the Hong Kong Island Constituency, there were still queues of voters waiting outside the polling stations in the Mid-Levels at 9.30 pm. The queues were even extending from the polling stations, and the voters still could not cast their votes. Finally, the Returning Officer was clever and professional. He made the professional judgement of allowing voters who were queuing outside the polling station to wait inside the polling station and queue up inside the polling station instead.

But what happened on that day was a most unforgettable experience. The size of the ballot paper was much too big and so, the ballot box was filled up very quickly and as many polling stations did not have sufficient ballot boxes, voters could not cast the ballot papers into the ballot box. Subsequently, somebody used a ruler — it might be the Returning Officer who, in the absence of the candidates, the counting officer and other relevant parties, opened the ballot box, touching the ballot papers with his hand in order to level the ballot papers. This is actually most undesirable. It is because of this problem in the last election that the independent EAC subsequently conducted a study. In the next election, this should be avoided by all means by, among other things, improving the

design of the ballot box and that of the ballot paper, and also maintaining spare ballot boxes.

In the coming election, according to an official from the Constitutional Affairs Bureau who attended the meeting of the Subcommittee, the size of the ballot paper may still be the same. But he told me that the ballot paper would be cast into the ballot box in a new manner and that is, horizontally, instead of folding the ballot paper and inserting it into the ballot box vertically as in the way votes are cast now. A new type of ballot box is being designed to tie in with this new manner in which the ballot paper will be cast into the ballot box and that is, inserting it into the box horizontally. I think that this is certainly a good idea and a clever design. But a clever design must still be practicable, so that what happened last time will not happen again. When we looked into what had happened in the last election, we asked the Registration and Electoral Office and the Constitutional Affairs Bureau whether they had tried to insert into the ballot box those ballot papers which were so large in size. They said that they had tried to do it, and it was not true that they had not tried at all. But still, after they had tried it, the situation still turned out to be rather "sloppy" as there were not sufficient ballot boxes at many polling stations. Now, a decision has yet been made, and perhaps the ballot paper would be inserted horizontally. I wish to tender an advice to Secretary Stephen LAM: Please make sure that there will be sufficient ballot boxes, or else it would again give the impression that there are problems with the vote and hence making us a laughing stock again.

So, with regard to the problems mentioned in the discussion of the Subcommittee, I hope that they will be addressed carefully. The design of the ballot paper, the new voting method, whether or not the desired effects can be achieved, and the timely supply of ballot boxes in case there are not enough of them are issues that need to be addressed, so that there would not be international news reports about voting chaos in Hong Kong or queries about why the process had been smooth over the years but problems occurred this time around. So, I just wish to put forth some views on this point. Thank you, President.

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

MR HOWARD YOUNG (in Cantonese): President, as the Chairman of the Subcommittee scrutinizing this regulation, I could actually rise to speak but I chose not to, because it was expected that many opinions might have to be

expressed in this meeting, and having read the proposed amendments to this Regulation, I found that they only involve, as the Secretary said earlier, minor technical amendments together with one other amendment. As I said in the meeting of the Legislative Council last week, this amendment which serves to state the obvious was proposed by a Member and so, there is not much controversy over it. But since Mr LEE Wing-tat has expressed some views, I would like to add a point or two.

From the problems mentioned by Mr LEE Wing-tat earlier, especially the problems concerning the ballot box and loudspeaker in the last election, we can see that the culture of election in Hong Kong has kept on evolving. Yet, this Regulation concerns mainly the election to be held at the end of this year, not the Legislative Council or District Council election in which problems such as nuisance caused by loudspeakers as mentioned earlier are more likely to occur. However, I remember that during discussions on these problems, government officials made an undertaking to introduce the relevant legislation before the Legislative Council election in 2008. I believe there will be more discussions by then, and there will be further improvement and certain amendments, some of which will be introduced because they have taken on board Members' views. We have also reminded them to refine the amendments in the next review of the legislation on the Legislative Council election. So, we are aware of these developments.

Today, I originally chose not to speak, because I think that the amendments are not controversial and so, I did not wish to spend too much time on this issue in this meeting which was supposedly the last meeting of the Session.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Constitutional Affairs, do you need to reply?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Yes. Thank you, Madam President. I also thank the two Members who particularly raised a few more key points.

Firstly, the definition of "political parties". This is actually in response to what Mr LEE Wing-tat has said. We have made clear provisions in various electoral legislation, and in this subsidiary legislation (Cap. 541I), in relation to the definition of political body, it is clearly provided that it means a political party or an organization that purports to be a political party; or an organization whose principal function or main object is to promote or prepare a candidate for an election. In this connection, even though some political bodies do not claim to be political parties but only call themselves organizations, they would fall into the scope of this definition if the objective of their establishment and their operation aim to support certain candidates in contesting elections.

Secondly, the problem concerning loudspeakers. In scrutinizing the Regulation, the Subcommittee did discuss this problem, and paragraph 18 of the report tabled by the Subcommittee also mentioned the relevant discussion. Section 40(14)(aa) of the Electoral Affairs Commission (Electoral Procedure) (Election Committee) Regulation (Cap. 541I) provides that "On polling day, a person must not conduct any activity for canvassing for votes, so that the sound of the activity can be heard in the no canvassing zone." So, this is provided for in law. Of course, while there is this statutory provision, but as Mr LEE Wing-tat has said, how the problem would be handled depends on the actions taken by the responsible personnel there and then. On polling day, there is often the case that everyone is canvassing for votes with great enthusiasm, and the Returning Officers must handle such a situation. Actions are normally taken at several levels: First, candidates or the electioneering team will be advised to conduct their activities in accordance with law; second, warnings will be issued; and third, if necessary and when a complaint is received, the Electoral Affairs Commission (EAC) will look into the complaint and take follow-up actions. But since Mr LEE Wing-tat has particularly reminded us of this point, colleagues of the EAC will certainly pay attention to it and continue to take proactive enforcement actions in future.

The third point mentioned by Mr LEE Wing-tat concerns the ballot box. We are fully aware of the inadequacies in the arrangements made in September 2004. In this connection, the EAC will be extra cautious in making electoral arrangements for this election and in respect of the design of the ballot box and ballot paper. Meanwhile, the EAC will fully learn the lesson of the last election and ensure that sound arrangements can be made in this election to serve candidates and electors in the entire election.

Madam President, I very much thank Members for their views, and I hope that the ensuing preparations to be carried out by us will be adequate. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Constitutional Affairs 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 of the Members present. I declare the motion passed.

PRESIDENT (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2006 and the Poisons List (Amendment) (No. 3) Regulation 2006.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2006 and the Poisons List (Amendment) (No. 3) Regulation 2006 as set out under my name in the paper circulated to Members be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose

for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations for the purpose of imposing control on three new medicines and relaxing the control on one medicine.

Arising from the applications for registration of three pharmaceutical products, the Pharmacy and Poisons Board proposes to add three substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations. Pharmaceutical products containing any of these substances must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

In addition, the Pharmacy and Poisons Board proposes to relax the control on Benzocaine when contained in condoms. At present, pharmaceutical products containing Benzocaine are classified in Part I of the Poisons List. That is to say, they must be sold in pharmacies in the presence and under the supervision of a registered pharmacist.

As the amount of Benzocaine contained in condoms is far below the toxic dose, the Board considers that the risk of over-dosage of Benzocaine from condoms is very low. Therefore the Board intends to reclassify Benzocaine when contained in condoms as Part II poison, so that they can be sold in both pharmacies and medicine companies.

We propose that these Amendment Regulations take immediate effect upon gazettal on 14 July 2006 to allow early control and sale of the relevant medicines.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Pharmacy and Poisons Ordinance to regulate the registration and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

With these remarks, Madam President, I beg to move.

The Secretary for Health, Welfare and Food moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 26 June 2006, be approved -

- (a) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2006; and
- (b) the Poisons List (Amendment) (No. 3) Regulation 2006."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food 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 the Secretary for Health, Welfare and Food 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 of the Members present. I declare the motion passed.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect.

First motion: Promoting family-friendly policies.

PROMOTING FAMILY-FRIENDLY POLICIES

MR TAM YIU-CHUNG (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has recently completed a study report, entitled "Forging Harmonious Families — Family-Friendly Policy Paper", and I have distributed copies of it to Honourable colleagues. Besides the study report, the DAB has also conducted a questionnaire survey on family harmony. According to the findings of the survey, the vast majority of the public attach great importance to families, with 70% of the interviewees putting the family in the top place in their life. It is their hope that families can offer family members care, security and stability in life. This shows that, in modern society, families are still the place where one's heart lies.

The family structure in Hong Kong has undergone tremendous changes since the '80s because of social development. The model of big families in the past has now transformed into one of small nuclear households, with the number of family members living apart in different places, single-parent families and families with second marriage parents continuing to grow. At the same time, family cohesion has become increasingly weak, as alienation between family members continues to grow. In recent years, a number of serious domestic violence incidents have occurred successively in Hong Kong, and cases of suicide, domestic abuse and divorce have been on the rise. For instance, the number of domestic violence cases handled by the police last year was up 21.6% compared to 2004. In 2004, Hong Kong saw 622 child abuses cases, and 3 371 spouse abuse cases, representing a 50% increase over the number of cases recorded in 2000. These figures reflect that the domestic violence problem in Hong Kong is worsening.

Marriage is one of the underpinnings of families. However, we can see from the results of the Population Census that the number of divorce or separation cases in Hong Kong has increased by 1.8 times in a decade from 1991 to 2001. The number of single-parent families has naturally risen subsequent to the increase in the divorce rates. At present, 40 000 single-parent families are receiving Comprehensive Social Security Assistance (CSSA).

All these social phenomena reflect the great number of hidden family crises involving the problems of educating children, youths in trouble, domestic

violence incidents, spouse and child abuse, marital crises, suicide, and so on, in Hong Kong. These crises, if not addressed and tackled, are detrimental to social development.

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

It is the belief of the DAB that members of an ideal family can foster mutual care, support and understanding, thus enabling each member to gain spiritual comfort and satisfaction, including dignity and a good sense of responsibility, satisfaction and security. Therefore, if each family, as a nuclear unit of society, can effectively perform its positive role, good family cohesion will be fostered. Furthermore, the children will develop healthily and each family member will be able to bring their strengths into full play. All this is definitely conducive to social stability and harmony. Social resources for remedial measures may also be reduced accordingly as a result of the manifestation of family values and strengthening of family functions.

However, the Government has failed to give full consideration to the impact of its social policies on family development and its indirect impact of alienating family members. For instance, adult children are often encouraged to live separately from their elderly parents as a result of the public housing policies on allocation, transfer and building designs. In carrying out town planning for redevelopment or development of new towns, the authorities have often ignored the needs for mutual care between young families and their parents living in old districts. They are far apart from each other, though they are living in the same city. Their gap is further widened as family members see each other less often because of exorbitant transport expenses. Although a number of tax allowances or concessions are offered under the existing tax regime targeting dependent children and parents, there is still a wide gap between the concessions and actual expenses. As a result, the financial burden on taxpayers can still not be relieved.

When it comes to social welfare policies, the Social Welfare Department (SWD) has recently redistributed its resources by merging a wide range of services centres into Integrated Family Service Centres. The social workers of these Centres have to take care of different types of family problems, so they can hardly focus on resolving specific types of problems as before. As a result, they cannot tackle specific problems and more effectively assist help-seekers in

resolving their family crises. Labour protection in Hong Kong can still not manifest the direction of family-friendly policies. For instance, the working hours of wage earners in Hong Kong are extremely long, and working pressure is tremendous. Relief must be expeditiously provided to address these problems. As regards personal protection, a number of groups have called for the expeditious amendment of the Domestic Violence Ordinance to widen the scope of protection to enable people harassed by their ex-spouses, former cohabitants or other family members to apply for injunctions, and strengthen protection for the protected parties.

The Council for Sustainable Development has recently published a consultation document on "Population Potential for a Sustainable Future" to, among other things, recommend employers to refer to overseas experience in providing female employees with flexible and diversified working opportunities, such as part-time jobs and shared posts. The Council for Sustainable Development is actually advocating one of the family-friendly initiatives in the hope that the business community can enable employees to take care of their careers and families concurrently. However, very little has been done in Hong Kong to promote family-friendly work. It has been revealed by the findings of the surveys carried out by the Equal Opportunities Commission and Women's Commission that 80% of the 137 local companies, with a workforce of more than 160 000, have not formulated family-friendly policies. Furthermore, as many as 60% of the companies have no idea of what family-friendly policies are.

Hence, the DAB holds that the Special Administrative Region (SAR) must vigorously promote family-friendly policies to create an environment that is conducive to rebuilding family values and enhancing family cohesion, thereby creating a harmonious society. I will propose six initiatives in relation to today's motion and hope to elaborate on them.

Let me start at the level of policy formulation. First, the Government should set up an inter-departmental Family Commission taking special charge of reviewing the policies of various government departments involving family well-being and advise the Government on the promotion of family-friendly policies and improvement initiatives. Second, a family impact assessment system should be introduced for assessing the impact of existing social policies, legislation and measures on families, with a view to making relevant improvements. Before implementing public policies, the Government should also conduct a study and assessment on the impact on families to ensure that the implementation of the relevant policies can enhance family functions and prevent

separation and alienation of families. The Family Commission may be given this task.

At the level of promoting policies as outlined in item (c) of the motion, the DAB calls on the Government to conduct vigorous publicity and promotion campaigns, and strengthen family and parent education as well as promoting family values through community service organizations and schools. The Government may also expand the scope of work of the Home-School Co-operation Committee, and focus additional resources on parent activities to give the parents a better understanding of the school life of their children. Furthermore, the Government should enhance various activities and publicity in the community, and offer more family education programmes on radio and television for the purpose of inculcating the correct concept of family values.

Fourth, the DAB proposes that the Government should provide financial assistance by offering tax concessions and funding for pre-primary education across the board to relieve the financial burden on families in Hong Kong. The Government should also raise the child allowance by increasing the child allowance from \$40,000 to \$50,000 per child. In addition to the child allowance, the Government may consider encouraging the public to give birth by offering a one-off \$100,000 allowance for each newborn baby. The Government should also pay more attention to early childhood education (ECE). Therefore, free education should cover ECE across the board. Meanwhile, the Government should strive to raise the quality of ECE, upgrade the qualifications of kindergarten (KG) teachers, establish a professional ladder for KG teachers so as to ensure the best and appropriate early childhood nurturing.

Fifth, the DAB hopes that the Government can proactively create a family-friendly environment in workplace, including encouraging public and private organizations to provide staff with child care services and implement flexible working hours. Furthermore, the Government should step up its promotion to employers of the implementation of five-day work week to ensure a longer rest period for employees. The Government should also make more efforts in studying the feasibility of introducing paternity leave to give working fathers more time to take care of their wives who will soon give birth or have just given birth, and their newborn babies.

Sixth, the Government should enhance social welfare services, and provide appropriate and relevant support to families in crisis. The support should include allocating additional resources to Integrated Family Service

Centres, strengthening preventive measures, offering support to families in crisis to resolve their practical problems. The Government should also set up "family crisis support centres" in various districts to provide immediate crisis intervention and counselling services for the purpose of defusing family crises. Apart from these, the SWD should strengthen its support programme for single-parent families by providing vocational education to more single parents, arranging job opportunities and child care services. The Government should also expedite the amendment to the Domestic Violence Ordinance to offer more comprehensive protection under the Ordinance.

With the economic development in Hong Kong, public expectations for the quality of life have gradually become higher. Besides material life, healthy spiritual life is even more important to us. The ingredients of family life are also given increasing weight. According to a survey conducted by the DAB, although 33% of the respondents expressed hope for a harmonious family, they found it relatively difficult to build one. Vigorous promotion of the family-friendly policies by the Government can help more people fulfil their wish of enhancing family harmony.

Through the promotion of family-friendly policies, each member of the public can enjoy family life and each family member can give one another mutual care and support. This is the manifestation of the "people-oriented" public policy. The content of the motion is complementary with the various proposals for building a happy society as advocated by Members all along. I therefore implore Members to support the motion as a gesture of delivering their share in promoting family and social harmony in Hong Kong.

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

Mr TAM Yiu-chung moved the following motion: (Translation)

"That, as in recent years a number of serious incidents of domestic violence have occurred successively in Hong Kong, and cases of suicide, domestic abuse and divorce have been on the rise, reflecting that the cohesion of families in Hong Kong is weakening and there are many hidden crises which are detrimental to the harmony and stability of the community, this Council urges the Government to promote family-friendly policies, so as to create an environment that is conducive to rebuilding family values and enhancing family cohesion, thereby creating a harmonious society; the specific measures should include:

- (a) setting up a Family Commission to advise the Government on the promotion of family-friendly policies and initiatives;
- (b) introducing a family impact assessment system for assessing the impact of existing social policies, legislation and measures on families, with a view to making relevant improvements;
- (c) conducting vigorous publicity and promotion campaigns, and strengthening family and parent education as well as promoting family values through community service organizations and schools;
- (d) offering tax concessions and funding for pre-primary education across the board to relieve the financial burden on families in Hong Kong;
- (e) creating a family-friendly environment in workplace, including encouraging public and private organizations to provide staff with child care services and implement flexible working hours; and
- (f) enhancing social welfare services, and providing appropriate and relevant support to families in crisis."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr TAM Yiu-chung be passed.

DEPUTY PRESIDENT (in Cantonese): Two Members will move amendments to this motion. The motion and the two amendments will now be debated together in a joint debate.

I will call upon Miss TAM Heung-man to speak first, to be followed by Mr Albert HO; but no amendments are to be moved at this stage.

MISS TAM HEUNG-MAN (in Cantonese): To start with, Deputy President, I have to thank Mr TAM Yiu-chung for moving the motion today calling on the Government to formulate a wide range of family-friendly policies. As the Chinese saying goes, prosperity comes with harmony at home. As families are

an integral social component, family harmony must be maintained before society can prosper. The amendment proposed by me today on behalf of the Civic Party is not intended to negate the principle of the original motion, but seeks to put forward the concept of the quality of family life and more specific policy proposals.

It is pointed out in the original motion that the Government should, apart from formulating policies, put emphasis on enhancing family values and family cohesion. These concepts are very good. In addition to these concepts, I hope to raise an additional concept, that the quality of family life must be upgraded. As the Chinese saying goes, "poor and lowly couples often land in multiple distress". How can down-and-out families plagued by financial problems live in harmony? In formulating policies, the Government should therefore improve the financial situations of the households of various strata so that the people can have ample time to enjoy their family life.

The Government should formulate comprehensive policies from a macroscopic perspective in order to achieve the goal of upgrading the quality of family life. Below I will express our views on several aspects, including employment, taxation and social security policies.

Deputy President, the employment policies implemented in recent years can be considered extremely family-unfriendly, with the phenomenon of exceedingly long working hours frequently found. I guess many Honourable colleagues know it better than I do that the income of low-income families has continued to fall day after day.

Because of these unfriendly employment policies, low-income families which can hardly make ends meet have no idea at all what the quality of family life means to them. Even better-off middle-class families have found it difficult to upgrade the quality of family life, as they are required to work exceedingly long hours every day, even on holidays.

For instance, many of my friends who work in major accountancy firms are frequently required to work until 9 pm or 10 pm, or even till midnight, every day. Despite the constant rise in their salaries, they do not have time to share with their families the good life brought by their improving finances, or communicate with their family members. Despite the improvement in their financial situations, they cannot upgrade the quality of family life.

The findings of a survey recently carried out by the Equal Opportunities Commission (EOC) reveal that family-friendly employment policies can protect the physical and mental well-being of employees, thus preventing the occurrence of imbalance between work and family. The maintenance of balance between physical and mental well-being and work and family can definitely help raise the quality of family life, cohesion and harmony. Therefore, the Government should vigorously encourage employers to implement family-friendly employment policies. In the long run, the authorities should even consider amending the Employment Ordinance and mandate the implementation of some of the policies by way of legislation.

The same survey has revealed the most popular family-friendly employment policies. They include flexible working hours, compressed work week, allowing employees to work at home, introducing additional leave for taking care of families, and so on. The survey has also revealed that, though some family-friendly employment policies have been implemented in Hong Kong, there is still room for the ratio to be raised. For instance, less than 30% of the employers in Hong Kong have adopted flexible working hours, while only some 40% of the employers have introduced five-day work week.

Besides the flexible working hours and child care services mentioned in the original motion, the Government and employers should also promote other family-friendly employment policies.

First of all, employers should, where circumstances permit, follow the Government in implementing five-day work week. With two holidays, employees will then be able to take a rest at home for one day, and go out with their family members for family activities the next day. However, five-day work week should not be implemented across the board. As five-day work week will inevitably lead to longer working hours, the daily working hours of the low-skilled manual workers in particular might thus be increased. At the same time, employers may be forced to incur additional expenses on wages due to the manpower shortage resulting from the introduction of five-day work week.

Allowing employees to work at home is also helpful to enhancing communication between employees and their families. Employers may consider allowing their employees to, circumstances permitting, arrange to have part or all of their work procedures, such as those relating to design, clerical work, research and analysis, and so on, to be performed at home. It is not only family-friendly to allow employees to work at home, the needs for workplace can

even be reduced, and this is conducive to saving resources. When I was working in Britain years ago, some of my colleagues were allowed to work at home. Through the installation of the required facilities by our employer, they were connected with the internal system of our company to facilitate them to work at home. In implementing the relevant measures, the employers in Hong Kong might as well refer to the examples of Britain.

The introduction of leave relating to family care is also a family-friendly measure. The Government may appropriately increase the number of statutory holidays and introduce paternity leave for male employees. However, as the staff arrangements of small and medium enterprises may be affected by the increase in the number of statutory holidays, the Government should engage employers and employees in detailed discussions in increasing the number of statutory holidays.

People in various sectors have found it difficult to spare time to be with their family members mainly because of their exceedingly long working hours. According to the information provided by the Census and Statistics Department, nearly one fourth of our workforce works more than 55 hours weekly. The Government should therefore take vigorous measures, including increasing the supply of manpower and studying the possibility of introducing such policies as standard working hours in certain trades and industries, for the purpose of alleviating the problem of exceedingly long working hours. Of course, the supply of extra manpower and the introduction of standard working hours in certain trades and industries necessitate a relatively long-term policy. In the short run, the employers should make better manpower resources planning to prevent, as far as possible, their employees from shouldering excessive workload.

In addition to the employment policies, Deputy President, I support the original motion's proposal to offer tax relief to alleviate the financial burden on families, especially middle-class families. Subject to its financial situation, the Government may consider implementing the long-awaited child education allowance for the middle class, further extending the home mortgage interest payment deduction, and increasing the upper ceiling on the allowance. All these tax concessions can help relieve the financial burden on middle-class families. With more money in hand, the middle-class families will naturally upgrade their quality of life. Their subsequent revival of confidence in the prospects will definitely be conducive to the physical and mental well-being of their family members.

The Government's recently conceived consultation on a goods and services tax has indicated the Government's sincerity in widening the tax base. The tax base, once widened, is expected to further stabilize the Government's revenue. By then, the authorities may be able to suitably enhance social security and offer additional financial assistance. For instance, the authorities may consider raising the amounts of CSSA, or providing poor families with transport expenses, and so on, with its extra revenue. This is actually what Members from the Civic Party have been striving for all along. Improving the financial situations of poor families is absolutely a family-friendly policy.

Deputy President, I believe every colleague present in the Chamber will share the hope that every family can live and work in peace and happiness. Hence, today's question should not trigger any great disputes. I hope the authorities can listen carefully to Members' views. Lastly, I implore Members to support my amendment. I so submit. Thank you, Deputy President.

MR ALBERT HO (in Cantonese): Deputy President, the Democratic Party today supports Mr TAM Yiu-chung's motion on "Promoting family-friendly policies". On behalf of the Democratic Party, I will make an amendment to enrich the contents of the motion. I will now further expound on my amendment.

To promote family-friendly policies, family harmony must be enhanced. In order to achieve this goal, a "zero tolerance" policy and attitude must be taken towards domestic violence. Our social culture should act in this way, and so should our government policies. Therefore, we propose "establishing a standing and multi-disciplinary mechanism for reviewing cases of family tragedies with the participation of law-enforcement agencies, social workers and relevant government departments", with a view to "providing appropriate and relevant support to families in crisis". We also propose "stepping up publicity and training for front-line staff, such as social workers, police officers, education workers, health care personnel, and so on, so as to enhance their understanding of and alertness to the problem of domestic violence; and studying making it mandatory for the relevant professionals to report the domestic violence cases that they handle, so as to assist in curbing domestic violence". On the other hand, we call for the introduction of paternity leave so that the spouses of women giving birth can take leave to look after their wives to substantially improve marital relations and relieve the stress on the women giving birth.

Families are definitely the nuclear component of society. All of us will seek comfort and support from our family members whenever difficulties are encountered. Therefore, the Government should make policy and legal requirements to help every one of us to build a perfect and harmonious family. As I indicated at the beginning of my speech, there is an urgent need to review and amend ordinances relating to domestic violence. We absolutely share the views of many sectors, that many ordinances relating to domestic violence can no longer cope with the actual needs of Hong Kong society.

We propose to widen the definition of the abused in the ordinances relating to domestic violence to cover the parents of the abusers and many elderly people. The problem of elderly abuse is worsening with the ageing of our population. Statistics have shown that the number of elderly abuse cases increased by 60% last year. We appeal to the Government to reasonably widen the scope of application of the domestic violence-related ordinances expeditiously.

Furthermore, I propose to follow Britain's practice. As I stated earlier in the meeting, a standing mechanism for reviewing cases of family tragedies should be established so that, following the occurrence of serious domestic violence incidents, the relevant departments and professionals should hold multi-disciplinary review meetings in the hope of learning lessons from the incidents, and taking prompt and effective actions to tackle similar issues in future to prevent the recurrence of tragedies by all means.

Moreover, a number of overseas countries have made it mandatory for the front-line staff to report the domestic violence cases known to them in the hope of curbing the deterioration of the relevant cases. We have therefore proposed to require social workers, police officers, teachers, health care personnel, and so on, to enhance their alertness to the problem of domestic violence, and report to their superiors upon encountering identified cases of domestic violence, or even when they have strong reasons to suspect the occurrence of domestic violence.

Lastly, we should establish a mechanism whereby a lot of information is collected in a centralized database for the handling of domestic violence cases. As regards the application of the information collected in the database, a reasonable and appropriate mechanism should be put in place to enable law-enforcement agencies or policymakers in various areas to make full use of the information to help formulate relevant policies to tackle certain high-risk cases.

A number of women's groups have pointed out that the number of cases involving women subject to abuse or sexual violence has continued to rise. However, according to the information we have acquired, law-enforcement agencies, particularly the police, have often adopted a tolerant attitude towards the abusers, mainly because of the traditional concept of emphasizing family harmony, or the thinking that law-enforcement actions should not be taken indiscriminately to deprive families of their breadwinners, and so on. Actually, such a tolerant policy or appeasement approach, in effect, fuels domestic violence and provides a strong backing for the abusers so that they have nothing to fear.

As Members should be aware, a family tragedy occurred in Tin Shui Wai in April 2004, involving the deaths of four family members. I had the opportunity to personally handle the case. I was most saddened to note in the Coroner's Court that the abused, Ms KAM Shuk-ying, had repeatedly seek assistance from various relevant departments. I saw a number of hands, including the hands from several government departments, including the SWD, some non-governmental organizations, the police, and so on, reaching out, but none of them could reach the hands of the abused to really help her and rescue her from the crisis. In the end, the tragedy occurred. All Hong Kong people, and even the entire community, were shocked and saddened.

We also propose to enhance assistance from professionals and front-line staff to enable police officers to, once they come into contact with the victims of domestic abuse, work like a team to prevent the occurrence of domestic violence cases. In handling domestic violence cases, the SWD and the police should provide the victims with 24-hour prompt services. I emphasize that such services are extremely important and must be effective. The help-seekers must not be merely connected to telephone recordings without knowing when their calls will be answered.

After the coroner inquest, I proposed that when the social workers responsible for handling some serious cases are on leave, the seek-helpers should be enabled to contact other people. In other words, immediate intervention by the colleagues of the social workers in question should be enabled. I emphasize that, insofar as these high-risk cases are concerned, the round-the-clock provision of prompt assistance is of paramount importance. In the event of the outbreak of a crisis, a decision made within 20 or 30 minutes might save the victims or an entire family.

As Members are aware, the entire community was saddened by another incident occurred in Tin Shui Wai involving a planned group suicide by several middle-age women. This incident has reflected the acute inadequacy of community facilities in many new towns. There is a lack, or even a complete lack, of leisure, community and sports facilities in many districts, in particular Tin Shui Wai North. There is not even a clinic in many districts. Although Tin Shui Wai has a community of 300 000 people, a government complex building has yet to be built there. The Government should be held responsible for failing its duty with such a backward new town planning. It must therefore mend the fold before it is too late. As regards paternity leave, some other colleagues have mentioned.....

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MR ALBERT HO (in Cantonese):that more efforts are required.

DR FERNANDO CHEUNG (in Cantonese): Deputy President, Hong Kong people are so busy day and night that they simply have no room at all for thinking. The endless tasks we are required to perform every day have probably made us insensitive. Our society has unknowingly become sick. With emphases on "cost-effectiveness" and "enhanced productivity" under all circumstances, people blindly worship market forces, succumb to the belief of primitive societies in "survival of the fittest", and regard "economic rationalism", whereby economic benefits are given priority consideration, as the highest guiding principle. The mainstream social value has gradually belittled the value of man as merely a tool for making money. Care for people no longer exists in society.

The application of these mainstream values to corporate management or professional development is manifested by "managerialism", an extremely popular notion upheld by various trades and industries over the past decade. Managerialism is manifested mainly in a lack of trust in people (particularly front-line operational staff). As a result, policies will be endorsed solely by the upper level for implementation, within the corporate hierarchy, by the lower level in accordance with the established procedures. In the process, the views and

experience of the front-line staff are not given weight. On the contrary, the work of subordinates is taken even more lightly than before by the upper level, whereas accountability is the sole concern. Through a variety of assessment procedures, the upper level has continued to quantify "quality assurance" and "work effectiveness" as measurable units, while values which cannot be quantified are discarded. In short, managerialism is all about money. In order to achieve maximum effectiveness with minimum resources, the managerial level strives for maximum effectiveness through the pursuit of "figures" and "gradings" by the front-line staff. Managerialism has led to excessive surveillance of employees under the corporate system. It has also directly led to the enormous workload presently confronting many wage earners. As a result, more and more people feel helpless and frustrated at work.

Today, Members from various political parties and groupings appear to agree that the work pattern of Hong Kong people is problematic. As a result, many wage earners cannot strike a balance between their work and families, thereby leading to numerous social problems. Some colleagues have therefore proposed that the Government should promote family-friendly policies to rebuild family values, enhance family cohesion, and so on. All these merit our great support indeed. In the consultation document just published, the Council for Sustainable Development also promotes the notion of a "flexible life horizon". One of the proposals put forward is to render support to working women, and provide them with flexible and diversified employment opportunities to enable them to continue working after giving birth. These proposals represent another major interpretation of the family-friendly policies following the trial implementation of five-day work week by the Government. We will certainly give our support.

Actually, the Government has been slow in responding by not initiating the discussion until now. Hong Kong has lagged far behind its neighbours such as South Korea, Taiwan, Japan, Singapore, and even the Mainland. However, I believe the Government and the business sector must be really willing to change their attitude and reverse the social reality and notion of "emphasizing enhanced productivity without regard to labour interests" before employees can truly enjoy more room beyond work for adjustment in family life. A good population policy should not merely emphasize ways to upgrade and develop the potentials of the labour force. It should put more emphasis on creating working conditions with a more human touch for the purpose of upgrading the quality of

life of wage earners. The crux of the problem has simply not been touched upon for our population policy has merely advocated more flexible job opportunities while evading the prescription of maximum or standard working hours. Exceedingly long working hours remain the fundamental problem affecting the quality of life of all wage earners.

A lot of problems have arisen from the enormous social costs attributable to the enormous working pressure on wage earners. After all, society has to pay the price. However, even the social work profession is now unable to fend for itself because of the reductions in funding for social services year after year, constant challenges to the social work profession by managerialism, and excessive workload. They are often helpless and sad in the face of the worsening social problems. The social work profession, originally a guiding star for the disadvantaged groups and a reliable shelter for the helpless in stormy weathers, can no longer properly play its role as a guardian angel in these days where cost-effectiveness is the paramount concern. My office has recently conducted a survey on the pressure confronting social workers. The findings of the survey show that 85% of the interviewed social workers have worked overtime during the past two weeks for an average of nine hours weekly. Their situation is indeed worrying, for 35% of them were pessimistic about life, and 25% of them showed symptoms of depression or anxiety. Furthermore, a vast majority of the interviewees felt physically exhausted, expressed great reluctance to go to work, or suffered sleeping problems. Three fourths of them have even had the intention of resignation. This is the actual situation of the social workers. Let us imagine this. If social workers are facing such a situation, other related professions, such as teachers, doctors, and so on, should be in the same plight too. What about those people seeking our assistance? If we are to truly promote the family-friendly policies, I consider it most imperative for the Government to show resolve and take the lead to change the face of society. The Government will not be able to prescribe the right prescription and address the root cause of the unhealthy working environment merely with high-sounding slogans, such as five-day week, without really reducing the workload, truly giving the working environment of wage earners a human touch, and fully reviewing its policy direction. It is imperative for the Government to legislate on standard working hours before the problems can truly be resolved.

Deputy President, I speak in support of the original motion and the two amendments. Thank you, Deputy President.

MR WONG KWOK-HING (in Cantonese): Deputy President, Hong Kong is an extremely stressful city. According to its social culture, everyone has to work hard day and night to be considered a diligent employee who has made his or her best efforts. Many wage earners dare not leave immediately at five o'clock even when it is time to go off work, whether or not they still have work to do. What do they fear? They fear dismissal by their employers on the ground that they have not worked hard enough.

It is precisely for this reason that some employers think that they have every reason to squeeze every minute of their employees for work. I once read an interview of a successful person who admitted that she was a workaholic who used to work round the clock, seven days a week. As she considered herself perfectly good to work so hard, she expected her subordinates to do the same. She even rented a hotel room near her office so that her subordinates could go to the hotel for grooming without making any excuse to make a trip back home and waste time as a result. After grooming, her subordinates would have to rush back to the office to continue with their work. This successful person certainly did not need to take care of her family. Without any trouble back at home, she could certainly press ahead in full steam at work. However, not each of her employees was in the same situation like hers. On the contrary, most of them had to take care of their families.

For instance, a colleague in my office lives with her elderly mother. Owing to old age and poor health, her mother cannot cook for herself and has to wait for my colleague to return home to prepare the meal. If my colleague goes off work late, she will then be starving. Therefore, we have to be extremely careful in making work arrangements for this colleague.

Employers normally have servants at home. A big meal would already be prepared for them when they return home. They simply could not appreciate the difficulties of their employees. They would often give their employees assignments to do when it is almost time to go off work. In order to retain their jobs, the employees certainly dare not raise any objection and could only accept the assignments. However, their young and old family members could not be starving as they do. Actually, if an employee has to work until six o'clock, it will be around seven o'clock when he or she reaches home after buying groceries in the market. When the dinner is finished, it will be around eight or nine, almost time for evening shows. Employees working on such a work pattern can simply not take care of their families.

Therefore, both the Government and the private sector should understand that their employees can only make their best efforts to serve their companies happily and willingly if they can work worry-free while taking care of their families. Furthermore, taking care of one's family and work is the fundamental philosophy of family-friendly policies.

Deputy President, family-friendly policies can be manifested in many different ways. However, it is crucial for overtime work to be regulated. The most perplexing problem confronting wage earners, regardless of their types of work or position, is their exceedingly long working hours. Apart from having to work overtime in the evening, they have to work even on Saturdays and Sundays. Therefore, working hours must be regulated in the implementation of family-friendly policies. At the same time, employers should take on additional manpower instead of frequently requiring their employees to work overtime excessively.

Sometimes, an exceptionally hard-working employer might require his employees to work overtime not because of inadequate manpower, but because he himself wants to work overtime. He expects his subordinates to follow suit by working overtime at weekends too. In his mind, he expects his employees to follow his example. He has simply given no consideration at all to the implementation of family-friendly policies at workplace. In short, such an employer does not know how to respect the private life of his employees and the fact that the lifestyle of every person is not the same. Even if a boss prefers not to take rest, it does not mean that his employees do not need rest.

This is particularly so for married employees with children because their spouses and children will be free at weekends. They certainly want to spend time with their family members by visiting the countryside or watching a movie to strengthen family cohesion. An employer who often requires his employees to work at weekends is effectively exploiting his employees because they will have less time to spend with their family members, thus undermining their relationship with their spouses and children. Some better employers might allow their employees to take compensation leave on weekdays. However, they might not realize that such leave cannot compensate anything because their employees' children are free only at weekends and the whole family can spend time together only on these days. Therefore, I would like to appeal to all hard-working employers here to, even if they have to work at weekends, try all means not to require their employees to work at weekends to enable their employees to enjoy their private and family life.

Deputy President, one of the family-friendly policies we must mention concerns the introduction of paternity leave. It is perfectly reasonable for both parents to assume an equal share of responsibility in taking care of a newborn baby. While the mother of a newborn can take maternity leave to take care of it, the father can only apply for annual leave because his employer might not grant him leave approval to stay home to take care of his newborn baby. Two weeks ago, I asked this question in this Chamber: Is the family status of a father being discriminated against by the Government? The Government indicated that it had to seek advice from the Department of Justice and the Equal Opportunities Commission. So far, I have not received the Government's reply. I will continue to follow up this matter in the Council to fight for the enactment of legislation on paternity leave.

With the rapid ageing of the population in society, even the Chief Executive once suggested each couple to have three children. In the absence of complementary measures, however, the Chief Executive's appeal will only come to naught. To enact legislation on paternity leave is certainly an effective measure. I hope the Chief Executive will listen to my suggestion. As regards the proposal raised by me earlier on the regulation of working hours, preventing employees to work long hours is a good way to encourage birth too. Having spent too much time on their work, the employees simply have no time for making babies. Even if they do, they have no time to take care and educate them. This is why many people consider it better to have no children at all.

Deputy President, society is family-based. The proliferation of problems nowadays is fundamentally closely associated with the excessive attention given to work in Hong Kong. Therefore, through promoting family-friendly policies at workplace and advocating a balanced development of work and family to enable employees to have more time to take care of their families, social problems might probably be reduced as well.

Deputy President, we can hear a lot of birds singing outside the Chamber at the moment. We hope all employers can allow their employees to enjoy life with their families at weekends.....

DEPUTY PRESIDENT (in Cantonese): Mr WONG Kwok-hing, speaking time is up.

MR WONG KWOK-HING (in Cantonese): Thank you, Deputy President.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, we would come across unfortunate or unpleasant domestic incidents nearly every day. The entire community has indeed been shocked by the terrifying domestic tragedies that occurred recently. In the motion moved by Mr TAM Yiu-chung today on "Promoting family-friendly policies", Mr TAM has not only promoted family-friendly policies, but also put forward a number of pragmatic and concrete proposals. Besides Mr TAM, Miss TAM Heung-man and Mr Albert HO have also put forward a number of concrete initiatives.

After careful reading, I have found two points of interest. First, unlike before, Mr TAM has no longer confined himself to "domestic violence". Instead, he has looked at domestic problems from the family-friendliness angle. In other words, the scope of domestic violence and even domestic problems has been widened. At present, there is only legislation on domestic violence. Let us not discuss the effectiveness of this piece of law. It is, however, unable to cover all the unfortunate or unpleasant domestic incidents, or domestic tragedies, even if we are really determined to resolve these problems. This is why the point raised by Mr TAM greatly deserves our appreciation.

Meanwhile, I have seen the concrete proposals raised by a number of colleagues on a number of areas, and some of the proposals fetch beyond the scope of domestic violence. In other words, Members have managed to extensively examine domestic issues. Therefore, I hope during today's discussion, the Government can extensively discuss the issues rather than looking at the issues from a narrow angle. We cannot resolve all domestic problems by merely resolving the domestic violence problem. Domestic violence is just one of the domestic problems. Furthermore, the definition of "domestic violence" in the Domestic Violence Ordinance is backward compared with other countries, for it covers merely sexual abuse, physical abuse, and so on. Other areas covered by other countries, such as negligence of care, abandonment, financial or material deprivation, and so on, are lacking in Hong Kong. Therefore, it is even more preferable for the Government to look at this issue more extensively today.

I have heard colleagues raise many problems today. Not only have they pointed out the domestic problems, they have also reflected the problems arising

outside the families, such as work problems. A number of colleagues have mentioned earlier that exceedingly long working hours affect our family life. In the past, long working hours were not the only factor affecting family life. Financial stress was actually the key factor. Because of the economic depression, society was plagued with the problem of unemployment. With the mounting stress on breadwinners, a lot of family problems would occur.

Actually, besides addressing the unemployment problem, it is most important that each family member has work to do so as to ensure that every one of them is financially independent. We have indeed seen numerous examples. Conflicts will occur if couples or family members living under the same roof are not financially autonomous or independent, and have to rely on someone else. When such conflicts become problems, the relationship between two genders, and even between generations, will run into problems too. For instance, elderly persons who are not financially independent will often have to rely on the next generation for maintenance. However, the next generation might not be able to pay for their daily expenses so easily. As a result, conflicts will often arise, and family disharmony will subsequently emerge.

Therefore, it is inadequate for us to merely look at a single issue. I hope the Government will, as proposed by Mr TAM Yiu-chung, examine the family problems in a holistic and macro manner, instead of looking at the problems with a stop-gap and piecemeal approach.

(THE PRESIDENT resumed the Chair)

A key concept raised in the motion is the setting up of a Family Commission. I believe this is extremely important because the Commission will be able to tackle problems from a wide range of aspects with a combination of policies and legislation. From a macro angle, this approach is more comprehensive. This is because we have often found that, in addition to the problems arising from financial dependence, the housing policy has also caused other problems. Under the existing policy, a couple is allowed to live separately when their relationship turns sour. However, their problems cannot be tackled independently, for each government department is merely able to deal with certain policies. I consider this our greatest deficiency. I think it is a more holistic approach to tackle the issues in an integrated manner.

I have just mentioned the housing problem earlier. Sometimes, family members might wish to live under the same roof for family harmony can thus be enhanced. Yet they are not allowed to do so under the relevant policy. But then, some family members are disallowed by the policy to live separately as they wish. For instance, people with financial hardship might wish to apply for CSSA. However, it is mandatory for the entire family of a CSSA applicant to be vetted. All the family members are therefore forced to live under the same roof. Family relationship might worsen if family members are forced to live together against their wish. On the other hand, family members are not allowed by the policy to live separately even if they want to in case of worsening relationship between two sexes or two generations. It is thus evident that there are a lot of contradictions in the Government's policies. I hope the Government can look at the issue in a holistic manner, for this will be more appropriate.

From the numerous proposals raised earlier by colleagues on a number of areas and at different levels, we can see that the problems have arisen precisely because of our lack of an integrated and comprehensive approach. I agree with Mr TAM Yiu-chung that an inter-departmental organ for co-ordinating and tackling domestic problems be set up. Otherwise, we will be unable to take care of every family and its problems.

The motion and amendments today have offered us a good angle to look at the domestic problems. I hope the Government can give us support and implement the proposals earnestly.

President, I so submit.

MR WONG YUNG-KAN (in Cantonese): Madam President, a number of family tragedies have happened in Hong Kong society in recent years. Last week, a group of women committed suicide by burning charcoal. Last month, a murder tragedy broke out involving an elderly couple who had failed in the splitting of household. Last year, a pair of innocent secondary students committed suicide by jumping from a height because they did not know what to do after the girl had learned of her pregnancy. In yet another case, a jealous stepmother hired someone to hack the child born to her husband and his ex-wife. Everyone will definitely be shocked and terrified on learning about these tragedies. Why has Hong Kong developed to such a state?

It is attributed to the constant changes of Hong Kong society and the structural transformation experienced by nuclear families. With the increase in divorce rates over the past decade, the number of single-parent families has been on the rise too. The growing number of marriages between people across the border has also pushed up the population of new immigrants. Because of their difference in living style and cultural background, they cannot integrate into society. The growing number of dual-income parents and increasingly long working hours have also led to negligence in family and children care. Coupled with the structural transformation of Hong Kong economy, a number of families are plagued by unemployment. As a result, there are many hidden social crises throughout the territory.

As the Chinese saying goes, "every family has its own problems". Family is the cornerstone of life, the cradle of personal growth, as well as the place for nurturing the pillars of society. Sick families will bring society problems and burdens. Therefore, in addition to striving to improve the economic conditions of the territory, it is also most crucial for the Government to cultivate family harmony.

In 1994, the United Nations designated 15 May of each year as the International Day of the Family with a view to enhancing the awareness of the governments, policymakers and people around the world of family problems so as to promote the formulation, enforcement and surveillance of family policies by various government organizations.

However, our Government appears to lack enthusiasm in promoting family policies in Hong Kong. As far as we can see, each year only some organizations, such as the DAB, Hong Kong Council of Social Service, Harmony House and Against Child Abuse, took their own initiative to conduct some opinion surveys to reflect existing family problems. However, the Government has failed to conduct vigorous publicity on the occasion. Without popular education in this aspect, there has frequently been a lack of concern for families in society.

As vigorous promotion on the part of the Government will greatly help raise social and public concern and acceptance, we propose that the Government should formulate a comprehensive set of family-friendly policies.

At the policymaking level, the Government may follow the example of the Singaporean Government by devising plans for family policies, setting up a Family Commission, promoting family-friendly policies and initiatives, offering advice, assessing the impact on families in the light of existing social policies, legislation and measures, and coming up with corresponding improvement initiatives.

At the social level, welfare services should be vigorously enhanced, particularly in such new towns as Tuen Mun, Tin Shui Wai, Tung Chung, and so on, where many grass-roots people and new immigrants are living. Furthermore, I have to point out that some residents are relocated from somewhere else. For instance, a number of newly-wed couples have moved to Tuen Mun or Tin Shui Wai after giving birth. Before their removal, their parents could take care of their children. Now they cannot do so because of the housing policy. This has consequently led to more and more family problems. As most of them have just moved to their new homes, they have relatively few friends in the district where they live, and their inter-personal relation is relatively weak too. Furthermore, they have less and less time to get along with their family members because they have to go out to work and spend long hours travelling to and from their workplace. Family crises will easily emerge because of a lack of communication. For these reasons, additional resources and manpower must be allocated to these districts to specifically tackle these family problems in new towns.

At the individual and family levels, the Government should vigorously improve the working environment for employees by, for instance, introducing the five-day work week advocated by the Government. Corporate participation should also be encouraged. In order to help dual-income parents find more time to take care of their children, we propose that the Government should promote a policy of providing child care services near the workplace to enable the parents to spend more time with their children. Furthermore, the parents will then no longer be required to hurry to other places to pick up their children after work. In addition, flexible working hours should be implemented to enable dual-income parents to cope with their families and work concurrently. Actually, during the holding of the World Trade Organization conference in Hong Kong late last year, a number of enterprises specially implemented flexible working hours, and the results were reported to be not bad. On the one hand, the traffic burden during rush hours could be alleviated and, on the other, economic development could be stimulated.

Lastly, I would like to say a few words on the findings of a survey published by the DAB yesterday. It was revealed that 70% of the respondents put "possessing a harmonious family" in the number one position, ahead of love, career and money. This reflects that Hong Kong people, though frequently ridiculed as being money-minded, attach great importance to the traditional family concept, for Hong Kong is after all a Chinese society. For this reasons, I hope that the Government can listen to the views of the public and vigorously promote family-friendly policies to help all citizens build up a harmonious family.

Madam President, I so submit.

MR KWONG CHI-KIN (in Cantonese): Madam President, with the robust development of the business and services sectors in Hong Kong over the past decade or so, the majority of our population has joined these sectors. The services industries, especially the consumption-led sectors, are people-oriented. How many employees who work from nine to five can go spending during the same hours? To enable more people to spend, the working hours of employees in the service industries are thus extended. In recent years, the requirement of more and more trades and industries to operate longer hours has also indirectly led to the further extension of the working hours of the services industries. Long working hours have effectively forced the employees to sacrifice their private time supposed to be spent with their family members. Such a vicious circle has simply made the manifestation of the family-friendly policies impossible.

Against this background, a number of Western countries have formulated one after another more comprehensive family-friendly policies. In Singapore, our close neighbour, the implementation of family-friendly initiatives dates back to as early as 2001. In Hong Kong, however, the family-friendly policies and education work have offered little to write home about.

It was not until the Question and Answer Session early this year that the Chief Executive raised the proposal of implementing, starting from this month, five-day work week for civil servants to enable some of the non-front-line civil servants and those providing non-emergency services to enjoy five-day work week and two-day weekends. On the surface of it, one of the demands the labour sector has been fighting for over the years has finally been met. However, the current size of the Civil Service is only 160 000. Excluding the

front-line civil servants and those providing emergency services, only very few civil servants can enjoy the benefit of five-day work week. As such, in order to expand the five-day work week arrangements in a more comprehensive manner, private enterprises must take complementary action. Both the retail and services industries are considered the most important component, for the majority of the labour force is employed by these two industries.

Among the services industries, the banking industry has been more proactive about the five-day work week arrangements. Earlier, some financial institutions in Hong Kong have, one after another, proposed the implementation of five-day work week. The largest banking group in Hong Kong also announced last week its decision to implement five-day work week. In spite of this, the business hours of its branches have also been extended to Saturdays and even Sundays. Many people will ask this question: Is the working arrangement not actually extended further, from five days to seven? In order to provide services on Saturdays and Sundays, the employees will inevitably be required to work on these two days. A more responsible employer may probably allow his employees to take leave on weekdays. But is this our original intent of advocating five-day work week?

Madam President, since the introduction of the five-day work week arrangements, we have heard a number of people in the commercial and business sectors expressing one after another reservations, or even doubts, about the arrangements. The most familiar point raised concerns the rising costs. I actually do not wish to dwell any further on this. It is simple common sense that costs are required to do business. Otherwise, everyone will be interested in doing business. I have recently heard an argument for the concern about the implementation of five-day work week — if the two-day weekend arrangement is promoted, Hong Kong people will be encouraged to go spending across the boundary. Consequently, the business of the local retail market will not be boosted. Is this really the case? At present, most Hong Kong people go spending across the boundary only during long holidays. Will they go spending in the north by travelling a long distance across the boundary if they have only two days? Furthermore, after the introduction of five-day work week, will the people swarm northward to spend when they have two-day weekends? Are the local retail and services industries so unattractive?

Insofar as society as a whole is concerned, five-day work week has a close bearing on family life. It is an integral component of family-friendly policies too. As a general practice, all family members do not need to go to work or go

to school on Sundays. As a result, most parents regard Sunday as the family day when the whole family can get together. Not only can they spend time with their children, they may even have time to take care of their elderly parents. However, two-day leave cannot be taken regularly if they have to perform shift duty on Saturdays and Sundays. For wage earners, taking leave on weekdays is far less meaningful than having two-day weekends. This is because, if they take leave on a weekday, most of their family members and friends will have to go to work or go to school. They can hardly come up with any good pastime. At the same time, it is difficult to encourage them to go out spending. For these reasons, I hope Members will not treat the two-day weekend arrangement as a scourge. On the contrary, it should be seen as an integral component in promoting family-friendly policies. Madam President, I so submit.

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

MR ALBERT CHAN (in Cantonese): President, regarding the implementation of the so-called family-friendly policies, it is easier said than done. It involves utilization of resources, acceptance or rejection of social values, and the availability of adequate manpower and means for implementation to ensure that families are treated in a friendly manner and live in a humane society embodies humanity.

Hong Kong's abnormal political system has made the territory an abnormal society. Another key factor is the Government's policies. To enable a family to survive and thrive in a harmonious environment of humanity, resources and time are vital.

A number of four-member families in Hong Kong are forced to live in extremely crowded conditions, whether in cubicles in old districts or public housing estates. The living space of a large number of people is less than 5.5 sq m. Owing to the extremely crowded living conditions, even elderly people have to go out early in the morning because of the intense heat at home, and to avoid having quarrels with their family members. They end up killing time in the parks alone and return home in the evening. Some youngsters are in the same plight too. Quarrels become a usual happening when five or six people are crammed in a tiny living room. Besides attending school or going to work, they go home when it is almost time for bed. Crowded living conditions

pose the biggest obstacle to families in bringing their family life to a reasonable standard.

The second factor is financial pressure. Some people are so worried about their living expenses every day that even their lives are threatened. Making ends meet is extremely difficult. Earlier, there were numerous reports about many middle-aged people doing two jobs. Some people have even died from exhaustion as a result of overwork. Some doing two jobs have died from car crash because of extreme fatigue while performing their driving duties. Life stress is so intense that their very existence is even threatened. Such being the case, how can a proper family life be built and promoted?

To address this problem, the Government must provide, for instance, housing. It is not the duty of Secretary Dr York CHOW, is it? It should be the duty of the housing authorities. The housing policy should be blamed for destroying family harmony. However, Secretary Dr York CHOW, responsible for social welfare, health care, and so on, can reduce the obstacles to raising a more friendly and harmonious family. Therefore, financial assistance, particularly adjustments to the CSSA, can not only enable families to live in more humane conditions, but also greatly reduce anxiety and conflicts. The group suicide of three women in Tin Shui Wai has become a hot topic recently. How can the women raise their families if they cannot even keep their own lives and their families have been destroyed completely?

President, Hong Kong is an abnormal society. Money-making and successful careers are taken very seriously by Hong Kong people. To strive for success and performance, they often devote a lot of time to their work. Even those who are very rich may probably return to their office early in the morning and go home very late. The same applies to professionals, and even civil servants. Although the five-day work week implemented by the Government will help bring about a better family life, many people under daily work stress have to work until nine or ten o'clock, or even eleven or twelve o'clock at night. They simply have no chance to spend time with their families. Therefore, in order to truly implement and promote family-friendly policies, we must start by reducing work stress on the people to enable them to have more time to be with their families.

As I mentioned earlier, apart from the financial pressure and crowded living conditions, a family of four also faces the problem of having nowhere to

go in Hong Kong. Where can a family of four go if there are two children in the family? Owing to exorbitant transport expenses, new town residents dare not, and are reluctant to, travel far with their whole families. This shows that transport expenses are another obstacle to the activities organized for fostering family harmony.

In his reply to the question raised by me on the previous occasion about new towns, the Chief Executive promised to instruct the relevant departments to put proposals into implementation and called on Directors of Bureaux to put more emphasis on, give consideration to and introduce improvements to removing the obstacles (especially health care facilities) to new towns in building harmonious families. I also asked the Chief Executive about a medical complex in Area 109A, Tin Shui Wai. Many medical facilities have indeed posed hardships to the people. The Government must endeavour to help the people remove or minimize their hardships before family relationship can be improved.

I hope the Secretary will not just tell us verbally what will be done. As long as these obstacles remain, the so-called implementation of family-friendly policies is mere empty talk. Actually, government policies remain the biggest obstacle to the building of happy families.

Thank you, President.

MR HOWARD YOUNG (in Cantonese): Madam President, the Universal Declaration of Human Rights of the United Nations reads, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Therefore, we affirm the promotion of family harmony and the spirit of mutual support.

An undermined or collapsing family system will produce an adverse impact on the healthy development of the next generation and lead to a lot of conflicts and agonies among family members, and even give rise to human tragedies and social problems.

For a variety of reasons, coupled with weakened family cohesion, the number of spouse and child abuse cases has continued to rise. The numbers of spouse abuse cases and child abuse cases for the whole of 2005 was up from the previous year by 19% to 3 598 and by 47% to 763 respectively.

This week, the High Court ruled that the abuse of a four-month baby girl by her parents had led to her death from brain damage, and her parents were convicted of manslaughter and sentenced to 10-year imprisonment. One was equally deeply grieved by a saddening family tragedy, involving a family of four, occurred in Tin Shui Wai in April 2004. A week or so ago, three women with psychiatric disorder records committed group suicide in Tin Shui Wai. Family problems were involved too.

In the face of these human tragedies, one cannot help asking this question: Have the families in Hong Kong fallen ill? If our Government is truly "people-oriented", it should promptly come up with remedial measures to rebuild family cohesion in Hong Kong.

For this reason, the Liberal Party supports the Government implementing family-friendly policies. We also consider it necessary for a two-pronged approach to be taken to, on the one hand, take precautions by providing appropriate and relevant support to families in crisis and, on the other, create an environment that is conducive to rebuilding family values and enhancing family cohesion, thereby creating a harmonious society. What specific measures should then be taken?

I think the Government should first target Tin Shui Wai, described by some senior officials as the "city of sorrow". The Chief Executive frankly admitted the day before yesterday that imbalance might sometimes be resulted from the design of new towns by the Government. The Chief Executive also undertook to pay special attention to the development of such new towns as Tin Shui Wai, Tung Chung, and so on. While we welcome the Government's ready acceptance of advice, we hope it will not confine itself only to enhancing hardware. It should specially focus on strengthening support for districts where cohesion is relatively weak to ensure that all families will receive timely and appropriate assistance when difficulties are encountered. For instance, in the light of the inadequate community care for psychiatric patients, the Government should, apart from deploying resources to enhance the relevant services, it is more important to provide the families of the patients with more support to enable them to learn how to treat and support the patients.

In implementing various policies and initiatives, the Government should also create a favourable environment to assist families in building up harmony. For instance, the Government should step up publicizing positive messages of

family harmony and ways of fostering mutual respect and tolerance between family members. In May this year, the Government spent \$10 million promoting a campaign entitled "Family at Heart", and produced APIs to advocate such family values as teaching others by one's own example, harmony, care, commitment, and so on. At the same time, family harmony is chosen as the theme of this year's summer holiday activities. All these deserve our support. We hope the Government can step up publicity and education in this area and, targeting the next generation, co-operate with parents and schools to help children nurture positive family concepts when they are small.

The Government should also make more efforts in policies concerning the people's livelihood in different aspects. For instance, the "Special Scheme for Families with Elderly Persons" launched by the Housing Department encourages two generations to live together or nearby with a view to strengthening family connection and care. This scheme allows young families to apply together with their elderly parents for one flat or two separate flats in the estates in new towns and allocation can be advanced by two years. We greatly support this and propose that, if resources permit, allocation be made more flexible by, for instance, allowing relocation of children to urban areas to take care of their elderly and weak parents.

As for financial support to ease the burden on families, the Government may, given that the economy has turned for the better and the financial conditions have greatly improved, extend the entitlement period of home loan interest deduction from 10 years to the end of mortgage terms so as to alleviate the living burden of the people, especially the middle-class families.

We also propose that the Government should increase the existing child allowance of \$40,000 and provide pre-school education subsidy in the form of vouchers. This will not only lower the expenses incurred by parents in children education, but also allow the parents to pick their favourite schools for their children.

As the saying goes, "One should seek medical treatment before one's sickness gets too serious". If the families in Hong Kong are ill, we must promptly employ the four ways of diagnosis — looking, listening, questioning and feeling the pulse, and then prescribe the right medicine, hoping that the medicine can treat the illness promptly. I so submit.

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

MR ALAN LEONG (in Cantonese): Madam President, the family may mean different things to different people. Some people think that it is a cosy and loving place, others may treat it merely as a place that provides meals and accommodation, but to victims of domestic violence, the family is a nightmare. However, no matter what the family means to you, it is undeniable that the family has an indelible influence and position in our growth.

Families nowadays have to face quite a number of challenges. More and more people choose to marry late and the divorce rate is rising, as a result, the number of single-parent families have multiplied and the problem of domestic violence is also worsening. The motion of today's debate advocates the promotion of family-friendly policies and it is a good response to the crisis faced by the family.

Madam President, the principle underlying family-friendly policies is that the formulation of all policies should be geared towards the well-being of the family. From this angle, to promote the well-being of the family, the positioning of family policies cannot be confined to the domain of welfare alone, rather, it is necessary for all major policy areas to be oriented towards the family as a matter of principle.

Specifically, how can family-friendly policies be implemented? I suggest that the Government make reference to enforcement experience in other policy areas. For example, in environmental protection, we have the Environmental Impact Assessment Ordinance which provides that statutory environmental impact assessments must be conducted on public and private projects. On promoting gender equality, we have proposed a gender mainstreaming checklist and in implementing various livelihood policies, the family perspective also has to be taken into account because quite a number of policies, such as those on labour, housing, education and the economy, have a direct or indirect bearing on the family to various degrees.

Environmental impact assessments can be conducted by scientific means and one can say that there are more objective criteria. In contrast, there are some difficulties in gauging the impacts on the family, since what can be

considered beneficial to the family is a rather vague notion. In order to establish a comprehensive family impact assessment mechanism, it is necessary to first understand the scope of family-friendly policies. At present, all the discussions on family-friendly policies are focused on how to strike a balance between the family and working hours, therefore, many proponents of family-friendly policies have focused on how to create a family-friendly work environment, including the implementation of measures such as five-day work week, flexi-hours and corporate child care service, in the hope that employees can cater to their work and family responsibilities concurrently.

Madam President, however, the scope of family-friendly policies goes far beyond this. For example, merely implementing the policy of five-day work week may not necessarily result in an improvement in the quality of family life because employees can choose not to spend the weekend thus made available with their family members. Even if they spend their weekend with their family members, if they hardly speak to one another or just do their own things, this may even increase the likelihood of conflicts. How can getting together like this be considered an enhancement of the quality of family life? It can thus be seen that to enhance the quality of family life, it is necessary for it to be fully complemented by family-friendly policies.

Madam President, as the name implies, family-friendly policies refer to the need to look at matters from the family perspective when formulating various public policies. A lot of western countries, for example, the United States, Canada and Australia, have all proposed the use of a family impact assessment mechanism at the policy level and developed a framework to systematically examine the effects on the family and classify them into different dimensions. For example, policies are evaluated according to whether they can ensure that family members have sufficient ability and resources to fulfil their family responsibilities, how to maintain the stability of the family and how to ensure that the various functions of a family can be brought into play, and so on.

Under this assessment framework, the people in governance have to assess the effects on the family in different dimensions, for example, whether the policy will exacerbate poverty; whether resources will be provided to parents to assist them in fulfilling their family responsibility of caring for and raising their children, or the type of families at which the policy is directed and whether there will be any positive or adverse effects on this type of families and whether the

bond between family members can be strengthened through the implementation of policies, so as to maintain the stability of the family, and so on.

Madam President, drawing up a checklist for the purpose of family impact assessment can help the people in governance fully grasp the extent of the effects of a certain policy on the family, so as to remedy the inadequacies of a policy. Since the process of assessment must be founded on concrete data, the Government has to establish a comprehensive family database for the purpose of policy analysis. Accounts of the results of the assessments should be given to the public, and public understanding of family-friendly policies should be promoted through public participation.

All in all, a family impact assessment mechanism is not just a tool for examining policies but it should also assess the scope of family-friendly policies.

With these remarks, Madam President, I support today's motion and amendments.

MR VINCENT FANG (in Cantonese): Madam President, the creation of a family-friendly working environment hinges on the co-operation of the Government, the business sector and even various sectors of society.

In fact, if family-friendly policies can be implemented successfully, so that employees can have time for family life outside their work, their work efficiency can be greatly enhanced. This will be beneficial to both employers and employees. Therefore, employers are also happy to offer assistance in the implementation of family-friendly policies. However, we must balance the overall interests of society carefully in order not to lose sight of one aspect while heeding another. Firstly, when implementing family-friendly policies, we must avoid making the business environment increasingly difficult, thus dealing a blow to the overall economy and reducing job opportunities, making families lose their financial support and ultimately, a policy will become "family-unfriendly".

In his amendment, Mr Albert HO requested that paternity leave be introduced. In fact, few economies in the world offer the benefit of paternity leave. Moreover, should society, employees or employers bear the costs arising from the provision of paternity leave? This is open to discussion.

Take Australia as an example. At present, the requirement is that a week of unpaid paternity leave has to be provided to employees with such a need. Since the territory of Australia is vast and employees may have to return to their hometown to take care of their wives who are about to deliver, a week of unpaid leave is justified. However, Hong Kong is a small place with convenient transportation and "wage earners" can go home to take care of their wives and children after work each day. Take Sweden as another example. The law there provides that male employees can enjoy 10 days of paid paternity leave and the expenses incurred are met by social insurance.

However, if we look at the situation in Hong Kong, "wage earners" and employers, in particular, employers of small and medium enterprises (SMEs), are already having a hard time making contributions to Mandatory Provident Fund (MPF) schemes and in future, it may also be necessary to contribute to health care financing. Furthermore, we have to face the problem of an ageing population because by 2033, every four young people will have to support one elderly person, so may I ask how funds for social security *a la* the Sweden model can be available in Hong Kong and how the costs incurred by paternity leave can be met with public funds? Pro-welfare Members may think that taxes in Hong Kong should be increased substantially or the proposed goods and services tax should be earmarked to meet such expenses, however, these two measures will both seriously undermine the competitiveness of Hong Kong and deter investors and tourists. I am afraid in that event, Hong Kong will become a desolate place.

Few neighbouring Asian cities can serve as reference. Although male civil servants in Taiwan and Malaysia are allowed to take three days' of paternity leave, such benefits are not provided by private organizations. 98% of the companies in Hong Kong are SMEs and they have limited manpower and resources. If it is mandated that paternity leave be provided, this will only increase the costs of companies operating with small capitals and curtail their room for survival. Furthermore, the majority of employees in Hong Kong are reasonable people, so if employees request to take time off around the time of their wives' delivery, I believe employers will also exercise their discretion in dealing with such instances. Moreover, this arrangement has been working well.

Apart from this, when employees have festive occasions or bereavement in their family or have other urgent matters to deal with, as long as they give the reasons clearly, employers will generally exercise discretion in dealing with such

matters. However, if it is necessary to offer "additional family-related leave", as Miss TAM Heung-man proposes, it seems it will only further complicate the issue. What actually does "family-related" mean? It will really be difficult to give a clear definition. In that case, what criteria should employers follow in deciding employees' applications? If the definition is set too loosely, it may be abused, or if it is set too strict, one will be criticized for making things difficult for employees. Therefore, it is really difficult to accept this proposal.

I often stress in this Council that it is not true that employers are not willing to do anything. As long as their ability permits and something is beneficial to both the company and the employees, everyone will do their utmost. Take the Hong Kong and Shanghai Banking Corporation Limited (HSBC) as an example. Although it followed the Government in implementing a five-day work week, through internal co-ordination, its 50 branches are open for six days and some of them even for seven days. It can thus be seen that if companies can have greater flexibility, they can do things even more effectively than the rigid system of five-day work introduced by the Government and the public can benefit even more. In order to implement the above arrangement, the HSBC has to recruit an additional 400 employees. To SMEs with limited resources, this may not be affordable. For example, for a company with only two or three employees, even the boss may have to be personally involved in the work. If an employee has to take paternity leave now and family-related leave then, is this not tantamount to obliging employers to wind up their business earlier?

Therefore, I believe that the present flexible approach that allows employers to exercise discretion in dealing with such matters can, on the one hand, allow companies to operate smoothly, and on the other, employees can apply for leave in special circumstances, so it is the most effective and appropriate approach.

Madam President, I so submit.

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

MRS SOPHIE LEUNG (in Cantonese): President, just now, I heard an Honourable colleague relate this issue to domestic violence and I very much agree with this point. I believe that this issue should be discussed not just from the perspective of working hours but also from the perspective of ultimately

creating a harmonious community and family. However, I wish to remind the Honourable colleague that when it comes to domestic violence, which is an issue studied by the Women's Commission, I already raised this issue again in early January. In fact, the report on domestic violence published in early January contains the views put forward by him and the scope of the views in it is even more extensive. It deals with how we can take into consideration a range of problems in local communities, including the ability to counter this infectious trend, that is, how to provide comprehensive assistance to communities.

I think today's question is very good but I wish to summarize the issues into several areas. On the one hand, the business sector and society should be encouraged to introduce by all means working hours conducive to family harmony, while on the other, we must not forget some matters. First of all, since there is such an ill trend in society, we have to examine if any problem has occurred in the ability of an individual to counter such a disease. I believe that this is a very important issue and we must look it from this perspective. This also echoes an issue raised in many other countries when discussing this kind of problems, that is, the more the assistance offered, the more the ability of the individual in weathering such adversities will be weakened. We must strike a balance between these two areas, so that all individuals can have an understanding of society and the ability to integrate into society. Only in this way can each individual adopt the attitude of "living in grace" and "living in dignity". This is the first point. Secondly, as stated in the report on domestic violence which I have mentioned, to prevent domestic violence, we must adopt a stance of genuine "zero tolerance" because this is an attitude that a harmonious community must manifest and realize in daily life. Thirdly, what I want to talk about is that it is probably even more urgent for society to examine if the role of social service should switch to the mode of "springboard" services, so that all people will adopt an attitude of helping themselves and others, rather than one that merely focuses on the provision of services. Only in this way can we lift ourselves from the pitfall of "social work fatigue", a phenomenon that is the subject of complaint in many advanced countries. Fourthly, I very much hope that in society, everyone can seek to empower people in various areas and lobby for more rights for women or other sectors. In this regard, ideas such as the Community Investment and Inclusion Fund and the Capacity Building Mileage Programme have been conceived and I believe that all these cannot be neglected.

If we still maintain that more funding is needed or that more should be done, the result will only be falling back into the former mode of service. President, I often promote the work of the Women's Commission in Council

meetings unawares but I think Honourable colleagues really must not forget that we have to balance this with the other side. Therefore, from this viewpoint, I am sorry that we will oppose the two amendments. Thank you, President.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam President, I believe the motion "Promoting family-friendly policies" moved by Mr TAM Yiu-chung is very important. Why do I say so? This is because we in labour unions actually have met a great deal of difficulties in trying to achieve this goal.

Therefore, when Mr FANG speak, I was all ears and I also welcome the initial remarks he made in his speech, that is, on this policy, it is necessary to secure the co-operation of the Government, the business sector and society; unfortunately, he quickly took a turn and went on to relate the difficulties faced by them. However, I believe this does not matter and we can negotiate.

Madam President, as the chairman of the Women Affairs Committee of the Hong Kong Federation of Trade Unions (FTU), I have put forward quite a lot of views to the Government because we believe that to everybody, the family is a very important place that can even serve as a refuge.

For example, when children are growing up, it is very important to their development for parents to care about them and when they have problems, family members should talk to them more. Another example is that when we grew up and became young people, or were about to work in society and encountered difficulties, the family as a whole should try to solve them together. For example, in the past couple of days, my friend's daughter was about to go to secondary school and her family members all came out in support of her. Her situation was in stark contrast with those who did not have family support and I witnessed this personally. Another example is that when we encounter problems, our families can often provide support. My own family can serve as an example. To us, my mother plays a pivotal role and she gave us, a group of poor children who lost our father at a tender age, a happy childhood. This is because in our family, my mother plays a pivotal role and she still performs the function of a pivot after we have grown up, so that we as a family still love one another even now and whenever there is a problem, everyone will help each

other solve it. Therefore, I believe that family harmony and unity are important to everybody.

I am the Chairman of the subcommittee in charge of studying domestic violence in the Legislative Council (I have served in this position since the last term) and I have witnessed a great many problems that are attributable to what happens in a family. What are these occurrences? I do not wish to recount them, so I will just tell the Government by quoting the results of various surveys. For example, a survey conducted by the EOC and the Women's Commission at the beginning of this year indicated that 88% of the employees work more than 60 hours a week, 30% higher than the international standard. Another example is the interviews conducted by the Boys' and Girls' Club Association of Hong Kong of nearly 1 000 primary and secondary school students, finding that over half of these students felt that their fathers were very busy, so much so that even though those students wanted to get close to their fathers — boys like to model on their fathers — doing so is almost an impossibility. Furthermore, the Hong Kong Women Development Association conducted a survey in May this year on working mothers and close to 70% of them were practically incapable of assuming the responsibility of taking care of each member of the family or performing such a function due to their work.

Now that I have cited the above figures, you can see the state of things in Hong Kong. I believe that if our society still does not face family problems squarely nowadays and does not attach importance to this place which is very important to the whole-person development of all people, we stand to suffer even greater losses.

Madam President, as many Honourable colleagues have said, I have also looked at the results of the interviews conducted by the DAB last month, which show that 73% of members of the public believed that there was little communication and care in their families, nor had the Government done anything — 73% of the people believed that the Government had not done any work in this regard. I believe that in voicing this view, we do not mean to saddle all the responsibility on the Government, however, there are some things that can only be done by the Government and nobody else, and it is difficult for workers to go it alone. For example, if a worker wants to go off duty earlier because his daughter has to choose the secondary schools she wants to enrol at, he dares not make the request because if he does so, he may face the prospect of losing his job. This is the fact.

Madam President, what are the tasks that the Government was unwilling to undertake? Let me give some examples. I believe that at present, a lot of employers, be they those of large, medium or small companies, are all only concerned about finding ways to reduce costs. Originally, I had a good opinion of Mr Vincent FANG because he is the more enlightened type in the business sector, however, he has just voiced some of his difficulties. I have no intention of saying whether he is right or wrong, however, he should be able to see that a lot of workers are in miserable circumstances. When employers say to them, "You have to work overtime but you will not be paid for it. Are you going to do it?", they choose being subjected to such humiliation and work overtime, therefore, a lot of people have to work till close to eleven o'clock before going off duty and they have to hurry back to work the next day at ten o'clock in the morning. How can they take care of their family? Another example is the situation that we find in the catering industry or the IT sector. In my family, there are several young people who are working in the IT sector. Sometimes, they say to their mother on returning home that they cannot figure out what they are doing all this for. They have to work until eleven or twelve o'clock before going off duty and sometimes, even later than that. However, we can see that employees are working longer hours and this seems to be a sign of industry. Moreover, this is a very important sign, however, do they really have to do so? Yet another example is that at present, in reality, the wages of a lot of people are not enough to support their families if they do not take one full-time and another part-time job concurrently.

The situation in the transport sector is a case in point and Members can talk to the people in it. They said that they could not work for just eight or nine hours because the money is not enough for feeding their families. Drivers, be they those who drive buses, minibuses or coaches, all find themselves in this situation. Some other people also find themselves in such a situation, including people in the cleaning and building management trades, feeling very helpless. They may have to work for several buildings. Why? Even though they toil for many hours, they still cannot support themselves and their families, so they are forced to work overtime again and again and in the end, they feel totally exhausted and some of them even died of fatigue.

Therefore, can Members say if they are in a position to communicate with their family members and to understand and care about them? All political groups will convene meetings every week and often, these meetings are convened just for the purpose of having a chat. If a political party does not meet to talk, a lot of conflicts will arise at any time. Often, when something

urgent comes up, we will assemble everyone in the Ante-Chamber to have a discussion. In the same vein, if all the people in a family do not have time to talk and communicate, I believe a lot of the problems mentioned by Mr TAM will occur, and he has already cited various examples of such problems.

In this Session, the other role that I am playing is the Deputy Chairman of the Panel on Welfare Services of the Legislative Council. We have been asking the Government all the time why a policy on the family has not been put in place and why no comprehensive study on the family has been conducted. Therefore, I totally agree with the proposal that a Committee on Family Affairs be set up, as suggested by Mr TAM. This is because I sympathize a lot with women who wanted to make use of child care services. If such services as child care services and services for the elderly are available, their burden can be relieved. Just now, Mr WONG Kwok-hing mentioned the twitter of birds. As members of the public, including Members of this Council, listening to the twitter of birds is a luxury. Everybody naturally hopes that there can be more communication and only in this way can society be harmonious. In this regard, the Government, the business sector and even Members cannot shift their responsibilities. This is particularly the case for the Government and the business sector.....

PRESIDENT (in Cantonese): Miss CHAN, your speaking time is up.

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

MR LEE CHEUK-YAN (in Cantonese): President, often, when it comes to the family, everyone thinks that the family is very important and that it should be a core value of Hong Kong. Although everybody says all the time that the family is traditionally very important in China, when it comes to the practical consideration, between family and money, which is more important? On examination, one will find that to the Government, money is actually more important and the family does not have any value at all.

Why do I say this? If the Government really makes the core value relating to the family one of the major pillars of its governance and wants to assess the impact of its governance on the family, I believe it should introduce

some family-friendly policies, particularly in respect of employment. However, so far, I have not seen the Government put in place any such policy.

The motion moved by Mr TAM Yiu-chung today advocates the implementation of flexible working hours. However, the greatest problem now is that although there is already flexibility, only the time for going off duty is flexible and only employers but not employees can have flexibility. At present, there is only the time for starting work but not for knocking off. The time for starting work is fixed but the time for going off duty is flexible and only employers can enjoy such flexibility but not employees, that is, employees cannot go off duty at the specified time. Furthermore, a lot of employment contracts in fact do not specify the time for going off duty.

Recently, I heard Dr KWOK Ka-ki say — perhaps York CHOW should pay particular attention to this issue — that the latest new contracts of the Hospital Authority (HA) do not specify the working hours. If the contracts of the HA do not specify the working hours, that means there will be no need to consider the issue of overtime work. If the HA can be so unscrupulous as to modify its contracts such that the working hours are not specified therein, Members can imagine how bad an example this will set for private organizations in society. Are doctors not supposed to have families? In view of this, I believe York CHOW has to communicate with the HA first and he really has to look into this. If all the new contracts do not specify the working hours, this is really unacceptable. How possibly can the working hours of doctors not be specified?

As I said just now, in many private organizations, it is not the case that employees can go off duty once they have finished the work they have been doing and that they can just work from nine in the morning to six in the evening. If it is necessary to work overtime, then they have to work beyond their working hours. However, the actual situation is that they have to work overtime without pay and their working hours are different every day. They only know when they should go on duty but not when they can go off. This is really a very common phenomenon in Hong Kong society. According to statistics, the working hours for over 20% of the workers in Hong Kong, that is, about 700 000 people, are more than 60 hours per week. At present, the number of working hours in western societies is 30-odd hours, however, not to mention 30-odd hours, we cannot even make it 48 hours and it stands at 60 hours at present.

President, talking about working hours, one can see that it is utterly at odds with and hostile to the family in Hong Kong. Since the working hours are so long, how possibly can there be any time for the family? Although Mr Alan LEONG said just now that even if there was time for the family, it was also necessary to consider the quality, and that if people did not communicate when they were together, it was not desirable either. This is true, however, at least, one must have the time to do so. Given not the time, they will not have the opportunity to get together at all. If there is not even the opportunity, there is no need to think about anything else. The numerous problems in families in Hong Kong are in fact closely related to the total disregard by society as a whole for the family needs of employees.

It is a shame that Mr Vincent FANG of the Liberal Party said just now that all policies must not make the business environment deteriorate or undermine Hong Kong's competitiveness, therefore, dealing with paternity leave, family-related leave, and the like, would not be easy and they could not be implemented. If all family-friendly policies are painted by the business sector as making the business environment deteriorate, wage earners can only continue to be the slaves of their work and they can only have work but no family. Is it necessary to be like this? If society carries on like this — Mr Vincent FANG said that the introduction of measures such as the regulation of working hours and family-related leave will turn Hong Kong into a desolate place, however, even before such measures have been implemented, is Hong Kong not already a desolate place? Is the family not already desolate? The existing problems have actually made the family system in Hong Kong ruined.

In the debate on the last occasion concerning women in poverty, I also said that each time when topics relating to family friendliness were discussed, the Liberal Party would say abstractly that it was supportive, however, in reality, it has always placed its hands on the wallets of the business sector. Can they be more balanced? I think that if things go on this way, the debates will be meaningless. Each time, the Liberal Party would request that we should not involve the business sector, or else they would not agree to anything. If the business sector will not agree to anything if they are involved, how can we talk about a balance between work and family? A balance between work and family will involve the business sector to some extent.

Take the insignificant issue of family-related leave as an example, if family-related leave is unpaid, will it then be feasible? At present, for the sake

of their children's education, parents often have to put aside their work to attend meetings between parents and teachers or see teachers, furthermore, there are a lot of petty chores at home. For families in which both parents work, who will take care of the children? With family-related leave, parents or families will at least feel that they can take time off to attend to some business and even if the leave is unpaid, they will still accept it. However, will the business sector accept it?

If the business sector accepts it, let us then start from this. If the business sector is not willing to do anything whatsoever, then there is no need to discuss the issue of family-friendliness at all. If one merely says that it should be promoted, this is just empty talk and lip-service that will bring no benefit. After talking about this so much, they just stick to their old ways. In Hong Kong, family friendliness has been talked about for many years but in the end, the hopes of families are always dashed.

President, I strongly support the amendment proposed by Miss TAM Heung-man as well as the original motion.

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

MR RONNY TONG (in Cantonese): President, Article 10 of the United Nations International Covenant on Economic, Social and Cultural Rights stipulates that, "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society." Article 11 also requires the States Parties to the Covenant "to recognize the right of everyone to an adequate standard of living for himself and his family.". This view of the family as a group unit of society also coincides with Chinese culture and thinking. To forge a harmonious society, the family must first of all be harmonious. However, has the SAR Government ever made any effort to create harmonious families?

To implement family-friendly policies, not only is it necessary to have vision, it is also necessary to complement them with the policies in various areas. We hope that the Government will not treat family-friendly policies as a welfare policy, rather, it has to be complemented by economic, social and political measures.

Let us look at Yuen Long district, including Tin Shui Wai. In the whole of 2005, the police received a total of 398 reports on spouse battering and this figure accounted for 16% of the total in Hong Kong. We still cannot put behind us the family tragedy that occurred in Tin Shui Wai two years ago, however, a group suicide involving three persons happened last month. What response did the Government make? The Government said that the situation in Tin Shui Wai and Tung Chung had to be improved. In a meeting of the Legislative Council convened to discuss tackling the domestic violence problem on 15 June, the representative of the Government said, "For us, to adopt a playing-it-by-ear approach is administering the right cure", so to this effect. If the Government has such thinking in addressing and looking at the problem of domestic violence, there is little wonder that this problem is deteriorating.

Apart from having such an erroneous attitude, the Government has also overlooked the problem of inadequate facilities. In a community in which people have lived for more than a decade, it turns out that no one is paying attention to its planning issues and community facilities are inadequate. Nowadays, we can find a large park, an indoor sports centre and a swimming pool near the town centre of Tin Shui Wai, however, the officials responsible for planning failed to consider the fact that if one goes from the outskirts of Tin Shui Wai to that central location, it takes 10 to 15 minutes even by light rail and it is basically not possible to go there on foot. There is so far not a single library in the area and the new arrival services centre is located in Shui Bin Wai Estate in Yuen Long, which is quite distant from Tin Shui Wai. In Tin Shui Wai, the Social Welfare Department or any organization funded by the department do not provide the service of conditional tenancy, however, there are two such offices in Yuen Long and they are not far from one another. Is this an error in planning and a mismatch of resources? Of course, even if the facilities are available nearby but the complementary policies are ossified, in the end, we will still see incidents such as the tragedy that occurred in Long Ping Estate in Yuen Long recently. Although the person involved had contacted the relevant government department several years ago, the Government did not taken any follow-up action.

In Yuen Long, where there was already a population of close to 450 000 people in 2001, there are only a total of five Integrated Family Service Centres and there is a lack of facilities that can improve the quality of family life, whereas in Tin Shui Wai North, where the population is 100 000, there is only one Integrated Family Service Centre. All in all, has anyone ever given any thought to the reason for such uneven distribution of facilities?

In urban planning, in a new urban area where public housing estates predominates, it turns out that there are no complementary commercial or industrial facilities, so the great majority of the working population has to travel long distances to work in other districts. The resources they spend on transportation have exerted enormous pressure on their families. The bus fare for a single journey to Hong Kong Island alone is more than \$20. In addition, they have to have their lunch outside, so may I ask how many people can take all their wages home? Worse still, since the working hours are long and so is the time spent on travelling, it is practically impossible for them to have a healthy family life with their family members. If we look at other examples, the median income for remote areas is far lower than that in urban areas. Without the protection provided by minimum wages, we really cannot see how families living in remote areas can improve their quality of life in terms of finance.

In addition, this kind of community problems is the cause leading to a concentration of poor families in certain areas. Urban renewal had forced families with low income to move to distant areas such as the Tin Shui Wai and Tung Chung new towns as they hoped that they could be "allocated public housing units" at an early date. Not only is the formation of slums a strong indictment against the SAR Government, more importantly, such slums have tremendous adverse effects on the mentality of poor families and their determination to improve their lot. In addition, since the Government condones other social classes and even takes the lead itself in deriding people in difficulty or tarnishing them repeatedly by painting CSSA recipients in such lights as lazy people who are the parasites of society, or by sweeping the whole problem, such as those in Tin Shui Wai under the carpet and then pay no more heed to them, consequently, these families are enveloped in the helplessness and despair of being abandoned by society.

Politically, the Members representing these families and speaking for them are not respected and are even neglected by the Government in policy formulation, thus exacerbating the sense of helplessness and despair of these families. When one feels helpless and desperate, how can one have the courage and ability to improve the quality of life of one's family? When formulating policies, if the Government takes a defensive attitude, turns a deaf ear to outside views and even counters them with plausible arguments, may I ask how a policy formulated in this way can cater to the needs of the people?

Finally, I hope that the Government can seriously listen to the voices inside and outside the Legislative Council. The officials concerned also have to

do some soul-searching to see if their conscience is really clear, or are they, as WANG Jingwei wrote in his poem, "Looking in retrospection at my life, I found I had not done my utmost"? If the latter is the case, I hope everyone will seize the opportunity before them and do more for Hong Kong people.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, Mr TAM Yiu-chung, you may now speak on the two amendments. You have up to five minutes to speak.

MR TAM YIU-CHUNG (in Cantonese): President, I wish to state the views of the DAB on the two amendments. Firstly, concerning Miss TAM Heung-man's amendment, we agree with her amendment, not because she is also surnamed Tam, but because she has proposed in her amendment that workers have to be protected, so that they can have more time to take care of their families and conditions can be created for workers to do so. In fact, we have also briefly mentioned the proposals made by her in our compilation of proposals on family-friendly policies and there is little difference between the proposals in the two of them. As regards why we did not set these proposals out in the motion, I hope Members will understand that if we were to do so, this would arouse a great deal of controversy. Since the proposals are mentioned in Miss TAM Heung-man's amendment, the contents of the motion have been supplemented by it and Honourable colleagues can also have one more option.

As regards how the prevention of domestic violence can be stepped up, the DAB is of the view that apart from implementing the scores of recommendations made by the Review Panel on Family Services in Tin Shui Wai and the Coroner's Court respectively, more importantly, the family support network in the community should be strengthened and the assistance provided by professionals increased. Mr Albert HO's amendment mainly proposes the establishment of a multi-disciplinary mechanism for reviewing cases of family tragedy and

conducting a study on making it mandatory for the relevant professionals to report the domestic violence cases they handle. In fact, concerning these proposals, Members have already discussed them in the motion debate conducted in March this year. The DAB believes that one must not go slack in the prevention of domestic violence, however, at present, there are already two inter-departmental committees responsible for dealing with domestic violence, including the Committee on Child Abuse and the Working Group on Combating Violence. Moreover, the Government said in March that after consultation, it would consider merging the aforesaid standing committees into one committee and introduce changes to have an unofficial member take up the chairmanship, so that the co-operation between professions and departments could be enhanced effectively. If the proposals in this amendment are adopted and another inter-departmental group of the same nature and function is established, there will again be duplications in the power and responsibilities of various groups, thus resulting in measures being taken by a number of bodies and the situation of conducting reviews without implementing anything will arise.

As regards a system mandating the report of cases, many front-line social workers have concerns about its effectiveness. The handling of domestic violence is more complicated than other social problems in general and the mentalities of the people concerned are often very conflicting. For example, some battered women are often more concerned about the development of their children than their own situations and they do not wish to see their children live in a broken family. Therefore, they will air their grievances to professional social workers, seek their advice and assistance and hope that the professional knowledge of social workers can help them restore family harmony, rather than resorting to legal channels right from the outset. Therefore, front-line social workers are concerned that if it is mandated that they have to make reports, these matters will exceed their scope, consequently, they cannot adopt the best approach in dealing with them. Meanwhile, the battered party may also become apprehensive and decide not to seek assistance. These are not the consequences that we wish to see. After the incident involving KAM Suk-ying in Tin Shui Wai had occurred, the reviews conducted by a number of expert groups all concluded that the main cause was that the front-line workers assisting the victim, including police officers and social workers, had inadequate training in handling domestic violence. Therefore, the fundamental cure for the problem is to strengthen the training for front-line workers, not mandating the report of cases. Therefore, the DAB cannot fully agree with the amendment moved by Mr Albert HO.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am thankful to Mr TAM Yiu-chung for moving this motion. I also wish to thank Members for putting forward their views on the motion topic.

Harmonious families form the cornerstone of harmonious societies. We have been striving to maintain and enhance family cohesion, promote family harmony, assist individuals and families in preventing and coping with problems and provide assistance to families that cannot cope on their own. Since the scope of family-related issues is very extensive, the various Policy Bureaux and departments have been, through the policies and services within their respective portfolios, implementing various family-friendly measures to support the function of the family and enhance family cohesion. For example, under our tax regime, taxpayers are provided with allowances for dependent children, parents and grandparents. And, special attention is paid to the special difficulties encountered by single parents and families having to care for relatives, particularly relatives with disabilities.

However, support for the family and the promotion of family-friendly policies are not the responsibilities of the Government alone. The joint efforts of all sectors (in particular employers in the business sector) are also required. In recent years, the Government has been vigorously promoting the co-operation among the Government, the business sector and the general public, and business organizations are also encouraged to discharge their corporate social responsibility. The adoption of personnel policies that cater for employees' family needs is one of the important examples. In this regard, companies showing concern about their employees' family life are given recognition under the Caring Company, an annual award scheme run by the Hong Kong Council of Social Service and funded by the Social Welfare Department (SWD). I would like to take this opportunity to call upon more employers to take part in the active promotion of family-friendly measures.

In regard to Members' specific proposals on the role of the Government, I would like to make a consolidated reply as follows.

The scope of family-related issues is extremely extensive, involving different age groups and various roles in the family. Children, youngsters, women and senior citizens, that is, practically all Hong Kong people, are involved. Family-related issues also cut across different policy areas. Under the existing policy, the various Policy Bureaux will liaise closely with one

another and conduct special studies on various topics. In case of necessity, inter-departmental working groups will be set up to examine policy contents and implications.

The Government has also established different advisory committees to conduct studies on family-related issues. For example, the Committee on Social Development and Quality of Life under the Commission on Strategic Development will discuss the topic of "Support for the Family". The Women's Commission will examine the roles and needs of both sexes in the family from the perspective of women, and it will also examine various family support services. The Elderly Commission has been championing and promoting the family responsibility of caring for the elderly, and it has also been advocating that the elderly should also make contribution to their families. The Commission on Youth has been conducting studies on youth development in the context of the family and other areas. To tackle the problems faced by families in poverty, the Commission on Poverty has set up the Task Force on Children and Youth with the aim of exploring ways of alleviating inter-generational poverty.

In its recently published document entitled "Enhancing Population Potential for a Sustainable Future", the Council for Sustainable Development advocates the need for promoting a culture that can balance the needs of work and family life, encouraging people to pay heed to other aspects of their life, such as their families. Many measures, such as five-day work week and the "home office" can all promote people's social health. In the long run, they can increase the size of the productive workforce.

We therefore think that the existing arrangements can enable us to respond flexibly and expeditiously to changing social circumstances and public concerns. Such arrangements should continue and it is not necessary to make the superfluous move of establishing a separate Family Commission.

Mr TAM Yiu-chung advocates the introduction of a family impact assessment system. Actually, when the various Policy Bureaux formulate their policy proposals, they will always assess the impacts of their policies from different perspectives, including the impacts on families and the roles of their members. For example, under the Employment Ordinance, employees are provided with various types of holidays and protection which serve to create the basic conditions of a family-friendly working environment. Besides, the Labour Department has been actively encouraging employers to adopt a sound,

"employee-oriented" personnel management approach that addresses the needs of their employees' family status. We have also put in place a clear family welfare policy aimed at maintaining and enhancing family cohesion. What is more, in the course of formulating policies and measures, the Government will also consider the needs and viewpoints of the two sexes. Since 2002, the Government has adopted a gender mainstreaming checklist for 16 policy or work areas. The checklist is being extended to a greater number of policy areas.

In recent years, family values have come under the severe impacts of society's changing economic structure and value judgements. We have therefore invested additional resources for the establishment of an inter-departmental working group to explore ways of stepping up and popularizing family education. The working group has already launched its work, broadcasting Announcements of Public Interest on television and the radio, organizing district activities and producing various television and radio programmes. We hope that all this can induce society as a whole to do some reflections. We further hope that everybody can take actions to manifest the familiar family values of teaching by example, harmony, care and commitment. Besides, schools, Integrated Family Service Centres, social service organizations, maternal and child care centres and District Offices will continue promote family education, consolidate family values and help enhance the function of the family. Through the Committee on Home-School Co-operation, the Education and Manpower Bureau will help and support schools in promoting parent education.

Mr TAM Yiu-chung proposes to offer tax concessions and funding for pre-primary education across the board. The Government has always been concerned about early childhood education (ECE). Over the years, it has been actively implementing a large number of measures to upgrade the quality of ECE.

The Government is committed to providing quality education services starting from the stage of ECE. In the past, we invested huge resources in upgrading the professional standards of ECE workers. We have made considerable achievements and succeeded in winning the widespread recognition of society. In the 2005-06 academic year, the Government launched a comprehensive review of pre-primary education. Frequent communications with the various stakeholders of the sector have been made and where appropriate, their proposals have been incorporated into the review of pre-primary education. The Government will monitor the progress of the

review, so as to ensure that existing resources are properly used for upgrading teaching quality.

The Government understands that Hong Kong people attach very great importance to the education of their children. For this reason, it has been reviewing the child allowance on a regular basis, with a view to relieving the financial burden of parents having to support their children and provide them with pre-primary education. As a matter of fact, there have been continuous increases in the child allowance over the past 10 years. At present, there is an allowance of \$40,000 for each of the first nine children. We are of the view that it is more effective to increase the child allowance. For one thing, it is not necessary for taxpayers to provide any proof of education expenses. In addition, families whose children are not receiving pre-primary education can also benefit. This is far more flexible than introducing a separate allowance for pre-primary education. The whole system is also much simpler.

Members are of the view that a family-friendly working environment should be created. As mentioned earlier on, the existing Employment Ordinance already provides the basic conditions necessary for creating a family-friendly working environment. Besides, the Labour Department also strives to encourage employers to adopt a sound personnel management approach that can assist their employees in meeting the needs of work and their families. These measures include flexible work arrangements (such as flexi-time, home office and job sharing) as well as support services for employees and their families (such as scholarships for their children, family fun days and child care services).

With a view to relieving the work pressure of government employees and improving the quality of their family life, the Government has started to phase in the five-day work week arrangement since July on condition that operational efficiency is not affected. Besides boosting the morale of civil servants and promoting social harmony, the implementation of five-day work week within the Government can also produce a positive bearing on society. Depending on operational needs, government departments may make arrangements for staggered working hours. When making such arrangements, government departments will seek to ensure that there will always be sufficient manpower to serve the public during office hours. The Government has no intention to enact any legislation on mandating five-day work week in other sectors. Other public-sector organizations and private-sector organizations can decide on their own whether they should follow suit.

In the paper entitled "Enhancing Population Potential for a Sustainable Future", it is pointed out that employers should consider the possibility of adopting more flexible working hours, assisting women and senior citizens in manifesting their work potentials and enhancing child care services, so that the public can further consider how they can balance the career development of individual family members and family obligations. These measures can help maintain family cohesion.

In order to assist parents who are unable to look after their small children due to work commitments, the Government has been providing diversified and flexible child care services through many non-governmental organizations (NGOs). Child care services and kindergarten education for children aged between zero and six are provided by subsidized whole-day child care centres, kindergartens as well as kindergarten cum child care centres operating on a non-profit-making and self-financing basis. The self-financing after-school care programmes operated by NGOs can provide after-school care services for children aged between six and 12. Needy families having been means-tested can receive 50% or even full subsidy for all these services.

We understand that because of their jobs or other reasons, some parents need child care services with more flexible operating hours. Besides extending the service hours of child care centres, we also offer other forms of more flexible child care services through NGOs, community groups and women's organizations, some examples being mutual help child care service, day foster care service and supervised child care service. The SWD is actively exploring the provision of non-conventional child care service at weekends, with a view to meeting parents' needs.

As for the proposal on enhancing social welfare services, I must point out that the 61 Integrated Family Service Centres all over Hong Kong are already providing needy families with a whole range of preventive, assistance and remedial services. These centres have also extended their service hours for the convenience of the public. Integrated Family Service Centres also adopt an active, outreaching approach to establish contact with needy families. In addition, these Centres have also established a network of contact with various other service units, so that needy families can be referred to them for early identification of problems and intervention. That way, appropriate and timely assistance can be rendered.

Since 2004, the Government has been taking active measures and investing greater resources to support and enhance the functions of the family and handle

domestic crises. These measures include the establishment of three more Family and Child Protective Services Units, the deployment of more social workers to Integrated Family Service Centres and Family and Child Protective Services Units, the enhancement of clinical psychological counselling service, the strengthening of the support available to refuges for women, the provision of more places in children's homes and foster care centres, the stepping up of public education on preventing domestic violence, the enhancement of training for social workers and professional personnel and the implementation of two two-year pilot schemes on counselling abusers. All these measures can help perfect the Government's services and assistance for victims of domestic violence.

The SWD has also proposed to put in place a mechanism for conducting cross-profession reviews following fatal cases of child abuse, with a view to identifying areas warranting improvement in respect of child abuse prevention and intervention. The SWD has started to formulate such a mechanism and it is expected that the review mechanism can be implemented in late 2006.

Mr Albert HO proposes to make it mandatory for the professional personnel concerned to report cases of domestic violence they handle. The SWD earlier on commissioned the University of Hong Kong to conduct a study on child and spouse abuse, and the findings show that according to foreign experience, a mandatory reporting mechanism may deter victims from seeking assistance. Its efficacy is therefore questionable.

We have already put in place a series of measures to facilitate the early identification and referral of needy cases by front-line professional personnel. For example, the Comprehensive Child Development Service was introduced in July 2005 on a trial basis to identify at an early stage the needs of infants aged between zero and five as well as their families, so that timely and appropriate service can be provided to them. We have put aside resources for improving the trial scheme. And, after reviewing the scheme, we will phase in the extension of the service to all districts in Hong Kong.

But many families are still unwilling to receive all these services despite their dire needs. In order to establish early contacts with them and handle the problems they face, we will, starting from this year, allocate additional resources for launching a family assistance scheme, whereby needy families will be introduced to various support services and encouraged to receive appropriate services.

What is more, we will also study the proposal on enacting legislation to provide for paternity leave. When considering legislative enactment and any amendments, we must first make sure that there is a widespread social consensus and strike a balance between the interests of employers and those of employees. Companies in Hong Kong are mostly small and medium enterprises which are less flexible in terms of manpower deployment. The enactment of legislation to introduce paternity leave will add to their operating costs and may also lead to operational difficulties. We will examine all these related problems.

In conclusion, we do clearly understand the increasing public demand for a family-friendly environment. To build up a family-friendly social environment, we need the joint efforts of all government departments and sectors. The various Policy Bureaux will continue to implement family-friendly policies and enhance family cohesion within their respective portfolios. We will also continue to co-operate closely with different advisory committees, educational institutions, social service agencies, the business sector and community organizations, with a view to building up a family-friendly social environment. In this process, we will continue to listen to the views of different social sectors and review our policies and measures in the light of the actual situation and needs of society. Thank you, Honourable Members. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Miss TAM Heung-man to move her amendment to the motion.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, I move my amendment. Thank you, Madam President.

Miss TAM Heung-man moved the following amendment: (Translation)

"To add "the policies on all fronts in Hong Kong have failed to effectively facilitate uplifting the value of the family and the quality of family life," after "That, as in recent years"; to delete "in Hong Kong" after "domestic violence have occurred successively"; to add "comprehensive" after "the Government to promote"; to add "uplifting the quality of family life," after "an environment that is conducive to"; to delete "and implement" after "to provide staff with child care services" and substitute with ", exploring measures to relieve the problem of excessively long working hours, making arrangements where practicable for staff to work at home,

studying the offer of additional family-related leave to employees, promoting five-day week where practicable, and implementing"; and to add ", etc, in order that members of the public can achieve a balance between work and family life" after "flexible working hours".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Miss TAM Heung-man's amendment to Mr TAM Yiu-chung's amendment be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Philip WONG rose to claim a division.

PRESIDENT (in Cantonese): Dr Philip WONG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr CHIM Pui-chung voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Mr TAM Yiu-chung, Mr Albert CHAN, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mr Ronny TONG voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, seven were in favour of the amendment and 11 against it; while among the Members returned by geographical constituencies through direct elections, 12 were present and 11 were in favour of the amendment. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR FRED LI (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion "Promoting family-friendly policies" and the amendment thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Fred LI be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

I order that in the event of further divisions being claimed in respect of the motion "Promoting family-friendly policies" and the amendment thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Mr Albert HO, you may now move your amendment.

Mr Albert HO (in Cantonese): President, I move that Mr TAM Yiu-chung's motion be amended.

Mr Albert HO moved the following amendment: (Translation)

"To delete "and" after "flexible working hours;"; to add "establishing a standing and multi-disciplinary mechanism for reviewing cases of family tragedies with the participation of law-enforcement agencies, social workers and relevant government departments, with a view to" after "enhancing social welfare services, and"; and to add "; stepping up publicity and training for front-line staff, such as social workers, police officers, education workers, health care personnel, etc, so as to enhance their understanding of and alertness to the problem of domestic violence; and studying making it mandatory for the relevant professionals to report the domestic violence cases that they handle, so as to assist in curbing domestic violence; and (g) introducing paternity leave so that the spouses of women giving birth can take leave to look after their wives and new born babies at home" after "relevant support to families in crisis"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Albert HO's amendment to Mr TAM Yiu-chung's amendment be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr CHIM Pui-chung voted against the amendment.

Mr WONG Yung-kan abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss CHAN Yuen-han, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Albert CHAN and Mr Ronny TONG voted for the amendment.

Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 18 were present, six were in favour of the amendment, 11 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 13 were present, eight were in favour of the amendment and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, you may now reply and you have one minute 54 seconds.

MR TAM YIU-CHUNG (in Cantonese): President, I only wish to raise two points, the first being an appeal and the second an advice.

I appeal to Members to support this motion on promoting family-friendly policies. As regards the advice, we who serve as members of councils, particularly Members of the Legislative Council, often act contrary to what we advocate. *(Laughter)* I believe this Council will go into recess on about 4 August, therefore, I propose that Members make use of the recess to promote harmony in their families and implement a family-friendly policy. I wish everyone a happy vacation. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TAM Yiu-chung 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 passed.

PRESIDENT (in Cantonese): Second motion: Protecting the Harbour.

PROTECTING THE HARBOUR

DR KWOK KA-KI (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, today, we are going to debate on the protection of the Victoria Harbour. We can consider ourselves lucky today because in the last meeting of the current Legislative Session, we still managed to get a time slot for a debate on the motion of protecting the Victoria Harbour. Of course, this topic is raised in response to the endless reclamation works carried out by the Government, particularly in the latter part of the '90s.

Madam President, since we have been living in Hong Kong for many years, we are all aware that the most important asset of Hong Kong is the Victoria Harbour. Soon after the inception of Hong Kong in 1841, the first reclamation took place in 1842. In fact, the reclamation that took place in 1842 was rather accidental. After the inception of Hong Kong as a city, major projects were carried out. Since, unlike today, there were no established landfills at that time, the lack of readily available place for dumping construction waste like debris had led the people of that time to think of dumping it into the

sea, and that was how the first reclamation project began in 1842. Since then, as many as 120 reclamation projects of various proportions have been carried out, resulting in a reclaimed area of 31.69 sq km. The Victoria Harbour had an area of 7 200 hectares, but as at 1990, 2 500 hectares of land were reclaimed out of the harbour. Massive reclamation projects were launched in 1990, and according to the latest figures, the Victoria Harbour has been reduced almost by half now.

I have with me now a photo which I would like to show to the President. Incidentally, the Legislative Council can be seen in this photo too. At that time, right off the Legislative Council Building was the sea. Madam President, nowadays, if we want to walk to the harbour-front from the Legislative Council, I do not even know how long it would take. This photo was taken in 1841. We know that, Hong Kong and Kowloon was 1 600 m apart at that time as measured from the two furthest points, but nowadays they are just 800 m apart. If LIU Xiang were to sprint through these 800 m, it would not take him long to get to the other side of the harbour. Witnessing the predicament of the Victoria Harbour, we are very upset, and this is the reason why I am moving this motion today.

As we are all aware, we have been compelled to move this motion debate on protecting the Victoria Harbour today, and so was the Court of Final Appeal (CFA) in having to make its judgment with respect to the Protection of the Harbour Ordinance (the PHO). As a matter of fact, as Hong Kong citizens, we did not oppose reclamation in the first place. We appreciated that there were economic reasons for reclamation, and we accepted reclamation. However, in 1990, the then British Government released a development blueprint involving 3 211 hectares of land, which would effectively reduce the Victoria Harbour to just 40% of its original size. But, nobody was aware of the problem at that time. Then, as this 1990 plan was being implemented step by step, we started to realize the problem. We all have had the experience of taking a ride on a Star Ferry. In the past, we could find a seat and sit for a while on a Star Ferry. But now it is getting less and less agreeable in taking a Star Ferry ride. No sooner had one got on board the ferry than he realized it was almost time to disembark. The harbour was getting narrower and narrower, and the ferry would keep jerking all the way through the journey. I also advise senior citizens to be particularly careful. I have no objection to their taking the Star Ferry, but I know that it is very easy for passengers to trip over when they are riding on the ferry.

When we witness that the Victoria Harbour — very much like the goose that lays golden eggs — is subject to continuous damage, we must come forward to protect it. The Government had actually done nothing in this regard until 2003. After the enactment of the PHO, in theory, the Government should comply with it. Unfortunately, it did not. This enraged the public. In 2003, a campaign calling for the protection of the harbour was organized. We all know that a "Blue Ribbon Operation" was conducted, and we can probably recall vaguely that nearly 20 000 people walked hand in hand from the Main Entrance of the City Hall now to the Golden Bauhinia Square. The weather on that day was quite similar to that of today, and the participants walked all the way in spite of the harsh weather conditions. Why did those Hong Kong people give up the cozy air-conditioned indoor comfort and the pleasure of shopping in departmental stores? Why were they doing it for in coming forward to declare their determination of protecting the harbour? They could not get any economic benefit, nor could they get any other advantages. They just did it to oppose the reclamation projects. Therefore, eventually the CFA handed down its final judgement to stipulate that the Government must comply with four major criteria in launching further reclamation projects, that is, such projects must be able to satisfy an overriding and compelling need, serving the public needs and they must be of the least extent. However, it is of course insufficient if the Government would do nothing other than just complying with these principles promulgated by the CFA.

The Government keeps saying that reclamation is needed for the sake of public interest; it has also said that hopefully no further reclamation would be needed. However, if we take a look at the Central Reclamation Phase III, we will find that while the original plan was to build more roads for the public, it has ended up with a superstructure covering an area of 840 000 sq m, which is more than double the existing plan for the International Finance Centre project. The reclaimed land will be home to a commercial complex of 2 million sq ft, two government buildings in the form of a groundscraper, one of which occupies an area of 1 097 sq ft, and the other 1 300 sq ft. The design blueprint is very exquisitely presented. Colleagues could view the design of the project from beautifully rendered computer simulation using the computers of this Council. The building occupies an area of 1 300 sq ft, which is about 10 storey tall. But then the people will still find it hard to make their way to the reclaimed land.

Let me cite two examples. According to Richard Marshall, an expert from EDAW Consultancy, the Victoria Harbour is an asset to our existing

transportation and port facilities, but it is very inconvenient for the people to access the harbour-front of Central. There is no roads to provide any direct access to there, and it is dry and unexciting too. Another company, Boyden Management Consultants, remarked that the roads and the infrastructures have prevented the public and tourists from gaining direct access to the harbour-front from the places where they live or work. Given the institutional failure, the lack of balance among such aspects as transport, policy, infrastructure and a number of historical reasons, our land planning is tilted in favour of building infrastructures instead of facilities for the general enjoyment and sharing by the community. Furthermore, since the planning programmes are often government-initiated, so they would end up in implementation failures.

Therefore, we feel that, in order to uphold the concept of protecting the harbour, we would not be doing enough if we just passively request the Government to comply with the law. The proposal I am putting forward today is to establish a Victoria Harbour authority. Later on, many Members will speak on this in the debate. Many significant cities in the world love their respective harbours very much. They would do all they can to protect their harbours. We have made reference to the experience of overseas countries, including Vancouver and Toronto and so on of Canada, San Francisco, Boston, and even Sydney of Australia, which I would like to talk about today for having set up the Sydney Foreshore Harbour Authority. They have done a lot in harbour management.

Many Honourable colleagues may ask: Why should we set up a harbour authority? Why do we not leave the responsibilities to the Government? What is more, we have the Harbour-front Enhancement Committee. I wish to tell everyone that, that Committee will never be able to achieve anything. The original objective of the Government in setting up the Committee is to enable the harbour to have some better developments. However, though it has been two years since the Committee was set up in May 2004, I feel great pity for the members of the Committee. They can definitely achieve nothing. In the first year, the Committee was only allocated less than \$1 million. It was better in the second year as it was allocated about \$11 million, but over \$10 million of it was earmarked for implementing an improvement project for the waterfront in West Kowloon. In effect, there is extremely little that the Harbour-front Enhancement Committee can do. Sometimes, I would make fun of certain members of the Committee by saying that they had actually joined the Harbour-front Reclamation Committee. It is because certain other projects are

not implemented in the way the members would have originally envisaged. In fact, every time when the Government intends to launch reclamation projects, including the Wan Chai Development Phase II, it will once again asked these members to come forward to indicate support for the government projects. However, regarding making concrete improvement to the harbour, say from Kennedy Town to North Point on Hong Kong Island, the Committee has absolutely achieved nothing during the past couple of years. One of the originally proposed functions of the Harbour-front Enhancement Committee is to establish a better framework to attain the goal of protecting the harbour. But they have failed in attaining this goal, and it is by no means easy for them to attain it.

We may make reference to the experience of other places. We may benefit from the experience of Sydney. A similar authority, the Sydney Foreshore Harbour Authority, was established not very long ago. It was formed in 1999 as a result of the enactment of a piece of legislation in 1998. In just seven years, the Authority has completely rejuvenated the port of Sydney. If any of us happened to have visited Sydney anytime during the past few years, it should have been evident to us that regardless of whether it was the Darling Harbour, the Rocks, or just about any of its harbour areas, we can see that they have acted with an attitude that displayed both determination and abilities in making improvements. Last year alone, they spent as much as AUS\$21 million on improving the community as well as AUS\$10 on the preservation of monuments. But have they incurred any deficits? Of course not. They have brought to the State of New South Wales an annual total revenue of HK\$56 billion, and they have achieved a sales volume as much as HK\$14 billion. They make money for the Government, and at the same time preserve the harbour for the people. Upon the completion of the improvement works, many people would very much like to visit the port of Sydney again for sightseeing or shopping, be they Sydney residents, Australians or even tourists from different parts of the world. So, it has drawn more tourists to Sydney. The present approach adopted by the Hong Kong Government is not preferable. After the Planning Department has designed the zoning plans, actually they cannot be implemented because the Government sells the land to property developers who are actually the party really responsible for implementing the plan. On the other hand, the Architectural Services Department (ASD) is responsible for undertaking the construction works. However, the ASD cannot implement the people's suggestions for making improvements to the harbour, because there are inadequacies both in terms of hardware and software.

Today I move the motion because I really hope that the Government (because I am moving a motion to call on this Council to urge the Government) can consider setting up — not setting up immediately, but I hope everyone can hear that I am requesting the Government to consider setting up — a framework, so that our beloved Victoria Harbour can really see some improvement under the planning and policies that are "citizen-centric", "sustainable" and "consistent with the principle of environmental conservation", so that all the future generations of all Hong Kong people can enjoy this harbour. I hope all Honourable colleagues can support my motion.

Thank you, Madam President.

Dr KWOK Ka-ki moved the following motion: (Translation)

"That, as today's Victoria Harbour, having gone through a number of large-scale reclamation works, coupled with the prolonged absence of an overall planning for the harbour environment and measures for conservation of natural ecology, has been seriously damaged and polluted, in order to protect the harbour and preserve it as a special public asset and a natural heritage of Hong Kong people, this Council urges the Government to:

- (a) adhere to the provisions of the Protection of the Harbour Ordinance and the judgement of the Court of Final Appeal, and follow the following three principles in considering the reclamation projects in the Wan Chai Development Phase II and the Kai Tak Development: first, there is a compelling, overriding and urgent need for reclamation; second, there is no viable alternative to reclamation; and third, the reclamation involves minimum impairment to the harbour;
- (b) re-plan the Central Reclamation Phase III to reduce the area for commercial development and plot ratio, and minimize the negative impact on traffic flow and air pollution so as to avoid the need for further reclamation;
- (c) formulate a comprehensive harbour district plan and policy that are "citizen-centric", "sustainable" and "consistent with the principle of environmental conservation" for enhancing and greening the

land facilities on both sides of the Victoria Harbour to enable all people of Hong Kong to get close to, share and make use of the harbour;

- (d) consider setting up a harbour district authority as the statutory authority to independently manage, develop and enhance the sites and facilities in all the waterfront areas; and
- (e) enhance public awareness of the protection of the harbour environment, promote civic engagement in urban development, conduct territory-wide consultation on harbour district planning and sincerely respect public opinion to enable the public to fully participate, present their views and reach a consensus on the matter."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Dr KWOK Ka-ki be passed.

PRESIDENT (in Cantonese): Two Members will move amendments to this motion, as printed on the Agenda. The motion and the amendments will now be debated together in a joint debate.

I will call upon Mr Tommy CHEUNG to speak first, to be followed by Mr SIN Chung-kai; but no amendments are to be moved at this stage.

MR TOMMY CHEUNG (in Cantonese): Madam President, regarding the issue of "protecting the harbour", the Liberal Party is totally supportive because the Victoria Harbour is the common asset of all Hong Kong people. Sharing the feelings of the people, we are also extremely concerned about the future planning on both sides of the harbour as well as the impact caused by the reclamation works, such as the damage done to the landscape and the fact that the harbour has become choppy now compared with the tranquil conditions in the past. However, regarding some of the viewpoints contained in the original motion under discussion today, such as the establishment of a harbour district authority, and so on, the Liberal Party does not fully agree. For this reason, I would propose an amendment in this connection.

First, I would like to state the position of the Liberal Party: We support and request the Government to enhance the overall planning and conservation of the harbour; however, as to the claim in the original motion that the serious pollution of the Victoria Harbour is caused by the reclamation works, the Liberal Party thinks that they are not necessarily related. According to the information provided by the Environmental Protection Department, since the commissioning of the Phase I of the Harbour Area Treatment Scheme in 2001, over 75% of the polluted water had been treated effectively, so the amount of dissolved oxygen in the water of the Victoria Harbour has increased considerably by 20%. In the waters from the west to the east, the *Escherichia coli* count has also reduced by 21% to 95%. So the water quality has shown some marked improvement.

Madam President, although the water quality of the Victoria Harbour has improved, it does not mean that we can carry on with implementing reclamation works. All along, the Liberal Party has not changed the principle it upholds, that is, reclamation works should be avoided as far as possible, otherwise the Victoria Harbour will soon become a narrow river and the Pearl of the Orient will lose much of its lustre.

Besides, in our opinion, although the Government has undertaken not to launch any further reclamation works in addition to the Wan Chai Development and the Kai Tak Development, in the interest of prudence, the provisions of the PHO and the three criteria stipulated in the judgement of the CFA, that is, "there is a compelling, overriding and urgent need for reclamation; that there is no viable alternatives to reclamation and that the reclamation should involve minimum impairment to the harbour" should be applicable to all the waters in Hong Kong, instead of being confined to one or two projects only.

Regarding the Central Reclamation Development, the Liberal Party supported it in the past because we believe it is necessary to build the Central-Wanchai Bypass (CWB), otherwise we shall be bogged down by the long-term traffic congestion problem whenever we enter or exit from our financial and political centre. The visible and invisible financial loss we may suffer can be quite considerable. However, while we thought that the new waterfront area gained through reclamation would enable the people to get closer to the Victoria Harbour, the recent release of the model of a vision of the new waterfront in Central has made the Liberal Party as well as other harbour protection organizations feel that they had been cheated once again. It is

because in the current model presented by the Planning Department, we find that the Bypass only occupies 2.71 sq km or 10% or so of the reclaimed land. At the same time, in that model, there are three sites with a total area of 7.5 sq km, on which a total of 306 550 sq m of floor area could be built — equivalent to 3.3 million sq ft of commercial land. It simply astonishes everybody in society.

Madam President, on these sites, the most controversial part is the two blocks of shopping malls and offices with a total floor area of over 2 million sq ft which is equivalent to the total floor area of the entire new Government Secretariat on the Tamar site. These two groundscrapers are planned to be constructed at the Statute Square near the Star Ferry. Although only with nine storeys and a height of less than 145 ft, the two buildings are as wide as 891 ft and 1 155 ft respectively, like two IFC IIs lying horizontally on the ground. Their outlooks are very ordinary, very much similar to some matchboxes. The design has met with waves of negative comments.

Moreover, the planning of the waterfront also includes two hotels and one commercial building. The Liberal Party cannot help ask this: Does Central District need to build so many shopping malls? Madam President, the Liberal Party can accept that, in the process of constructing roads, some cafes or small-scale commercial activities may be operated at the sides of the avenues, but we do not accept any substantial increase in the amount of land for commercial use. Besides, how will such sites be launched? Will they be put on the Application List for triggering by property developers? Or will they be auctioned openly? I think the Government needs to explain this very clearly.

Many organizations have expressed the concern that while the reclaimed land should be used for alleviating the traffic flow in Central, it is now being planned as a site for commercial use. Will this not be defeating the original purpose as the commercial site will generate enormous traffic demands? Some organizations hold that the two groundscrapers will be stretching from north to south in the heart of Central. They will have negative impacts on the venting of exhaust air and the ventilation of fresh air. I believe the Government needs to identify ways of reducing the construction of commercial buildings on the reclaimed land.

With regard to the announcement made by the Planning Department that it would introduce an air ventilation index for planning undertakings, and that the

area around IFC in Central will be given priority in conducting such tests, and that the index however will not be available until three years later, the Liberal Party thinks that the authorities should conduct air ventilation index tests with regard to the new waterfront development in Central, and it should be applied to the planning of new developments in the district.

Madam President, I have mentioned earlier that we should not focus our attention on only one or two reclamation development projects in the urban area. If we aspire to becoming a world city and enjoy the advantage of having a world-class harbour design, then Hong Kong cannot do without further sound planning, making it citizen-centric, enhancing and greening the land facilities on both sides of the harbour. In fact, as early as 1999, the Town Planning Board (TPB) already promulgated a declaration entitled "Vision & Goals for Victoria Harbour", which stresses such notions as citizen-centric, planning for Hong Kong, planning for and with the people as well as sustainable development. The Liberal Party is absolutely supportive of such a development concept, but have these objectives been achieved? I think we still need to continue working hard in this regard.

Madam President, will the establishment of a harbour district authority solve all the problems, as suggested in the original motion? The Liberal Party considers that it will only lead to duplication of functions and duties because every single development on both sides of the Victoria Harbour has to go through the processes of public consultation, vetting by the TPB and final approval of the Executive Council. In addition, we have the Harbour-front Enhancement Committee responsible for collecting public opinions and conducting public consultations. So we cannot see any need for setting up a separate harbour district authority.

Finally, I wish to raise the issue of respecting public opinions. Central District is the hub of our political, administrative and economic activities. People are most concerned about its development. However, it is a very difficult task to reach a consensus on its development. Last week, the Liberal Party conducted an opinion poll on the land use planning of the site to be vacated after the relocation of the Government Secretariat. We found that the numbers of people who "support", "oppose" and "hold no opinions" are very close, that it is an evenly divided situation. If we take actions only after a consensus has been reached, we will probably miss many boats.

All in all, the Liberal Party thinks that the Government should definitely heed public opinions, and at the same time, it should provide more opportunities for the people to participate in building up the city and express their views; and after that, it should act swiftly to make the resolute decisions to reconcile conflicts and differences, thereby enabling the projects to commence as soon as possible.

Madam President, I so submit.

MR SIN CHUNG-KAI (in Cantonese): The subject under discussion today is "protecting the harbour". In our opinion, the definition of "harbour" is very wide, which includes not only both sides of the Victoria Harbour, but also the entire coastline of Hong Kong that stretches as long as several hundred kilometers. It should include not just the land, but also the ocean. When we say "protecting the harbour", we should be protecting all of what I have mentioned just now.

The Democratic Party believes that the cardinal principle for Hong Kong's harbour and coastal development policy should be geared towards attaining "sustainable development", with a view to striking a balance between economic growth and the conservation of natural ecology.

In this regard, we support Mr KWOK Ka-ki's suggestion of making Hong Kong model after other metropolitan cities of the world, such as, as Mr KWOK Ka-ki has said just now, cities like Sydney and London in setting up a Ports Authority. The powers delegated to different government departments such as the Environmental Protection Department, the Marine Department and the Lands Department in relation to the administration, development and conservation of the harbour should be taken back, and a new authority should be set up to be solely responsible for the planning and development of the harbour. This should change the current practice of having different government departments adopting a patch-work and unco-ordinated approach of harbour planning, thereby implementing an integrated and comprehensive approach in the administration of the harbour, with a view to perfecting the harbour-front landscape and enhancing the harbour-front facilities.

When the Government carries out planning on the land use of the sites at the harbour-front, the Government only focuses on how the land should be made

compatible with the peripheral hardware such as the traffic, and very often it would fail to look at it from the prospective of the users, that is, the general public, whose consideration is how the harbour-front planning could be made compatible with the natural surroundings and to ensure an open and unobstructed view on the harbour, so that the public can get to the waterfront and enjoy the views on both sides of the Victoria Harbour.

To cite a classic example of the Government's planning failure, mention must definitely be made of the Eastern Corridor. Ever since the Eastern Corridor has been built, the waterfront of Hong Kong Island East, from Taikoo Shing to Tin Hau, has been obstructed by an expressway stretching several kilometres. Even if members of the public manage to make their way to the waterfront area in the district, they cannot get a scenic view of the Victoria Harbour. It is obvious that during the planning stage, the Government failed to consider making the harbour-front more accessible to the general public.

Ideally, a harbour-front promenade with a pedestrian walk should be in place on both sides of the Victoria Harbour, each connecting the East and the West of the Kowloon Peninsular and the Hong Kong Island respectively. The harbour-front promenade should be unobstructed, so that the public can take a leisurely walk and get in touch with the Victoria Harbour in close range. The public should be able to get to the harbour-front promenade conveniently, without having to thread through a series of flyovers or subways. Furthermore, the harbour-front promenade should offer more than just a pedestrian walk. There should be other amenities such as landscaping and recreational facilities for the public to view and to enjoy — by the way, Mr Tommy CHEUNG, the second character for the Chinese term "休憩" (leisure) should be pronounced as "hei", not "tim". The harbour-front should be kept away from expressways laden with vehicle emissions, so that the public can enjoy the natural scenery of the Victoria Harbour with peace of mind. The building of mammoth shopping arcades, skyscrapers or groundscrapers should be kept to a minimum on both sides of the Victoria Harbour to avoid obstructing the harbour view.

To realize this goal, public participation is indispensable. Public consultation should be conducted on the planning of the harbour and the harbour-front so that the public could express their views on how the harbour should look like, and how the harbour should be used, conserved and managed. We believe public participation provides access to collective wisdom and consensus building.

The judgement handed down by the CFA with regard to the Wan Chai North Outline Zoning Plan has reaffirmed the legal principle that the harbour is a special public asset and a natural heritage of Hong Kong. The presumption against reclamation can only be rebutted when there are "overriding public needs", which include economic, environmental and social needs that are compelling and present and that there are no reasonable alternatives. Any decision for reclamation on the grounds of "overriding public needs" must have justifications that are concrete and compelling, and when any such reclamation has to be carried out, the extent of reclamation should not go beyond the minimum required by the "overriding needs". In other words, in the interest of sustainable development of the harbour, unless there are "overriding public needs", we should refrain from carrying out any further reclamation works in the harbour, in order to attain the goal of protecting the view of the Victoria Harbour.

At present, development projects to be carried out on both sides of the Victoria Harbour include the Central Reclamation Phase III, the Wan Chai Development Phase II and the Kai Tak Development, all of which involve reclamation works or partial reclamation works.

In view of the judgement of the CFA, the current Kai Tak Outline Zoning Plan will not be able to pass the "overriding public needs" test, since the proposed reclamation area accounts for about 30% of the overall development area. Therefore, the Government has reviewed the entire development plan and in the public consultation on the Kai Tak Development Plan Phase II, the undertaking of not implementing any reclamation works is used as a starting point. The idea is to conduct a general review of the planning for the area, and to examine, with a proactive approach, ways of addressing the pollution problems associated with the Kai Tak Nullah. Suggestions include cutting a 600-m opening at the northern end of the runway to enhance the water flow, and the building of a platform on top of this opening to preserve the original outlook of the runway. The major direction of not launching reclamation works for the Kai Tak Development project is both positive and correct and it has earned the general support of the people.

A public consultation on the Wan Chai Reclamation Phase II is currently underway to study the routing of the Central–Wanchai Bypass. However, all the available options involve varying degrees of reclamation, whereas no detailed

technical studies have been conducted on other solutions for addressing the traffic problems of Central. The feasibility of other options has been ruled out on a theoretical basis. This leaves many wonder if the Harbour-front Enhancement Committee has adopted the principle of "implementing no reclamation" as the basis for reviewing the project, or if it has been putting up a defense for reclamation instead. If the Wai Chai Reclamation Phase II is to be implemented, other options must be seriously examined to ensure that they comply with the requirements in the "overriding public needs" test.

Presently, the planning for the Central harbour-front is based on the designated land use and indicators as specified in the Central District (Extension) Outline Zoning Plan, which involves 46 hectares of land, of which 23 hectares come from the Central Reclamation Phase III. However, the area in relation to commercial land use in the outline zoning plan has caused a widespread public alarm. There are two major concerns. First, it is about the traffic problem. Will the additional commercial buildings aggravate traffic congestions in Central? Second, it is about the landscape issue. Will the mammoth commercial buildings affect the low-density environment at the harbour-front, and will they be compatible with the general outlook of the harbour-front?

Simply put, this is a question of the eggs and the hens. Increasing the number of buildings will lead to an increase in demand, and with an increased demand, further reclamation works may be required again in future.

In particular, in the outline zoning plan, 5.23 hectares of land stretching from the Statue Square to the new harbour-front has been designated as a comprehensive development zone for the commercial and retail industry, where gigantic buildings, or groundscrapers, as Mr Tommy CHEUNG described it just now, of 10 storeys tall, which stretch across 400 m horizontally will be built. Although these 10-storey buildings will not affect the view of the ridgelines, these voluminous buildings will seriously jeopardize the low-density ambience of the harbour-front area. Although the Government claims that this cluster of buildings will serve as the corridor of the Statue Square which will provide the public direct access to the harbour-front, it is doubtful whether these colossal buildings would become some gigantic obstacles preventing the public from getting close to the Victoria Harbour. Furthermore, these gigantic horizontally-stretching structures will bring about additional traffic demands, leaving the public wondering whether that would become another excuse for yet another reclamation project. To put it in short, I hope the Government can

reconsider the planning issues with a view to reducing unnecessary buildings, increasing open space, and avoiding further reclamation projects as a result of additional traffic demands.

With these remarks, President, I seek to move my amendment.

MR WONG KWOK-HING (in Cantonese): President, Dr KWOK Ka-ki has moved a very meaningful motion today. The motion calls on us to protect an immovable property of ours. In order to show my support to this motion moved by Dr KWOK Ka-ki, I have deliberately put on an ocean blue shirt in delivering this speech.

Why do I think that this motion is very meaningful? I would like to make use of the name of a radio programme, "It is so close and yet it is so remote", to describe my feelings. I can still recall the scene when my father brought me, a very small boy then, to take a Star Ferry sailing from Tsim Sha Tsui to the Star Ferry Pier at Connaught Road Central, Hong Kong. It was about the '50s. The position where I disembarked from the ferry was approximately the area adjacent to the present location of the Mandarin Oriental Hotel. I can recall that, as far as my own impression is concerned, the sea was rather extensive, and it took us more than 10 minutes to sail on a ferry to the Hong Kong side. If we took a Yaumatei Ferry from Jordan Road to the Hong Kong side, it would take more than 20 minutes. The feeling I had at that time was — it was so faraway, that we could appreciate the majestic beauty of the Victoria Peak and the harbour was very beautiful. But it is so close now. If you do not believe in my words, you may go to the present Star Ferry Pier and look over to the pier at Tsim Sha Tsui, and you can probably catch a vague glimpse of the colours of clothing that the people are wearing on the other side of the harbour.

A child told me he does not fancy looking over to the Hong Kong side from the Tsim Sha Tsui pier because a "razor building" had cut through the Victoria Peak. I guess you all know which building is being referred to as the "razor building". I find this child very simple and unaffected and he had told us the truth. He said the ugliest building was that "razor building", which had cut through the Victoria Peak without any good reason and he found it a great pity. The Government has allowed property developers to ruin the most beautiful landscape best loved by Hong Kong people, and there is no remedy for it.

If we take another look at Hong Kong, actually the Victoria Harbour offers the best scenery in the entire territory. However, tall buildings are erected one after the other on both sides of the harbour. The "razor building" is built on the north of Hong Kong Island, whereas another tall building by the name "so and so" has been erected in the Whampao district of Hung Hom in Kowloon. These two skyscrapers have dissected the beautiful scenery of Hong Kong. If more reclamation works are carried out, and more tall buildings are constructed, even without the restriction of any height limits, then please imagine what will happen to the Victoria Harbour by 2047? By then it would have probably become the Victoria River, with tall buildings closely lining up both sides of it. People can possibly open the windows and use a bamboo pole to touch someone on the other side of the river. Perhaps this is just how I envisage the situation. But should that really happen, by then, such a precious asset we have inherited from our last generation will be ruined altogether.

Secretary Michael SUEN, I can still recall that the other day when a Member pointed out that the groundscraper was like the Titanic berthing in Central, you answered that the reclamation project had to be launched for building roads in order to solve the traffic congestion problem; but after building the roads, it was found that some vacant sites had become available, so it was decided to erect some buildings to fill up the vacant sites. I find this most ridiculous. So after putting up the buildings, you will find it necessary later on to tackle the traffic congestion problem created by such new buildings, and by then the Government will have to launch further reclamation projects for building roads to ease congestion, but after building roads, you will find some vacant land, so you will proceed to construct some buildings again, because it is always good for the Government to sell land and properties to generate proceeds for the Treasury. However, how can a government be so short-sighted? As policymakers, how can the officials turn a blind eye to the future of Hong Kong? This is really a major blunder. I find it very hard to accept such a reply given by Secretary SUEN the other day. I just find it very ridiculous. If possible, I hope the Secretary can give me a reply later on. The Government cannot act in such a manner. Is it true that we do not have to care about the consequences as long as properties and lands are available? How can this be acceptable? It is absolutely impossible to launch any further reclamation projects in our Victoria Harbour, none at all!

I can recall that, some five or six years ago, there were this group of officials, also from the Planning Department. They did not possess any

decision-making power and they were just some technical officials. They were so conscientious that they held a competition for designing a pedestrian promenade on each side of the harbour. The one on Kowloon side stretches from Lei Yue Mun to the typhoon shelter in Yau Ma Tei, whereas the one on the Hong Kong side runs from Island Resort in Chai Wan to the place we now call Mount Davis. These conscientious officials held the competition because they hoped that it would enable Hong Kong people to embrace the harbour and get close to it. However, things did not happen according to their wish simply because they did not have the decision-making power. After this planning was put forward, we have heard nothing further of it so far. It seemed that the plan had been shelved prematurely. Therefore, regarding the motion moved by Dr KWOK, I am completely supportive. I also urge all Honourable colleagues to give their full support to it because this is a motion intended for protecting the assets of Hong Kong people and for the benefit of the next generation of Hong Kong people.

Thank you, President.

MR ALBERT CHAN (in Cantonese): President, Hong Kong is "well-known" in many ways. Recently, our pollution problem has become very well-known too, and we are called the city of pollution. However, Hong Kong is also well-known in another way, namely, reclamation. So Hong Kong may also be called the city of reclamation.

President, if we review the figures, we will find that they are very alarming indeed: We reclaimed 97 hectares of land in the '50s; 116 hectares in the '60s; 559 hectares in the '70s; 186 hectares in the '80s; 2 429 hectares in '90s — I cannot see the decimal figures very well, I have started to suffer from presbyopia. Since 2000, we have reclaimed 667 hectares of land, and the total area of land we have reclaimed so far is 4 056 hectares. I believe this is an unprecedented figure. I cannot find anywhere in the world that can have reclaimed so much land in such a small place — we have reclaimed about 4 000 hectares of land within half a century. One hectare is already quite large — it is equivalent to 10 000 sq m. So the size of the reclaimed land is quite alarming.

Perhaps it was all attributable to the fast development in Hong Kong in the past. And on the other hand, during the colonial era, in the eyes of the traditional British, Hong Kong was just a borrowed place in borrowed time. So

they had never had any concept of permanent planning, nor was there any sense of belonging. So in short, those in power would only care about making the most money in the shortest term — the craze for things which are "fast, beautiful and nice". However, born and raised here, we, the people with sentiments (especially the officials), should change such a colonialist mentality completely. Such an attitude should be wiped away completely after the reunification in 1997.

Due to the short-term economic needs, reclamation can of course bring immediate and effective returns. This is for sure. But in the long term, if a natural harbour is damaged, it will be impossible (or at least very difficult) to restore it to its original look. Therefore, this Council passed the Protection of the Harbour Ordinance (PHO) before 1997, for fortunately, the Council at that time still allowed Members to put forward private bills, but this is no longer possible after 1997. It was really fortunate for the Council to have passed the law to provide some protection to the harbour. However, the protection covers the Victoria Harbour only. Beyond the Victoria Harbour, the other waters of the territory, including those in Tsuen Wan, Tsing Yi, Tuen Mun, South Lantau and North Lantau, and so on, are unprotected. They are outside the specified scope of the PHO. Therefore, if the Government wants to carry out reclamation works in the waters off Tai O, it is not subject to the restrictions stipulated in the PHO. It is really opportune for Dr KWOK Ka-ki to move this motion now and I hope that the Government, and also Members of this Council, can wake up and start realizing the significance of protecting the harbour.

Apart from protecting the harbour, it is equally significant for us to protect the coastline. Therefore, apart from the PHO, in fact we should think deeper — to think about how our coastline can be protected. At present, insofar as planning in Hong Kong is concerned, apart from the restrictions imposed by the Outline Zoning Plans, the majority of the planning work is executive-led. I proposed the establishment of a statutory planning authority many years ago, so that we can entrust all the strategic and regional planning tasks to a statutory body that could handle such work in a co-ordinated manner. One of the significant issues is the protection of the coastline.

As we examine the situations in other countries, we can see that, since the coastline is a natural resource, it is usually regarded as a treasured gem. But very often, the Hong Kong Government just treats the gems as some kinds of rubbish, and this includes some very valuable sites. One such example is the Dragon Garden, a piece of highly valuable private land situated at Tsing Lung

Tau, Tsuen Wan. Another example is the proposed buffalo centre that we have frequently called for its establishment. Such a buffalo centre can be used as an educational site for promoting a better understanding of buffaloes among the people. But the Government has done nothing about it. Instead, the Agriculture, Fisheries and Conservation Department continues with its efforts of catching and killing such buffaloes.

Coming back to the coastline, let us take a look at the situations in several countries. In Denmark, they have enacted laws to classify the land within three kilometres from the coast as the development protection zone, which is subject to certain restrictions; and for the areas within 300 m from the coast, the construction of buildings is prohibited. In Norway, any land within 100 m from the coast cannot be used for development purposes. In Poland, special permission has to be obtained before any house can be constructed anywhere within 200 m from the coast. And if anyone wishes to build houses within 2 km from the coast, he still has to apply for special permissions from the relevant departments. Of course, the two categories of permissions cover different scopes and carry different restrictions. In Spain, all land within 6 m from the coast can only be used as pedestrian walkway for use by the public. In Sweden, new developments are completely banned within 100 m from the coast. Such places can only be used for recreation or nature conservation purposes. In Turkey, a place relatively not so advanced, no buildings are allowed to be constructed within 50 m from the coast. With regard to the areas between 50 m and 100 m from the coast, only infrastructure and tourist facilities can be constructed.

From these, we can see that the coastlines of many places and countries are protected by law. But the situation in Hong Kong is completely different. If the land in question belongs to a certain rich tycoon, he can then build whatever he likes. You may take a look at our coastline. In the proximity of Repulse Bay, many luxurious mansions have been built there belonging to the LI and KWOK families, and so on. Therefore, in this regard, if the Government and Members of this Council do not wake up to the significance of this issue, we shall lag behind other countries, including some former communist countries such as Turkey, Spain and Poland, and so on. We shall lag far behind the general trend.

I hope the Secretary can erase the outdated colonialist mentality. Before us is the land of Hong Kong people, the harbour of Hong Kong people, the

coastline of Hong Kong people, they must be protected. Our natural resources must be protected. Thank you, President.

MR CHEUNG HOK-MING (in Cantonese): Madam President, I can recall that on a certain day several years ago, a Hong Kong newspaper featured a prominent frontpage report on the changes that had taken place to the outlook of the Victoria Harbour during the past few decades. We found that the Victoria Harbour had become smaller and smaller, whereas the waters in the harbour have become increasingly rough. And the trend has developed to such an extent that people have started to call it jokingly as the "Victoria River". In fact, the reclamation projects in Central District and Wan Chai started as early as several decades ago. In recent years, the people have become increasingly concerned about the protection of the harbour. This was especially so after the Court of Final Appeal (CFA) had handed down a judgement to set some conclusive tests, so that the Victoria Harbour are now protected against any reclamation by some restrictive criteria, namely, that there must be a compelling, overriding and urgent need for reclamation; that there is no viable alternative to reclamation; and that the reclamation should cause the minimum impairment to the harbour, and so on. In recent years, the proportions of reclamation projects launched by the Government in the Victoria Harbour have already been reduced substantially. However, with regard to land already reclaimed, we can do nothing to change it, and this is a fact. The only thing we can do now is to protect the remainder of the Victoria Harbour to the best of our abilities. Since a long time ago in our historical past, the Victoria Harbour has always been the most significant landmark of Hong Kong, and the soul of this "Pearl of the Orient". We must ensure that our next generation can also enjoy this precious natural resource. This conviction has already become a consensus in society.

However, it begs an equally important question: How can we enable the people to really enjoy the Victoria Harbour and appreciate its beauty? And how can we eventually translate this idea into some concrete actions? Our society can no longer tolerate the never-ending reclamation projects along the harbour-front, as well as the continuous construction of mega towers one after the other on the reclaimed land, thus turning our beautiful harbour into a concrete valley or a concrete jungle without natural lighting and free flow of natural breezes. Should that happen, Hong Kong will become a city completely devoid of any natural touch. In order to achieve this objective, we must be very cautious in undertaking our planning work for the waterfront areas. We often

say that, "There is no second take in life". The same applies to town planning. You simply cannot implement town planning as if you are in a virtual reality because there is no turning back.

Madam President, in the past, the Government implemented reclamation projects for the purpose of developing sufficient land for constructing roads and tall buildings. Nowadays, such a mentality is no longer applicable. In recent years, many land lots on both sides of the harbour are awaiting development, and they are located in Central, Wan Chai, Southeast Kowloon, and West Kowloon, and so on. And everyone is very concerned about how these sites are made use of in future. And the majority public opinion is inclined to granting the most beautiful waterfront sites for the enjoyment and use of the public. The DAB holds the same stance on this issue. In a proposal released by the DAB in May on the future development of Kai Tak or Southeast Kowloon, it also embraced such thinking: A sightseeing tower is proposed to be constructed at the far end of the beautiful runway in order to enable the people to have a good view of the Victoria Harbour; the entire waterfront of Southeast Kowloon is proposed for the designated use as a promenade running from Tsim Sha Tsui to Lei Yue Mun; a cosmopolitan park and an artificial beach are proposed for construction in the area around the starting point of the runway in Kowloon City and San Po Kong; and the sports complex originally planned by the Government to be constructed by the seaside should be relocated inland to San Po Kong, thus enabling more people in the Cosmopolitan Park to enjoy the beautiful view on the other side of the Victoria Harbour.

Let us back to the core issue of today's motion — the planning of the Central Reclamation site. In fact, there have been endless arguments in society since the proposal was announced many years ago. At that time, when the Town Planning Board conducted a public consultation on the statutory Outline Zoning Plan (OZP), it already received many different dissenting views. The Legislative Council Panel on Planning, Lands and Works held a meeting at the end of last year to discuss the issue, whereas the Central and Western District Council also held a meeting in the middle of this year for the same purpose. Both passed a motion to request the Government to substantially reduce the area for commercial development in Central Reclamation Phase III and that no commercial buildings such as office buildings and hotels should be constructed there. Unfortunately, the Government remains not convinced, refusing to accept this request. In the Government's view, the Central Reclamation Phase III has already gone through all the required statutory procedures and that public

consultation has already been held and public views already adequately considered. As such, the Government considers it not necessary to go back to square one and start anew. However, I find this claim unconvincing. Why can an OZP not be amended, though it has been passed by the TPB and the Government? If so, why is it possible to make amendments to OZPs already passed, insofar as the law is concerned? The Chief Executive often says that policies should be implemented on the basis of public opinions. Now, from the motions in this Council and the DC, we can clearly see that public opinions are advocating the reduction of construction projects of commercial buildings on the Central Reclamation site, and that the public opinions are advocating for the provision of more leisure grounds. Can the authorities heed sound advice and review the relevant planning?

Madam President, the establishment of a harbour district is a most controversial issue. Therefore, the DAB will support Mr Tommy CHEUNG's amendment. With regard to the original motion and the other amendment, the DAB will abstain from voting.

I so submit. Thank you, Madam President.

DR RAYMOND HO: Madam President, the Protection of the Harbour Ordinance (the Ordinance) was among a few controversial pieces of legislation passed by the Legislative Council shortly before the changeover in 1997. Immediately after its enactment, the then Secretary for Planning, Environment and Lands already pointed out the Ordinance would seriously affect the Government's planning and works in the central harbour, as well as its ability to supply land and infrastructure.

Nevertheless, an amendment to the Ordinance was proposed by the Government and passed in 1997 to extend the boundaries of the harbour for its application. As expected, the Ordinance has caused greater uncertainties to major projects planned along the harbour fronts. They include Central Reclamation III (CRIII), Wan Chai Reclamation II, South East Kowloon and Western District Development. For almost 10 years, the completion of these projects is not yet in sight. In fact, the Government has already scrapped the Western District Development although its planning concepts have been discussed at the Panel on Planning, Lands and Works of this Council back in the year 2000.

Having said that, I must make it clear that I support the principle of protecting our harbour. Like many people in Hong Kong, I am concerned that our harbour is getting narrower and narrower because of reclamation. As some critics have pointed out, some reclamation works in the harbour should not have been done. The landfill sites in Tseung Kwan O are amongst the examples.

However, an indiscriminate restriction on reclamation in the harbour should not be the best option for our society. The zigzags formed in our harbour front due to poor planning in the past should be straightened to eliminate traps of stagnant water and to give the harbour a more aesthetic outlook. This will help enhance the tidal flow and improve water quality in the harbour.

In addition, there is sometimes an overriding need for reclamation. Take the CRIII as an example, some may consider that the reclamation under the project is excessive. I do not support their views. Indeed, the 18 hectares required for reclamation under the CRIII, fully discussed at the Panel on Planning, Lands and Works, is already the minimum. Apart from the Central-Wan Chai Bypass (CWB), the CRIII will provide necessary land for construction of other important transport infrastructure and facilities, including supporting road networks, an extended overrun tunnel for the MTR Hong Kong Station, construction of a new "Star Ferry" Pier and two public piers, a 150-m long berth for the People's Liberation Army Forces in Hong Kong, reprovision of the affected government and private cooling water pumping stations. It is worth mentioning that the Government has already scaled down the area of reclamation from the originally proposed 32 hectares to the current 18 hectares so as to address the concern of the public.

It is a matter of time that the traffic conditions in the Central will become impossible without the construction of the CWB. Some questioned the need to build the CWB and suggested adopting the electronic road pricing (ERP) to solve our traffic problems in the Central. The ERP has always been a controversial issue ever since the Government brought it up two decades ago. The Government spent a further \$100 million in another study on the subject about six years ago. The idea was dropped following a visit of the then Secretary for Transport to Singapore to learn from their ERP experience. It is considered very difficult to introduce the ERP into Hong Kong because of the hilly terrains of the Hong Kong Island and the lack of alternative roads. The CWB is amongst many other infrastructure facilities that are essential to sustain our development and improve our quality of life.

Some may challenge that engineers may have a propensity for reclamation and development. But this is simply not true. There are 18 engineering disciplines and the environmental discipline is amongst one of them. Engineering is never a synonym for anti-environmental protection. It is very sad to see that too many people view the reclamation issue through layman-tinted glasses and simplify it into a dichotomy between development and destruction of our harbour.

Madam President, it will not be in the best interests of the people of Hong Kong if we hold up all future development along the harbour front by haggling over the size of reclamation based on different interpretations on the three principles in considering the reclamation projects, namely, (1) there is a compelling, overriding and urgent need for reclamation; (2) there is no viable alternative to reclamation; and (3) the reclamation involves minimum impairment to the harbour.

With these remarks, Madam President, I so submit. Thank you.

MISS CHOY SO-YUK (in Cantonese): President, a friend in the DAB often makes fun of me, saying that whenever the subject of environmental protection is mentioned, I would immediately lose all my human compassion. Actually, I would say, whenever these issues are mentioned, I am in fact the one who displays the strongest human compassion. Why should they say that I would lose all my human compassion? He says he makes the remark because when such subjects are raised, my mind would be completely focused on trees, animals and the harbour, and I would not care about human beings anymore. In fact, when a baby is first born, his nature must be virtuous. So we should treat Nature well and treat the natural world well. In doing so, we are actually showing the strongest human side of ourselves.

Many would ask me why I am so concerned about environmental protection. What has happened to make me act like that? My answer is always this: My first encounter with environmental issues was the reclamation issue. I have taken part in anti-reclamation campaigns since 1995. Eversince, I found that many aspects of environmental work were not done properly. We might have spent a lot of money on it, but the direction we had taken was absolutely wrong.

When I first took part in anti-reclamation campaigns, I heard a lot of theories on why reclamation projects should be implemented. Undoubtedly, in the '60s and '70s, the prospects beyond 1997 were still uncertain. At that time, the Hong Kong British Government strongly wanted to increase the amount of land supply in Hong Kong because what would the situation be for the part north of Boundary Street was still very much unknown. So under such circumstances, all they could do to increase the amount of land by way of reclamation, reclaiming into the Victoria Harbour. I may not keenly condemn such an approach because it could be their only alternative given the historical circumstances then. However, after everything regarding the post-1997 situation had become settled, after knowing that Hong Kong would be, and actually has already been, reunited with the Motherland, and is now part of the country, and the so-called Boundary Street issue is totally irrelevant now, why should we still harbour the mindset of increasing land supply by way of reclamation? This is unacceptable.

President, I can still recall that it was about mid-1998 that the Government had submitted the proposal of the Central Reclamation Phase III to the relevant panel of the Legislative Council. At that time, I was not a member of that panel. But when I was in the Ante-Chamber, I heard that the discussion seemed to be about the Victoria Harbour, then I hurried into the meeting venue, which was this Chamber. I can recall that after the Government had made the presentation, Mr LEE Wing-tat and I started to bombard the plan with questions. On that day, the Government withdrew all the papers because the scale of the entire project was too gigantic. After withdrawing all the papers, the Government formulated another new planning proposal, which, as frequently claimed by the Government, had been endorsed by the Legislative Council. I admitted that we had been too credulous, being easy targets of persuasion by the Government. I remember I was sitting next to Mr Jasper TSANG. I asked him whether the scale of reclamation had been reduced to a minimum. His answer was in the affirmative. So at that time, we believed in the Government, accepting that the scale of reclamation had been reduced to a minimum. All along, I had not joined the panel related to the planning aspect. But just because of the reclamation issue, I made up my mind to join the Panel on Planning, Lands and Works in this Session.

At that time, we did agree to that latest planning proposal submitted by the Government. However, when the Government submitted the new proposal, the

Wan Chai Reclamation litigation had taken place in the interim and the people had already formed new views on the entire planning proposal. Although the earlier proposal had obtained the approval from the Legislative Council, I still noted with regrets the Government's unwillingness to make any amendments. I recall that Mr SUEN had told us all along that only two pumping stations would be built. But I kept asking him, in both written and oral forms, how much area those two stations would take up. And I had held private meetings with them, continuing to raise questions on why so much extra land had to be reclaimed to house two pumping stations. The reason cited by the Government was — I guess it would make you laugh all the way to the hospital — the fear that the people might fall into the sea while watching the firework display. I found the answer most ridiculous.

Later on, the Government established the Harbour-front Enhancement Committee. I regret that they would only discuss how planning would be conducted, but the proportion, or the scale, could not be modified. In fact, everyone's concern was nothing but the proportion. Of course, it is already too late to discuss these now. Today's motion is about planning. I can only hope that the Government would not make the same mistakes again. If the Government thinks that the scale cannot be modified, may I ask them to listen to our voices and aspirations as well as those of the people. I believe all Hong Kong people will feel heart-broken when they see that the Victoria Harbour is getting narrower and narrower. In the past, I often suffered from motion sickness when I was sailing on a boat. So people would warn me to be careful when I had to set sail because the waves would be so very rough in the open seas. But nowadays, I no longer find the waves in the open seas particularly rough because even within the harbour, the waves were already like that. Therefore, I would like to sincerely implore the Secretary to identify a solution to the problem.

Besides, I would like to make just one more brief comment here. Regarding the proposal of establishing a harbour district authority, the DAB has strong reservations. But I personally think that, if everyone is so concerned about the harbour, I hope the Government can conduct a study on the feasibility of establishing such an authority. The Government said that everything could be resolved through internal co-ordination. However, if the Government cannot work effectively through making improvement and co-ordination efforts, then may we request it to seriously consider the possibility of establishing a harbour district authority? Therefore, I shall support Dr KWOK Ka-ki's

motion. In fact, the DAB has reservations only about this point. But personally I think this is a very important issue.

President, I so submit.

MR RONNY TONG (in Cantonese): President, I have just heard Mr WONG Kwok-hing share with us his childhood story. That reminds me of a story frequently recounted by my mother. She said, "Son, you often rose from sleep suddenly in the middle of the night, and while crying and yelling, you would demand to see the 'Buu Buu'." She would then carry me on her back, walking all the way from Fa Yuen Street to the waterfront. At that time, the walking distance between Fa Yuen Street and the waterfront was very short. It was just a few blocks away. As soon as I heard 'Buu Buu', the sound of the blowing horn of the ferries, I would fall asleep.

President, I can never tell if this story was true because I can hardly remember whether it had really happened. However, what is real, I believe, is that all Hong Kong people have strong sentiments toward the harbour. What is more, we have learned that the Victoria Harbour was the most important natural resource of Hong Kong since our schooldays. But how do we treat such an important resource?

Let us leave the past behind. Let us first take a look at the reclamation works in the last decade or so. The whole bunch of figures read out by Mr Albert CHAN earlier was very shocking indeed. If we look at the current coastline, there you will find the International Finance Centre, Hong Kong Station of the Airport Express and the new Central Reclamation Phase III. We would often ask this question: When are we going to stop all these reclamation works?

When the Harbour-front Enhancement Committee was set up in 2004, six key directions were advocated. I am not going to repeat them all here. However, there are two points in their objectives that I would like to share with you. That is, in point 3 "to boost tourism through enhancing the attractiveness of the harbour", and point 4 "to promote innovative architectural designs and provide good facilities, leisure areas and pedestrians networks, thereby advocating diversified cultural activities and creating an exquisite coastal environment". We do not need a harbour that puts on "A Symphony of Lights" every evening. What we need is a harbour with a greater touch of culture and an ambience of tranquility.

The Victoria Harbour is a public asset shared by all Hong Kong people. However, in the last decade or so, taller and taller buildings have been erected along the coast, from the 52-storey Jardine House in the past, to the 78-storey Central Plaza and the new 88-storey IFC Phase II now. We have now heard the Government as saying that no more skyscrapers will be allowed. But, to our surprise, we heard that some groundscrapers would be built instead. In fact, the groundscrapers are equally worrying to us. The ruling made by the Court of Final Appeal explicitly said that no further reclamation should be allowed unless there is an immediate and convincing need. Is reclamation not proposed for the purpose of solving the traffic congestion problem? Yet, would traffic congestion cease to occur if a nine-storey groundscraper is built? What if traffic congestion occurs again, are we going to launch further reclamation works for more land? Would we build more commercial buildings on the further reclaimed land only to create traffic congestion again? It seems that the situation will only end up in a never-ending cycle.

What makes us worry even more is: How great is our determination in protecting the harbour? We have looked up the minutes of meetings of the Harbour-front Enhancement Committee of this year and found that in a recent meeting, Committee members put forward the final version of the harbour planning principles. The first principle states that the Victoria Harbour must be conserved for Hong Kong people and tourists as an important public asset. However, can we meet this key objective when reclamation projects are implemented one after the other? If we are to realize the objectives in today's motion, that is, those proposed by Dr KWOK Ka-ki, there is in fact a very simple solution — no need to engage ourselves in any empty talk; all we need to do is just stop implementing any further reclamation works and the job is done.

In addition, I am also very concerned about the water quality and safety in the fairways. It seems that this issue is seldom mentioned in discussions on the reclamation issue. Actually, the width of the harbour nowadays is just marginally sufficient for large vessels to sail through. However, out of the consideration of safety in the fairways, all large vessels have changed their courses to sail through the Rambler Channel instead. Moreover, the waves in the Victoria Harbour have become rougher compared with the situation when no large-scale reclamation works were launched. It is all because there are far too many ships jammed in a harbour too narrow. If the Government really hopes to gain a better understanding of the needs of Hong Kong people, senior officials should come down from their high horses for a while — but eating a bowl of beef

brisket noodle is not good enough, they should try out different modes of transportation, or even take a ride on the ferries to see how the harbour has changed. And in doing so, they will find out what is on the mind of Hong Kong people.

Besides, the water quality in the Victoria Harbour now is in fact very poor. No matter how beautiful our night scenery may be, with poor water quality in our harbour, not only will our tourism suffer, but so will society as whole because the water quality has deteriorated. And our harbour can no longer enable Hong Kong to maintain its status as the world's leading harbour with the highest container throughput in terms of TEUs. In addition, we are now in urgent need of a cruise terminal. If the Victoria Harbour should get narrower and narrower like a river, it would be just a waste, no matter how many great sites, like the Kai Tak site, are available, because we just could not build a cruise terminal there.

As a Chinese saying goes, "Realizing the wrong in the past will enable us to start treading on the right path now". I hope the Government can realize its past wrong-doings and start rectifying its mistakes by refraining from implementing any further reclamation works in the harbour, as I am afraid such works would kill this beautiful harbour in the hands of this generation. I hope the Government will not implement any further reclamation projects which may turn this beautiful deep-water harbour inherited from the past into something that is "neither fish nor fowl". I hope the Government can refrain from ruining the harbour recklessly as it is an important economic pillar of Hong Kong. Should that happen, it would be useless even if the Hong Kong Tourism Board spends another \$5 billion or so to promote our harbour. Moreover, since the Chief Executive Mr Donald TSANG has been hard selling his concept of "Strong Governance", we very much hope that he can show greater sincerity and stronger determination to do more in protecting the harbour by faithfully complying with the Protection of the Harbour Ordinance as well as the conditions for launching any reclamation works as stipulated in the ensuing lawsuits. I hope neither the Government nor senior officials would act on their free whims and eventually ruin the harbour overnight which belongs to all Hong Kong people. We do not wish to see that happen again. Therefore, I would like to render my absolute support to Dr KWOK Ka-ki's original motion.

Thank you, President.

MR PATRICK LAU (in Cantonese): President, most of the ideas put forward in the motion have already become facts, that is, the Government has already put them into actions. Instead of dwelling on these ideas, I would rather discuss the issue of harbour planning. Earlier on, Mr Albert CHAN told me outside the Chamber that I must state our views very clearly. He also said that the Victoria Harbour would not become a river, but a stream, in future. I think the situation may not necessarily become so ridiculous. Now the Court has handed down a judgement and the authorities have to comply with the relevant ordinance as well. Also, I have learned in the Town Planning Board (TPB) that, apart from adopting a "non-reclamation" approach in developing the Victoria Harbour, the Government will also be very cautious in other aspects. Therefore, I think the judgement passed by the Court in this case is very significant for the development of Hong Kong as a whole.

The Government is in the process of planning anew the Central Reclamation Phase III. I think it is working in the direction of reducing the area for commercial development and plot ratio and reducing the traffic flow. However, I have also made some criticisms. As Mr Ronny TONG has said just now, do these developments deserve our support after all? Instead, I am hoping that the Government can speed up the process, so as to complete the planning expeditiously and formulate a package of reasonable proposals — proposals that are drawn up from the perspective of town planning. And most important of all, the construction of the waterfront areas can be completed as soon as possible, for the enjoyment of the people. This would be more practical than leaving everything on the drawing board. As some Members have said earlier, in spite of having discussed the issue in numerous meetings, we still have not developed any place into a waterfront that can be enjoyed by the people.

On the issue of harbour management, many different departments are involved in handling work related to the harbour with divided responsibilities. However, there is not a single department with dedicated responsibility in harbour planning. In my opinion, the Government should deploy the resources more effectively, reshuffle the relevant frameworks and define the responsibilities clearly, so that a department can be established with dedicated responsibilities in the planning and management of the harbour.

With regard to town planning, we have the TPB and the Planning Department undertaking the responsibility of enforcing the Town Planning Ordinance. However, on harbour planning, no relevant laws are in place now.

For the Marine Department, which is primarily responsible for the management of the harbour, does not assume the significant task of conducting planning for the harbour. Therefore, at present, no comprehensive planning mechanism is in place for the harbour.

Many people place the emphasis of protecting the harbour on the development of the waterfront or reclamation projects in the harbour-front, but they have overlooked the planning for the entire harbour. In fact, harbour planning is also very important. We should know that, in history, the survival of Hong Kong depended actually very much on the Victoria Harbour as it is a deep-water port, and Hong Kong's success was largely attributable to this factor.

Regarding the planning for the Kai Tak Development which is underway, it is precisely because the barges have to sail in and out of a cargo handling area that the connection between Kai Tak and Kwun Tong is restricted. On the other hand, the planning mechanism of the harbour has also made it absolutely impossible to conduct proper planning for the future.

Therefore, it is necessary to establish an independent department which can start working on the overall planning for the harbour, so that developments in both the waterfront and coastal areas in various districts can have a standard to follow. Good planning will ensure that vessels can sail in the waters in a more orderly manner, enhance the visual beauty of the harbour, and minimize accidents among the vessels. The main purpose of taking this course of action is to enable the establishment of special characteristics of the coastal areas in different districts. In fact, the harbour of Hong Kong used to have some characteristics in the past. From those photographs of the earlier days of Hong Kong, we can see that the harbour was crowded with freighters dispatched by British merchants who came all the way to Hong Kong to do business here. They sent the goods to Europe, and then brought other goods to Hong Kong, though we should not care too much about the kinds of business they were engaging in.

The beauty of a harbour originates from the functions it serves. In the past, the so-called "triangular pier", which was mainly used for loading and unloading goods, was also full of special characteristics. It witnessed many Hong Kong people working diligently to make their way to wealth and success. Therefore, I find the functions of a harbour very important. Another example is the Star Ferry which also carries great historical significance. I doubt whether the new pier in use now is a better design. As regards the Ocean

Terminal which facilitates the berthing of cruise liners, or even the planned projects in the harbour like the proposed new cruise terminal in Kai Tak which is under discussion recently, since their developments can tie in with the development of the city, and the waterfront areas have already been reserved in such projects, so we do not have to consider the issue of launching reclamation projects in such cases.

I think there are a lot of restrictions in our existing legislation, and they will lead to problems in the future planning of the harbour. Therefore, President, in short, I think it is the obligation of every citizen to protect the harbour, and on the part of the Government, it has the responsibility to strengthen the publicity and education in this regard, instead of entirely relying on the efforts made by non-government organizations and the business sector. Therefore, the Government should deploy its resources to work through a department with dedicated responsibility in harbour planning, whose work should range from undertaking planning for the Victoria Harbour to building up the special characteristics of coastal areas in various districts. In addition, the Government should also introduce facilities that would beautify the waterfront areas, so as to motivate the people to participate actively in the protection of the harbour. Thank you, President.

MR ALAN LEONG (in Cantonese): Madam President, recently, the Tamar Project triggered much controversy but it is not the whole problem. What the public is really concerned about actually extends far beyond the Tamar Project to the planning and design for both sides of the Victoria Harbour. In recent years, members of the public have gone to such lengths as taking the Government to Court a number of times, in the hope that the legal principles on the protection of the harbour can be clarified, so as to prevent the harbour from being despoiled further.

In early 2004, the Court of Final Appeal (CFA) and the High Court gave their judgements on the legality of the Wan Chai Development Phase II and Central Reclamation Phase III respectively. The CFA ruled that the Wan Chai Reclamation Plan designed by the Town Planning Board had violated the law and laid down the principle of "the overriding public need test" for considering whether reclamation can be carried out legally.

Not long after the CFA had made its ruling, the Honourable Mr Justice HARTMANN of the High Court also gave his ruling on the reclamation project

in Central. Mr Justice HARTMANN believed that the wrong interpretation of the Protection of the Harbour Ordinance with regard to the reclamation project in Wan Chai also occurred in the case of the Central reclamation. However, since the Chief Executive in Council, which was the respondent in the case involving the Central reclamation, must take into consideration a series of factors, including the reclamation works that had been launched and the liability to pay huge sums of compensation if the projects were terminated, therefore, even though the law had been wrongly interpreted when designing the Central reclamation project, it is still legal for the Chief Executive to adhere to the decision to proceed with the works.

Madam President, in other words, the frequently trumpeted government claim that the Court ruled Central Reclamation Phase III to be legal is in fact very misleading and far-fetched. That the Central Reclamation Phase III could proceed was merely due to the fact that the Court felt what had been done could not be undone. Unless there is an overriding public need in carrying out a reclamation project and there are no alternatives, and unless the adverse effects are minimized, otherwise, the project does not conform to the legislative intent of the Protection of the Harbour Ordinance.

The area of reclamation in the Central Reclamation Phase III is 23 hectares and of the 47 hectares of land in the entire development, only less than 15 hectares are designated as open space, but the newly created total floor area will amount to as many as 9.3 million sq ft, which is double the total floor area of the two towers of the International Finance Centre (IFC) combined. Even if the portion for the Tamar Project is excluded, in this government design for a "groundscraper", the new planning will effectively place two more towers of the IFC horizontally at the waterfront. I can hardly imagine what overriding public need there is for the Government to put more than 4 million sq ft of commercial floor area at the Central waterfront.

Madam President, we have little difficulty in foreseeing the damage that will be done by this sort of planning and in fact, the adverse effects are by no means minimized. Creating large areas of land for commercial use will no doubt make the traffic in Central further expand in volume, however, building new roads was precisely the justification advanced by the Government for the reclamation projects in Central and Wan Chai. Is creating more traffic, then carrying out further reclamations to build new roads the right attitude in planning and land administration?

Madam President, Hong Kong is already tired of such piecemeal approach in planning. The land on both sides of the harbour should not be zoned off and carved up by the Government and rich and powerful property developers only, rather, different sectors should be allowed to participate through systematic and regularized channels. The establishment of a harbour district authority proposed in the original motion is a proposal for public participation worthy of consideration. Many civic groups have sung high praises of the experience of the Sydney Harbour Foreshore Authority in Australia.

The Sydney Harbour Foreshore Authority has full power over the management of over 400 hectares of land located in the harbour and the coastal areas of the city. It answers to the Department of Planning of the New South Wales Government direct. It pools such experts as urban planners, architects, archaeologists, skilled communicators, education professionals and specialists in finance, IT and graphic design together and undertake extensive community engagement work frequently. Based on the principle of sustainable development, it seeks to develop waterfront land so that the economy of the city can benefit and ensure that the public can have access to and enjoy the waterfront, while striving to preserve the historical and cultural heritage of the waterfront precincts.

Madam President, the people in Sydney have always been proud of their waterfront. This is because the local government and the people do not just treat the waterfront precincts as just another valuable piece of land but also the façade that the city shows the whole world. Therefore, overall planning and design must be carried out and the whole area must be shaped into a symbol of the city that manifests the spirit of its people. The name of our city has the word "harbour (Kong)" in it, so how possibly can we not have a special affection for the harbour and protect it with loving care? To return the harbour to the people, allow public participation and carry out holistic planning is the right attitude in respecting this harbour of ours.

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

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the Victoria Harbour in Hong Kong is a very important resource of Hong Kong. In different ages past, it had performed various functions.

For example, Hong Kong was initially a fishing port. This fishing port was the exit for businesses in China and Hong Kong, so it was an important fishing port. Since the harbour is deep and never freezes throughout the year, often, some compradors for foreign companies also came to Hong Kong. Therefore, in this period, a lot of people eked a living out of this and some marine activities and shipping also took place. Therefore, if we look back at the 19th century, we could learn that a lot of activities had taken place in this harbour.

We can see that subsequently, in the course of our development, this place made Hong Kong a very important port in marine transport in Southeast Asia and also introduced new elements into our economy. A lot of people made a living out of these new economic elements. We can also see that individual undertakings, including fishermen working at sea, also relied on this harbour for a living, so it can be seen that this harbour really supported the living of a lot of people. In other words, the Government should treasure the Victoria Harbour, which is so important and precious. However, it is a shame that the colonial Government of the past often had designs on the harbour and so does the SAR Government after the reunification. What are these designs? They are none other than to carry out reclamations there.

I have to stress that in the 20th century, when the property market was booming, reclamation seemed to be the only measure taken by the Government, so there were a lot of activities there. Buildings were built by the seaside, after their completion, reclamation would start anew and after reclamation, construction would start again, then reclamation would start again. In the end, soon after I had joined the then Legislative Council, members of trade unions for marine trades asked me if I noticed that vessels would often have to sail rough after entering the Victoria Harbour and often, a lot of unpredictable conditions would occur in the fairways. On this point, I believe if Members have made a visit to Cheung Chau or Lamma Island and returned to the harbour by boat, they will find that the sea is quite rough. I believe all Members and officials seated here will share this view.

Therefore, this harbour, which is located at where we have always lived, has provided a lot of business opportunities to us and enabled us to develop considerably for the proximity to the open seas. However, in the 20th century, due to excessive reclamation, we have lost a great deal, so everyone has formed the opinion that reclamation should discontinue. Well, at present, the

Government says that since there is a law prohibiting reclamation, it will no longer do so. However, we have to notice the Government's changes now. The Government said to us that it would return the shores of the Victoria Harbour to the public and I believe this is very important. It is also very important to see how the Victoria Harbour can provide us opportunities of development, however, we find that the Government is now putting forward another proposal and some aspects of it have aroused our concern. For example, there are things about the Central Reclamation Phase III or Phase II that worry us enormously. As regards Southeast Kowloon, there are also some aspects which have aroused our concern. What are these proposals?

I have always wanted to tell the Secretary and we have also asked a number of times in this Chamber whether the economic activities along the coast would be wiped out at one stroke as a result of the development. Although there is the Protection of the Harbour Ordinance to protect the Victoria Harbour, how can we enable people making a living along the coast to continue to do so? I wish to use the cargo handling areas, mid-stream operations and typhoon shelters as the examples. I am familiar with all these economic activities that are very characteristic of the port of Hong Kong. When we want to create a concept for the waterfront, is it the case that no consideration whatsoever will be given to these original economic activities? We can see that they are an important part of the logistics industry, which is one of the four economic pillars of Hong Kong. The Government often says that if they have to move to somewhere else, then they must do so. In that case, may we ask the Government where they can move to? The answer is Hei Ling Chau. However, people in fact will not make use of such places for their operations. The wind and sea are so rough there that it is no good.

Last week, there was a special television programme on mid-stream operations, typhoon shelters, cargo-handling areas and one question was posed in it. I think this programme is a job well done. The question in the programme is that, when we want to develop the waterfront, what will happen to people who originally do their businesses at the waterfront. These people have employed many of the people in the logistics industry. Another example is fishermen. They witnessed the relocation of the airport. After the airport was relocated, the fishery in the Kowloon Bay area has become abundant. In the past, when the airport was still there, the dried cuttlefish of Kowloon were not available. Now that the airport has been relocated, the dried cuttlefish of Kowloon are available again. If the Secretary is interested, I can ask some fishermen to show him. In particular, when the tides come in, a lot of in-shore fishermen can

catch quite a lot of seafood, including some very large and beautiful fish, as the water in the Victoria Harbour is now clearer.

When we want to embark on another stage of development, how should we deal with the livelihood of these people who live off the sea? We must not replace one thing with another. We should not say that since we have the cruise terminal, we do not want these people anymore. We do not agree with doing so. As the aim is to tidy up the waterfront, so cargo handling areas are no longer wanted. So where can the cargo handling areas be relocated? Where can people load and unload their goods? When there is a storm, where can people take shelter? I believe all these call for continued attention from Members. I also hope that the Government can attach importance to these local economic activities that make a living out of the hills and the sea. We should not forsake one thing in our quest for another. We will find that doing so will make us suffer tremendous losses.

Madam President, in fact, I do not object to the construction of a fishermen's wharf or the development of Aberdeen. However, when we say that we want to model on overseas examples, why do we not think about some of our existing characteristic in-shore economic activities? Seattle is a good example. Seattle is a port and also a tourist destination. It also has a lot of wharves and facilities. Ozu in Hokkaido, Japan is also developed into an area with not just warehouses but also facilities for marine activities and tourism. Why do we not consider such examples? In fact, from these examples, it can be seen that in other countries, people do not shift from one extreme to another in the process of developing ports.

We hope very much that the Government can treasure our harbour and in doing so, it has to retain some original economic and characteristic activities in Hong Kong. I do not wish to see a shift from one inclination to another. With these remarks, Madam President, I support the motion.

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

DR YEUNG SUM (in Cantonese): Madam President, I speak in support of Dr KWOK Ka-ki's motion on "Protecting the Harbour".

As the Harbour has a symbolic value for Hong Kong and is an important public asset of Hong Kong people, the Government is duty-bound to protect it

properly. However, protection does not simply mean passive compliance with the Protection of the Harbour Ordinance and that any reclamation within the Victoria Harbour must satisfy the overriding public need test. The Government also has to actively plan waterfront development properly according to sustainable development principles in order to make it convenient for members of the public to get close to the harbour, and I stress again, to make it convenient for members of the public to get close to the harbour and to make the waterfront an ideal open space for public enjoyment.

At present, there is a major blind spot in the Government's planning, namely, the failure to make the waterfront an important consideration in planning. For example, when inviting tender for the West Kowloon Cultural District Development (WKCD), one of the Proponents was screened out for planning to extend the facilities of the cultural facilities of the WKCD to both sides of the Victoria Harbour. It turned out that this otherwise well-intentioned proposal was deemed to have exceeded the stipulated planning parameters. This precisely reflects that the Government has failed to conduct planning for the harbour as a whole.

Despite the fact that the Government has begun to pay attention to waterfront development in recent years, the two sides of the Victoria Harbour cannot be developed into a coherent and systematic waterfront promenade because at present, all the districts at the waterfront have already got their separate Outline Zoning Plans and respective courses of development have been charted for them. At present, the Harbour-front Enhancement Committee has limited resources and power and is principally a advisory organ. Therefore, the Democratic Party agrees with Dr KWOK Ka-ki's proposal to study the establishment of a statutory harbour district authority — in fact, we have also put forward such a proposal many times — which is responsible for the management and development of waterfront land. It will be a statutory organization, an organization with power and professionals responsible for protecting the interests of the Victoria Harbour and developing both sides of the harbour in an independent manner. Moreover, in order to further protect the Victoria Harbour, the Democratic Party suggests that the Government set up a "Protect the Harbour Fund", so as to concentrate resources on educating the public and the business sector on how to protect the Victoria Harbour and the waterfront environment and raise the awareness of harbour conservation. At the same time, the Fund can be used to carry out studies on how to beautify, conserve and carry out planning on the harbour, so as to further implement the programme to protect the harbour. Only by establishing a specialized and systematic planning agency can our harbour be effectively and actively protected.

The motion also voices concern about the planning of the Central waterfront and what has caused the greatest reverberation in society is the construction of a nine-storey and 400-m long groundscraper in the Comprehensive Development Area at the waterfront. Since the existing Two IFC is 413 m tall, it can be seen that a groundscraper will be extremely incongruent with the peripheral environment and will seriously affect members of the public in getting close to the waterfront and also considerably increase the traffic load in Central. This is a stark contradiction of the Government's original claim that the reclamation was intended to improve the traffic. Therefore, the Government must drastically scale down the planning for commercial development. We in the Democratic Party strongly oppose the construction of such a groundscraper which will take up so much land.

In order to enable members of the public to get close to the Central waterfront, at present, the Government plans to build three corridors to give the public direct access to the Central waterfront. Moreover, the public can also reach the waterfront directly via the pedestrian crossings of the Road P2 network. However, as Road P2 is close to the waterfront, excessively heavy traffic will cause air and noise pollution and seriously affect the surroundings of the open space at the waterfront. The Democratic Party demands that the traffic flow of the Road P2 network be restricted.

Furthermore, in order to facilitate public enjoyment of the Victoria Harbour, the Democratic Party suggests that a public viewing platform should be built at an appropriate point on the top floor of the high block of the new Government Secretariat. Given the prime location of Tamar, the construction of a viewing platform can enable members of the public to enjoy the scenery of the Victoria Harbour and the scenic Central waterfront from the best location.

From the foregoing, we can see that the Government must play a more active role in protecting the harbour.

I also wish to mention the Central-Wan Chai Bypass. I can see that there are many proposals, including the several proposals made by the Harbour-front Enhancement Committee which involve reclamation works. I have to point out clearly that the Democratic Party will not agree to any further reclamation works at the Central-Wan Chai Bypass, so as to protect the harbour. In the past, sacrifices were already made by our harbour for the sake of many developments in Hong Kong. The harbour is a very important resource of ours. We will

oppose any further reclamation works at the Central-Wan Chai Bypass in the interest of protecting the harbour.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon Dr KWOK Ka-ki to speak on the two amendments.

DR KWOK KA-KI (in Cantonese): Madam President, there are two amendments today. Mr SIN Chung-kai's amendment further improves my original motion, so I agree with and support this amendment.

Mr Tommy CHEUNG is not present now. Actually, I want to tell him that as I was listening to his speech, I found that it was not in any way in conflict with what I had said. He thinks that pollution has been reduced, so he believes that the ecology is no longer affected. I understand this point.

However, Members must know that had we not made such a lot of efforts and had we not forced the Government to do so much, what would have the harbour been like now? Would the Victoria Harbour have looked the way it is now? If the large amount of work to reduce discharge and pollution had not been carried out, the harbour would not have looked like its present state.

I am also grateful to him for pointing out that although the Government maintains that the reclamation is to be carried out for the sake of building roads, in reality, the area to be used for road construction is less than 10% of the reclaimed land. In fact, the Government is really going after the two groundscrapers.

However, I really find it very unacceptable and incomprehensible as to why Mr Tommy CHEUNG, since he supports the protection of the Victoria Harbour so much, chose to delete two very important points, which are the most

important details in my original motion, the first being "so as to avoid the need for further reclamation" in item (b), since the most important thing at present is that we must work according to two principles, one being the need for us to abide by the law; and the second being bearing the ecology and long-term interests of Hong Kong in mind. For this reason, we really cannot accept any further reclamation.

The second point of course has to do with the "harbour district authority". I wish to point out that the phrase I have used is "consider setting up", since I knew full well that even if I used more hard-line terms, it would not help advance the cause. However, if even "consider setting up" is not given the nod, then I am really feeling nonplussed.

Today, I have spent a lot of time talking about the example of Sydney not without reasons. This is because the approach in Sydney is actually consistent with the interests of the business sector. The annual reports submitted by the body concerned are in fact no different from that of a commercial organization. Of course, its goal is very clear, which is to protect the harbour. All along, its operation is geared towards two very important objectives, that is, apart from protecting the waterfront precincts and attracting more people to it, it also has to be a commercial success. I have said that 51 000 people work in the waterfront precincts and the annual revenue it brings to the State of New South Wales amounts to \$55 billion and the annual turnover generated is \$14 billion. A survey was conducted in Darling Harbour and it was found that each person in Sydney would go there 24 times a year. May I ask if anyone in Hong Kong would go to the harbour 24 times? The answer is no.

Mr Patrick LAU is now present and that is fine. I also want to say to him that if we put aside past issues and do not talk about the Protection of the Harbour Ordinance anymore, why do I still want to talk about the foregoing two points, namely, the Central Reclamation Phase III and a harbour district authority? This is because I hope the harbour in Hong Kong can become a place that we all love to visit. Had it been possible to achieve this end under the former mechanism, had the Town Planning Board, the Lands Department, the Architectural Services Department, and so on, of the Government been able to achieve this end, our harbour would not have looked the way it is now.

In fact, there are many successful examples among the statutory organizations in Hong Kong, for example, the Airport Authority, the MTR Corporation (MTRC), Ocean Park, and so on. The MTRC is no longer one of

them because it is now listed. However, most of these statutory organizations were wholly owned by the Government during their course of development. They are examples of success, so why can we not adopt a more neutral position, so that the harbour can also become a successful example?

Just imagine: Had the Ocean Park been handed over to the Leisure and Cultural Services Department for management, how would it be like nowadays? Had the new airport been managed according to the thinking of the Aviation Department, how would it be like nowadays? Are such moves consistent with the interests of the business sector?

In economic terms, a desirable Victoria Harbour will make the public spend more readily and, more importantly, in terms of tourism, a lot of people will consequently be willing to visit Hong Kong. All these are not in the least bit at odds with our present proposals.

I do not know how the voting results later will turn out, however, I very much hope that Honourable colleagues from the business sector and the Liberal Party will think further about this. A harbour district authority will only make the Hong Kong economy develop further, enable the business sector to have more active participation and further advance the long-term interests of Hong Kong.

Therefore, I hope Members can all support the original motion. Thank you, Madam President.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, regarding the general principle of protecting the harbour, the position of the Government is in complete agreement with that of Honourable Members. As a matter of fact, on many occasions over the past few years, I have reiterated the determination of the Government in protecting and preserving the Victoria Harbour.

With regard to the first point in Dr KWOK's motion, which requests the Government to adhere to the provisions of the Protection of the Harbour Ordinance (the Ordinance) and to carry out the Wan Chai Development Phase II and the Kai Tak Development in accordance with the interpretation of the Court of Final Appeal (CFA) with respect to the Ordinance, I can categorically assure Honourable Members and the citizens of Hong Kong that the Government will

continue adhering to the provisions of the Ordinance and the judgement handed down by the CFA in the strictest manner. We fully agree that all reclamation projects must satisfy the "overriding public needs" in social, environmental and economic aspects. Given the "no other reasonable alternatives" requirement, in the case of the Central Reclamation Phase III (CRIII) project, for example, we have reduced the scale of reclamation to the minimum, apart from strictly adhering to the provisions of the Ordinance and the judgement of the Court.

I believe Members are all aware that the major objective of the CRIII is to provide land for the provision of necessary transportation infrastructures, including the proposed Central-Wan Chai Bypass, the Road P2 network, the Extended Overrun Tunnel (EOT) of the Airport Railway, and the reprovisioning of the piers and the sea-water cooling pumping stations. The Government had completed a review in 2004 of the CRIII based on the "overriding public interests" principle laid down in the CFA judgement, and the review concluded that the project fully complied with this principle.

With regard to the Wan Chai Development Phase II and the Kai Tak Development, in order to ensure that these two development plans could comply with the provisions of the Ordinance and the judgement of the Court, we have already shelved the original plan and undertaken a new planning exercise. I would like to take this opportunity to brief Members on the latest development of this project. The Wan Chai Development Phase II, the major objective of which is to build the Central-Wan Chai Bypass, is currently under review. There is a compelling and immediate need for the Bypass in order to ameliorate the traffic congestion of the existing road network. The Harbour-front Enhancement Committee has played a proactive role in this review exercise, with the setting up of an independent subcommittee comprising local and overseas experts on planning and transportation in a bid to determine whether there is a compelling need for the Central-Wan Chai Bypass. After making repeated and thorough analyses in a professional, scientific and objective manner, and subsequent to open discussion and public consultation, the subcommittee has confirmed the need for building the Bypass, and the Harbour-front Enhancement Committee has given its unequivocal support for it. Our next step is to ascertain the routing of the trunk road as well as the construction method. We will adhere to the principle of achieving the maximum protection and preservation of the Victoria Harbour and involving the minimum impairment to the harbour area. In the meantime, in order to achieve our common vision for the provision of a vibrant, easily-accessible harbour-front that the general public

could share and enjoy, we will implement the much anticipated Harbour-front Enhancement Plan.

With regard to the Kai Tak Development which is currently under review, we have presented the proposals with "launching no reclamation" as a starting point. In this, the Government's determination in adhering to the provisions of the Ordinance as well as avoiding any further reclamation by all means is evident. Interesting enough, after proposing the initial "outline development plan", we have received lots of demands for blocking the Kai Tak nullah opening for tackling the environmental problems.

Just now Miss CHAN Yuen-han has put forward some alternative opinions to illustrate that there are other points worthy of our consideration. We agree that they are worth considering.

With regard to the demand of Dr KWOK for the replanning of land use for the CRIII project, I already gave a reply to an oral question raised by a Member last week. The land use for the CRIII project is specified in the Central District (Extension) Outline Zoning Plan, which was drawn up in accordance with the legal procedures as stipulated in the Town Planning Ordinance. Public views had been repeatedly and extensively consulted before approval was sought from Chief Executive in Council. In the process of formulating the zoning plan, the views of the public have been taken into account, and the extent of the reclamation has been substantially reduced accordingly. Furthermore, amendments have already been made to certain land uses as well.

The CRIII is a project involving an area of approximately 18.73 hectares, of which 12.28 hectares of land will be created by reclamation. Most of the land will be made available for public amenities or for low-density harbour-front commercial and recreational purposes (Appendix 1), which would provide the public with ample recreational area and an area for conducting a multitude of different activities. The remaining 2.63 hectares of the land will be used for low-density offices and/or commercial development, with a plot ratio of just 3.63. Hong Kong is an international financial centre, and in the interest of the long-term economic development of Hong Kong, there is a compelling need to increase the competitiveness of the central business district and to satisfy the keen market demands for Grade A offices. However, we are fully aware of the public aspiration for more recreational area and open area in Central. In this regard, we believe that the needs of the Hong Kong community as a whole have already been taken fully into account in the current land use planning.

Many Members mentioned in the debate held just now the area of land to be derived from the development project. Many Members, like we do, refer to the area of land using hectare as the unit of measurement. But some Members use "square foot", which is also a unit of measurement. For example, a hectare is equivalent to 10 000 sq m, which, in turn, is equivalent to 100 000 sq ft. To complicate the matter further, an hour is a unit for measuring time. We may use "one" to refer to an hour. This is a small number. However, we may refer to the same by using 60 minutes. The number is now bigger. If you are not happy with it, you could use 3 600 seconds to refer to this duration, although all of these expressions refer to a single hour. This serves to illustrate that the same thing could be represented by different means of depiction — some use a larger figure while others use a smaller figure. What I want to illustrate is that, regardless of whether we are speaking in terms of "square feet" or "hectares", the fact is that it remains a very small proportion. We are talking about less than 10% of the land, and that refers to that piece of land stretching from the current Central Post Office to the existing Star Ferry Pier and out to the end of the site of the reclamation project. This is all we are talking about. The rest of the eastward-stretching harbour-front land will entirely consist of open areas and recreational areas. Therefore, alarming though it may sound when it is represented by figures, as if there will be tens of thousand square feet of commercial land, if we put that into the right perspective, we will know that during the past few years, the Government has actually designated most of the land for recreational and leisure purposes.

With regard to traffic volume, when the CRIII project and the outline zoning plan were being drawn up, a comprehensive assessment on the impact of the traffic had been conducted. It was estimated that Road P2, which is built within the reclaimed area, together with the proposed Central-Wan Chai Bypass, will be able to cope with the current as well as the projected traffic volume in the district up till 2016, including the additional traffic volume brought about by the relevant reclamation project. The Environment Impact Assessment (EIA), including assessment in respect of air quality, for the CRIII has been completed too. The EIA was endorsed in 2001 in accordance with the Environmental Impact Assessment Ordinance.

Undoubtedly, changes have to be made to town planning in order to keep up with the needs of society. However, if the use of land, which has been duly planned and approved through established legal procedures, has to be subject to constant reviews and re-planning, it will only affect our city and the development

of society, and it is not in the interest of the public either. Therefore, we are unable to support Dr KWOK's proposal for replanning the project.

With regard to the principle of harbour planning, the view of the Government is actually identical to that of Honourable Members. The principles of harbour planning drawn up by the Harbour-front Enhancement Committee coincide with the Visions and Goals of the Town Planning Board in that they both share the same basic principles of "citizen-centric", "sustainable" and "consistent with the principle of environmental conservation" in respect of enhancement of the Victoria Harbour and the sustainable planning, preservation, development and management of the area on both sides of the Victoria Harbour. The Government will continue to work with the Committee in enhancing the Victoria Harbour and the harbour-front area for the enjoyment of the public.

Dr KWOK suggested in his motion the establishment of a statutory harbour district authority. In fact, studies are being undertaken by the Government, and references have been drawn from the examples of other places. We have found that different countries and cities have adopted different models, and even in cities where harbour district authorities have been formed, the functions of these authorities vary significantly. The formation of a harbour district authority is not a model with universal relevance. Furthermore, considerations have to be given to the constitutional, legal and administrative issues in relation to a statutory body. At the present stage, we should focus on the replanning and development of the several pieces of land in the harbour-front area. A statutory authority has been proposed in the West Kowloon Cultural District development project, which will provide an important source of reference. However, in our opinion, it is not appropriate at this stage to consider the establishment of a harbour district authority.

We agree to the proposition of enhancing public awareness of protecting the harbour environment and promoting civic engagement as mentioned in the motion. Apart from the statutory mechanism provided by the Town Planning Ordinance, through which the general public could express their views on the planning of land uses, we emphasize and encourage public participation in the planning process, and the planning project for Kai Tak serves as a good example. Through the novel model of public participation adopted by the Government and the Harbour-front Enhancement Committee, the people have become substantially more interested in participating in the planning process of developments.

Finally, I am most grateful to Honourable Members for their enthusiasm in protecting the harbour. I wish to reiterate once again that the position of the Government is in complete unison with that of Honourable Members on the issue of the protection of the harbour. Subsequent to the judgement handed down by the CFA in 2004 and the declaration of the position of the Government with regard to reclamation projects, together with the novel model of public participation adopted by the Harbour-front Enhancement Committee, we sincerely hope that the social disputes over the issue of reclamation should be drawn to an end, and we look forward to the joint efforts to be made among the public, the Legislative Council and the Government for the creation and protection of a beautiful Victoria Harbour.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr Tommy CHEUNG to move his amendment to the motion.

MR TOMMY CHEUNG (in Cantonese): President, I move that Dr KWOK Ka-ki's motion be amended.

Mr Tommy CHEUNG moved the following amendment: (Translation)

"To delete "coupled with the prolonged absence of an overall planning for the harbour environment and measures for conservation of natural ecology, has been seriously damaged and polluted" and substitute with "which has aroused grave public concern about the future planning for both sides of the harbour and its impact on the environment"; to add "relevant" after "Protection of the Harbour Ordinance and the"; to delete ", and follow the following three principles in considering the reclamation projects in the Wan Chai Development Phase II and the Kai Tak Development: first, there is a compelling, overriding and urgent need for reclamation; second, there is no viable alternative to reclamation; and third, the reclamation involves minimum impairment to the harbour" after "judgement of the Court of Final Appeal"; to delete "re-plan" after "(b)" and substitute with "when planning for land development under"; to delete "to" after "the Central Reclamation Phase III"; to delete ", and" after "commercial development and plot ratio" and

substitute with "so as to"; to delete "so as to avoid the need for further reclamation" after "traffic flow and air pollution"; to add "and" after "share and make use of the harbour;"; to delete "(d) consider setting up a harbour district authority as the statutory authority to independently manage, develop and enhance the sites and facilities in all the waterfront areas; and"; to delete the original "(e)" and substitute with "(d)"; to delete "civic" after "protection of the harbour environment, promote" and substitute with "public"; to add "and expression of opinions on" after "engagement in"; and to delete ", conduct territory-wide consultation on harbour district planning and sincerely respect public opinion to enable the public to fully participate, present their views and reach a consensus on the matter" and substitute with "through extensive consultation, so that the Government can adequately respond to the aspirations of the public when planning for developments".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Tommy CHEUNG's amendment to Dr KWOK Ka-ki's amendment be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Dr KWOK Ka-ki rose to claim a division.

PRESIDENT (in Cantonese): Dr KWOK Ka-ki has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted for the amendment.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted against the amendment.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr James TIEN and Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mr Albert CHENG voted against the amendment.

Miss CHOY So-yuk abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, 13 were in favour of the amendment, five against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, eight were in favour of

the amendment, nine against it and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr SIN Chung-kai, you may now move your amendment.

MR SIN CHUNG-KAI (in Cantonese): President, I move that Dr KWOK Ka-ki's motion be amended.

Mr SIN Chung-kai moved the following amendment: (Translation)

"To add "and the coastal" after "an overall planning for the harbour"; to add "and the coastal environment" after "in order to protect the harbour"; to delete "it" after "and preserve" and substitute with "the harbour"; to delete "and the judgement of" after "the Protection of the Harbour Ordinance" and substitute with ", and strictly ensure that the reclamation projects in the Wan Chai Development Phase II and the Kai Tak Development will meet the criterion of 'the overriding public need test' set by"; to delete ", and follow the following three principles in considering the reclamation projects in the Wan Chai Development Phase II and the Kai Tak Development: first, there is a compelling, overriding and urgent need for reclamation; second, there is no viable alternative to reclamation; and third, the reclamation involves minimum impairment to the harbour" after "the Court of Final Appeal"; to delete "Central Reclamation Phase III to reduce" after "(b) re-plan the" and substitute with "'Comprehensive Development Area' in the Central District (Extension) Outline Zoning Plan to ensure, as far as possible, reduction in"; to add "and coastal environment" after "(c) formulate a comprehensive harbour district"; to add "and the coastal" after "public awareness of the protection of the harbour"; to add "the planning for the" after "conduct territory-wide consultation on"; and to delete "planning" after "harbour district" and substitute with "and the coastal environment". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr SIN Chung-kai's amendment to Dr KWOK Ka-ki's motion be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr SIN Chung-kai rose to claim a division.

PRESIDENT (in Cantonese): Mr SIN Chung-kai has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted for the amendment.

Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the amendment.

Mr WONG Yung-kan and Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mr Albert CHENG voted for the amendment.

Mr James TIEN and Mrs Selina CHOW voted against the amendment.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 19 were present, five were in favour of the amendment, 12 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, nine were in favour of the amendment, two against it and seven abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Dr KWOK Ka-ki, you may now reply and you have three minutes six seconds.

DR KWOK KA-KI (in Cantonese): Madam President, first, I have to thank the 11 colleagues for speaking today. Now, I guess this motion and the amendments will all come to naught. The happiest party is probably the Government because I know this is what Secretary SUEN wishes to see the most. Your reply was fairly disappointing to me. You have not changed in any way and each time I talk about protecting the harbour, you would behave like a recorder and say that according to the law, you have done all that you should do, however, you have not done it conscientiously.

This sort of motion should not have been proposed by me but by Secretary SUEN. You are responsible for planning and for the harbour, however, what have you done? To improve the harbour and to review the Central Reclamation Phase III are what lovers of the harbour, including officials, should do. I have cited so many examples and mentioned Sydney, in the hope that the Victoria Harbour can become a world-class harbour and this is not in any way at variance with the intent proclaimed by the Government. However, not only has the Government done nothing whatsoever, it even mobilized all that is within its might to vote down today's motion. The Government ought to be ashamed of itself, but it is the public who will suffer the losses.

You said just now that Members were manipulating figures when talking about how many metres, how many hectares, and so on, however, the one most skilled at manipulating figures may be the Government, which says that no more than 10% would be used for roads, yet it could use such an excuse to carry out reclamation. Miss CHOY So-yuk stopped short of accusing the Government of employing all means by hook and by crook in her speech just now. Concerning the Central Reclamation Phase III, the Government said that building roads is a major reason for the reclamation, but was this remark sincere? Just now, you also said that you had contemplated the views of the public, but where can it be seen that you have contemplated the views of the public? When did you ask the public if reclamation should continue? Have you ever asked the public if they want the two groundscrapers? The 11 Members and all political parties requested the Government to review the phase III projects, including scaling down the groundscrapers or not building them at all, however, you have not said a word about this.

In fact, whether this motion can be passed or not does not matter much to me. What matters most is that we cannot make the Government really give the public a Victoria Harbour that they want. I cannot see any determination or sincerity on the part of the Government. In the voting on this occasion, your scheme may succeed, but you have not returned what you owe the Hong Kong public. Thank you, Madam President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Dr KWOK Ka-ki'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.

(Members raised their hands)

Dr KWOK Ka-ki rose to claim a division.

PRESIDENT (in Cantonese): Dr KWOK Ka-ki has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted for the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Patrick LAU voted against the motion.

Mr WONG Yung-kan and Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Miss CHAN Yuen-han, Dr YEUNG Sum, Miss CHOY So-yuk, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mr Albert CHENG voted for the motion.

Mr James TIEN and Mrs Selina CHOW voted against the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the motion, 13 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, 10 were in favour of the motion, two against it and six 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 negatived.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11.00 am on Wednesday, 2 August 2006.

Adjourned accordingly at a quarter to Six o'clock.

Annex II

FINANCIAL REPORTING COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) In the definition of "associated undertaking", in paragraph (a)(i), by deleting "a subsidiary of the corporation within the meaning of section 2 of the Companies Ordinance (Cap. 32)" and substituting "a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the corporation".</p> <p>(b) In the definition of "relevant undertaking", by deleting paragraph (a)(i) and substituting -</p> <p>"(i) a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the corporation; or".</p> <p>(c) By adding -</p> <p>"public officer" (公職人員) -</p>

- (a) means a person holding an office of emolument under the Government, whether such office be permanent or temporary; but
- (b) does not include -
 - (i) a person holding such an office by virtue only of being the chairman of a board or tribunal established under an Ordinance; or
 - (ii) a person who is a judicial officer for the purpose of section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92) or a judicial officer appointed by the Chief Justice;".

- 3(1) (a) In the Chinese text, in the definition of "上市法團", by deleting "曾經" where it twice appears and substituting "曾".
- (b) In the Chinese text, in the definition of "上市集體投資計劃", by deleting "曾經" where it twice appears and substituting "曾".
- 5 (a) In subclause (1), by deleting "within the meaning of Part 1 of that Schedule" and substituting ", within the meaning of Part 1 of that Schedule, that applies to the report".
- (b) In subclause (2), by deleting "within the meaning of Part 2 of that Schedule" and substituting ", within the meaning of Part 2 of that Schedule, that applies to the report".
- 7 (a) In subclause (1)(c)(iv), by adding "from amongst persons who either because of their experience in accounting, auditing, finance, banking, law, administration or management, or because of their professional or occupational experience, appear to the Chief

Executive to be suitable for such
appointment" after "Chief Executive".

(b) By adding -

"(5A) The Council may perform any of its
functions, and its proceedings are valid,
despite -

- (a) a vacancy in the membership
of the Council;
- (b) a defect in the appointment
or qualification of a person
purporting to be a member of
the Council; or
- (c) a minor irregularity in the
convening of any meeting of
the Council."

- 10(2)
- (a) In paragraph (a), by adding "a committee
established by the Council," after
"Committee,".
 - (b) In paragraph (b), by deleting "in the
performance of its functions" and
substituting ", the Investigation Board, a
Review Committee, a committee established by
the Council, or any or all of them, in the
performance of its or their functions".

- 13(1) (a) In the English text, by deleting "performs" and substituting "perform".
- 21 In subclauses (2), (3) and (4), by deleting "Division 3" and substituting "Divisions 3 and 4".
- 22 By adding -
- "(3A) The Investigation Board may perform any of its functions, and its proceedings are valid, despite -
- (a) a vacancy in the membership of the Board;
- (b) a defect in the appointment or qualification of a person purporting to be a member of the Board; or
- (c) a minor irregularity in the convening of any meeting of the Board.".
- 28(1) By adding "a person who is, or was at the material time," after "require".
- 34(4) (b) By deleting everything after "required" and substituting -
- "for -

- (i) any criminal proceedings;
- (ii) any proceedings before the Market Misconduct Tribunal; or
- (iii) any proceedings under this Ordinance or Part V of the Professional Accountants Ordinance (Cap. 50),

such longer period as may be necessary for the purpose of those proceedings.".

35

By deleting the clause and substituting -

"35. Investigation reports

(1) As soon as practicable after the completion of an investigation under this Part, the investigator shall prepare a written report on the findings of the investigation.

(2) The investigator may, if it thinks fit, prepare an interim report on the investigation. But if the investigator falls within section 21(2), (3) or (4), the investigator shall also prepare an interim report on the investigation as soon as practicable after being required by the Council to do so.

(3) The Council may adopt a report prepared under subsection (1) or (2).

(4) If, in the Council's opinion, any person named in a report prepared under subsection (1) or (2) would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the investigator shall, before the report is adopted under subsection (3), first give the person a reasonable opportunity of being heard.

(5) After having adopted a report under subsection (3), the Council may cause the report, or any part of the report, to be published.

(6) In deciding whether or not to cause a report, or any part of a report, to be published under subsection (5), the Council shall take into account -

(a) whether or not the publication may adversely affect -

(i) any criminal proceedings before a court or magistrate;

- (ii) any proceedings
before the Market
Misconduct Tribunal;
or
- (iii) any proceedings
under Part V of the
Professional
Accountants
Ordinance (Cap. 50),
that have been or are likely
to be instituted;
- (b) whether or not the
publication may adversely
affect any person named in
the report; and
- (c) whether or not the report, or
that part of the report,
should be published in the
interest of the investing
public or in the public
interest.

(7) In any civil proceedings before a court or any proceedings before the Market Misconduct Tribunal or under Part V of the Professional Accountants Ordinance (Cap. 50), a document purporting to be a copy of a

report adopted under subsection (3), and purporting to be certified by the Chairman of the Council as a true copy of such a report, is, on its production without further proof, admissible as evidence of the facts stated in the report."

36 By deleting subclause (2) and substituting -

"(2) The Council shall not, in relation to an investigation under this Part, exercise a power under subsection (1) unless the Council has taken into account the report prepared under section 35(1) or (2) in relation to the investigation."

39 (a) In subclause (1), by adding "either because of their experience in accounting, auditing, finance, banking, law, administration or management, or because of their professional or occupational experience" after "Review Committee".

(b) In subclause (2), by adding "at least" before "3".

40 (a) By deleting subclause (1)(b) and substituting -

"(b) the Council may appoint a Financial Reporting Review Committee consisting of -

(i) a Panel Convenor appointed under section 39(2), who is to be the Chairman of the Review Committee; and

(ii) at least 4 other members of the Review Panel,

to enquire, with those powers, into the non-compliance and the question."

(b) By adding -

"(1A) On making an appointment under subsection (1)(b), the Council shall notify the listed entity in writing of the names of the members of the Review Committee."

(c) By deleting subclause (2) and substituting -

"(2) The Council shall, on making an appointment under subsection (1)(b), specify the terms of reference of the Review Committee, and the Committee shall act in accordance with those terms."

"(1) A Review Committee may perform any of its functions, and its proceedings are valid, despite -

- (a) a vacancy in the membership of the Committee;
- (b) a defect in the appointment or qualification of a person purporting to be a member of the Review Panel or the Committee; or
- (c) a minor irregularity in the convening of any meeting of the Committee."

44(2)(a) By adding "and" at the end.

47 By deleting the clause and substituting -

"47. Enquiry reports

(1) As soon as practicable after the completion of an enquiry under this Part, the enquirer shall prepare a written report on the findings of the enquiry.

(2) The enquirer may, if it thinks fit, prepare an interim report on the enquiry. But if the enquirer falls within section 38(2), the enquirer shall also prepare an

interim report on the enquiry as soon as practicable after being required by the Council to do so.

(3) The Council may adopt a report prepared under subsection (1) or (2).

(4) If, in the Council's opinion, any person named in a report prepared under subsection (1) or (2) would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the enquirer shall, before the report is adopted under subsection (3), first give the person a reasonable opportunity of being heard.

(5) After having adopted a report under subsection (3), the Council may cause the report, or any part of the report, to be published.

(6) In deciding whether or not to cause a report, or any part of a report, to be published under subsection (5), the Council shall take into account -

- (a) whether or not the publication may adversely affect -

(i) any criminal
proceedings before
a court or
magistrate;

(ii) any proceedings
before the Market
Misconduct
Tribunal; or

(iii) any proceedings
under Part V of the
Professional
Accountants
Ordinance (Cap.
50),

that have been or are likely
to be instituted;

(b) whether or not the
publication may adversely
affect any person named in
the report; and

(c) whether or not the report, or
that part of the report,
should be published in the
interest of the investing
public or in the public
interest.

(7) In any civil proceedings before a court or any proceedings before the Market Misconduct Tribunal or under Part V of the Professional Accountants Ordinance (Cap. 50), a document purporting to be a copy of a report adopted under subsection (3), and purporting to be certified by the Chairman of the Council as a true copy of such a report, is, on its production without further proof, admissible as evidence of the facts stated in the report."

48 By deleting subclause (2) and substituting -

"(2) The Council shall not, in relation to an enquiry under this Part, exercise a power under subsection (1) unless the Council has taken into account the report prepared under section 47(1) or (2) in relation to the enquiry."

49 By deleting subclause (1) and substituting -

"(1) If, after the Council has taken into account a report prepared under section 47(1) or (2) for an enquiry concerning a relevant non-compliance in relation to a listed entity, it appears to the Council that

there is or may be a question whether or not there is such a relevant non-compliance, the Council may give a written notice to the operator of the listed entity in accordance with subsection (1A).

(1A) The notice is to -

- (a) indicate the respects in which it appears to the Council that such a question arises or may arise;
- (b) specify -
 - (i) such manner of revising the relevant financial report of the listed entity as the Council thinks fit; or
 - (ii) such other remedial action concerning that report as the Council thinks fit; and
- (c) specify a period for the operator to -

- (i) give a satisfactory explanation of the relevant financial report of the entity;
- (ii) cause that report to be revised in such manner as specified in the notice; or
- (iii) take such other remedial action concerning that report as specified in the notice."

50

By deleting subclause (1) and substituting -

"(1) This section applies if -

- (a) the Council gives a notice to the directors of a listed corporation under section 49(1); and
- (b) at the end of the period specified in the notice, or such longer period as the Council may allow, it appears

to the Council that the
directors have not -

- (i) given a satisfactory
explanation of the
relevant financial
report of the
corporation;
- (ii) caused that report
to be revised in
such manner as
specified in the
notice; or
- (iii) taken such other
remedial action
concerning that
report as specified
in the notice."

51

- (a) By deleting subclause (3) (b) (ix) and
substituting -

"(ix) the Official Receiver in a capacity
other than that of a liquidator or
provisional liquidator appointed under,
or holding such office by virtue of, the
Companies Ordinance (Cap. 32);".

(b) By deleting subclause (3)(c) and substituting -

"(c) subject to subsection (4), if there is or has been an investigation under Part 3 concerning a relevant irregularity, or an enquiry under Part 4 concerning a relevant non-compliance, in relation to a listed corporation, disclose information on the listed corporation to -

(i) the Official Receiver in the capacity of a liquidator or provisional liquidator of the listed corporation appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32); or

(ii) any other person who -

(A) is a liquidator or provisional liquidator of the listed corporation appointed under the Companies Ordinance (Cap. 32); or

(B) acts in a similar capacity in relation to

the listed corporation
under any law of a place
outside Hong Kong;".

- (c) In subclause (4), by deleting "or (b)" and substituting ", (b) or (c)".
- (d) In subclause (10)(b)(i), in the English text, by deleting "subsections" and substituting "subsection".
- (e) In subclause (13)(b)(i), in the Chinese text, by deleting "曾經" and substituting "曾".
- (f) In subclause (13)(b)(ii), in the Chinese text, by deleting "曾經" and substituting "曾".

New

By adding -

"51A. Protection of informers

(1) Any information on the identity of
a relevant person is not admissible in
evidence in -

- (a) any civil or criminal
proceedings before a court or
magistrate;
- (b) any proceedings before the
Market Misconduct Tribunal;
or

- (c) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).

(2) In such proceedings, a witness is not obliged -

- (a) to disclose the name or address of a relevant person who is not a witness in those proceedings; or
- (b) to state any matter that would lead, or would tend to lead, to discovery of the name or address of a relevant person who is not a witness in those proceedings.

(3) If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry -

- (a) in which a relevant person is named or described; or
- (b) that might lead to discovery of a relevant person,

the court, the magistrate, the Market Misconduct Tribunal or the Disciplinary Committee constituted under section 33(3) of

the Professional Accountants Ordinance (Cap. 50), as the case may be, shall cause all such passages to be concealed from view, or to be obliterated, so far as may be necessary to protect the relevant person from discovery.

(4) In such proceedings, the court, the magistrate, the Market Misconduct Tribunal or the Disciplinary Committee, as the case may be, may, despite subsection (1), (2) or (3), permit inquiry, and require full disclosure, concerning a relevant person if -

- (a) it is of the opinion that
justice cannot be fully done
between the parties to the
proceedings without
disclosure of the name of the
relevant person; or
- (b) in the case of a relevant
person falling within
paragraph (a) of the
definition of "relevant
person" in subsection (6), it
is satisfied that the
relevant person made a
material statement that he -

(i) knew or believed to
be false; or

(ii) did not believe to
be true.

(5) This section has effect despite
sections 35 and 47.

(6) In this section, "relevant person"
(有關人士) means -

(a) an informer who has given
information to the Council,
the Investigation Board or a
Review Committee with respect
to an investigation under
Part 3 or an enquiry under
Part 4; or

(b) a person who has assisted the
Council, the Investigation
Board or a Review Committee
with respect to such an
investigation or enquiry."

52 (a) By deleting subclause (3)(a) and substituting

-

"(a) a listed corporation in the securities
of which he has an interest;

- (aa) a listed collective investment scheme in the interests of which he has an interest; or".
- (b) In subclause (5)(a), by deleting "or" at the end.
- (c) In subclause (5)(b), by deleting the full stop and substituting "; or".
- (d) In subclause (5), by adding -
 - "(c) keep or be given any document, or the relevant part of any document, that contains a record of, or is issued for the purpose of, such deliberation or decision."
- (e) In subclause (6)(a), by deleting "or".
- (f) In subclause (6)(b), by deleting the full stop and substituting "; or".
- (g) In subclause (6), by adding -
 - "(c) keep or be given any document, or the relevant part of any document, that contains a record of, or is issued for the purpose of, such deliberation or the making of such determination."
- (h) By adding -
 - "(6A) If the Council determines under subsection (5) that a person may be present during any deliberation, or take part in any

decision, of the Council, Investigation Board or Review Committee, or a committee established by the Council, the Council shall give written notice of the determination to -

- (a) in the case of a deliberation or decision with respect to an investigation under Part 3 concerning an auditing irregularity, the auditor concerned;
 - (b) in the case of a deliberation or decision with respect to an investigation under Part 3 concerning a reporting irregularity, the reporting accountant concerned; or
 - (c) in the case of a deliberation or decision with respect to an enquiry under Part 4 concerning a relevant non-compliance, the listed entity concerned."
- (i) In subclause (9), in the definition of "associate", in paragraph (j), by adding "or" at the end.

- (j) In subclause (9), in the definition of "associate", by deleting paragraph (k).
- (k) In subclause (9), in the definition of "associate", in paragraph (l), by deleting "(k)" and substituting "(j)".
- (l) In subclause (9), in the English text, in the definition of "associate", in paragraph (l)(ii), by deleting the semicolon and substituting a full stop.
- (m) In subclause (9), by deleting the definition of "related corporation".

53

By deleting the clause and substituting -

"53. Immunity

(1) A person who complies with a requirement imposed on him under section 25, 26, 27, 28, 34 or 43 does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of the compliance.

(2) A person does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done, or omitted to be done, by him in good faith in the performance, or purported performance, of the functions of

the Council, the Investigation Board, a Review Committee or a committee established by the Council."

- 54 (a) In subclause (1), in the Chinese text, by deleting "不得僅因" and substituting "無須僅因".
- (b) In subclause (2), by deleting "Subsection" and substituting "For the avoidance of doubt, subsection".
- (c) In subclause (3)(a), in the Chinese text, by deleting "不論指" and substituting "不論是".
- 56 In subclauses (1)(b) and (2)(b), in the English text, by deleting "the record" and substituting "such record".
- 59 (a) In subclause (1)(a), by deleting "42, 48(3) or 49(1)" and substituting "40(1A), 42, 48(3), 49(1) or 52(6A) or section 3(2) of Schedule 6".
- (b) In subclause (2)(c), by deleting "non-Hong Kong company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32)" and substituting "company to which Part XI of the Companies Ordinance (Cap. 32) applies".

- (c) In subclause (2)(c)(i), by deleting "Part XI of that Ordinance" and substituting "that Part".
- (d) In subclause (2)(e), by deleting "or a non-Hong Kong company" and substituting ", or a company to which Part XI of the Companies Ordinance (Cap. 32) applies".
- 61 (a) In the heading, in the English text, by deleting "**Sections**" and substituting "**Section**".
- (b) In the cross-heading before the proposed section 141E, by deleting "**defective**".
- (c) By deleting the proposed section 141E(1) and (2) and substituting -
- "(1) If -
- (a) a copy of any accounts of a company has been sent under section 129G to a person entitled to be sent the copy; and
- (b) it appears to the directors of the company that the accounts did not comply with this Ordinance,

the directors may cause the accounts to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned.

(2) Such revision of the accounts is to be confined to -

(a) those aspects in which the accounts did not comply with this Ordinance; and

(b) other necessary consequential revisions.".

(d) In the proposed section 141E(4), by deleting everything after "who" and substituting "is in default, shall be liable to a fine and, for continued default, to a daily default fine.".

New

By adding -

"61A. Section added

The following is added -

**"336A. Voluntary revision
of accounts**

(1) If -

(a) a certified copy of any accounts of an overseas company has been delivered to the

Registrar for
registration under
section 336; and

(b) it appears to the
directors of the company
that the accounts did
not comply with the
relevant requirements,
the directors may cause the accounts to
be revised and make necessary
consequential revisions to the
directors' report concerned.

(2) Such revision of the accounts
is to be confined to -

(a) those aspects in which
the accounts did not
comply with the relevant
requirements; and

(b) other necessary
consequential revisions.

(3) If the directors of an
oversea company decide to cause any
accounts of the company to be revised
under subsection (1), the company
shall, as soon as practicable after the
decision, deliver to the Registrar for

registration a warning statement, in the specified form, that the accounts will be so revised.

(4) In this section, "relevant requirements" (有關規定), in relation to the accounts of an overseas company, means -

(a) the law for the time being applicable to that company in the place of its incorporation or origin; or

(b) in the case where section 336(4) applies to that company, this Ordinance."."

62

(a) By deleting -

"62. Section added

The following is added -"

and substituting -

"62. Section substituted

Section 336A (as added by section 61A of this Ordinance) is repealed and the following substituted -".

- (b) In the proposed section 336A(1) (a), in the English text, by deleting "have" and substituting "has".
- (c) In the proposed section 336A(2) (a), by deleting "the correction of".
- (d) In the proposed section 336A(2) (b), by deleting "the making of" and substituting "other".

63

- (a) In the proposed section 359A(3) (b), by deleting "that have" and substituting "or directors' report that has".
- (b) In the proposed section 359A(4) (c) (ii), by deleting "under" and substituting "in compliance with".
- (c) In the proposed section 359A(4) (c), by adding "the company or" after "require".
- (d) In the proposed section 359A(5) (a), by deleting "have" and substituting "or directors' report has".
- (e) In the proposed section 359A(5) (a) (i) and (ii), by adding "or report" after "accounts".
- (f) In the proposed section 359A(5) (b), by deleting "the non-Hong Kong company" and substituting "a company to which section 336A applies".

- (g) In the proposed section 359A(5) (b), by deleting "that have" and substituting "or directors' report that has".
- (h) In the proposed section 359A(5) (c), by deleting "that have" and substituting "or directors' report that has".
- (i) By adding -
 - "(6) Regulations made under subsection (3) may -
 - (a) provide that any of the following is an offence -
 - (i) a failure to take all reasonable steps to secure compliance as respects the accounts, summary financial report or directors' report that has been revised with -
 - (A) a specified provision of the regulations; or
 - (B) a specified provision of

this Ordinance

as having

effect under

the

regulations;

(ii) a contravention of -

(A) a specified

provision of

the

regulations; or

(B) a specified

provision of

this Ordinance

as having

effect under

the

regulations;

(b) provide that such an offence

is punishable -

(i) by a fine not

exceeding \$300,000,

or by a term of

imprisonment not

exceeding 12 months,

or by both such fine

and imprisonment;

and

- (ii) in the case where a person is convicted of such an offence after continued default, refusal or contravention, also by a fine not exceeding \$700 for each day on which the default, refusal or contravention is continued;

- (c) provide for any specified defence to be available in proceedings for such an offence; and

- (d) provide that a court shall not sentence a person to imprisonment for such an offence unless satisfied that the offence was committed wilfully."

"70A. Disciplinary provisions

Section 34 is amended -

(a) in subsection (1)(a), by

adding -

"(ia) has been convicted
of any offence under
section 31 of the
Financial Reporting
Council Ordinance
(of 2006);

(ib) has been punished by
the Court of First
Instance under
section 32(2)(b) of
the Financial
Reporting Council
Ordinance (of
2006) for failing to
comply with a
requirement imposed
under section 25,
26, 27 or 28 of that
Ordinance or for
being involved in
the failure;

(ic) has been punished by
the Court of First
Instance under
section 45(2)(b) of
the Financial
Reporting Council
Ordinance (of
2006) for failing to
comply with a
requirement imposed
under section 43 of
that Ordinance or
for being involved
in the failure;"

(b) in subsection (1AA), by
repealing "(iv) to (ix)" and
substituting "(ia), (ib),
(ic), (iv), (v), (vi), (vii),
(viii) and (ix)".

New

By adding -

"72A. Section added

The following is added -

**"42CA. Referral of matter
to FRC**

(1) Where it appears to the Council that there are circumstances suggesting -

(a) that -

(i) a certified public accountant has acted in a manner described in section

34(1)(a)(iii),
(xi) or (xii);

(ii) section 34(1)(a)(iv),
(vi), (viii),
(ix) or (x) applies to a certified public accountant or a firm of certified public accountants

(practising);

or

(iii) section

34(1)(a) (as

applied by

section

34(1AA)) or (b)

applies to a

corporate

practice; and

(b) that the matter

constitutes a relevant

irregularity in relation

to a listed entity for

the purposes of the

Financial Reporting

Council Ordinance (of

2006),

the Council shall refer the matter to the FRC and shall not, even if it may do so under section 42C(2)(a), constitute an Investigation Committee in relation to the matter.

(2) For the avoidance of doubt, subsection (1) does not apply if a complaint of the matter is submitted to

the Council, or the matter otherwise
comes to the Council's attention, before
the commencement of section 72A of the
Financial Reporting Council Ordinance
(of 2006)."."

74

By deleting the clause and substituting -

"74. Official secrecy

Section 120(5A) of the Banking Ordinance
(Cap. 155) is amended -

- (a) in paragraph (b), by
repealing "or";
- (b) in paragraph (c), by
repealing the full stop at
the end and substituting "
or";

- (c) by adding -

"(e) the Financial
Reporting Council
established by
section 6(1) of the
Financial Reporting
Council Ordinance
(of 2006)."."

New

By adding immediately after clause 75 -

**"75A. Public bodies specified
for purposes of
definition of "public
servant"**

Schedule 2 is amended by adding -

"8. Financial Reporting Council."."

76 In the Chinese text, by deleting "加入"財務匯報
局。"。" and substituting -

"加入 —

"財務匯報局。"。".

77 In the proposed item 6A(b), by deleting
"sponsoring" and substituting "making
contributions, whether in cash or in kind, to
sponsor".

Schedule 1 In Part 1, in the Chinese text, in the definition
of "有關財務報告", in paragraph (a)(iv)(C), by
adding "刊登、" after "傳閱、".

Schedule 2,
section 3 (a) By deleting the heading and substituting -
"Acting Chairman or temporary member".
(b) By deleting subsection (1) and substituting -
"(1) If -
(a) because of absence from Hong
Kong or any other reason, the

Chairman of the Council is
unable to perform the
functions of his office as
Chairman; or

- (b) there is a vacancy in the
office of Chairman of the
Council,

the Chief Executive may appoint another
appointed member of the Council who is a lay
person to act as Chairman of the Council
during the absence, incapacity or vacancy."

- (c) By deleting subsection (4) and substituting -

"(4) If a person is appointed to act as
Chairman of the Council, the person may
perform all the functions of the Chairman.

(5) If a person is appointed as a
temporary member of the Council, the person
may perform all the functions of the member
in whose place the person is appointed."

Schedule 2, By adding -
section 5

"(3) Subsection (4) applies if notice of
a declaration is given under subsection (2)
otherwise than by notice published in the
Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette."

Schedule 2,
section 6

(a) In subsection (3), by deleting "Schedule" and substituting "Ordinance".

(b) By adding -

"(5A) If a member of the Council is required under section 52(5) or (6) of this Ordinance not to be present during any deliberation of, or not to take part in any decision of or the making of a determination by, the Council, he is not to be counted for the purpose of forming a quorum at such part of a meeting of the Council that is held for such deliberation or decision or the making of such determination."

Schedule 3,
section 1

In subsection (3), by deleting "A notice" and substituting "Unless it is otherwise provided in the terms and conditions of the appointment determined under section 3, a notice".

Schedule 3

By deleting section 2 and substituting -

"2. Acting Chief Executive Officer

(1) If -

(a) because of absence from Hong Kong or any other reason, the Chief Executive Officer of the Council is unable to perform the functions of his office as Chief Executive Officer; or

(b) there is a vacancy in the office of Chief Executive Officer of the Council,

the Chief Executive may appoint another person to act as Chief Executive Officer of the Council during the absence, incapacity or vacancy.

(2) If a person is appointed to act as Chief Executive Officer of the Council, the person may perform all the functions of the Chief Executive Officer."

Schedule 3, By adding -
section 4

"(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette."

Schedule 4 By adding -

"1A. Temporary member

(1) If, because of absence from Hong Kong or any other reason, a member of the Investigation Board, other than the chairman, is unable to perform the functions of his office as member, the Council may appoint another person to be a temporary member in his place during his absence or incapacity.

(2) If a person is appointed as a temporary member of the Investigation Board, the person may perform all the functions of the member in whose place the person is appointed.

1B. Removal of members

(1) If the Council is satisfied that a member of the Investigation Board appointed under section 22(2)(b) of this Ordinance -

(a) has become bankrupt;

- (b) is incapacitated by physical or mental illness;
- (c) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
- (d) is otherwise unable or unfit to perform the functions of a member of the Investigation Board,

the Council may declare his office as member of the Investigation Board to be vacant, and upon such declaration the office becomes vacant.

(2) The Council shall give notice of a declaration under subsection (1) in such manner as it thinks fit.

(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Council shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette."

Schedule 4,
section 2

(a) In the heading, by adding "**etc.**" after "**proceedings**".

(b) By deleting subsection (2) and substituting -

"(2) The quorum for a meeting of the Investigation Board is 2 members of the Board or one half of the members of the Board, whichever is the greater.

(3) If a member of the Investigation Board is required under section 52(5) of this Ordinance not to be present during any deliberation of, or not to take part in any decision of, the Board, he is not to be counted for the purpose of forming a quorum at such part of a meeting of the Board that is held for such deliberation or decision.

(4) The Investigation Board may transact any of its business by circulation of papers.

(5) The Investigation Board may, subject to this Ordinance and any direction of the Council, determine -

- (a) the procedure for convening meetings of the Board and for the conduct of business at those meetings; and
- (b) the procedure in the transaction of business of the Board by circulation of papers."

Schedule 5, section 2 By adding -

"(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette."

Schedule 6 Within the square brackets, by adding ", 59" after "41".

Schedule 6,
section 1

(a) In the heading, by adding ", **etc.**" after
"proceedings".

(b) By deleting subsection (2) and substituting -

"(2) The quorum for a meeting of a
Review Committee is one half of the members
of the Committee.

(3) If a member of a Review Committee
is required under section 52(5) of this
Ordinance not to be present during any
deliberation of, or not to take part in any
decision of, the Committee, he is not to be
counted for the purpose of forming a quorum
at such part of a meeting of the Committee
that is held for such deliberation or
decision.

(4) A Review Committee may transact
any of its business by circulation of
papers.

(5) A Review Committee may, subject to
this Ordinance and any direction of the
Council, determine -

(a) the procedure for convening
meetings of the Committee and
for the conduct of business
at those meetings; and

(b) the procedure in the
transaction of business of
the Committee by circulation
of papers."

Schedule 6,
section 3

(a) By renumbering the section as section 3(1).

(b) By adding -

"(2) If the Council appoints a member
of the Review Panel, or a Panel Convenor,
under subsection (1) to fill a vacancy, the
Council shall notify the listed entity
concerned in writing of the name of the
member or Panel Convenor."

FINANCIAL REPORTING COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable TAM Heung-man

<u>Clause</u>	<u>Amendment Proposed</u>
17	By adding — “(4) The Secretary shall cause the estimates as approved pursuant to subsection (3) to be laid on the table of the Legislative Council.”.
Schedule 2, section 2(2)	By adding “, but may not serve as such a member continuously for more than 6 years” after “eligible for reappointment”.
Schedule 2, section 7	By deleting the section and substituting — “7. Written resolution (1) Subject to this section, any business that may be transacted by a resolution of the Council in a meeting may be validly transacted, without a meeting, by a resolution in writing if – (a) the resolution is signed and endorsed by all the members of the Council present in Hong Kong (being not less than the number required to constitute

two thirds of the members of the Council); and

- (b) it is so signed and endorsed within the specified period.

(2) If a resolution is in the form of more than one document, the requirements of subsection (1)(a) are to be regarded as satisfied if each document is in the like form and the documents together bear the signatures of, and have been endorsed by, all the members of the Council present in Hong Kong.

(3) A telex, cable or facsimile, or an electronically transmitted document, that bears the signature of a member of the Council, is to be regarded as signed by that member.

(4) A resolution in the form of more than one document is to be regarded as made on the date on which the resolution is signed by the last person signing as a member of the Council signing and endorsing it within the specified period.

(5) A member of the Council may, within the specified period, give notice in writing to the Chairman of the Council requiring that the business to which the resolution relates be transacted at a meeting of the Council.

(6) Where a notice is given under subsection (5), the following applies –

- (a) the business to which the resolution relates may not be transacted in the manner described in subsection (1);
- (b) a resolution for the purposes of subsection (1) may not be made or regarded as having been made.

(7) For the purposes of this section –

“all the members of the Council present in Hong Kong” (在香港的全部財務匯報局成員) means all the members of the Council who, on the date on which the resolution is circulated, are –

- (a) present in Hong Kong;
- (b) entitled to attend and vote at a meeting of the Council in respect of the business; and
- (c) capable of signing and endorsing the resolution;

“endorse” (同意), in relation to a resolution, includes to endorse the transaction of the business by a resolution without a meeting of the Council;

“specified period” (指明期間), in relation to any business referred to in subsection (1), means a period –

- (a) that is determined by the Chairman of the Council and specified in the documents circulated for the purposes of transacting the business; and
- (b) within which a member of the Council may indicate to the Council as to whether he endorses the resolution.”.

Schedule 3,
section 1(1)

By adding “be recruited openly, and” after “is to”.

Schedule 3,
section 1(2)

By adding “without open recruitment” after “eligible for reappointment”.

Schedule 3,
section 3

By renumbering the section as section 3(1).

Schedule 3,
section 3(1)

By deleting “All” and substituting “Subject to subsections (2) and (3), all”.

Schedule 3,
section 3

By adding —

“(2) The remuneration of the Chief Executive Officer of the Council is to be determined with reference to the remuneration of public officers of comparable level by an independent committee appointed by the Council for such purpose.

(3) The Council shall set comprehensive arrangements for post-termination employment of the Chief Executive Officer of the Council in order that any real, potential or perceived conflict of interest arising as a result of the Chief Executive Officer taking up employment after the termination of his employment with the Council may be avoided, which arrangements shall include a control period of not less than 12 months commencing from the date of the termination of the Chief Executive Officer’s employment with the Council. A Chief Executive Officer shall not after the termination take up any remunerative employment without the prior written approval of the Council during the control period.”.

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Revised amendments, to be moved by Hon TAM Heung-man, to section 3 of schedule 3 of the Financial Reporting Council Bill, if her amendment to add subsection (2) to the same section has been negated

FINANCIAL REPORTING COUNCIL BILL

COMMITTEE STAGE

ClauseAmendment Proposed

Schedule 3,
section 3

By renumbering the section as section 3(1).

Schedule 3,
section 3(1)

By deleting “All” and substituting “Subject to ~~subsection~~*subsection (2)* and ~~(3)~~, all”.

Schedule 3,
section 3

By adding —

~~(3)~~(2) The Council shall set comprehensive arrangements for post-termination employment of the Chief Executive Officer of the Council in order that any real, potential or perceived conflict of interest arising as a result of the Chief Executive Officer taking up employment after the termination of his employment with the Council may be avoided, which arrangements shall include a control period of not less than 12 months commencing from the date of the termination of the Chief Executive Officer’s employment with the Council. A Chief Executive Officer shall not after the termination take up any remunerative employment without the prior written approval of the Council during the control period.”.

FINANCIAL REPORTING COUNCIL BILL**COMMITTEE STAGE****Amendments to be moved****by the Honourable Ronny Tong Ka-wah, SC**

<u>Clause</u>	<u>Amendment Proposed</u>
14	By deleting subclause (1) and substituting – “(1) After consultation with the Chairman of the Council, the Chief Executive may on being satisfied that the Council, in the performance of its functions, has committed a serious and apparent error in failing to investigate a relevant irregularity or relevant non-compliance and it is in the public interest to do so, give the Council such written directions as he thinks fit directing the same to correct the error and to properly investigate the relevant irregularity or relevant non-compliance in accordance with the requirements of this Ordinance.”.
14	By deleting subclause (3).

Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for Housing, Planning and Lands requested the following post-meeting amendment

Line 1, fifth paragraph, page 418 of the Confirmed version

To amend "....., of which 12.28 hectares of land will be created by reclamation. Most of the land will be made available for public amenities or for low-density harbour-front commercial and recreational purposes....." as "....., of which most of the land will be created by reclamation. Approximately 11.28 hectares of land will be made available for public amenities or for low-density harbour-front commercial and recreational purposes.....". (Translation)

(Please refer to line 4, last paragraph, page 9918 of this Translated version)