

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 23 April 2008

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.M., 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 MARTIN LEE CHU-MING, S.C., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI, S.B.S., J.P.

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

THE HONOURABLE WONG YUNG-KAN, S.B.S., 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, J.P.

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, S.B.S., J.P.

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

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., 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 WONG TING-KWONG, B.B.S.

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.
SECRETARY FOR SECURITY

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

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE TSANG TAK-SING, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MATTHEW CHEUNG KIN-CHUNG, G.B.S., J.P.
SECRETARY FOR LABOUR AND WELFARE

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE MRS CARRIE LAM CHENG YUET-NGOR, J.P.
SECRETARY FOR DEVELOPMENT

THE HONOURABLE EVA CHENG, J.P.
SECRETARY FOR TRANSPORT AND HOUSING

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

CLERKS IN ATTENDANCE:

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

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Air Navigation (Hong Kong) Order 1995 (Amendment) Order 2008	77/2008
Fugitive Offenders (Transnational Organized Crime) Order	78/2008
Trade Descriptions (Provision of Information on Natural Fei Cui) Order	79/2008
Trade Descriptions (Provision of Information on Diamond) Order	80/2008
Trade Descriptions (Provision of Information on Regulated Electronic Products) Order	81/2008
Trade Descriptions (Marking) (Gold and Gold Alloy) (Amendment) Order 2008.....	82/2008
Trade Descriptions (Marking) (Platinum) (Amendment) Order 2008	83/2008
Trade Descriptions (Definition of Platinum) (Amendment) Regulation 2008.....	84/2008
Preservatives in Food (Amendment) Regulation 2008 ...	85/2008
The English Schools Foundation (Amendment) Ordinance 2008 (Commencement) Notice.....	86/2008
Fugitive Offenders (Terrorist Bombings) Order (Commencement) Notice	87/2008
Fugitive Offenders (Maritime Safety) Order (Commencement) Notice	88/2008

Specification of Arrangements (The Mainland of China)
(Avoidance of Double Taxation and the Prevention
of Fiscal Evasion with respect to Taxes on Income)
(Second Protocol) Order 89/2008

Specification of Arrangements (The Mainland of China)
(Avoidance of Double Taxation on Income)
(Revocation) Order 90/2008

Other Papers

No. 87 — Annual Report and Financial Report 2006-2007 of the
Vocational Training Council

No. 88 — Audited Statement of Accounts together with the Director
of Audit's Report of the Education Development Fund for
the year ended 31 August 2007

No. 89 — Audited Statement of Accounts together with the Director
of Audit's Report of the Quality Education Fund for the
year ended 31 August 2007

Report of the Bills Committee on Mainland Judgments (Reciprocal
Enforcement) Bill

Report of the Bills Committee on Legislative Council (Amendment) Bill
2007

WRITTEN ANSWERS TO QUESTIONS

Travel Insurance Agents

1. **MR HOWARD YOUNG** (in Chinese): *President, I have learnt that since the Travel Insurance Agents Examination was introduced on 15 May 2006, as at 31 January 2008, a total of 6 568 candidates have attempted the examination with a passing rate of 45%. However, of the 2 943 candidates who passed the examination, only 1 914 have registered with the Insurance Agents Registration Board. In this connection, will the Government inform this Council:*

- (a) *whether it has collected any statistics about the increase in the total amount of travel insurance premium since the implementation of the Travel Insurance Agents Registration System; if it has, of the relevant details;*
- (b) *whether it has conducted any study on the low passing rate of the above examination; if it has, of the outcome of the study and the measures taken by the Government to raise the passing rate of the examination;*
- (c) *of the measures it has taken to encourage more candidates who have passed the above examination to register as travel insurance agents; and*
- (d) *given that at present travel insurance agents are only allowed to sell travel insurance for the tour or travel package which they are arranging for the clients but not other forms of insurance, including annual travel insurance policy, and it is quite common nowadays for people to travel abroad several times each year, insurance companies have accordingly launched annual travel insurance plans to save people from the hassle of having to take out an insurance policy each time they travel, and such companies also offer premium discounts, whether the authorities will consider allowing travel insurance agents to sell annual travel insurance policy as well; if they will, when the authorities will implement the new arrangement; if not, of the reasons for that?*

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

- (a) Currently, the Government does not keep separate statistics on travel insurance premium figures. However, according to the information obtained from insurance companies by the Office of the Commissioner of Insurance (OCI), the travel insurance business has grown by about 10% in 2007 compared to that of 2006.
- (b) The passing rate of the Travel Insurance Agents Examination is similar to those of other Insurance Intermediaries Qualifying Examinations. The OCI would from time to time discuss with the

industry about practicable measures to enhance the quality of insurance intermediaries.

- (c) According to the OCI's understanding from the Travel Industry Council of Hong Kong, the main reason for some people to have passed the Travel Insurance Agents Examination but have not registered as travel insurance agents is that some experienced practitioners could not satisfy the requirement of having attained Form Five education. In view of this, the Insurance Intermediaries Quality Assurance Scheme Steering Committee endorsed the one-off waiver of such requirement for practitioners who already have ample experience before the introduction of the registration system. The insurance and travel industries have also worked together to strengthen publicity to remind eligible travel agents and their staff to promptly register as travel insurance agents.
- (d) The main objective of introducing the travel insurance agents registration system is to provide an effective regulatory system to facilitate the public to purchase designated travel insurance products before setting off and to ensure that relevant marketing practices comply with professional code. Given the fact that the insurance industry already provides adequate channels for the public to purchase annual travel insurance, and allowing travel insurance agents to sell annual travel insurance would give rise to the problem of how to provide satisfactory after-sale service, the Government has no plan to change the existing arrangement.

Replacement and Rehabilitation Programme of Water Mains

2. **MR JAMES TIEN** (in Chinese): *President, it has been reported that as the problem of aged underground water mains is becoming increasingly serious in Hong Kong, incidents of suspension of water supply have occurred from time to time in some districts. The authorities have implemented the Replacement and Rehabilitation Programme of Water Mains (the Programme) since 2000, but it is anticipated that all the works for replacing and rehabilitating water mains can only be completed by 2015. On 30 March this year, the valve in an underground fresh water pipe (600 mm in diameter) beneath a section of Tai Po Road off Wo Che Estate broke down, resulting in suspension of fresh water supply in a number of housing estates and villages in Fo Tan area in Sha Tin. In this connection, will the Government inform this Council:*

- (a) *apart from old water pipes, whether the Programme which is under implementation covers the replacement and rehabilitation of other components (such as valves) as well, and the latest progress of the Programme;*
- (b) *of the respective numbers of incidents of suspension of fresh water and salt water supplies in the past three years, which were caused by aged water mains or other aged components, broken down by district;*
- (c) *pending the replacement of water supply facilities which have been in use for a long time, whether the authorities will step up inspection of such facilities in various districts, so as to replace or rehabilitate them earlier once problems of ageing, rusting or cracking are detected; and*
- (d) *whether it will review afresh whether the above Programme can be expedited for earlier completion; if the outcome of the review indicates that the Programme can be expedited for earlier completion, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, Hong Kong has an extensive water supply system of about 7 700 km of water mains. To enhance the quality of water supply service, reduce the wastage of water resources, and mitigate the nuisances and economic losses due to pipe bursts, the Government has since 2000 been implementing the Programme. The aim is to replace and rehabilitate about 3 000 km of aged water mains throughout the territory. Given the enormous scale of the Programme, it is to be implemented in four stages, with the final stage scheduled for completion in 2015. With respect to the four parts of the question, I wish to tender a reply as follows:

- (a) In addition to aged water pipes, the Programme also covers the replacement and rehabilitation of other components such as valves. Works for the first two stages of the Programme has commenced, and the remaining two stages will start in this autumn and 2011 respectively. As regards the overall progress of the Programme, works has already been completed on about 460 km of water mains

and in progress on about 890 km of them. The lengths of water mains under detailed design and planning are about 800 km and 850 km respectively. It is estimated that all the works will be completed by 2015.

- (b) The breakdown by district of the number of incidents of suspension of fresh and salt water supplies caused by ageing of water mains or other components over the past three years is as follows:

<i>District</i>	<i>Aged water mains</i>		<i>Aged components</i>	
	<i>Fresh water</i>	<i>Salt water</i>	<i>Fresh water</i>	<i>Salt water</i>
Hong Kong and Outlying Islands	354	473	89	118
Kowloon	463	796	114	242
New Territories East	381	141	107	31
New Territories West	225	128	194	34
Total	1 423	1 538	504	425

- (c) Pending replacement of aged water supply facilities, the Water Supplies Department (WSD) has drawn up guidelines requiring that every incident of water supply suspension or serious traffic disruption as a result of pipe burst or component failure should be examined in detail. The aim is to establish the cause of the incident and to step up necessary checking on the associated water mains networks, for early identification of pipes with latent problems for maintenance or replacement as appropriate.
- (d) In most cases, replacement and rehabilitation of water mains requires road excavation. It will, therefore, seriously disrupt road traffic and cause inconvenience to the public if the works programme is to be conducted within a very short time. With this in mind, we have decided, after detailed planning, to implement this enormous programme in four stages so as to minimize traffic disruption and inconvenience to the public. The WSD will continually review the construction processes and schedules and actively explore ways to speed up the works and strive for completing most of the works before 2015 so far as it would not cause undue impact on both the traffic and the public.

Traffic Congestion in Three Road-harbour Crossings

3. **MR ANDREW CHENG** (in Chinese): *President, regarding traffic congestion in the three road-harbour crossings, will the Government inform this Council:*

- (a) *of the average waiting time for motorists to use the above three harbour crossings during the peak and non-peak hours in the past three years, and whether congestion in the harbour crossings has shown signs of deterioration; and*
- (b) *whether it has examined the annual losses, in terms of social costs, caused by traffic congestion in the above harbour crossings; if so, of the detailed outcome; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): *President,*

- (a) The Journey Time Indication System installed by the Transport Department on Hong Kong Island provides real time information to motorists about the journey time from the relevant system to the road harbour crossings. The relevant data provides some reference about the waiting time for motorists to use the three harbour crossings. According to the relevant data, from Gloucester Road to the egress of the Cross-Harbour Tunnel (CHT) at Hung Hom, journey time during morning peak hours is around seven minutes and that during evening peak hours is around 22 minutes; and from Canal Road Flyover to the egress of CHT at Hung Hom, journey time during morning peak hours is around 14 minutes and that during evening peak hours is around 21 minutes. There were no material changes in the relevant journey time over the past three years.
- (b) We are very concerned about the problem caused by the congestion at road harbour crossings, and have been keeping an open-mind and studying in earnest possible measures that may improve the distribution of traffic at the three road harbour crossings. However, any assessment should be premised on alternative options of different traffic distribution for comparison purpose.

We consider that no matter which option is to be adopted, it must be able to bring about overall benefit to the public, be fair to taxpayers

and help to achieve reasonable distribution of traffic. In the meantime, we need to consider whether the road network connecting the three crossings has sufficient capacity to absorb the increased traffic flow arising from a reduction of tunnel toll. This is because insufficient capacity of these connecting roads would undermine the objective of rationalization of cross-harbour traffic flow by adjustment of tunnel tolls. In this connection, accelerating the construction of planned connecting roads, in particular the Central-Wan Chai Bypass, is an important element in improving the distribution of traffic amongst the three crossings.

Air Pollution in Districts with Heavy Traffic

4. **MR MARTIN LEE** (in Chinese): *President, regarding air pollution in districts with heavy traffic, will the Government inform this Council:*

- (a) *whether air pollution in Mong Kok, Causeway Bay and Central has shown signs of deterioration in the past three years;*
- (b) *of the policies the Government had implemented to reduce air pollution in districts with heavy traffic in the past five years, as well as the expenditure involved, and whether it has assessed the effectiveness of such policies; if it has conducted such an assessment, of the outcome; and*
- (c) *whether it has looked into the main sources of air pollution in districts with heavy traffic, as well as the impact of public transport and other commercial vehicles on air pollution in such districts?*

SECRETARY FOR TRANSPORT AND HOUSING (in the absence of Secretary for the Environment) (in Chinese): *President,*

- (a) In the past three years, the annual average concentrations of air pollutants measured at the three roadside air quality monitoring stations did not vary much and showed no sign of deterioration. The details are given in Table 1 of the Annex.
- (b) and (c)

Motor vehicle emissions are the main source of air pollution in districts with heavy traffic (such as Mong Kok, Causeway Bay and

Central). The air quality in these districts is also affected by regional air pollution.

To reduce air pollution at the roadside and in districts with heavy traffic, the Government has a standing policy to implement as soon as possible practicable motor vehicle emission reduction measures. In the past five years, the Government continued the implementation of the comprehensive motor vehicle emission control measures announced in 1999, and launched new measures to further improve air quality at the roadside and in districts with heavy traffic. Details of the measures and their expenditures are given in Table 2 of the Annex.

At present, the Government has fully implemented all the motor vehicle emission control measures announced in 1999. Air quality in districts with heavy traffic has already improved. Compared with 1999, the roadside concentrations of the major air pollutant emissions from vehicles, namely respirable suspended particulates (RSPs) and nitrogen oxides (NO_x), had been reduced by 15% and 24% respectively last year. The relevant air quality data are given in Table 3 of the Annex.

The new motor vehicle emission reduction measures that were launched by the Government in the past three years included measures that can provide continuous improvement in the overall emissions from motor vehicles. For example, more stringent standards for motor vehicle fuel and the emissions of newly registered vehicles will be introduced whenever practicable; a one-off grant to encourage vehicle owners to replace their pre-Euro and Euro I diesel commercial vehicles with new commercial vehicles compliant with the prevailing emission requirements for newly registered vehicles has been launched; tax incentives to encourage vehicle owners to use environmentally-friendly vehicles have been introduced. These measures will replace in coming years existing vehicles with more environmentally-friendly vehicles. Hence, air quality at the roadside and in districts with heavy traffic will improve continuously.

On the other hand, the Government is joining hands with the Guangdong Province to reduce regional air pollution in the Pearl River Delta to improve air quality in Hong Kong including districts with heavy traffic.

Table 1

Annual Average Concentrations of Air Pollutants Measured at
the three Roadside Monitoring Stations

<i>Annual average concentrations of air pollutants measured at the three roadside monitoring stations (micrograms per cu m)</i>			
<i>Air Pollutants</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
Respirable Suspended Particulate	75	75	73
Nitrogen Oxides	356	354	336
Sulphur Dioxide	22	21	22
Nitrogen Dioxide	96	96	97

Table 2

Motor Vehicle Emission Reduction Measures and their Expenditures
(in the period from 2003 to 2007)

1. Motor Vehicle Emission Reduction Measures Announced or Commenced in 1999

<i>Measures</i>	<i>Details</i>	<i>Expenditure Involved</i>
Liquefied petroleum gas (LPG) taxis incentive scheme	<p>The scheme began in August 2000 and completed in end 2003. A total of 18 100 taxis (99.8% of the taxi fleet) were replaced with LPG taxis under the scheme.</p> <p>Since August 2001, all newly registered taxis must be either LPG or petrol vehicles.</p> <p>Compared with diesel taxis, LPG taxis emit virtually no RSP and 50% less NO_x.</p>	<p>The total expenditure of the scheme was about \$720 million. (The expenditure between 2003 and 2007 was about \$43 million.)</p>
LPG or electric light bus incentive scheme	<p>The scheme began in August 2002 and completed in end 2005. A total of 2 370 public light buses (54% of the public light bus fleet) were replaced with LPG light buses under the scheme. The operation of public light buses is bounded by routes. Some of their routes do not have LPG filling stations nearby. Hence, public light bus operators can choose to use diesel or LPG light buses according to their operational situation.</p> <p>Compared with diesel light buses, LPG light buses emit virtually no RSP and 50% less NO_x.</p>	<p>The total expenditure of the scheme was about \$140 million. (The expenditure between 2003 and 2007 was about \$120 million.)</p>

<i>Measures</i>	<i>Details</i>	<i>Expenditure Involved</i>
Incentivize the installation of particulate reduction devices in pre-Euro diesel vehicles	The programme began in September 2000. It helped vehicle owners to retrofit their pre-Euro diesel vehicles with particulate reduction devices in stages for different vehicle classes. The programme was completed in end 2005. About 60 000 pre-Euro diesel vehicles (about 90% of eligible vehicles) participated in the programme. These devices can reduce about 30% of RSP emission from pre-Euro diesel vehicles.	The total expenditure of the scheme was about \$420 million. (The expenditure between 2003 and 2007 was about \$340 million.)
Strengthened control for smoky vehicles	Starting from 1999, an advanced smoke test was introduced to the smoky vehicle control programme. The fixed penalty for smoky vehicles was also raised from \$450 to \$1,000 in 2000. The number of smoky vehicles on the road has since reduced by about 80%.	It is part of Environmental Protection Department (EPD)'s normal duties and there is no breakdown on the expenditure involved.
Deploy more environmentally-friendly buses on busy corridors and reduce the number of bus trips in busy districts	The Transport Department (TD) has been discussing with the franchised bus companies on the deployment of more environmentally-friendly buses on busy corridors. As at end 2007, all of the franchised buses running along Yee Wo Street and over 80% of the franchised buses running along Hennessy Road, Queensway, Des Voeux Road Central and Nathan Road were of Euro II or above emission standard. The TD has been requesting franchised bus companies to study, through route cancellations, amalgamations, truncations and frequency reductions, to reduce the number of bus trips particularly on busy corridors, and consult District Councils at appropriate time. The TD will balance the public demand for bus services and improvement of the environment, and strengthen the bus service rationalization plan to further reduce the number of bus trips operated so as to improve the traffic and environment. From 1999 to September 2007, over 2 800 bus trips passing through Central and about 1 900 bus trips passing through Yee Wo Street, Causeway Bay per day were removed. In Kowloon, over 1 400 bus trips in Nathan Road were reduced.	It is part of TD's normal duties and there is no breakdown on the expenditure involved.

2. New Motor Vehicle Emission Reduction Measures Announced in Recent Years

<i>Measures</i>	<i>Details</i>	<i>Expenditure Involved</i>
Euro IV motor vehicle petrol and Euro IV emission standards for newly registered vehicles	Euro IV petrol specification was implemented in January 2005 to pave way for introducing in stages Euro IV emission standards for newly registered vehicles starting from 1 January 2006. Since 1 January 2007, all newly registered vehicles must comply with Euro IV emission standards. Compared with their Euro III models, a Euro IV light duty vehicles emit about 50% less and Euro IV heavy duty vehicles emit about 80% less RSP and 30% less NOx.	It is part of EPD's normal duties and there is no breakdown on the expenditure involved.

<i>Measures</i>	<i>Details</i>	<i>Expenditure Involved</i>
Incentivize the replacement of pre-Euro and Euro I diesel commercial vehicles by new commercial vehicles	<p>Starting from 1 April 2007, a one-off grant is being provided to encourage vehicle owners to replace early their pre-Euro and Euro I vehicles with one compliant with the prevailing emission standard, which is Euro IV emission standard. The grant will last until 30 September 2008 for pre-Euro vehicles and 31 March 2010 for Euro I vehicles.</p> <p>Compared with their Euro IV counterparts, pre-Euro vehicles emit 30 times more RSP and two times more NOx whereas Euro I vehicles emit 15 times more RSP and 1.5 times more NOx.</p>	<p>\$3.2 billion has been earmarked for this programme. The expenditure in 2007-2008 fiscal year was about \$170 million.</p>
Encourage the use of environmentally-friendly vehicles	<p>Starting from April 2007, a 30% reduction in the first registration tax, subject to a ceiling of \$50,000 per car, is offered to encourage people to buy environmentally-friendly petrol private cars. Compared with petrol private cars meeting the prevalent emission standards, environmentally-friendly petrol private cars emit about 50% less hydrocarbons and NOx, and travel about 40% more mileage per litre of fuel.</p> <p>Starting from April 2008, a reduction in the First Registration Tax on commercial vehicles is offered to encourage vehicle owners to choose environmentally-friendly commercial vehicles meeting Euro V standards. Compared with Euro IV vehicles, Euro V heavy duty diesel vehicles emit about 40% less NOx. For light duty diesel vehicles, Euro V models emit about 80% less RSP and 30% less NOx. As regards Euro V petrol/LPG vehicles, they emit about 30% less NOx.</p>	<p>It is part of EPD's normal duties and there is no breakdown on the expenditure involved.</p>
Euro V diesel	<p>From 1 December 2007, a concessionary duty rate for Euro V diesel of \$0.56 has been introduced and will last for two years.</p> <p>The Government plans to make Euro V diesel the statutory standard for motor vehicle diesel on 1 January 2009 and will review the concessionary duty arrangement beforehand.</p> <p>Compared with ultra-low sulphur diesel, Euro V diesel has 80% less sulphur content. Using Euro V diesel can reduce the sulphur dioxide and RSP emissions of diesel vehicles by 80% and 5% respectively.</p>	<p>It is part of EPD's normal duties and there is no breakdown on the expenditure involved.</p>

Table 3

Change in the Annual Average Concentrations of RSPs and NO_x Measured at Roadside Monitoring Stations from 1999 to 2007

<i>Air Pollutants</i>	¹ <i>Annual average concentration of air pollutant at roadside monitoring stations (micrograms per cu m)</i>		
	<i>1999</i>	<i>2007</i>	<i>Reduction (%)</i>
Respirable Suspended Particulates	91	77	15
Nitrogen Oxides	452	342	24
Sulphur Dioxide	27	21	22
Nitrogen Dioxide ²	99	95	4

- 1 As the present Mong Kok Roadside Monitoring Station was built and commenced operation in 2001, when comparing the change in the roadside air pollutant concentrations from 1999 to 2007, only data from the Central and Causeway Bay Roadside Monitoring Stations are used.
- 2 Apart from a small amount emitted directly from vehicles, nitrogen dioxide in the ambient air is mainly formed by NO_x reacting with pollutants formed by photochemical reactions such as ozone.

Financial Assistance Schemes for Post-secondary and Tertiary Level Students

5. **DR YEUNG SUM** (in Chinese): *President, regarding the Tertiary Student Finance Scheme — Publicly-funded Programmes (TSFS) and the Financial Assistance Scheme for Post-secondary Students (FASPS) (financial assistance schemes), will the Government inform this Council:*

- (a) *among the cases in which financial assistance in the form of a grant was provided under these financial assistance schemes in the current school year, of the respective number and percentage of those in which the grant is less than \$20,000, as well as the average amount of loan approved in such cases;*
- (b) *of the interest income of each financial assistance scheme in each of the past 10 years;*

- (c) *of the reasons for some cases turning into bad debts; together with a breakdown, by such reasons, of the bad debt cases of each financial assistance scheme in the past 10 years; and the respective numbers of defaulting cases in the past 10 years with over five, 10 and 15 instalments overdue under each financial assistance scheme;*
- (d) *of the additional charges payable by borrowers for defaulting loans, together with the name, amount and method of calculation of each item; and the total amount of additional charges payable in the defaulting loan cases in each financial assistance scheme in each of the past 10 years; and*
- (e) *whether it will change the existing low-interest loans under TSFS to interest-free loans; and whether it will increase the direct subsidy for students who are only eligible to apply for assistance under FASPS (especially sub-degree students) or offer interest-free loans for them to meet their living expenses; if it will, of the implementation date; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) In the current academic year (up to 31 January 2008), under the TSFS and the FASPS, the number of cases with a grant not exceeding \$20,000, the percentage of these cases against the total number of cases and the average amount of loan paid for such cases are as follows:

	<i>TSFS</i>	<i>FASPS</i>
Number of cases with a grant not exceeding \$20,000	9 012	2 288
Total number of cases with a grant	25 255	11 085
Percentage of cases with a grant not exceeding \$20,000 against the total number of cases with a grant	35.7%	20.7%
The average amount of loan paid for cases with a grant not exceeding \$20,000	\$10,209	Not Applicable ¹

¹ Starting from the 2006-2007 academic year, financial assistance under FASPS has been provided in the form of grant.

- (b) Loans under TSFS and FASPS are subject to an interest of 2.5% per annum. The borrower shall repay the loan and interest in 20 quarterly instalments within five years upon completion of study. The total amount of outstanding principal under repayment and amount of interest received under the two schemes from 2002-2003 to 2007-2008 academic years² are as follows:

Loan Scheme		Academic Year					
		2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
TSFS ³	Total outstanding principal under repayment (\$ million)	1,498.44	1,306.28	1,237.55	1,172.91	1,146.09	1,364.16
	Interest (\$ million)	44.24	37.39	33.70	31.70	42.78	14.80
FASPS	Total outstanding principal under repayment (\$ million)	2.77	17.95	51.70	102.19	164.41	229.96
	Interest (\$ million)	0.02	0.32	0.96	2.01	3.31	2.04

* As at 31 January 2008

- (c) The Student Financial Assistance Agency (SFAA) may consider writing off student loans under the following circumstances:
- (i) on compassionate grounds if the loan borrower has passed away;
 - (ii) where all efforts to contact the loan borrower and his indemnifier(s) have failed, and the loan proves irrecoverable; or
 - (iii) where write-off action is recommended by Department of Justice (DoJ).

From the 1998-1999 to 2007-2008 academic years, the number of write-off cases under TSFS and FASPS due to the above reasons is provided in the Annex.

² SFAA started to compile relevant statistics from the 2002-2003 academic year. Statistics before that year are not available.

³ The figures refer to the combined amount of the total outstanding principal and total interest received under TSFS and the Student Finance Assistance Scheme (SFAS). Breakdown of the figures under the two schemes is not available.

From the 2002-2003 to 2007-2008 academic years², the number of default cases under TSFS and FASPS with 5-9, 10-14 and 15 or more overdue quarterly instalments respectively is as follows:

<i>Loan Scheme</i>	<i>Quarterly instalments overdue</i>	<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
TSFS	5-9	680	838	889	942	861	864
	10-14	223	370	489	526	550	545
	15 or more	103	130	194	250	324	313
FASPS	5-9	0	0	6	12	39	92
	10-14	0	0	0	6	9	11
	15 or more	0	0	0	0	6	6

* As at 31 January 2008

- (d) Statistically, the SFAA classifies cases with two or more consecutive overdue quarterly instalments as default cases. This does not include cases where deferment of repayment (for example, due to financial hardship, further studies or serious illness) has been approved. If loan borrowers of TSFS and FASPS fail to settle their quarterly instalment by the due date, they will be required to settle the overdue instalment together with a 5% surcharge. The SFAA is reviewing whether and how recovery costs and administrative costs arising from the recovery action should be charged pursuant to the undertaking signed by the loan borrowers.

From the 2002-2003 to 2007-2008 academic years², the total amount of surcharge received each year under TSFS and FASPS is as follows:

	<i>Loan Scheme</i>	<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
Surcharge	TSFS ⁴	2.61	3.60	3.86	3.81	3.21	1.23
(\$ million)	FASPS	0.00	0.01	0.03	0.05	0.10	0.06

* As at 31 January 2008

⁴ The amount includes the surcharge received under TSFS and SFAS. Breakdown of surcharge received under the two schemes is not available.

- (e) The Audit Commission recommended in its report published in 1985 that loans under TSFS (formerly known as the Local Student Finance Scheme) should be interest-bearing in order to ensure more effective use of public resources. Subsequently an interest of 2.5% per annum was charged starting from the 1987-1988 academic year.

Loans provided under TSFS and FASPS are not subject to any interest during the study period. Hence, the effective interest rate over the entire loan period depends on the duration of the study period as well as the repayment period. Assuming a loan borrower pursues a three-year programme, takes out a loan of the same amount each year and repays the loan over a period of five years, the effective interest is just 1.4%, which is reasonable. In the light of the above background and consideration concerning the level of interest charged, we have no intention to provide the loan on an interest-free basis.

We have recently published the "Report of Phase 2 Review of the Post-secondary Education Sector" and recommended therein further improvements to FASPS, including the provision of means-tested, low-interest loans to eligible students to cover their living expenses. The recommendations will be implemented upon approval by the Finance Committee of the Legislative Council.

Annex

From the 1998-1999 to 2007-2008 academic years, the respective numbers of write-off cases under TSFS and FASPS are as follows:

<i>Reason for Write-off</i>	<i>Academic Year</i>									
	<i>1998-1999</i>	<i>1999-2000</i>	<i>2000-2001</i>	<i>2001-2002</i>	<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
TSFS										
Decease of loan borrower	10	6	6	15	16	14	18	16	6	2
Loan proved to be irrecoverable	0	0	1	0	0	0	0	0	0	0
On the DoJ's advice	0	0	0	0	0	13	0	0	0	0
FASPS#										
Decease of loan borrower				0	1	0	3	0	6	2
Loan proved to be irrecoverable	NA	NA	NA	0	0	0	0	0	0	0
On the DoJ's advice				0	0	0	0	0	0	0

* As at 31 January 2008

FASPS was introduced with effect from the 2001-2002 academic year.

Operation of Supplementary Medical Professions Council

6. **DR JOSEPH LEE** (in Chinese): *President, the Supplementary Medical Professions Ordinance (Cap. 359) provides for a statutory framework for the registration, discipline and management of medical laboratory technologists, occupational therapists, optometrists, physiotherapists and radiographers. While the Ordinance stipulates that the Chairman of the Supplementary Medical Professions Council (SMPC) is appointed by the Chief Executive, it does not provide that the chairmanship shall not be taken up by a member of the supplementary medical professions. In this connection, will the Government inform this Council:*

- (a) *whether regular reviews had been conducted by the Government on the operation of the SMPC during the 20-plus years since its establishment, and whether it has considered establishing a council for each of the above five supplementary medical professions; if there is no such consideration, of the reasons for that; and*
- (b) *whether it will amend the above Ordinance to stipulate clearly that the chairmanship of the Council must be taken up by a member of the above professions; if it will, of the relevant timetable; if not, the reasons for that?*

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

- (a) We have all along maintained dialogues with various health care professions (including the five professions regulated by the SMPC) to exchange views on the existing regulatory systems and other concerns of the professions.

The SMPC was established in 1981 when the five professions were still in their early stage of development in Hong Kong. In this connection, the Government took reference from overseas experience and set up a multidisciplinary platform for these professions to draw on one another's experience in the development of their respective regulatory frameworks. Under the present arrangement, the SMPC is responsible for co-ordinating and supervising the work of the Boards underpinning it, and provides appropriate advice and assistance in relation to issues involving two or more of the five professions. Each profession has its own

regulatory Board responsible for the registration and discipline of its own members, and promotion of standards of professional practice and conduct. This arrangement helps ensure consistency in the services provided to the public by the supplementary medical professions, and facilitates effective communication and co-operation. Currently, the SMPC and its five Boards are operating smoothly. The Administration has no plan at this stage to establish a council for each of the five supplementary medical professions.

Since the establishment of the SMPC more than 20 years ago, the five professions have gradually matured and have gained the recognition of the Hong Kong community. At the same time, some other supplementary medical professions have expressed interest for inclusion in the statutory regulatory framework. To encourage the supplementary medical professions to develop their expertise under the principle of professional autonomy, and to further enhance our primary care and rehabilitation services to tie in with the health care reform, we plan to review the structure, composition and operation of the SMPC within the next term of the Legislative Council.

- (b) Under the principle of professional autonomy along with a fair degree of lay participation, the current legislation allows the chairmanship of the SMPC to be assumed by a member of the relevant professions or one from other sectors. The appointment of the SMPC chairman is made on an *ad personam* basis taking into consideration the candidates' abilities, expertise, experience, integrity and commitment to public service. The professional background of the candidates can be one of the considerations, but appointment decision is made after taking all considerations into account. At present, the Administration has no plan to amend the legislation to prescribe any requirement on the professional background of the chairman.

Transparency of and Public Participation in Heritage Assessment

7. **MR FRED LI** (in Chinese): *President, regarding the assessment on whether a place, building, site or structure should be declared a monument or graded as a historic building, will the Government inform this Council whether there are guidelines specifying that:*

- (a) *the relevant assessment reports must be uploaded onto the Government website for public information, or such reports must be made available for public inspection; if not, whether the Government will consider formulating relevant measures, and whether arrangement can be made to upload the relevant assessment reports in cases which involved the declaration of monuments or grading of historic buildings in the past five years onto the Government website for public inspection;*
- (b) *the relevant meetings, at which the Antiquities Advisory Board (AAB) discusses the above individual assessment cases, should be held in public; if not, whether the Government will request the AAB to consider formulating the relevant guidelines; and*
- (c) *the AAB must conduct public hearings on the above individual assessment cases to allow the public to give views on the cases concerned to the Board; if not, whether the Government will request the AAB to consider formulating the relevant guidelines?*

SECRETARY FOR DEVELOPMENT (in Chinese): President,

- (a) All discussion papers and minutes of the open meetings of the AAB, including documents on the assessment, development and conservation proposals of monuments and historic buildings, are uploaded onto the website of the AAB for public information. In addition, the full list of monuments (together with brief descriptions) and the full list of graded historic buildings have been uploaded onto the Internet. The public can also view the filed information on monuments and graded historic buildings available at the reference library of the Hong Kong Heritage Discovery Centre.
- (b) To enhance its transparency, the AAB has held open meetings for public observation since September 2005. At present, most topics, including the grading of historic buildings and related development as well as conservation proposals (for example, the grading of Queen's Pier and the adaptive re-use of Central Police Station Compound) are discussed at these open meetings. If confidential information or sensitive issues are involved in the case of a particular historic building, such as private property rights, the AAB will discuss the case in a closed meeting. In case the AAB deems it appropriate and necessary (for example, a case of public concern), it

will inform the media and the public of the result of the deliberations after the meeting. A case in question is the discussion on the case of King Yin Lei early this year.

- (c) As explained in part (b) above, to enhance its transparency, the AAB has been holding open meetings for public observation since September 2005. However, not many cases are controversial in nature and the public may not be interested in attending public hearing on each and every case. In order to strike a balance between the effectiveness of public hearings and the limited resources available, we do not consider it necessary to hold public hearing for each and every case. Nevertheless, to enhance its transparency, the AAB will, on a case-by-case and need basis, hold a public hearing to listen to the views of different sectors of the community and concern groups on the conservation or adaptive re-use of a historic building that attracts much public attention before making an assessment on that particular building.

Meanwhile, as pledged by the Chief Executive in his 2007 policy address, we will set up the Commissioner for Heritage's Office to enhance public engagement and step up our promotional efforts. The Development Bureau has conducted a series of public engagement exercises for a number of important conservation and adaptive re-use proposals. For example, in the case of the adaptive re-use of the Central Police Station Compound, the Bureau attended a briefing for the Central and Western District on 29 October 2007 as well as a public forum for the residents and shop operators in the vicinity of the Compound on 12 March 2008. As for the case of the former site of the Central School on Hollywood Road, the Bureau organized an open day from 28 to 29 March 2008 and a public seminar will be held on 26 April 2008.

Disclosure to Prospective Property Buyers of Requirement to Provide Facilities in Private Developments for Public Use

8. **MR LEE WING-TAT** (in Chinese): *President, in connection with the disclosure by property developers and estate agents to prospective property buyers that certain facilities in private developments shall be open for public use in accordance with the land leases or deeds of dedication concerned, will the Government inform this Council:*

- (a) *given that some sales brochures or property information provided by estate agents to prospective property buyers had depicted the club house and public open space on the podium as "club house with podium garden for exclusive use of residents", while some sales brochures stated that "owners shall be responsible for the maintenance of various items spelt out in clause 26(a) of the Special Conditions of the Land Grant" but failed to provide the contents of the clause, whether the Government and the Estate Agents Authority (EAA) are aware of such situations;*
- (b) *whether the Government has studied if consumers have been misled by such sales brochures and property information into believing wrongly that the public open space in the developments were for residents' exclusive use, and whether such sales brochures and property information have listed out the obligations to be discharged by property owners;*
- (c) *whether it can set out in detail the information to be provided in sales brochures as stipulated in the Lands Department Consent Scheme, and whether the scope and conditions of opening up the facilities (such as open space) for public use in accordance with the land leases or deeds of dedication as well as the relevant obligations of owners are included in the information; if they are not included, whether the Government will amend the relevant requirements so that prospective buyers can have access to the relevant information through such sales brochures; and*
- (d) *whether it knows if the information referred to in part (c) are included in the guidelines issued by the Real Estate Developers Association of Hong Kong (REDA) to its members on sales brochures; if such information is not included, whether it will ask the Association to revise the relevant guidelines?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, in accordance with the Lands Department's Consent Scheme and the Guidelines for Sales Descriptions of Uncompleted Residential Properties issued by the REDA, developers should provide in the sales brochures specified property information, including salient points of the Government lease, and the information so provided must be accurate at the time of printing of the sales brochures. In addition, in approving pre-sale applications from developers, the Lands Department will clearly state in its pre-sale consent letter that apart from

strict compliance with the requirements of the Consent Scheme, developers should provide in the sales brochures information on the public facilities or public open space which developers (subsequently owners) are responsible for managing, operating and maintaining at their own expenses. The sales brochures should also contain a statement indicating that owners will have to meet a proportion of the relevant expenses in the management charges.

My reply to the four-part question is as follows:

- (a) Developers are responsible for ensuring the accuracy of all the information contained in the sales brochures. They may be legally liable if the sales brochures contain any inaccurate, misleading or false information. Separately, the EAA has issued practice circulars requiring estate agents to provide accurate property information to prospective purchasers. In case of non-compliance with the practice circulars or provision of inaccurate and misleading information, the EAA can undertake disciplinary actions against the estate agents or suspend their licences under the Estate Agents Ordinance. We have recently received comments and complaints about developers not having disclosed clearly salient points of the Government leases in the sales brochures of certain developments. We have followed up on the cases concerned.

(b) and (c)

As mentioned above, developers are required under the Consent Scheme to provide in sales brochures salient points of the Government lease (including lot number, lease term, user restrictions on the lot, onerous lease conditions which would restrict purchasers' usual legal rights) and other specified items of information. These include general description of the development; the identity of the intended manager if known; names of contractors and Authorized Persons; location plan showing prominent neighbouring facilities or features; layout plan showing communal facilities within the development; salient points of the Deed of Mutual Covenant (DMC) (including definition of common areas; terms of appointment of the management company; the basis of fixing management fees; the management fee deposit); anticipated completion date of the building; detailed plan of a typical floor; schedule of flat size; fittings and finishes; the location, number and dimensions of the carparks; date of printing of sales brochures; miscellaneous payments upon delivery of units to

owners; slope maintenance responsibilities and contributions by owners; statement on the payment of preliminary deposit; and the amount to be forfeited in case of cancellation of the Sale and Purchase Agreement.

In addition, in approving pre-sale applications from developers, the Lands Department will clearly state in its pre-sale consent letter that developers should provide in the sales brochures information on public facilities or public open space which developers (subsequently owners) are responsible for the managing, operating and maintaining at their own expenses. The sales brochures should also contain a statement indicating that owners will have to meet a proportion of the relevant expenses in the management charges.

In view of the relevant cases we have received and public concern about the provision of public facilities and public open space by private residential developments, we will explore with relevant parties, including the REDA, Consumer Council and the EAA, ways to further enhance the disclosure in sales brochures of salient points of the Government lease, in particular information on areas which are to be opened for public use and maintained at owners' expenses.

- (d) Under the REDA guidelines, developers are required to provide specified property information, including salient points of the Government lease and owners' responsibilities to construct and maintain any facilities prescribed in the lease. The REDA has also asked developers to use larger prints or texts of different colour in the sales brochures to highlight the relevant clauses about owners' responsibilities regarding the maintenance of public facilities. Prospective purchasers can also refer to the Government lease or DMC for details of the relevant clauses. The REDA has already issued guidelines requiring developers to provide a copy of the Government lease and DMC at the sales offices for free inspection by prospective purchasers.

In addition, the REDA has requested developers to appoint an independent auditor to certify that the sales arrangements and information contained in the sales brochures comply with the requirements of the REDA guidelines and to submit to it the relevant independent audit report.

Management of Chater Road Pedestrian Precinct

9. **MISS CHOY SO-YUK** (in Chinese): *President, many times on Sunday, I found that different types of activities were carried out in the Chater Road Pedestrian Precinct. As a result, the precinct was very congested. Pedestrians not only have no room for activities, but even find it very difficult to pass through the Precinct, and they found it very inconvenient. In this connection, will the Government inform this Council:*

- (a) *of the number and nature of complaints received by the authorities relating to the above situation in the past three years;*
- (b) *given that according to the information on the website of the Transport Department, two of the objectives for implementing pedestrian schemes, including setting up pedestrian precincts, are to improve pedestrian safety and mobility as well as to improve the overall pedestrian environment, whether the Government has assessed if the situation of the above pedestrian precinct contradicts these two objectives; if such an assessment has been made, of the outcome; and*
- (c) *whether it will review the current utilization of the above pedestrian precinct and introduce improvement, so as to achieve the objectives mentioned in part (b); if it will, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): *President, my reply to the three parts of the question is as follows:*

- (a) *In the past three years, we received one complaint about obstruction to pedestrian flow by the activities carried out in the Chater Road Pedestrian Precinct on Sundays. The complaint was received in January this year.*
- (b) and (c)

The setting up of pedestrian precincts can separate vehicular and pedestrian traffic, thereby improving the overall pedestrian environment as well as pedestrian safety and mobility. The Transport Department considers that the overall pedestrian

environment, road safety, as well as pedestrian mobility and vehicular circulation have been improved at the pedestrian precincts, including Chater Road Pedestrian Precinct on Sundays. The objectives of pedestrianization have been met. If any activities carried out in pedestrian precincts cause obstruction, relevant authorities will take appropriate enforcement action. We will closely monitor the use of pedestrian precincts to ensure that the objectives are met.

Public Transport Service Plying Route 8

10. **MR JAMES TO** (in Chinese): *President, the section of Route 8 between Sha Tin and Cheung Sha Wan opened on 21 March this year. During my earlier site visit, I found that the works on the bus-bus interchange stations located at the exits of Eagle's Nest Tunnel on that section had also been completed. However, it has been reported earlier that Kowloon Motor Bus Company (1933) Limited does not have any plan in the short term to introduce bus routes plying that section, and will consider whether or not to modify the existing bus routes to include that section after another section of Route 8 between Tsing Yi and Cheung Sha Wan has opened. Moreover, I have also been told by the Transport Department (TD) that it will consider approving the introduction of public light bus (PLB) routes plying Route 8. In this connection, will the Government inform this Council:*

- (a) *of the estimated number of bus routes which can be accommodated by the 100-metre long modal interchange links for buses located along the eastbound and westbound carriageways of Route 8, taking into account the design of the project or with reference to the information on similar modal interchange links of other tunnels;*
- (b) *whether the Government has discussed with various franchised bus companies before the opening of the above section on introducing bus routes plying the section; given that the works of the section between Tsing Yi and Cheung Sha Wan will not affect the traffic plying between Sha Tin and Kowloon via Route 8, whether the Government knows why the franchised bus companies do not introduce bus routes plying between Sha Tin and Kowloon via Route 8; whether the Government has discussed with the franchised bus companies the introduction of the bus routes concerned*

expeditiously upon the opening of the above section; if it has, of the progress and the possibility of speeding up the progress of introducing the bus routes concerned;

- (c) of the progress of introducing the above PLB routes and the anticipated time for successful introduction of such PLB routes; and*
- (d) whether the Government has estimated the losses incurred so far by not being able to introduce the above bus routes, such as the amount of tunnel tolls forgone, as well as the social costs arising from bus congestion on other highways?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

- (a) The TD projects that each of the about 100-metre long bus bays located along both carriageways of the section of Route 8 between Sha Tin and Cheung Sha Wan can accommodate around 10 bus routes during peak hours, taking into account the works design and with reference to the information on similar bus bays of other tunnels. However, the actual number of bus routes that can be accommodated by these bus bays depends on factors such as the frequency of the bus routes stopping at that stop as well as the boarding and alighting time of passengers.
- (b) Prior to the opening of Route 8, the TD has discussed with the franchised bus companies the possibility of introducing bus services plying Route 8. Having regard to the fact that there are adequate public transport services between Sha Tin and the West Kowloon areas, the TD does not have any plan to introduce new bus routes plying Route 8 at present. At the same time, the TD has been discussing with the bus companies the possibility of diverting the existing bus routes to Route 8. The bus companies indicated that such diversion would affect some of the existing passengers as the diverted routes would not cover some of the existing en route stops. In addition, the diversion would increase the journey distance of some of the routes and hence the travelling time of passengers. The bus companies therefore have not arranged for bus services to ply the section of Route 8 between Sha Tin and Kowloon at this stage. The TD will continue to liaise with the franchised bus

companies to jointly examine the need to provide franchised bus services on Route 8.

- (c) In view of the adequate public transport services provided between Sha Tin and the West Kowloon areas, the TD has no plan to introduce green minibus routes plying Route 8 at this stage.
- (d) In considering whether to introduce new bus routes plying Route 8, the major factors taken into account by the TD include passenger demand, traffic conditions, coverage of existing bus networks and impact on the operational efficiency of the bus networks. However, the TD would not increase the number of bus routes with a view to increasing the tunnel toll revenue. As there are already adequate public transport services between Sha Tin and the West Kowloon areas, the introduction of extra new bus routes plying Route 8 will not be able to help improve the traffic conditions. On the contrary, it would increase the overall traffic flow and adversely affect the other busy corridors where the new routes operate.

e-Certs Embedded in Smart Identity Cards

11. **DR DAVID LI:** *President, in order to promote electronic commerce, the Hongkong Post (HKP) offered the public the option of embedding a digital certificate (e-Cert) in their smart identity cards (IDs), for free use in the first year, between June 2003 and March 2007. The free use period had subsequently been extended several times, and eventually was extended to three years for all smart ID e-Certs issued on or before 31 March 2007. In November 2006, the Government awarded a contract to an outside contractor (the Contractor) to run the e-Cert programme for four years. In this connection, will the Government inform this Council:*

- (a) *of the total number of the above free e-Certs which were issued between June 2003 and the end of 2004, and were therefore due for renewal in or before the end of 2007; among them, the number of those which were renewed upon the expiry of the three-year free use period and the total revenue collected thereon;*
- (b) *whether the HKP or the Contractor is responsible for meeting the cost of managing the renewal exercise for smart ID e-Certs; if the HKP is responsible, of the costs of managing the renewal exercise*

up to the end of 2007, including but not limited to the costs of publicity, printing, mailing, computer equipment, web development and personnel;

- (c) of the standard number of reminder notices sent to a holder of smart ID e-Cert which is due for renewal, broken down by the means (that is, mail, e-mail and Short Message Service) of sending the notices; and*
- (d) whether the contract between the HKP and the Contractor stipulates a minimum number of valid e-Certs during the contract period; if so, of the nature of any associated penalties or fees should the number of valid e-Certs fall below the minimum requirement?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT:

President, the Hongkong Post Certification Authority (CA) was set up in January 2000 to issue e-Certs under the operation of the HKP. With effect from 1 April 2007, the Government has outsourced the operation of the e-Cert services to the Contractor for a period of four years. The Contractor receives no revenue from the HKP but is entitled to collect and retain subscription and renewal fees from e-Cert subscribers. The Contractor is responsible for the full operating cost in providing the e-Cert services. These arrangements mean that the Contractor bears the commercial risk and upside related to subscriber numbers and therefore has a commercial incentive to improve ease of use of the e-Cert and to maximize renewals. The Government monitors the service provided by the Contractor to the public and the Postmaster General remains the recognized CA under the Electronic Transactions Ordinance (ETO) (Cap. 553).

Regarding the questions raised by Dr the Honourable David LI, my reply is as follows:

- (a) The number of free e-Certs that were issued between June 2003 and the end of 2004 amounted to 702 520, of which 1 347 of the smart ID Card holders have renewed their embedded e-Cert before the end of 2007. The revenue collected from renewal of embedded e-Cert was \$67,350.
- (b) When the first batch of free embedded e-Cert began to expire starting from 2006, the renewal of embedded e-Cert was treated as part of the normal e-Cert subscription and no itemized cost of

renewal is available. After the e-Cert operation was outsourced starting from 1 April 2007, the cost of managing the e-Cert subscription including the renewal of embedded e-Cert was borne by the Contractor.

- (c) Reminders for renewal of embedded e-Cert are posted on the HKP's website. E-mail reminders are only sent to e-Cert holders where e-mail addresses are provided to the HKP. Up to the end of 2007, around 230 000 e-mail reminders had been sent.
- (d) There is no requirement of minimum number of valid e-Certs under the contract between the HKP and the Contractor.

Filling Vacancies of Doctors in Hospital Authority

12. **DR KWOK KA-KI** (in Chinese): *President, it is learnt that a vacancy arising from the retirement of a Consultant of Tuen Mun Hospital was left vacant for a long time before being filled by a promoted doctor, resulting in the medical services of the hospital being adversely affected in the period concerned. In this connection, will the Government inform this Council whether it knows:*

- (a) *in each of the past three years, the respective year-end numbers of incumbent Consultants, Associate Consultants and Senior Medical Officers (SMOs) in public hospitals, as well as the respective numbers of those who left and those who were appointed to such posts;*
- (b) *the respective average periods for which vacancies of Consultants, Associate Consultants and SMOs in public hospitals in the past three years were left vacant before being filled;*
- (c) *the respective five longest periods for which vacancies were left vacant among those vacancies of Consultants, Associate Consultants and SMOs in hospitals under the New Territories West Cluster in the past three years, and the reasons for such vacancies being left vacant for a prolonged period; and*
- (d) *if the Hospital Authority (HA) has considered taking measures to expedite the filling of vacancies of doctors; if it has not, of the reasons for that?*

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

- (a) The numbers of Consultants, Associate Consultants and SMOs who are in service, leaving service and newly appointed in all hospital clusters under the HA in each of the past three years are shown in Annex.

According to the data in recent years, it takes seven years on average for a Resident to obtain a specialist qualification and about another four years for promotion to SMO or Associate Consultant after acquiring the specialist qualification. For an SMO or Associate Consultant to be promoted to Consultant, it needs an average of about six years. The number of doctors appointed in various hospital clusters varies depending on the structure of the respective specialty and the service demand in the respective cluster.

- (b) The HA does not have any statistics on the average lead time between a doctor leaving service and the vacancy being formally filled.

But in general, when a doctor leaves service, the cluster management will first conduct a review to see if there is a need to fill the vacancy having regard to the service demand and manpower deployment. In parallel, acting appointment by a suitable doctor will be arranged to ensure that the services will not be affected. If the vacancy has to be filled, the hospital concerned will issue a vacancy circular within two weeks to proceed with the recruitment exercise. An assessment panel will then be set up within one and a half months thereafter for conducting an interview with the applicants. If no suitable applicant is found after the first round of interview, another round of recruitment and interview will normally be conducted within one to three months depending on the prevailing manpower supply. After a suitable applicant is selected, arrangement will be made for him/her to be transferred out from his/her original post and to take up the new position within two to three months. As such, the time for an incoming doctor to formally take up the vacant position varies from case to case, depending on the time required for the recruitment and selection

exercise, the availability of a suitable candidate and the time when the appointed staff member can formally report for duty.

- (c) In the past three years (that is, from 2005 to 2007), the average lead time between the departure of outgoing Consultants, Associate Consultants and SMOs in the New Territories West Cluster and the arrival of incoming officers to formally fill the vacancies was two and a half months. The average lead time in the five most prolonged cases of unfilled vacancies ranged between four and nine months. The reasons include the absence of professionally qualified candidates. Furthermore, the appointment of Consultants involves strict selection procedures. The applicants are subject to assessment by a selection board comprising a number of professionals and this usually involves a longer selection period. Since departments would make corresponding manpower deployment and service arrangement upon the departure or retirement of a staff member, normally the services would not be affected.
- (d) Between 2005-2006 and 2007-2008, the overall number of doctors (full-time equivalents) in all hospital clusters saw an increase of 39.3, 47 and 107.8 each year respectively. This shows that the overall number of doctors in the HA keeps on increasing.

Furthermore, the HA has put in place various measures for retaining its doctors. These include: (i) introduction of more flexible employment terms and remuneration package for part-time employment since August 2007 to attract more part-time doctors; (ii) implementation of salary adjustment for Residents from Point 27 to 38 to Point 30 to 44B of the HA General Pay Scale (HGPS) since October 2007; awarding additional salary increments to doctors who have successfully passed a specialist examination; and adjustment of starting salary for Associate Consultants from Point 40 to 45 of the HGPS; (iii) allowing qualified contract doctors to apply for transfer to full-time employment on permanent terms; (iv) provision of better training and development opportunities to facilitate the professional development of doctors; and (v) carrying out pilot programmes on doctor work reform to improve the working environment of doctors.

Annex

Number of Consultants, Associate Consultants and SMOs
who are in service, leaving service and newly appointed in all hospital clusters
in each of the past three years

		2005-2006		2006-2007		2007-2008	
		<i>Consultants</i>	<i>Associate Consultants/ SMOs</i>	<i>Consultants</i>	<i>Associate Consultants/ SMOs</i>	<i>Consultants</i>	<i>Associate Consultants/ SMOs</i>
Hong Kong East Cluster	In service	51	103.58	53	102	55	113.05
	Leaving service	0	5	2	3	0	8
	Appointed	3	14	5	9	3	28
Hong Kong West Cluster	In service	65.73	117.06	70.5	114.27	85.49	111.45
	Leaving service	2	10	2	12	4	12
	Appointed	10	27	9	18	19	25
Kowloon Central Cluster	In service	74.38	134.08	76.15	135.95	78.31	140.87
	Leaving service	2	9	4	10	5	5
	Appointed	4	20	7	15	7	18
Kowloon East Cluster	In service	48.9	113.2	48.24	114.12	48.1	119.62
	Leaving service	0	6	2	5	8	12
	Appointed	0	15	1	6	5	24
Kowloon West Cluster	In service	120.31	243.23	122	255.23	122.38	285.31
	Leaving service	6	7	7	17	7	17
	Appointed	2	23	8	37	7	50
New Territories East Cluster	In service	65.32	163	68.51	176.57	75.51	182.91
	Leaving service	5	10	6	17	3	21
	Appointed	7	29	9	41	10	34
New Territories West Cluster	In service	60.39	101.82	62.08	109.82	64.13	130.23
	Leaving service	4	3	5	9	6	4
	Appointed	2	9	6	21	7	30

Note:

1. The above manpower is calculated on a full-time equivalent basis, including all medical officers on permanent, contract and part-time terms in the HA.
2. Figures on the number of doctors exclude medical interns and dentists.
3. The number of doctors in service refers to the number of serving doctors as at 31 March of that year, and the number of doctors leaving service/appointed refer to number of doctors leaving service/appointed during that particular year.
4. The number of doctors leaving service refers to the doctors who have left the HA, excluding those who were transferred internally.
5. The number of doctors appointed refers to newly recruited doctors and doctors who got an internal promotion, excluding those who were transferred laterally.

Handling of Sexual Harassment Cases by Police

13. **MS EMILY LAU** (in Chinese): *President, on 5 October last year, the police arrested 15 conservationists who protested against the demolition work at Lee Tung Street in Wan Chai. They were detained for investigation overnight and strip-searched in a police station. Some of them even claimed that they had been sexually harassed by police officers. In this connection, will the executive authorities inform this Council whether:*

- (a) *they have investigated if any police officer has committed acts of sexual harassment; if so, of the investigation findings, and the follow-up actions to be taken; if not, the reasons for that; and*
- (b) *they have provided training courses on how to handle sexual harassment cases for police officers; if so, of the details, including the annual number of police officers receiving such training; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) In view of the ongoing judicial proceedings in respect of the Lee Tung Street case, it would be inappropriate for the Administration to provide any information that may directly or indirectly prejudice those proceedings.
- (b) The induction training courses provided by the Police College for all newly-recruited police officers include a module on equal opportunities matters. The training module covers the definition of "sexual harassment" under the Sex Discrimination Ordinance (Cap. 480), the law-enforcement powers conferred on the police under the Ordinance as well as the police procedures for handling cases concerning sexual harassment.

In 2007, a total of 1 186 Recruit Police Constables and 110 Probationary Inspectors attended the abovementioned induction training.

Non-means Tested Loan Schemes for Tertiary Students

14. **MR SIN CHUNG-KAI** (in Chinese): *President, regarding the three non-means tested loan schemes, which are applicable respectively to full-time tertiary students who are covered by the Tertiary Student Finance Scheme — Publicly-funded Programmes (TSFS), full-time students who are covered by the Financial Assistance Scheme for Post-secondary Students (FASP) and eligible students who are not covered by TSFS and FASP, will the Government inform this Council:*

- (a) *of the following in respect of each loan scheme each year since 1998:*
 - (i) *the interest income, and how much of it is related to the 1.5% risk-adjusted factor (RAF);*
 - (ii) *the respective total amounts of interest paid by borrowers during their study periods and on completion/cessation of their studies;*
- (b) *of the reasons for some cases turning into bad debts, together with a breakdown, by such reasons, of the bad debt cases of each loan scheme since 1998; the respective numbers, since 1998, of defaulting loan cases of each loan scheme with over 15, 20 and 25 instalments overdue;*
- (c) *of the additional charges payable by borrowers for defaulting loans, together with the name, amount and method of calculation of each item; the total amount of such additional charges payable in the defaulting loan cases in each loan scheme since 1998; and*
- (d) *given that the majority of borrowers have repaid their loans on time, whether the Government will cancel the charging of interest based on the RAF in various loan schemes; if it will, of the implementation date; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): *President,*

- (a) **The Non-means Tested Loan Scheme (Scheme 1) applicable to full-time students eligible for the TSFS, the Non-means Tested Loan**

Scheme (Scheme 2) applicable to full-time students eligible for the FASP, and the Non-means Tested Loan Scheme (Scheme 3) applicable to students not covered by TSFS and FASP are operated on a non-means tested and unsecured basis. Loans provided under these schemes are subject to an interest charged on a no-gain-no-loss and full-cost recovery basis. The prevailing interest rate is 4.382% per annum, inclusive of the RAF concerned. The loan borrower is required to repay the loan and interest in 40 quarterly instalments within 10 years upon completion of study. From the 2002-2003 to 2007-2008 academic years¹, the total amount of outstanding principal under repayment and amount of interest received under these schemes are as follows:

<i>Loan Scheme</i>		<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
Scheme 1	Total outstanding principal under repayment (\$ million)	445.68	558.01	692.74	770.94	829.00	954.99
	Interest (\$ million)	29.22	34.14	44.01	70.62	77.86	40.00
Scheme 2	Total outstanding principal under repayment (\$ million)	22.52	77.67	208.57	359.97	543.36	788.40
	Interest (\$ million)	0.94	3.45	9.12	24.94	39.10	24.02
Scheme 3	Total outstanding principal under repayment (\$ million)	112.52	328.39	623.29	943.93	1,175.08	1,321.34
	Interest (\$ million)	4.12	13.63	28.38	62.39	78.31	45.42

* As at 31 January 2008

¹ Student Financial Assistance Agency (SFAA) started to compile relevant statistics from the 2002-2003 academic year. Statistics before that year are not available.

From the 1998-1999 to 2007-2008 academic years, the amount of interest received from the RAF under the three non-means tested loan schemes is provided in Annex 1.

Under the three non-means tested loans schemes, the loan borrower is not required to settle any interest payment during the study period. The interest accrued during the study period will be repaid together with the instalment interest upon completion of study. From the 2002-2003 to 2007-2008 academic years¹, the amount of interest received each year under the non-means tested loan schemes is as follows:

	<i>Loan Scheme</i>	<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
Study interest (\$ million)	Scheme 1	10.64	11.93	15.53	22.21	21.44	11.80
	Scheme 2	0.48	1.14	2.71	7.04	9.38	6.14
	Scheme 3	1.76	4.20	7.79	14.14	14.37	9.22
Instalment interest (\$ million)	Scheme 1	18.58	22.21	28.48	48.41	56.42	28.20
	Scheme 2	0.46	2.31	6.41	17.90	29.72	17.88
	Scheme 3	2.36	9.43	20.59	48.25	63.94	36.20

* As at 31 January 2008

¹ SFAA started to compile relevant statistics from the 2002-2003 academic year. Statistics before that year are not available.

- (b) The SFAA may consider writing off student loans under the following circumstances:
- (i) on compassionate grounds if the loan borrower has passed away;
 - (ii) where all efforts to contact the loan borrower and his indemnifier(s) have failed, and the loan proves irrecoverable;
or
 - (iii) where write-off action is recommended by the Department of Justice (DoJ).

From the 1998-1999 to 2007-2008 academic years, the number of write-off cases under the three non-means tested loan schemes due to the above reasons is provided in Annex 2.

From the 2002-2003 to 2007-2008 academic years¹, the number of default cases under the three non-means tested loan schemes with 15 to 19, 20 to 24 and 25 or more overdue quarterly instalments respectively is as follows:

<i>Loan Scheme</i>	<i>Quarterly instalments overdue</i>	<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
Scheme 1	15-19	10	39	98	110	188	260
	20-24	0	0	9	39	18	22
	25 or more	0	0	0	3	36	34
Scheme 2	15-19	0	0	0	10	39	50
	20-24	0	0	0	0	1	5
	25 or more	0	0	0	0	0	0
Scheme 3	15-19	0	13	11	30	270	533
	20-24	0	0	4	7	6	7
	25 or more	0	0	0	1	8	7

* As at 31 January 2008

¹ SFAA started to compile relevant statistics from the 2002-2003 academic year. Statistics before that year are not available.

- (c) Statistically, the SFAA classifies cases with two or more consecutive overdue quarterly instalments as default cases. This does not include cases where deferment of repayment (for example, due to financial hardship, further studies or serious illness) has been approved. If loan borrowers of non-means tested loan schemes fail to settle their quarterly instalment by the due date, they will be required to settle the overdue instalment together with an overdue interest equal to the average of the best lending rates of the note-issuing banks. The SFAA is reviewing whether and how recovery costs and administrative costs arising from the recovery action should be charged pursuant to the undertaking signed by the loan borrowers.

From the 2002-2003 to 2007-2008 academic years¹, the total amount of overdue interest received each year under the three non-means tested loan schemes is as follows:

	<i>Loan Scheme</i>	<i>Academic Year</i>					
		<i>2002-2003</i>	<i>2003-2004</i>	<i>2004-2005</i>	<i>2005-2006</i>	<i>2006-2007</i>	<i>2007-2008*</i>
Overdue interest (\$ million)	Scheme 1	0.14	0.18	0.44	0.29	0.53	0.44
	Scheme 2	0.00	0.01	0.02	0.06	0.15	0.12
	Scheme 3	0.02	0.05	0.12	0.23	0.54	0.41

* As at 31 January 2008

¹ SFAA started to compile relevant statistics from the 2002-2003 academic year. Statistics before that year are not available.

- (d) Non-means tested loan schemes operate on a no-gain-no-loss and full-cost recovery basis. The interest rate charged is inclusive of a RAF to cover loss of the Government due to defaulted loans and interests in the provision of unsecured loans. We are closely monitoring the situation to see if the amount of interest received from the RAF would be sufficient to cover the amount in default. We will consider whether the RAF should be revised having regard to the default situation.

Annex 1

From the 1998-1999 to 2007-2008 academic years, the respective amounts of interest received from the RAF under the three non-means tested loan schemes are as follows:

	Loan Scheme	Academic Year									
		1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
Interest received under RAF (\$ million)	Scheme 1	0.04	1.30	3.96	6.37	8.63	10.87	13.98	17.27	17.40	8.08
	Scheme 2#	NA	NA	NA	0.07	0.33	1.22	3.21	6.39	9.04	4.98
	Scheme 3	0	0.08	0.46	0.66	1.33	4.86	9.77	15.88	21.26	9.01

* As at 31 January 2008

Scheme 2 was introduced with effect from the 2001-2002 academic year.

Annex 2

From the 1998-1999 to 2007-2008 academic years, the respective numbers of write-off cases under the three non-means tested loan schemes are as follows:

Reason for Write-off	Academic Year									
	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008*
Scheme 1										
Decease of loan borrower	0	0	1	5	1	6	4	6	3	1
Loan proved to be irrecoverable	0	0	0	0	0	0	0	0	0	0
On the DoJ's advice	0	0	0	0	0	0	0	0	0	0
Scheme 2#										
Decease of loan borrower	NA	NA	NA	0	1	0	3	0	5	2
Loan proved to be irrecoverable				0	0	0	0	0	0	
On the DoJ's advice				0	0	0	0	0	0	0
Scheme 3										
Decease of loan borrower	0	0	1	0	1	2	7	16	11	4
Loan proved to be irrecoverable	0	0	0	0	0	0	0	0	0	0
On the DoJ's advice	0	0	0	0	0	0	0	0	0	0

* As at 31 January 2008

Scheme 2 was introduced with effect from the 2001-2002 academic year.

Regulating Junk Food TV Advertisements in Order to Tackle Childhood Obesity

15. **MR FREDERICK FUNG** (in Chinese): *President, data from the Department of Health (DH) reveal that the obesity problem among primary school students is worsening, with the obesity rate increasing from 19.4% in 2005-2006 to 20.2% in 2006-2007. The causes can be attributed to such factors as children's lifestyle and their eating habits, and so on, which include their preference for foods that are high in fat, sugar or salt (generally referred to as "junk food"). Obesity not only affects children's physical and psychological development, but also increases their risk of developing a number of chronic diseases in the future, which in turn adds to the burden of health care on the community. In view of this, the authorities in the United Kingdom have, since last year, gradually imposed a ban on the broadcast of junk food advertisements during or soon before and after children's television (TV) programmes and programmes which are especially popular with children under 16. In this connection, will the Government inform this Council whether, apart from keeping up its efforts to promote EatSmart in schools, it will, following the practice in the United Kingdom, restrict the broadcast of junk food TV advertisements during children's programmes or family viewing time, and regulate the contents of such advertisements, so as to reduce children's access to information about such food, thereby promoting the development of healthy eating habits among children from childhood; if not, of the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): *President, generally speaking, childhood obesity is mainly attributable to two factors: first, unhealthy eating habits, such as high consumption of unhealthy foods (including foods high in fat, sugar, salt or low in nutrient levels) with low consumption of fruits and vegetables, and second, inadequate exercise. Both factors are closely related to the lifestyle of individuals. Hence, to effectively address obesity, we should start with changing our living habits.*

Adopting and consolidating a healthy eating habit and performing regular exercise since childhood help prevent various diseases such as heart disease,

diabetes, stroke and cancer. The most effective way to help children develop healthy living habits is by publicity and education. As such, the Government has been disseminating knowledge of healthy eating and benefits of exercise to school children through various channels. Apart from this, the Government also works with the community, schools, the trade and parents to create a favourable environment conducive to developing healthy lifestyle among children. The "EatSmart@school.hk" Campaign and the "EatSmart@restaurant.hk" Campaign are two such examples.

Realizing the influence of the mass media on children, the DH has been disseminating information on healthy lifestyle through the mass media and different channels to the public. To tackle childhood obesity, we will continue with our publicity and educational efforts and strive to build a favourable environment to facilitate children to make healthy food choices and exercise. At this stage, the Government is open-minded about the regulation of food advertisements. We have to gather more evidence, draw on the practical experiences of other countries and places, and listen to the opinions of experts and the public.

Installation of Television Broadcasting Systems in Private Estates

16. **MR LAU KONG-WAH** (in Chinese): *President, some private housing estates plan to install television broadcasting systems for broadcasting to their residents information such as estate notices as well as dining and entertainment tips. The operating costs of such systems and services are to be covered by the revenue from television advertising. In this connection, will the Government inform this Council whether it knows:*

- (a) *the number of applications received last year by the relevant authorities from operators of such television broadcasting systems for the waiving of a television service licence;*
- (b) *the major factors considered by the relevant authorities in deciding whether or not to grant approval for such applications; and*

- (c) *if the relevant authorities will consider relaxing the approving criteria concerned, so as to facilitate the residents' access to more information through such television broadcasting systems; if not, the reasons for that?*

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

- (a) By virtue of section 7 of Schedule 3 to the Broadcasting Ordinance (the Ordinance) (Cap. 562), broadcasting of internal or security information to residents within private residential estates through closed circuit television systems shall not be regarded as "television programme services" under the Ordinance. Provision of such service is exempted from broadcasting licensing.

Nevertheless, if the service also includes programmes or advertisements other than internal or security information, provision of such service require a television programme service licence in accordance with the Ordinance.

Last year, the Secretariat of the Broadcasting Authority (that is, the Television and Entertainment Licensing Authority) did not receive any such licence application.

- (b) In vetting the licence applications, the Broadcasting Authority takes into account such factors as financial and technological capacities, programme service and management of the applicant.
- (c) Currently, the licensing and exemption clauses under the Ordinance allow the provision of various television programme services or internal information by private residential estates to suit their residents' needs. That said, we will review the operation of the Ordinance from time to time to meet the needs of the community and citizens.

Stock Options Known as Accumulators

17. **MR JAMES TO** (in Chinese): *President, recently, several members of the public, who have entered into contracts of stock options known as "accumulators" with banks, have sought my assistance. They claimed that some bank staff had sold these accumulator contracts in a misleading manner, resulting in substantial financial losses on their part. Moreover, it has been reported that claims for default payments and interests in connection with these contracts have recently been filed with the Court by banks against their clients. I have also received complaints about warrants and other derivatives. In this connection, will the Government inform this Council:*

- (a) *in the past two years, whether the Hong Kong Monetary Authority (HKMA), other government departments, the Consumer Council or the Securities and Futures Commission (SFC) have received any complaint regarding accumulator contracts, warrants or other derivatives; if they have, of the number of complaints received, broken down by the type of complaints (such as sales practices and unclear contract terms);*
- (b) *given that at present, the selling of investment products by securities firms must be conducted by persons holding relevant licences issued by the SFC, whether such selling activities conducted by banks are subject to any regulation;*
- (c) *although I understand that the Government should not intervene in private contractual matters, however, since some market participants have recently stated that the design of accumulator contracts are unfair to investors, and that the issue is worth the Government's concern, whether the Government has examined the problems brought about by these contracts, or strengthened education for consumers and reminded them of the risks inherent in the relevant investment products; and*
- (d) *whether it knows the number of claims for compensation in respect of accumulator contracts filed with the Court in the past three years?*

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

- (a) The number of complaints received by the HKMA, the SFC and the Consumer Council regarding accumulator contracts, derivative warrants or other derivatives since 2006 is set out in the following tables:

Number of Complaints regarding Accumulator Contracts

	2006	2007	2008 (January to March)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	0	1	9
SFC			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	0	0	3*
- Unclear contract terms	0	0	1
Consumer Council	0	0	0
Total	0	1	10*

* Remarks: As all three complaints received by the SFC were related to banks, the SFC had referred them to the HKMA and these cases were already included in the nine complaint cases received by the HKMA. Therefore the total number of complaints received in 2008 (January to March) should be 10.

Number of Complaints regarding Derivative Warrants

	2006	2007	2008 (January to March)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	1	1	0
SFC			
- Price movements	117	85	24
- Obligations of liquidity providers	17	32	9
- Others	1	3	0
Consumer Council			
- Failure to explain the nature of the product and the issues concerned in relation to its trading	1	0	0
- Unclear price quotes	0	1	0
- Unclear transaction fees	0	1	0
- Selling price different from normal price	0	1	0
Total	137	124	33

Number of Complaints regarding Other Derivatives

	2006	2007	2008 (January to March)
HKMA			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	3	7	6
SFC			
- Failure to explain clearly the investment risks and/or to assess the clients' suitability in investing in the product	1	4	1
Consumer Council	0	0	0
Total	4	11	7

- (b) Under the existing legislation, the HKMA is the front-line regulator for banks in relation to their securities and futures business, and is responsible for the day-to-day supervision of banks' securities and futures business and carrying out supervisory duties in line with those exercised by the SFC in relation to brokers. Banks and their relevant staff carrying out securities and futures business are subject to comparable regulatory standards and the same range of disciplinary sanctions in the event of breaches as non-bank intermediaries.

Regardless of who the client is, the sale process for all securities and futures products by both banks and the SFC licensees is governed by the Code of Conduct for Licensed and Registered Persons. The Code requires intermediaries to explain to the clients the products and the risks involved.

- (c) Like other derivatives, accumulators are high risk investment products. In choosing which products to invest, investors should first understand the sale and purchase, contract terms, operational and potential risks of the products concerned.

As regards market education, the Government and various financial regulators have all along attached great importance to investor protection and education. In fact, the Consumer Council is also concerned about the possible lack of understanding by general investors of equity linked instruments and related investment products, and has published an article entitled "Potential risks are high for 'high yield' equity linked products" in the March 2008 issue (issue 377) of its monthly *CHOICE* magazine, so as to explain the characteristics of equity linked investment products in detail and to educate investors to be aware of the potential risks of such products.

The financial regulators and the Consumer Council will continue to actively carry out investor education activities to enhance investors' awareness of various investment products, so that they can have a deeper understanding of the benefits and risks of investment.

- (d) The Financial Services and the Treasury Bureau, the HKMA, the Consumer Council and the SFC do not have figures in respect of the number of claims filed with the Court for compensation arising from accumulator contracts.

Conduct of Breath Tests for Drivers Suspected of Drink Driving

18. **MS EMILY LAU** (in Chinese): *President, it has been reported that, on 15 January this year, when handling a traffic accident involving a private car driven by an off-duty police officer, the police officers at the scene allowed the driver to stay in the car and drink plenty of plain water. They seemed to have deliberately employed delaying tactics to buy time and, consequently, the driver was breathalysed almost an hour after their arrival at the scene. As the driver's alcohol level was tested to be slightly lower than the prescribed limit, he was only cautioned. It has also been reported that in respect of the time taken from the arrival of police officers at the scene of a traffic accident to the conduct of screening breath test(s), there is a big difference between this accident and another accident. In this connection, will the executive authorities inform this Council:*

- (a) whether they have received any report from the police officers handling the above traffic accident, indicating a delay in conducting the breath test on the driver; if so, of the details of the report;*
- (b) whether they have followed up and investigated the police officers' way of handling the breath test in question; if so, of the relevant details; if not, the reasons for that;*
- (c) among the breath tests conducted by police officers on drivers at the scene of traffic accidents in the past three years, of the number and percentage of those in which the alcohol levels of drivers breathalysed did not exceed the prescribed limit; and*
- (d) whether, in the past three years, police officers had acceded to the request of drivers involved in traffic accidents for delaying the taking of breath tests, or allowed them to drink plenty of plain water before the tests; if so, of the details?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President,

- (a) and (b)

In accordance with the police's procedures in handling traffic accidents, the first police officers arriving at the scene should, after

identifying the vehicles and drivers involved, attend to or help attend to the injured, if any. In addition, the police officers should, depending on the location of the accident and the traffic conditions at the time, handle the traffic conditions or direct the traffic to help smooth out traffic flow and to ensure the safety of other passing-by vehicles, as well as the speedy arrival of emergency vehicles at the scene. If situation allows, police officers will require the drivers to conduct the breath test as soon as possible.

Regarding the traffic accident involving a private car driven by an off-duty police officer on 15 January this year, the police have conducted an investigation on the procedures in handling this traffic accident.

The findings of police's investigation reveal that the first police officers arriving at the scene had followed the procedures by identifying the vehicles and drivers involved in the first instance. At the same time, since the accident took place on a highway, it was necessary for the officers to take immediate actions to deal with the traffic conditions at the scene. The police officers also requested for dispatch of additional police officers to the scene. The interval between the arrival of the first police officers at the scene and the completion of the screening breath test on the driver by police officers was 36 minutes. This is comparable to the average time required (that is, 25 to 45 minutes) for the relevant procedures in most traffic accidents as generally recorded by the police. There is no evidence showing that there was any unreasonable delay in this case.

- (c) Among the screening breath tests conducted by police officers on drivers at the scene of traffic accidents in 2005, 2006 and 2007, 42 724 (96%), 42 931 (94%) and 42 869 (94%) drivers respectively were tested with alcohol concentration in the body which did not exceed the prescribed limit.
- (d) According to the police's procedures in handling traffic accidents, police officers will require the drivers to take the breath test as soon as practicable, after taking into account the need to attend to the injured and deal with the traffic conditions at the scene. Except for health reasons, normally police officers will not accede to the

request of drivers involved in traffic accidents for delaying the conduct of the breath test. On the contrary, police officers will, depending on the situation and in accordance with existing legislation, warn the drivers that he may be prosecuted if he fails to provide a specimen of breath upon request from police officers without reasonable cause.

On the other hand, there is no specific provision in the law empowering the police to prohibit persons detained or required to take the breath test from drinking water. According to the police, currently there is no conclusion from studies that drinking water before conducting the breath test would have any significant impact on the test result.

Promotion of Social Enterprises

19. **MR FREDERICK FUNG** (in Chinese): *President, on promoting the development of social enterprises (SEs), will the Government inform this Council:*

- (a) *of the details of the Pilot Scheme to facilitate eligible SEs in bidding 38 government cleansing contracts, including the number of contracts awarded by each participating department and the districts covered, the periods and commencement dates of the contracts, the tender process and expiry dates, the eligibility criteria for bidding, the number of bids received, how the tender assessment mechanism prevents the situation that the lowest bids are always the winning bids, and how it prevents the successful SEs from making pledges of services beyond what is required in the contracts and being unable to honour such pledges after being awarded the contracts, whether it will consider providing the reasons and information concerned for the SEs whose bids are unsuccessful, as well as when it will review the Scheme;*
- (b) *given that in reply to my question on 25 April last year, the former Financial Secretary said that the Policy Bureaux and government departments represented in the defunct Commission on Poverty were expected to procure about \$32 million worth of goods and services from SEs during 2007-2008, of the details of the procurement in this*

respect by these Policy Bureaux and government departments during that financial year, including the actual values, quantities or times of the procurement, the types of the goods and services involved, how these figures and types compare with those in 2006-2007, and the estimated figures and types of the procurement in 2008-2009;

- (c) when the dedicated website on SEs and the directory of SEs will be launched, and whether the SEs which have not been recognized as charitable institutions or trusts of a public character under section 88 of the Inland Revenue Ordinance (Cap. 112) will be included;*
- (d) whether the promotional activities at district level to be organized by the Government in the second half of this year will include holding display and sales activities at government and other venues, so as to promote directly the goods and services of SEs to the public, and whether government venues will be offered for free or at low charge to SEs for holding display and sales activities; and*
- (e) of the details (including the numbers and backgrounds of the mentees and mentors at present, the estimated numbers of mentees and mentors to be registered, the expiry date for the registration of mentees) of the Mentorship Scheme under the Social Enterprises Partnership Programme launched by the Home Affairs Department (HAD), whether it will relax the eligibility criteria for registering as mentees by allowing the staff of all SEs (including those mentioned in part (c)) to participate, of the latest progress of the Matching Forum (including the number of organizations and the areas matched, as well as the backgrounds and work plans of these areas)?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, my reply to the various parts of the question is as follows:

- (a) The pilot scheme to facilitate SEs in bidding government cleansing contracts has been introduced early this year. Under the scheme, 38 government cleansing contracts of one year duration have been set aside by 19 government departments. These contracts, covering all 18 districts, involve a total value of about \$17 million and provide more than 300 job opportunities. Government

departments participating in the scheme and the number of contracts offered are set out at Annex. SEs participating in the bidding for the contracts must be recognized charitable institutions or trusts of a public character registered under section 88 of the Inland Revenue Ordinance (Cap. 112). Departments concerned will give priority to such SEs when inviting bids for the 38 government cleansing contracts. The tendering process of most of these contracts is in progress and will be completed in the second quarter of 2008. As such, overall statistics on the quotations received are not available at this stage.

Just like assessing other government procurement contracts, relevant government departments will assess bids from SEs under the pilot scheme in accordance with the Stores and Procurement Regulations. In general, government departments should accept the lowest quotation for service that meets the requirements set out in a contract. Government departments will also help SEs understand clearly the service requirements, for example by arranging site visits, to prevent successful SEs from not being able to honour the pledges of services. The unsuccessful SEs may ask for reasons for non-acceptance. We will also conduct a mid-term review of the pilot scheme in the third quarter of 2008.

- (b) In 2007-2008, some \$34 million worth of goods and services were procured from SEs by bureaux and departments represented in the then Commission on Poverty, representing a growth of around 20% over 2006-2007. The goods and services procured included cleansing, catering (restaurants and light refreshment kiosks), printing, documents delivery, gardening, transport, delivery, banner and souvenir production, and so on. In 2008-2009, apart from introducing a pilot scheme to give eligible SEs priority in bidding 38 government cleansing services contracts, we will continue to encourage bureaux and departments to make more use of the goods and services provided by SEs.
- (c) The HAD will launch a dedicated website on SEs to provide SE-related information such as a directory of SEs in Hong Kong, support services available to SEs, SE-related publications and reference materials, past activities on SEs, and so on. The website is expected to be launched in mid-2008. Regarding the information

to be contained in the directory of SEs, we are considering at this stage to include mainly SEs set up by charitable institutions or trusts of a public character registered under section 88 of the Inland Revenue Ordinance (Cap. 112). As regards those SEs that are not set up by charitable institutions or trusts of a public character registered under section 88 of the aforementioned Ordinance, we will consider how to include them in the directory in the next stage.

- (d) The HAD will promote SEs at the district level through various means including organizing district promotional activities, such as exhibitions, in all 18 districts. If circumstances permit, we will consider following last year's practice for SEs to set up exhibition booths at the Hong Kong Products Expo to promote their businesses, give service demonstrations or sell their products. Details of the promotional activities to be held in all 18 districts are being worked out. We plan to make announcement on the details later this year.
- (e) The Social Enterprises Mentorship Scheme (the Mentorship Scheme) is a service provided under the Social Enterprises Partnership Programme. It aims to link up SEs registered as mentees with voluntary mentors from the business and professional sectors for the latter to offer business advisory services to the former with a view to increasing the competitiveness of SEs. The Mentorship Scheme is open to application all year round.

At present, about 80 organizations/individuals have indicated initial interests in serving as voluntary mentors. All of them are experienced entrepreneurs, senior executives and professionals. More than 10 SEs have also registered as mentees. We are now ascertaining the particulars of the registered mentees and mentors in order to implement the Scheme. Since the mentors will examine and advise on the problems encountered by mentees in business operations instead of providing skills training for individual trade, we believe that there are better chances of achieving the expected results if the Mentorship Scheme is targeted at managerial staff.

The matching forum is another service provided under the Social Enterprises Partnership Programme to facilitate interested business organizations to team up with non-governmental organizations (NGOs). The partnership can be in the form of outsourcing certain

operations to SEs, or providing concessionary rental of their premises or vacant land for use by SEs. The HAD liaises with different sectors of the community through the current district-based network, including various District Offices, to implement the programme. Regarding the Enhancing Self-Reliance Through District Partnership Programme under the HAD, of some 30 applications being processed under the third phase of application, about half are partnership programmes between business organizations and NGOs, which cover businesses such as salon, catering, tourism, manipulation and foot reflexology, recycling and cleansing services, care for the elderly and home help, gardening, and so on. Most of the business organizations in partnership provide SEs with professional advice, and some provide concessionary rental, clientele, and so on.

Annex

Government Departments Participating in the Pilot Scheme to
Facilitate SEs in Bidding Government Contracts
and the Number of Contracts Offered

	<i>Government Department</i>	<i>Number of Contracts</i>
1.	Agriculture, Fisheries and Conservation Department	1
2.	Architectural Services Department	1
3.	Buildings Department	1
4.	Civil Aviation Department	1
5.	Civil Engineering and Development Department	2
6.	Customs and Excise Department	1
7.	Education Bureau	1
8.	Food and Environmental Hygiene Department	1
9.	Government Flying Service	1
10.	Home Affairs Department	18
11.	Hong Kong Observatory	1
12.	Hong Kong Police Force	2
13.	Independent Commission Against Corruption	1
14.	Land Registry	1
15.	Leisure and Cultural Services Department	1
16.	Marine Department	1
17.	Planning Department	1
18.	Radio Television Hong Kong	1
19.	Social Welfare Department	1

Financing Construction of New Railway Lines

20. **MR LAU KONG-WAH** (in Chinese): *President, in the past, the Government has assisted in financing the construction of new railway lines by means of granting property development rights for land along the proposed railway or providing grants to the two railway corporations. In this connection, will the Government inform this Council:*

- (a) *of the respective amounts of revenue that each railway corporation derived from property development projects in each of the past five years, and the relevant figures estimated by the Government (based on the estimates made at the time when the relevant development projects were approved by the Government);*
- (b) *whether it has assessed if the amounts of revenue that the two railway corporations derived from property development projects in the past have far exceeded the Government's original estimates; if the assessment result is in the affirmative, of the reasons for that; and how the Government ensures that the relevant estimates made in the future will be more accurate; and*
- (c) *of the respective and total amounts of grants the Government provided in each of the past five years to the two railway corporations for the development of new railway lines?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, railway projects require huge expenditure and intensive capital investment at the construction stage and during the operating period. Under the Mass Transit Railway Ordinance (Cap. 556) (previously entitled the "Mass Transit Railway Corporation Ordinance") and Kowloon-Canton Railway Corporation Ordinance (Cap. 372), the two railway corporations have to operate on prudent commercial principles. Therefore, in assessing the financial viability of railway projects, the two corporations have to consider if the expected revenues of the projects can cover all the direct operating expenditures, costs of capital, maintenance and asset replacement as well as providing reasonable commercial returns on the capital invested.

As regards new railway projects that are financially non-viable but desirable in terms of overall public interest, Government will calculate the

funding gap of the projects after scrutinizing the railway corporations' estimates on such aspects as projected patronage, construction costs and operating (fare and non-fare) revenues and then consider providing funding support for the railway projects. Not only can this arrangement enable the railway corporations to meet the huge expenditure for railway infrastructures, but also maintain the fare at a level affordable to the general public. Granting the property development rights and offering non-recurrent capital grant are among the financing modes the Government may adopt in providing funding support to the railway corporations.

My reply to the questions is as follows:

(a) and (b)

According to the annual reports of the former MTR Corporation Limited (MTRCL) and Kowloon-Canton Railway Corporation (KCRC), their respective profits from property development over the past five years are listed below:

	(\$ Million)				
	2007	2006	2005	2004	2003
Profits on property development for the MTRCL	8,304	5,817	6,145	4,568	5,369
Profits on property development for the KCRC	0	427	0	0	0

The above profits are generated from the property development rights granted by the Government as funding support to the MTRCL for undertaking the projects of Airport Railway (including the Airport Express Line and Tung Chung Line) and Tseung Kwan O Line and to the KCRC for undertaking the project of Tsim Sha Tsui East Extension and Ma On Shan Line. Apart from using the profits derived from property development on its sustainable operation, the railway corporations will also use the profits on capital investment in new railway lines, maintenance and operation expenses of operating railways and asset replacement of its system.

The schedule on the sale of properties concerned is a commercial decision made by the railway corporations. The Government has

not made any estimate on the profits from railway property development for any particular year. The railway corporations have to pay the Government the full market premium on a green field site basis for implementing property development projects and therefore bear all the risks of the property market. If the actual revenues turn out to be lower than expected, the railway corporations cannot request for additional funding support from the Government.

In view of the above, the Government has not compared the actual and estimated revenues of property development projects after granting the property development rights to the railway corporations.

For the forthcoming railway projects, to ensure more accurate estimates of the revenues from property development, the Government will engage independent consultants to assess the possible profits to be generated. A proper mechanism would be in place to ensure that the estimated profit to be derived from the granting of property development rights to the railway corporation would be comparable to the estimated amount of the funding gap of the project.

- (c) During the period from 2003 to 2007, the Government only provided funding support for the Disneyland Resort Line project in the form of waived dividend payment. As for the West Island Line project which was approved for implementation by the Executive Council in October 2007, the funding gap is estimated to be around \$6 billion. The Government has proposed bridging the gap with a non-recurrent capital grant. The first stage funding at an amount of \$400 million, covering the cost for design, was provided to the MTRCL in February 2008.

BILLS

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Appropriation Bill 2008.

APPROPRIATION BILL 2008**Resumption of debate on Second Reading which was moved on 27 February 2008**

PRESIDENT (in Cantonese): The public officers concerned will speak, after which the Financial Secretary will reply.

(Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do you have a point of order?

MR LEUNG KWOK-HUNG (in Cantonese): Yes.

PRESIDENT (in Cantonese): What is your point of order?

MR LEUNG KWOK-HUNG (in Cantonese): I wish to seek your advice. I would like to speak.

PRESIDENT (in Cantonese): I see. Please sit down. Mr LEUNG Kwok-hung, I think I cannot allow you to speak because we already allowed Members to speak on the two days of last Wednesday and Thursday, and this has all been arranged long before. If I let you speak now, I would set a precedent and as a result, the arrangement that Members first speak on two days a week before and officials speak in the following week would be rendered meaningless. However, this does not mean that you do not have a chance to speak today because you will have a chance to speak when the Bill will be examined clause by clause in the Committee stage later.

MR LEUNG KWOK-HUNG (in Cantonese): President, I am actually speaking very calmly. It is because on that day I did not see I would like to speak in the presence of Financial Secretary John TSANG. Let me first explain

PRESIDENT (in Cantonese): I know. I understand. But

MR LEUNG KWOK-HUNG (in Cantonese): I waited for him for a long time last Wednesday but he still did not come back at night. My case was heard in court on Thursday and after the hearing was finished, the meeting was already over. I have prepared the script of my speech

PRESIDENT (in Cantonese): You may use your wits later to

MR LEUNG KWOK-HUNG (in Cantonese): I know

PRESIDENT (in Cantonese): Use your wits, and you will certainly find a way to relate your speech to the relevant amendment. *(Laughter)*

MR LEUNG KWOK-HUNG (in Cantonese): I understand this custom. But this year, the Financial Secretary had not been seen in this Chamber for a long time and this is not quite in line with the custom

PRESIDENT (in Cantonese): I see your point and I do appreciate it. However, I cannot set this precedent.

Secretary for Education, you may speak now.

SECRETARY FOR EDUCATION (in Cantonese): President, first of all, I would like to thank many Members for their concern over education.

The Financial Secretary's Budget has reaffirmed that developing human capital is a primary concern of the Government, and education is regarded as an important investment for promoting social development. In 2008-2009, education remains the largest spending area of the Government, accounting for about one quarter of total government expenditure. Our target is to improve the overall quality of education, including pre-primary, primary, secondary and post-secondary education.

Firstly, I would like to briefly mention the education initiatives implemented in recent years. In respect of pre-primary education, we have implemented the Pre-primary Education Voucher Scheme progressively to provide fee subsidy for students and professional development for principals and teachers in kindergartens.

Additional staff is provided in primary and secondary schools to help them cope with the work arising from various reform initiatives. These include curriculum leaders, specialized teachers, student guidance officers and teacher librarians. Various cash grants are also provided for creating more room for teachers to implement integrated education as well as for the preparation of the new senior secondary (NSS) academic structure.

On tertiary education, we have launched four rounds of Matching Grant Scheme with grants totalling \$4 billion, established a \$1 billion HKSAR Government Scholarship Fund, and greatly improved the Student Financial Assistance Scheme for post-secondary students attending self-financing programmes.

As for new initiatives, we will create the post of Deputy Head in public sector primary schools and implement free senior secondary education from September this year. Starting from the 2009-2010 school year, we will implement small class teaching in primary schools progressively and introduce the NSS academic structure and curriculum reform. In addition, the graduate teacher ratios of primary and secondary schools will increase progressively from September this year to 50% and 85% respectively in the 2009-2010 school year.

In respect of post-secondary education, we will set up an \$18 billion research fund, increase the number of publicly-funded places for postgraduate research programmes in phases and provide eligible students of self-financing post-secondary programmes (including associate degree and top-up degree programmes) with grants as well as low-interest loans. From 2012 onwards, the duration of publicly-funded degree programmes will change from three to four years.

Full implementation of these new initiatives incurs additional recurrent expenditure amounting to billions of dollars. These measures affirmed the Government's determination and commitment to improve quality of education. However, many Members hoped we could allocate more financial resources to strengthen or expedite other work on improving education.

I hope Members will understand and accept that all important education policies and initiatives need a long planning time and have to be implemented progressively year by year, and often take eight to 10 years before full implementation. The new "3-3-4" academic structure and small class teaching are typical examples. The Government's recurrent financial commitment will not be fully reflected in the financial allocation of the year in which the announcement is made. As a matter of fact, the total recurrent expenditure will be reflected only after a number of years when the initiatives are fully implemented. Therefore, before deciding whether to revise existing policies or implement any new initiatives, we have to assess the long-term financial implications, taking into consideration the overall allocation priorities of government resources and our ability to fulfil the commitment.

As for primary and secondary education, some Members are of the view that the Additional Time-limited Capacity Enhancement Grant (CEG) should be made recurrent. I would like to make it clear that in applying for funding from the Finance Committee two years ago and when we offered the grant to the schools, we explicitly stated that the Additional Time-limited CEG would be time-limited for a period of three years. Its purpose was to support schools in coping with the extra workload arising from the implementation of the Territory-wide System Assessment (TSA) and School-based Assessment (SBA) at the initial stage.

At present, the majority of schools have gradually integrated TSA and SBA into their curriculum and assessment framework. For the SBA measures, suitable adjustments have been made earlier this month after extensive consultation. The revised measures will be implemented progressively based on the consensus reached with various parties. If necessary, recurrent funding for the NSS curriculum may also be used flexibly to support SBA work. In other words, the objective of the Additional Time-limited CEG is largely achieved and it is difficult for us to turn this time-limited and purpose-specific grant into a recurrent one.

In respect of primary and secondary education, we have re-examined the priority in resource allocation, and would put more resources into initiatives, such as preparation for small class teaching in primary schools, implementing the NSS curriculum, enhancing support for students with special educational needs (SEN) and improving the teacher-to-student ratio of secondary schools, which best address the needs of students.

Regarding small class teaching, we have announced that it will be implemented progressively in public sector primary schools starting from Primary One in 2009. I would like to stress that effective small class teaching is not simply about reducing the class size to 25 students. What I hope is that primary schools could make the most out of the small-class-teaching environment to improve learning and teaching. In order to assist schools in preparing for small class teaching, we will create about 700 time-limited Certificated Master/Mistress (CM) posts for two years starting from the 2008-2009 school year for schools having indicated their intention to implement small class teaching. This would enable them to make preparation for school-based plans and facilitate teachers' participation in professional training, so that the culture of a whole-school approach for small class teaching will be developed for greater learning effectiveness.

For those schools which are not yet ready to implement small class teaching, we hope that they can also map out some school-based teaching strategies to enhance learning and teaching. Therefore, if these schools submit specific plans to enhance classroom teaching and apply for the necessary additional resources in the 2009-2010 school year, we will be glad to provide them with an additional CM post in the coming year to help them with the preparatory work.

The support measures I have just mentioned are to assist schools in preparing for small class teaching. In the coming two school years, we expect additional resources in the region of \$500 million would be incurred, not yet counting the investment into professional development programmes for teachers under planning and the long-term recurrent expenditure needed for implementing small class teaching and related initiatives.

To further support the development and implementation of the NSS academic structure, we intend to disburse the Senior Secondary Curriculum Support Grant one year earlier in the 2008-2009 school year and increase its rate during the four-year transitional period of the new academic structure. Our intention is to ensure that in the 2008-2009 and 2009-2010 school years, each secondary school offering the NSS curriculum will be provided with a cash grant sufficient for hiring at least one additional graduate teacher. This would allow them to better prepare for implementing the NSS academic structure at its initial stage and to handle more effectively the heavy workload during the years when the old and new academic structures operate concurrently. We anticipate that about \$1 billion is needed for paying the grant in the coming four years.

We also intend to strengthen the support for implementing integrated education in primary and secondary schools so that SEN students can be better cared for. For secondary schools implementing integrated education, we plan to provide them with a Learning Support Grant (LSG) starting from the 2008-2009 school year. The rates are \$10,000 for each SEN student and \$20,000 for each student with severe impairment. For those schools admitting students with severe impairment, a basic grant of at least \$120,000 will be provided. The total amount of grant is capped at the level of \$1 million per school.

For primary schools, we plan to improve the funding arrangement of the LSG and also provide a basic grant of at least \$120,000 for those schools admitting students with severe impairment starting from the next school year. The ceiling of the grant will be raised from \$550,000 to \$1 million per school to better meet school needs. It is estimated that an additional expenditure of about \$270 million is required each year for full implementation of the above improvement measures in primary and secondary schools.

We understand that schools are very concerned about the possible impact of declining student population in secondary schools in the next couple of years. In 2002, the Audit Commission asked the Education Bureau to ensure cost-effective use of resources by reducing surplus school places. Separately, to tie in with the NSS curriculum and for the benefit of students, we have stated clearly that the acceptable minimum class size should be at least three classes for each level in secondary schools. We will continue the existing policy to ensure that government resources are properly used and students are provided with a reasonable choice of subjects to tie in with the development of their interests.

Against this background, we will introduce further mitigation measures to provide a relatively stable environment for our secondary schools, particularly those which may be under-enrolled due to a shrinking population and may have to face class reduction or even closure. We hope that this will enable our schools to focus their attention on the implementation of the NSS curriculum. However, we must reiterate that whether or not to introduce small class teaching in secondary schools is a separate issue. Small class teaching must be premised on professional considerations and must aim at improving teaching and learning. It is not a means for tackling class reduction or surplus teachers. As a matter of fact, the teaching environment and subject choices in secondary schools are different from those in primary schools. It is not appropriate to generalize the

case of small class teaching in primary schools and extend it to the secondary schools.

As to the specific relief measures, pending a full review in the 2011-2012 school year of the standard class size in our secondary schools, we are prepared to reduce the number of Secondary One students allocated under the Secondary School Places Allocation system from 38 to 36 students per class in 2009 and further to 34 students per class in 2010.

Moreover, we are going to relax the threshold for counting the number of Secondary One classes for secondary schools with surplus teachers in September this year from 35 to 33 students per class and further to 30 students per class in 1 September 2009.

It is estimated that the above proposals will ultimately involve over \$1.4 billion each year. We believe that these measures will not only alleviate the concern of the school sector but also make real improvement to the teacher-to-student ratio of secondary schools. This will help schools enhance the effectiveness of learning and teaching and, in particular, strengthen support for students with weaker family back-up. We expect our schools to capitalize on the reduced class size and, taking into account their own needs, adopt school-based measures to better meet the needs of their students.

Regarding post-secondary education, we published the Report of the Phase Two Review of the Post Secondary Education Sector two weeks ago, setting out the direction of our policies in support of the sector's long-term and sustainable development. A total of 22 recommendations were made in the review, covering areas such as programme quality, recognition of qualifications, employment and further learning opportunities of students, support for institutions and financial assistance for students. Over half of the recommendations relate directly or indirectly to quality improvement, which forms the focus of the review. With the approval of the Finance Committee, we will provide more financial assistance for students and support for institutions. In addition, the Government will continue to take the lead in enhancing the recognition of sub-degree qualifications.

Some Members suggested that tertiary institutions should be given the flexibility to make use of the unused quotas for non-local students to enroll more sub-degree graduates so as to increase their opportunities to pursue university

education. I would like to point out that such quota is only an upper limit. The actual number of admissions will be decided by the institutions, taking into account the availability of facilities and manpower. As the considerations relevant to the admission of local and non-local students, including those applicable to tuition fees and allocation of hostel places, are different, there is no plan to mix the use of the relevant quotas at this stage. In fact, tertiary institutions are allowed to admit an additional 4% of students on top of the approved first-degree places.

President, the above initiatives are to nurture talents and enhance the quality of our younger generation to keep pace with the social and economic development of the community. We hope that the above initiatives will have the agreement and support of the education sector.

Thank you, President.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Madam President, I thank Members for their questions to the Food and Health Bureau in respect of health care and medical services, food safety and environmental hygiene and for speaking on these areas. I would like to respond to issues that Members have touched on more in their discussion. They include funding for public health care services, health care vouchers for the elderly and health care reform.

Let me start with funding for public health care services. The Government's appropriation to the Hospital Authority (HA) in recent years has been increasing. In 2006-2007, \$28.1 billion was allocated to the HA and the provision was increased to \$29.7 billion in 2007-2008. Government funding to the HA in 2008-2009 will be about \$30.5 billion, an increase of more than \$780 million over 2007-2008, and most of the provision will be spent on service enhancement.

The additional provision for the HA mainly includes an increase of about \$300 million in the recurrent funds, plus an additional recurrent funding of over \$300 million for improving health care services. These improvement measures mainly include enhancing health care services in the New Territories West and Kowloon East Clusters, building up the surge capacity of neonatal intensive care services, providing new medicine for cancer treatment to improve cancer services, and strengthening mental health care services.

Besides, it is worth mentioning that government appropriation to the HA for procurement of medical equipment and information technology systems amounts to \$699 million in 2008-2009 while that in 2007-2008 was \$678 million, representing a substantial increase over the allocation of \$290 million in 2006-2007.

More worthy of mentioning is that the HA, unlike its position in the past four years, achieved a fiscal balance in 2007-2008. Meanwhile, the problem concerning the remuneration of medical and health care personnel has also been addressed properly.

In respect of health care vouchers for the elderly, I understand Members' concern about the number and amount of the vouchers, the eligible age for receiving the vouchers and the timetable for implementation. But I must stress again that health care vouchers for the elderly are a new idea to implement the "money follows patient" concept on a trial basis and promote the concept of shared responsibility for health care expenses. The pilot scheme under the current proposal is just a starting point. While a comprehensive review will be conducted upon completion of the three-year pilot period, an interim review will be conducted on the operation and cost effectiveness of the Scheme in the second year of implementation to fine-tune the operational arrangements of the Scheme. If the feasibility of the scheme is established, we will actively consider extending the health care voucher scheme.

In respect of health care reform, it has been six weeks since the publication of the Consultation Document on Health Care Reform. I feel very encouraging seeing rational and in-depth discussion in the community and by various sectors in the media. The majority of people, political parties and community organizations agree to the need to carry out health care reform. They also agree that it is now time to decide on the direction of reform. We have heard very clearly the voices calling for reform and what we must do now is to conduct more in-depth discussion and forge a consensus in society, so that the reform can continue to move forward.

Let me reiterate here that the ultimate objective of health care reform is to put in place a health care system which can continuously improve the standard and quality of service for the public and hence provide more comprehensive service, more choices and greater protection for all Hong Kong people. To achieve this objective, we must have a sustainable market structure and financing model.

We have heard very clearly the views of Members and the public. They agree with the direction of the reform as proposed by us and hope that we can expeditiously implement the reform proposals to improve the service. In fact, we have introduced pilot projects to implement various reform proposals. For instance, to enhance primary health care service, we will soon implement the pilot project to purchase primary care services from the private sector in Tin Shui Wai, and we will implement the Elderly Health Care Voucher Pilot Scheme early next year. After June this year, we will relaunch the Working Group on Primary Health Care under the Health and Medical Development Advisory Committee to prepare for the reform.

In respect of public private partnership, apart from the pilot project to be implemented in Tin Shui Wai that I have just mentioned, the HA is carrying out the Cataract Surgeries Programme under which subsidies are provided to patients with cataract to undergo surgery in the private sector. This is a pilot project and so far, over 200 patients have undergone a cataract surgery and more patients will benefit from the programme. Work has been carried out in full swing to prepare for the multi-partite medical centres of excellence and explore the feasibility of public private partnership for Phase 2 of the North Lantau Hospital. Another key area of work is to look into how private hospitals can be provided with room to extend their service capacity.

As for the Electronic Patient Record Sharing Project, the HA will further extend the current pilot programme of sharing patient records with private hospitals and private medical practitioners. Besides, electronic patient record sharing will also be promoted on a trial basis under the Cataract Surgeries Programme and in buying services from the private sector. The Steering Committee set up for the purpose is studying with the public and private health care professions the blueprint for the development of a territory-wide system of electronic patient record sharing in the future.

In respect of the public health care safety net, I already mentioned earlier that resources have been increased for the HA. The Financial Secretary has also undertaken to inject \$1 billion into the Samaritan Fund to provide assistance for people who have to pay expensive medical expenses but have financial difficulties to do so.

These arrangements are just a starting point of the health care reform but they are proof that the Government has the determination to take forward reform of services.

There are views that we should carry out reform first and deal with the financing arrangement later. Given changes in demographic profiles and increasing costs for health care services, the reform still cannot be sustained even though the Government has decided to increase the resources for health care services to 17% of recurrent government expenditure. Increased financial commitments by this Government may put off the problem to a later time but resource constraint is set to become an obstacle to reform in the future. As a responsible government, we are duty-bound to explain the clear picture to the people. So long as the financing issue remains unresolved, all the fruits borne by the reform will only be short lived. The suggestion that the question of financing can be excluded from the consideration of health care reform is but a shortsighted view to the neglect of objective statistics and global experience.

On the question of financing, some people have criticized that this consultation of the Government aims to fleece the middle class and extort money from the people. I must stress once again that the resources for any health care system ultimately come from society and the people. Insofar as financing is concerned, what we must discuss is how resources can be pooled together and how these resources can be channeled into health care services. The objective must be to reduce wastage of resources and ensure that resources are injected into areas most in need.

The middle class is actually put under a double burden now. On the one hand, they are taxpayers who have to pay for the public health care expenditure but as the waiting time may be long, the middle class often prefers to turn to the private sector for medical consultation and so, they have to take out voluntary medical insurance or seek medical consultation at their own expense. As revenue from tax is the major source of financing for the public health care sector and when health care resources are tight, taxpayers will inevitably be the first to bear the brunt. The question is: Are the resources funded by them put to use effectively and can these resources provide sufficient protection to them? According to the insurance sector, private insurance premium has gone up by 12% on average over last year. If medical inflation will continue year after year, the middle class will very soon find the expensive premium of voluntary medical insurance unaffordable.

Speaking of insurance, I must put right some misunderstandings about insurance options. First, no insurance option will require the public to take out double insurance. If the public would opt for the standard medical insurance scheme, consideration has already been given to setting up a transition

mechanism for citizens with voluntary medical insurance or employers who have taken out medical insurance for their employees to realign their insurance plans with the standard medical insurance scheme. Generally speaking, the terms and conditions of standard medical insurance should be more favourable to the insured and the premium should also be lower, while plans with better coverage than that of the standard plan can be maintained as a rider under the standard scheme.

Madam President, taking out insurance is, in the final analysis, to pay in return for a mind at ease and a sense of security. It is difficult to predict the future; all the more so our own health conditions in future. Nobody can foretell his medical needs in his life or when and how he will need to pay for medical expenses in his life. Therefore, an insurance system is worth consideration by Members and this is precisely the way to achieve effective risk management and sharing.

The Consultation Document on Health Care Reform sets out six supplementary financing options which actually reflect different societal values. In simpler terms, supplementary financing has to do with the following three major values:

- (1) Should there be wealth redistribution in supplementary financing as in taxation?
- (2) Should supplementary financing involve a greater ratio of risk sharing?
- (3) Should it be a principle of supplementary financing to make preparation early in order to save up for rainy days and maintain sufficient reserves for old age?

The consultation period will end in about one and a half months. We will continue to collect public views and then formulate a concrete proposal for the second stage of public consultation. So, I call on Members and the public to continue to put forward their views enthusiastically.

Disregarding what the ultimate arrangements will be for health care financing, the Government's commitment for medical and health care service will only increase rather than decrease. At the present stage, we have not made any decision with regard to the various supplementary financing options,

especially on who will have to pay and how much they have to pay. Consultation is conducted precisely to gauge public views and carefully study this issue in concert with the public before making a decision.

With these remarks, Madam President, I hope that Members will support the Appropriation Bill 2008. Thank you, Madam President.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I wish to thank Members for putting forward many valuable and constructive views on welfare, labour and manpower development in their speeches during the debate last week. Members were particularly concerned about the impact of recent price increases on the grassroots. The Government is indeed equally concerned about the needs of the disadvantaged and low-income group, and ongoing effort will be made to provide the right kind of support to them.

The Budget proposed a series of measures to assist the disadvantaged and low-income employees, with a view to easing the inflationary pressure. Two of the measures, namely, granting an electricity charge subsidy of \$1,800 to each residential electricity account and a one-off injection of \$6,000 into the Mandatory Provident Fund accounts and accounts under an occupational retirement scheme which is a defined contribution scheme of employees earning not more than \$10,000 monthly, are intended to specifically assist the "three have-nots", that is, people who do not have to pay tax, do not have to pay rates and do not receive Comprehensive Social Security Assistance (CSSA), in order to enable them to share the fruits of economic growth. This shows that the 2008-2009 Budget can be considered a holistic package to return wealth and provide support to the grassroots and the disadvantaged.

The Government appreciates that the surge in food prices has created a particularly significant impact on CSSA households. In this connection, the Financial Secretary proposed in the Budget the provision of one additional month of the standard rate of CSSA payment and Disability Allowance and undertaken to adjust the CSSA payment rates in accordance with the existing mechanism ahead of the normal schedule in the middle of this year, so as to ease the impact of price increases on CSSA recipients. The Social Welfare Department (SWD) will also adjust the CSSA rates according to the movement of the Social Security Assistance Index of Prices (SSAIP). I wish to point out that food, with a

weighting of 55.3%, is the largest component of consumption items being factored into the calculation of SSAIP. Therefore, the adjustment of CSSA rates can fully take into account the movement in food prices. The Legislative Council Panel on Welfare Services was consulted earlier on these proposals which will be implemented as soon as possible after seeking funding approval from the Finance Committee.

With regard to rent, the rent allowance provided to a majority (about 87%) of CSSA recipients is still sufficient to pay for their actual rent. The maximum level of rent allowance is adjusted in accordance with the movement of the Consumer Price Index (A) rent index for private housing. This rent index is compiled by the Census and Statistics Department on a monthly basis to measure the rental movements of private housing of non-CSSA households with relatively low expenditure. We will continue to monitor closely the movement of the index. Moreover, the Government will also adjust various other special allowances under the CSSA in accordance with the established mechanisms.

Members are all very concerned about the elderly. The elderly have made a lot of contributions to the development of Hong Kong over the past decades. They are important members of the community and hence deserve respect, care and protection by the Government, society and family. To enable the elderly to share the fruits of economic prosperity while easing the pressure of inflation on them, we will provide a one-off grant of \$3,000 to each Old Age Allowance (OAA) recipient after the passage of the Budget. This proposal will benefit over 470 000 elderly persons and involve an expenditure of about \$1.5 billion.

We understand the aspiration of the community for an increase in the OAA rates. The Labour and Welfare Bureau is conducting a comprehensive and in-depth review of the OAA, with a view to drawing up a practicable long-term proposal to provide pertinent support to elderly truly in need while ensuring that the proposal is an affordable and sustainable option to the community.

We will study in detail the relevant statistics, including the future trends and pace of population ageing in Hong Kong. We will also review the need to reposition the OAA, the sustainability of the existing arrangement in the long term and also how we can identify the elderly in need so as to provide them with more appropriate assistance. We will take an open and pragmatic attitude and extensively gather public views, in order to work out a long-term proposal after

listening to the views from all sectors of the community. We hope that a conclusion can be drawn by the end of the year.

I wish to take this opportunity to reiterate that elderly who cannot support themselves financially can apply for the CSSA to make ends meet even if they own self-occupied property. Elderly in need should contact the SWD early.

Some Members suggested that we should further relax the limit of absence period for OAA recipients. I undertake to look into this issue when we conduct the review, but I hope Members will understand that the OAA is a non-contributory social assistance scheme entirely funded by the Government's general revenue. Therefore, we must ensure that public coffers are spent on Hong Kong residents whose permanent place of residence is Hong Kong.

Many Members are very concerned about elderly people and persons with disabilities who require residential care service. They hope that the Government can increase the supply of these places expeditiously in order to shorten the waiting time for subsidized residential care places. In fact, the Government has always attached great importance to the demand of the elderly and people with disabilities for subsidized places and we have continuously injected resources to increase the overall supply of subsidized places.

In respect of residential care home service for the elderly, the number of subsidized places has increased from about 16 000 in 1997 to about 26 000 in 2007, an increase of as much as 60%. Looking into the future, we will continuously seek resources to increase the supply of places but I wish to emphasize that not every elder in need of long-term care has to move into a government-subsidized residential care home, because with the support of family members, carers of the elderly and various subsidized community care services, elderly in need of long-term care can still age in the community. In fact, of the elderly currently on the waiting list, about half are receiving different kinds of subsidized services, including subsidized community care services, or being cared for in private residential care homes for the elderly through the CSSA payment to them.

We appreciate Members' wish to shorten the waiting time for subsidized residential care places for the elderly. But as population in Hong Kong ages, the increasing demand cannot be met simply by continued provision of additional resources to create residential care places. The Labour and Welfare Bureau

will continue to work closely with the Elderly Commission in studying the long-term planning of elderly services, in order to respond to the aspiration of the community. The Elderly Commission has decided to further conduct a study on the recommendations of the former Commission on Poverty regarding the waitlisting situation of subsidized residential care services, and to explore how to target subsidized residential care services at elders most in need and how to promote further development of quality private residential care services and encourage shared responsibilities among individuals, their families and society in meeting the needs of the elderly. The study is expected to complete early next year and we will then examine in a very detailed manner the findings of the study, in order to identify the way forward.

In respect of the strategy for developing residential care services for people with disabilities, I met with the representatives of an association formed by a group of parents of children with severe mental disabilities just yesterday and we had talked for two or three hours. I wish to point out that the latest Rehabilitation Programme Plan has clearly stated that we will regulate the operation of private residential care homes, support the development of self-financed residential care homes by non-governmental organizations and continue to provide subsidized residential care services, with a view to providing more service alternatives to people with disabilities by promoting the three-pronged development of private, self-financed and subvented hostels. Meanwhile, we will continue to develop diverse long-term and short-term residential service, day care service and community support service to meet the different needs of people with disabilities.

The Government currently provides over 10 600 subsidized residential care places for people with disabilities in need. In 2007-2008, government provision increased by \$52 million and 490 new places were created. In this fiscal year of 2008-2009, we have sought an additional \$53 million to provide another 490 residential care places. Ongoing efforts will be made to seek resources in the hope that the number of subsidized places can be increased steadily every year.

Apart from enhancing various subsidized services, we will actively encourage people with disabilities to go out more often to participate in social activities, in order to fully integrate with society. The Budget this year proposes to provide an additional travel subsidy of \$200 a month to Disability Allowance recipients aged between 12 and 64, and CSSA recipients in the same

age group with 100% disability. This proposal will cost the Government \$230 million and is expected to benefit 96 000 people with disabilities.

I wish to emphasize that this measure is a full manifestation of the importance that the Government has attached to people with disabilities as well as the Government's caring and supportive attitude towards them. The provision of a cash subsidy is a practical and timely measure which can flexibly meet the transport needs of people with disabilities and be brought into operation in a short time. However, I understand that many organizations of people with disabilities as well as Members in this Chamber still hope that public transport operators will fulfil their corporate social responsibilities by offering fare concessions to people with disabilities. The Government will continuously make continuous effort to lobby public transport operators into providing fare concessions.

Speaking of transport fares, some Members proposed to extend to all other districts in the territory the Pilot Transport Support Scheme for the unemployed and low-income employees in four remote districts. I wish to reiterate here that this scheme is originally intended to provide financial incentives to the unemployed or low-income employees living in the four designated remote districts by providing them with a time-limited travel subsidy to encourage them to "go out" and find jobs. Having considered the large geographical spread of the four designated districts which means that the transport cost for commuting within the same district could be relatively high, we have proposed in this year's Budget to relax the cross-district working requirement under the scheme, in order to encourage residents in the four districts to find jobs. In other words, as long as fee paying home-to-work commuting is needed, an applicant will be eligible for transport allowance regardless of whether he works within or across district.

Moreover, to further provide incentives to encourage residents to work in other districts and to help develop and entrench the work habit among the target beneficiaries, we propose to extend the duration of the transport allowance from the current six months to 12 months, and in the light of a wage increase for low-income employees in the past year, we have proposed that the ceiling for monthly income be raised from \$5,600 to \$6,500.

On the issue of minimum wage, Members urged the Government to expeditiously commence the legislative work. Members are very concerned about this issue, and I wish to take this opportunity to reiterate the position of the

Government. As clearly stated by the Chief Executive in the policy address last year, an overall and conclusive review of the Wage Protection Movement will be conducted in October this year. If the review indicates that the movement fails to yield satisfactory results, the Government will proceed to legislation on a statutory minimum wage for cleansing workers and security guards. We are now making preparations for two scenarios by actively promoting the movement on the one hand while proceeding with the preparatory legislative work on a statutory minimum wage on the other. If the voluntary movement has failed in the overall review, we will introduce a bill in the legislative session of 2008-2009 as soon as possible to introduce a statutory minimum wage for cleansing workers and security guards.

Members called on the Government to cease the imposition of the employees retraining levy on employers of foreign domestic helpers (FDHs). I wish to say in response that to maintain its economic vibrancy and competitiveness, Hong Kong must nurture high quality manpower and labour force. While Hong Kong's economic situation has improved in recent years, we still face problems of economic restructuring and manpower mismatch, and the situation has remained serious. Moreover, the need for manpower training and skills enhancement is no longer confined to low-skilled middle-aged workers with low education attainment, for there is also this need among employees in other groups or categories. The Government, therefore, needs to ensure that the local workforce would receive suitable training and retraining, in order to enhance their employability and equip them to meet the challenges arising from a knowledge-based economy.

As the Chief Executive said in the 2007-2008 policy address, the Employees Retraining Board (ERB) will fund a comprehensive expansion of employees retraining schemes with the levies collected from employers of FDHs, including relaxing the age limit of eligible trainees from 30 to 15, and relaxing the eligibility criteria from secondary three or below to cover those with an education level at sub-degree or below. These measures have been put into practice since 1 December last year and the ERB has also started to meet its operational and service expenditure with the levies collected from employers of FDHs.

Besides, the ERB has earlier completed a strategic review of its future role and functions and published in January a consultation document in which a series of recommendations are made to provide more comprehensive and more

diversified training and retraining services for the local workforce. Therefore, the targets and scope of service of the ERB will be significantly expanded. To achieve its various work objectives, the ERB will need a stable source of funding to cover its recurrent expenditure. For this reason, the Government considers it necessary to maintain the arrangement of collecting the levy from employers of FDHs at this stage, in order to ensure stable and sustained development of training and retraining services.

Madam President, helping the poor and upgrading the quality of the local workforce are the key areas of work of this new term of the SAR Government. The role of the Government is to create the suitable environment to assist low-income workers to seek employment using a multi-pronged policy approach. Meanwhile, we must vigorously promote infrastructure projects, create employment opportunities and expand training programmes, in order to assist the middle-aged and grassroots to achieve self-enhancement and upgrade their skills as well as competitiveness to meet the needs of the ever changing job market. In addition, the needs of the elderly, people who cannot support themselves financially and the disadvantaged will not be neglected. We will, and as we have all along been doing, continue to provide social assistance to them as a safety net, in order to help them meet the basic needs of living. The measures as set out in the 2008-2009 Budget have fully demonstrated the Government's caring and supportive attitude to these social groups.

With these remarks, Madam President, I hope Members will support the Appropriation Bill 2008. Thank you.

PRESIDENT (in Cantonese): I now invite the Financial Secretary to reply.

FINANCIAL SECRETARY (in Cantonese): Madam President, first of all, I would like to thank Honourable Members for the 2 733 written questions raised on the 2008-2009 Budget, which is a record. In other words, each Member, excluding the President, has raised 46 questions on average. Our colleagues had spent great efforts and a lot of time from end of February to end of March in helping to reply to these questions.

I also wish to extend my heartfelt thanks to Honourable Members for the valuable views they expressed in the two-day debate last week. During the

debates held last Wednesday and Thursday, a total of 55 Members had spoken. Their speeches were well-structured and informative, covering a diversity of policy areas and providing a lot of insights. Apart from making passionate, inspiring speeches, Members had used various techniques and props to highlight their viewpoints. Some Members cited from Matthew; some used the analogy of a donkey and a mule; some even used lyrics of oldies and some brought magnifying glass and "Fat Choy" candy as props. Besides, some Members had translated their words into "actions" to put across their message; some had taken off their coats, and some had made bilingual speeches.

Members had used these various techniques and props in the hope that the Government, the public and the media could be more deeply impressed and their views more strongly stressed. Here, I wish to assure Members that their brilliant speeches have always been treated seriously and solemnly by the Government, and we never dare to lose sight of them.

During the two-day debate spanning almost 12 hours last week, I was not in this Chamber from the beginning till the end to listen to all the speeches made by Members. However, I was actually gathering the views of Members at different places through different media. The other Secretaries of Department and Directors of Bureau had, in line with the usual practice, taken turn to come to this Chamber in different sessions to listen to Members' speeches. Moreover, many more of my colleagues had been listening to Members' speeches outside this Chamber and immediately proceeded to prepare the relevant information. In fact, all Secretaries of Department and Directors of Bureau were able to fully grasp the views of Members within a few hours after the end of the debate last Thursday. An internal meeting was held last Friday to discuss our response to Members' speeches.

We attach great importance to the views of Members, and as I would need more time to make preparation, I started to discuss with the relevant colleagues our response to Members' views in the afternoon of last Wednesday after listening to Members' speeches in the morning. I will give a detailed response later on issues of greater concern to Members and the public. My gratitude also goes to various sectors of the community for the views they have given to me through different channels in the past few months.

After the announcement of the Budget, apart from discussing the various measures that I have proposed, another focus of the community was, I am afraid,

my wildly fluctuating popularity rating. It has been like the roller-coasting stock market performance in recent months and the movements are difficult to predict.

As a team accountable to the public, the Government must pay attention to public opinions and listen to the community's views on our policies. Our governance is for the community. When our popularity rating is high, it is indeed an encouragement. But when our rating is low, we need to be vigilant in reviewing our policies in order to identify shortcomings and consider rooms for improvement. We should strive to make improvements so as to meet the public's expectations.

In my speech moving the Second Reading of the Appropriation Bill, I have spelt out the short and long-term challenges facing Hong Kong and pointed out that we must make full preparations for these challenges. This year's Budget has been formulated on three principles, namely, commitment to society, sustainability and pragmatism. The measures I have proposed will not only give additional support to various disadvantaged groups, but also allow various sectors of the community to share the fruits of economic development, promote economic and social development, and alleviate pressures on public finances in the long run.

As I have pointed out earlier, there are uncertainties in the external economic environment, which will pose risks to Hong Kong's economic prospects. As expected, the impacts of the United States (US) sub-prime mortgage problem and credit crunch on the financial markets around the world have progressively surfaced in the past two months, exerting downward pressure on the global economy.

The US economy has slowed down further, with the growth rate in the fourth quarter of 2007 falling to 0.6%. While the US Federal Reserve Board and other central banks have introduced a series of proactive and exceptional measures to tackle the problem, many financial institutions still need time to restructure their capital and cash flow arrangements, and are not very willing to take risks. As such, the credit crunch problem persists.

On the other hand, the threat of financial crisis lingers on with concerns over the further deterioration of the property market and the economic slowdown in the US. The international community became even more concerned about

the health of the US financial markets after a US investment bank ran into cash flow problems at the end of last month.

In its Global Financial Stability Report published two weeks ago, the International Monetary Fund estimates that the aggregate potential losses in the global financial industry caused by the US sub-prime mortgage problem may reach some US\$1 trillion. The estimate reflects the seriousness of the situation.

The US financial crisis, the drastic cut in the US dollar interest rates, and the slide in the US dollar exchange rates have caused volatilities in the commodity markets. The persistently high prices of food, oil and other commodities have worsened the global economic prospect as a whole. In advanced economies, consumer confidence has fallen to new lows. Lately, many people have revised downward their forecasts on the US economy in 2008.

The market also believes that the US economic slowdown will last longer than originally anticipated and that a US economic contraction in the first half of this year is looming. Furthermore, retail businesses in the euro area have been sluggish recently, and the property markets in some European countries have experienced downward adjustments. The Japanese economy has also slowed down further.

In contrast, the economy of emerging markets, in particular the Mainland and India, continues to grow strongly. So far, there has been no clear sign of a credit crunch in the East Asian region. However, the economic slowdown in the US and Europe and the global financial turmoil will inevitably have some impacts on exports and the economic prospects of the East Asian economies. In addition, the macroeconomic adjustment and tight monetary policy adopted by the Mainland will bring considerable pressure on the businesses of many enterprises.

On the back of the strong momentum over the past four years, Hong Kong's economy continued to grow steadily in early 2008. The unemployment rate in the first quarter of 2008 is 3.4%, and there has been a continued increase in wages, which stimulates a strong growth in domestic consumption and a rise in housing rentals. As a result, inflation has been rising progressively.

Meanwhile, rapid economic growth and population increase in developing economies have generated huge demand for food. Coupled with the abnormal

weather conditions, increase in demand for biofuels, rise in production costs and reduction in agricultural land, the recent shortage of the global food supply has led to a significant increase in the prices of many food items. Our food and daily necessities are predominantly imported goods, which are highly susceptible to external factors. This has led to our sharply rising inflation in recent months.

The Composite Consumer Price Index for the first quarter of 2008 published yesterday registers an increase of 4.6% over the same period of last year, and the rise in food prices accounts for about one third of the increase. In other words, if food items are excluded, the underlying inflation rate for the first quarter will be 3%. These show that the causes of our inflation in recent months are from both the supply side as well as the demand side.

The current volatility of global food prices will have a vital influence on Hong Kong's overall inflation this year. Other factors such as soaring world prices of oil and commodities, the weakening US dollar and the rising rentals and wages in Hong Kong will also play a part in this. I believe that the inflation problem still needs to be closely monitored in the next few years.

From the medium-term perspective, however, we should not be overly pessimistic about the inflation problem. Inflation in Hong Kong is dependent on domestic factors as well as the global environment. The central banks of the advanced economies in Europe and the US are endeavouring to maintain price stability in the medium term. The Mainland has also stepped up its efforts in containing inflation.

With increasing market incentives, there should be a gradual improvement in global food supply. Food production will also pick up when weather conditions return to normal. Moreover, with the impending global trend of economic slowdown, the increase in commodity prices will be constrained. The medium and long-term interest rate trend in Europe and the US reflects the market's expectation that inflation will be under control and will not rise substantially in the medium to long term.

Domestically, we have implemented measures to ensure an adequate food supply in Hong Kong and have the support of the Mainland in this connection. As a long-term policy, we will strive to ensure that our economy and foodstuff market are open and competitive. This will help expand the sources of food supply, providing more choices for consumers and thus alleviating the impact of

inflation. Besides, enhancing productivity and promoting market competition will help to ease the overall inflation. The average growth rate of our total labour productivity in the past four years reaches 4.8%, outperforming many other economies. By implementing various initiatives to promote economic development, enhance market adjustability, promote fair competition and improve economic efficiency, productivity can be increased further, thus curbing inflation and increasing our citizens' real income.

Hong Kong is a free market, and price fluctuations are therefore inevitable as a market mechanism. However, the Government recognizes that a significant rise in inflation will have a direct impact on the livelihood of our citizens and that low income earners will be hit hardest. I fully understand their hardships. Therefore, in formulating this year's Budget, I have adopted "Commitment to Society" as my first principle so as to provide assistance targeting those people in need.

For social security recipients, we will provide one additional month of standard rate Comprehensive Social Security Assistance (CSSA) payments for CSSA recipients and one additional month of allowance for recipients of Disability Allowance. We will also adjust the CSSA payment rates in accordance with the existing mechanism ahead of the normal schedule so as to lessen the impact of rising prices on recipients. Furthermore, the Government will pay one-month's rent for lower income families living in the rental units of the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society (HS), increase the income ceilings for applicants for Cross-district Transport Allowance and provide each residential electricity account with a subsidy of \$1,800. Proposals for these measures will be submitted to the Legislative Council shortly for approval. We hope that Members could give their approvals expeditiously so that the pressure of inflation on our citizens can be relieved soon.

I would also like to call on public utilities to follow the principle of "social commitment" and take into consideration the hardships of our citizens under inflationary pressure when they apply for tariff adjustments. They should strike a proper balance between corporate profits, shareholders' interests and social responsibilities. For Government fees and charges that have a wide impact on citizens, subject to the cost recovery and the "user pays" principles, we will carefully consider the adjustment levels taking into account the affordability to our citizens.

Some retail businesses have taken advantage of the rise in food prices to increase their retail prices drastically. I believe their business reputations will suffer as a result of their pursuit for short-term benefits and their losses will ultimately outweigh their gains. I trust that the Consumer Council and other relevant bodies will help citizens obtain information about the prices of daily necessities so that they can make informed choices.

Some Members consider the pegging of Hong Kong dollar to the US dollar to be the main cause of rising inflation, and propose that we consider abolishing the linked exchange rate system or pegging Hong Kong dollar to other currencies. I do not think this proposal will be able to resolve the problem because the surge in food prices is a global phenomenon, and is also occurring in economies adopting floating exchange rate regimes.

The linked exchange rate system has been implemented in Hong Kong for almost 25 years and amply demonstrates its ability to weather fluctuations in different economic cycles. It is unwise to change a well-established system in order to address a problem not caused by exchange rates. If the linked exchange rate system, which has been successfully implemented for a long time, is hastily abolished, the confidence of the international community in the stability of Hong Kong dollar will inevitably be undermined, potentially causing adverse consequences to our overall economy. I would like to reiterate that we do not intend, or see any need, to change this well-established system.

In the face of the current global risks like financial turmoil, economic downturn and rising protectionist sentiments, we must step up our efforts in promoting economic development.

In the Budget, I forecast a small deficit for this year that will provide some stimulus to domestic demand. With the external environment becoming more difficult, this will give an impetus to our economic growth.

I have also put forward in the Budget a number of principles and measures to promote long-term economic development. We will invest heavily in infrastructure, make good use of land resources, reinforce pillar industries, tap new markets, develop human capital, support community building and improve our environment. Upon implementation, these long-term objectives and measures will help to strengthen Hong Kong's position as an international financial centre and as a hub of trade, logistics and commerce in the region.

Hong Kong has the unique advantage of having the Mainland as our hinterland while maintaining an international outlook. The Mainland is now adjusting its mode of development to enhance economic efficiency, promote the development of service industries, and encourage enterprises to enter the international market. The moving of the mainland economy up the value chain has brought more opportunities to Hong Kong. As such, we must constantly adapt ourselves to the changes in the mainland economy. Apart from strengthening and deepening our close relationship with the Mainland to bring our advantages under "one country, two systems" into full play, we must endeavour to tap new markets to further enhance our status as Asia's world city.

The Greater Pearl River Delta Economic Region is the fruit of the close co-operation between Hong Kong and Guangdong in the past 30 years. Currently, Guangdong is finding a new path under the direction of scientific development, and Hong Kong needs to move towards a knowledge-based service-oriented economy. Both places must optimize the existing mode of co-operation, forge new consensus, and further economic co-operation and integration, with a view to providing new impetus to and making a breakthrough in the development of the region, thus making greater contributions to the economic development of our nation.

Hong Kong and Shenzhen have conducted a joint study on the preliminary planning of the Liantang/Heung Yuen Wai control point. Under the principle of joint study and development, the Hong Kong-Shenzhen Joint Task Force on Boundary District Development decided in March this year to explore the feasibility of developing the Lok Ma Chau Loop. This is a new mode of collaboration which requires new thinking. We should also apply such new thinking to other areas, such as financial and other service industries and environmental protection. In the area of furthering regional integration, we will liaise regularly with the mainland authorities to explore the feasibility of various options, so as to increase co-operation, strengthen the complementary roles of each place and achieve mutually beneficial outcomes.

As a result of globalization, Hong Kong will inevitably face intense competition. We must, on the one hand, enhance our overall competitiveness, and on the other hand, identify new impetus for economic growth. The exemption of duties on wine, beer and all other alcoholic beverages except spirits as announced in this year's Budget is one such measure aimed at further developing Hong Kong's wine trading and distribution businesses and creating more employment opportunities for Hong Kong people.

Surveys conducted after the announcement on 27 February on the immediate exemption of wine duty show that the average retail prices of the best-selling wine have been reduced by about 20%, demonstrating the benefits to consumers. From the announcement to mid-April, the volume of imported wine has increased by about 80% compared with the same period last year, and the increase in value terms is more than 200%. Furthermore, a number of major auctioneers have decided to hold wine auction in Hong Kong. Some companies have also embarked on business expansion or indicated their intention to develop businesses in Hong Kong relating to wine trading, including exhibition and storage. The market's initial response to the wine duty exemption has been encouraging.

The Government is stepping up the publicity and promotion work in conjunction with the Hong Kong Trade Development Council, Hong Kong Tourism Board and Invest Hong Kong, with a view to further promoting the development of business activities relating to wine trading, thereby benefiting our catering, hotel, tourism and logistics industries and creating more job opportunities.

The Commerce and Economic Development Bureau is liaising with the industry to identify their needs in storage facilities, manpower training and tapping mainland markets so as to formulate appropriate business facilitation measures.

As an international financial centre in Asia, Hong Kong has a number of unique advantages, such as a sound legal system, free flow of capital, and a low and simple tax regime. The financial turmoil triggered by the US sub-prime mortgage problem will continue to have an impact on the development of global financial industry in the short term. However, given the sustained strong growth momentum in the Asian-Pacific markets, we believe that capital will continue to flow in, bringing more opportunities to the Asian markets and attracting more professionals and investors to develop their businesses and seek new opportunities in the region.

We expect that the Mainland's economy will sustain a robust growth and its financial markets will become increasingly mature. With further interactions between the markets in Hong Kong and the Mainland, we believe that the development of our financial industry will also benefit from the rapid growth of the Mainland's financial markets. We will continue to study ways of enhancing

the competitiveness of our financial industry, such as further improving the regulatory regime, improving our business environment and attracting more financial talent. Efforts will also be made to explore new areas, including the Islamic finance and certain emerging markets, so as to ensure greater diversification and internationalization in the development of our financial industry.

I indicate in the Budget that we will adopt a more proactive approach in the use of land resources to facilitate the overall social and economic development of Hong Kong. Examples of the concrete measures in this respect are the inclusion of sites "restricted to hotel use" in the 2008-2009 Application List and the provision of two sites adjacent to the Wetland Park in Tin Shui Wai North for diversified development so as to create more job opportunities. I am glad to see that Members welcome and endorse this approach and that they have made other suggestions along this direction.

We will consider all these suggestions and give positive responses as far as possible. For example, in support of the development of the logistics industry, we have made available a site in Kwai Chung with an area of about 2.3 hectares for the development of a logistic back-up base. A tender for the site has been awarded after an open tender exercise early this year. Besides, to address the needs of international schools to expand, we have allocated four sites in Kowloon and the New Territories for international school development and have invited interested parties to express their interest to the Education Bureau early this month.

I am pleased that many Members have expressed their support to our efforts in recent years to amend the outline zoning plans in order to state the development parameters and suitably lower the development density. As Hong Kong is a small and densely populated city, I believe Members will not underestimate the difficulty of the work involved.

The objective of building Hong Kong into a quality city with a balance struck between optimal development and adequate provision of open space requires a consensus forged through thorough discussions by the community. The Stage 2 Public Engagement for the Urban Design Study for the New Central Harbourfront launched in early April is a good example of the Government's determination to build a vibrant, green and accessible new Central harbourfront through public participation.

One of the focus areas of this year's Budget is to take advantage of the fiscal surplus to return wealth to the community. In the area of support for disadvantaged groups, we have adopted a comprehensive approach so as to reduce as far as possible the number of people in need who might fall outside the net of the measures. I have already mentioned some such measures, namely the provision of additional CSSA payments and Disability Allowance, adjustment of the CSSA payment rates ahead of the normal schedule, payment of rent for public housing tenants, relaxation of the eligibility criteria for application for the Cross-district Transport Allowance, and granting of electricity charge subsidy.

Other major wealth-returning and support measures include the injection of \$6,000 into the Mandatory Provident Fund (MPF) accounts of employees and self-employed persons who earn not more than \$10,000 a month, provision of \$1 billion to create 3 000 jobs for youth, injection of \$1 billion into the Samaritan Fund, provision of \$1.2 billion to provide one additional month of the standard rate CSSA payments for CSSA recipients and one additional month of allowance for recipients of Disability Allowance, provision of \$1.5 billion to provide each Old Age Allowance (OAA) recipient with an additional grant of \$3,000, and earmarking \$1.2 billion as a subsidy for needy elderly people to repair their self-occupied properties and to provide them with minor home maintenance and improvement services. These measures have amply demonstrated the Government's commitment to support the disadvantaged groups.

Some Members are of the view that lowering the standard tax rate and profits tax rate, introducing tax concessions and waiving rates are indications that the Budget leans towards the rich and the business community. I do not agree with this.

If we put the clock back to the year 2003, we can see clearly that the Government raised the tax rates at that time to ask the taxpayers and the business community to help in riding out the difficulties in the public finances. As the health of our public finances has been restored, I consider it reasonable to revert the tax rates to their 2002-2003 levels. I believe that this will gain the support of our citizens.

In fact, we have taken a more prudent approach on profits tax. On the other hand, for salaries tax, we have accepted the suggestions of many Members and widened the tax bands. They are now wider than in 2002-2003 and will help to lessen the burden on the middle class. With a large surplus, we can

afford to return wealth to those taxpayers who helped us ride out the difficulties a few years ago by offering tax reduction and waiving rates.

Some Members remarked that the percentage share of social welfare expenditure in public expenditure has decreased, and this reflects the Government's failure to make the best effort to help the disadvantaged. I would like to point out that such a decrease can be explained with simple arithmetic. It is largely due to a bigger "denominator" from a number of the one-off measures involving large sums proposed for this year. These measures include an upfront endowment of \$21.6 billion to the West Kowloon Cultural District Authority, a grant of \$18 billion for establishing the Research Endowment Fund, granting of electricity charge subsidy, and injection of fund into the MPF accounts of those employees and self-employed persons who earn not more than \$10,000 a month. Some of the one-off measures that benefit the disadvantaged have not been categorized under the policy area of social welfare. As such, the percentage share of social welfare expenditure in public expenditure has naturally decreased.

Social welfare expenditure is mostly recurrent expenditure. The share of social welfare expenditure in public expenditure has in fact increased from 15.1% in 2003-2004 to 16.6% in the 2008-2009 Estimate. The estimated recurrent expenditure for the three policy area groups of education, social welfare and health, which are related to people's livelihood, will account for 56.6% of government recurrent expenditure for 2008-2009. This shows that the Budget has definitely not neglected the people in need.

Some Members pointed out that the share of housing expenditure in public expenditure is lower than that in 2003-2004. The reason for this is that the Government has repositioned the housing policy in 2002, focusing land and financial resources to provide public rental housing units for low income families that could not afford private sector rental housing. Expenditures relating to the operations of shopping malls and carparks and the construction of Home Ownership Scheme flats have been reduced. The streamlining of the organization of the HA has also achieved savings in staff cost. However, the policy objective of an average waiting time of about three years for public rental housing remains unchanged. The HA will plan the construction and development of public rental housing to meet this objective.

Some Members considered that the Pilot Transport Support Scheme should be extended to cover all districts and turned into a long-term subsidy scheme.

As Members will recollect, the Report of the former Commission on Poverty clearly stated that the purpose of the Scheme is to provide a time-limited allowance as an incentive for the needy unemployed persons and low income employees in the remote districts to find employment and work across districts, in view of the relative lack of employment opportunities in those districts. The Commission also considered that the subsidies are not meant to be a form of income support to supplement the low wages of employees. Providing the subsidies on a long-term basis is likely to have a negative impact on wages. Therefore, I have reservations on the views of those Members.

Many Members mentioned the OAA Scheme. I appreciate the community's expectations and also care for the well-being of the elderly in need. We are not rejecting any increase in the OAA. We hope to formulate a set of measures that can meet the needs of the community. The Labour and Welfare Bureau has commenced the studies on how to improve the OAA Scheme, and we hope that a decision will be made by the end of this year. The new Scheme will be more sustainable and better suit the needs of the elderly. I have pledged to provide the necessary resources. The purpose of providing a one-off grant of \$3,000 to our elderly is to enable them to share the fruits of our economic growth immediately during the period when the Labour and Welfare Bureau is reviewing the Scheme. I must reiterate that with our population ageing gradually, we have the responsibility to ensure that the Scheme is sustainable.

In considering how to better assist the disadvantaged, we must bear in mind that capital and commercial activities are highly mobile in a globalized economy and will move to markets with the highest returns. If Hong Kong's business environment deteriorates, for example, because of a need to raise tax substantially to finance various social welfare measures, it is conceivable that capital and investment in Hong Kong may move to other areas. This can have a significant impact on our economy and further reduce our social resources. Therefore, we must endeavour to maintain Hong Kong's competitiveness at all times and strike a proper balance between various social demands.

Last month the Government published the Consultation Document on Health Care Reform for the first stage consultation. The Consultation Document makes a number of recommendations for improving health care services in light of the problems facing the health care system and the challenges brought by population ageing and medical inflation. It also sets out the pros and cons of various supplementary financing options.

Health care reform is an important and major project. Increasing the share of public health care expenditure to 17% of government recurrent expenditure should be able to provide adequate resources for the Government of this term to meet the health care demand and take forward the health care reform. This is, however, just the starting point.

The Government introduces the health care reform at this time so as to seize the opportunity afforded by the favourable economic environment to create conditions in anticipation of the problems of health care system that will emerge in several years' time. The proposed health care reform includes such measures as enhancing primary care, promoting public-private partnership and enhancing the efficiency of public health care services. Upon implementation, these measures can ease the pressure of the increasing health care expenditure in the long run.

Even when the reform has been implemented, health care expenditure will remain a major challenge to our public finances in the future. Changes in demographic profiles are traceable, and our population projections have already taken into account the future population growth. The phenomenon that advances in health technology drive up medical costs is common to all advanced economies, and Hong Kong is no exception.

The Government has also provided detailed data to explain how changes in demographic structure and rising medical costs can give rise to an increase in health care expenditure that outstrips the economic growth. The share of health care expenditure will increase substantially from the present 15% of government recurrent expenditure to 27% in 2033. Some critics are of the view that health care reform does not require financing and some suggest undertaking the reform before implementing any financing arrangements. These views are shortsighted, without due regard for the future. Our generation, including you and me, will become the burden of our children in the future. Should we not have the courage to deal with this cross-generation problem with a long-term vision?

If we do not have the resolve now to revamp the existing arrangements of relying on tax revenue to cover the rising health care costs in parallel with the reform of health care services, there will be an acute shortage of medical resources when the peak of population ageing arrives. At such times, the Government will have no alternative but to increase tax substantially or cut the

expenditure of other public services in order to maintain the quality of public health care services.

For the future of Hong Kong and our younger generation, we must grasp this opportunity to reach a general consensus on a sustainable supplementary financing arrangement. The Government has pledged to draw \$50 billion from the fiscal reserves to assist the implementation of health care reform. This demonstrates our commitment to share the health care financing burden with citizens.

Some Members suggested that the measure of rent holiday for public housing tenants should also apply to HA tenants who are required to pay extra rent and tenants of HS Group B estates. I would like to stress that this measure is meant to provide assistance to lower income public housing tenants and should therefore be a targeted one. However, I note that there are some 300 tenants who are living in elderly persons' flats in HS Group B estates. The income ceilings for those flats are lower than the normal tenants of the same estates. These elderly tenants should also be the target beneficiaries of the measure. As such, the Government will pay one month's rent for them as well.

Moreover, to demonstrate the Government's commitment to enhance retirement protection in Hong Kong, I have proposed in the Budget that for people earning not more than \$10,000 a month, a one-off injection of \$6,000 be made into their MPF accounts and accounts under an occupational retirement scheme which is a defined contribution scheme.

I am glad that the measure has received widespread support in the community. I also note the suggestion of some Members that the Government should broaden the coverage of the measure to include people who have no MPF accounts or have not joined any occupational retirement schemes because of temporary unemployment. After careful consideration of the implementation details and the feasibility of the measure, I have decided to make some adjustments to the original proposal.

To be eligible for this one-off injection, a person must be a member of an MPF scheme or an occupational retirement scheme as at the end of February this year. Apart from those in employment as at the end of February, others who had been employed during a year period preceding the announcement of the Budget, who had an MPF account or an account under occupational retirement

scheme during the employment period and who earned not more than \$10,000 a month would also be entitled to the fund injection.

Another adjustment is that the measure will cover all members of occupational retirement schemes who meet the same salary requirements, irrespective of whether their schemes are defined contribution schemes or defined benefit schemes. Therefore, persons who have recently left their jobs and those who have an option to join an MPF-exempted Occupational Retirement Schemes Ordinance scheme under the law can also benefit from the measure, provided that they meet the salary requirements.

With the above adjustments and the latest figures provided by the Mandatory Provident Fund Schemes Authority, we estimate that the number of beneficiaries will increase from some 1.3 million to some 1.7 million while the expenditure will increase from \$8.5 billion to \$11.5 billion. The Financial Services and the Treasury Bureau will consult the Legislative Council Panel on Financial Affairs on the measure in early May. I expect that the funds will be injected into the relevant accounts in 2008-2009 upon the completion of the necessary legislative procedures.

Madam President, because of the volatility of the global financial markets, the local stock market has fallen and the turnover has shrunk. The property market has also become relatively thin recently. It could therefore be expected that the revenue from stamp duty this year will be lower than last year. Moreover, our economy will be affected by uncertainties in the external environment. Therefore, the Government must adhere to the principle of prudent management of public finances. Nevertheless, we have provided additional resources to benefit various disadvantaged groups as far as possible.

We will continue to monitor the impacts of rising inflation on citizens, especially low income families, and introduce relief measures where necessary. I believe that the Budget has provided appropriate assistance to the disadvantaged groups, offered a large number of concessions to share the fruits of economic development with various sectors of the community, as well as put forward positive measures to promote social and economic development and alleviate pressures on public finances in the long run.

This year's Budget fully reflects the concerted efforts of the Government and our citizens to join hands to readily face various challenges that our citizens may encounter. Through investing heavily in education, public health care and

infrastructure as well as vigorously promoting economic development, the Budget will also help people carry hope in their hearts for a better future.

Madam President, I would like to extend my heartfelt thanks again to those members of the public, organizations and Honourable Members for the many valuable views they have expressed from the start of the consultation exercise through the preparation of the Budget, as well as after its announcement. Thanks to their great efforts to reflect the aspirations of various sectors, this Budget has been able to stay close to our citizens' expectations and satisfy the community's needs.

I have tried my best to prepare a budget that enables people from all walks of life to share the fruits of economic growth. Nevertheless, I appreciate that the Budget is still not perfect. I will bear in mind your comments and criticisms. Deployment of public resources is not a task to be completed in one single year — it is an ongoing job. Your views will therefore serve as my reference in the next stage of my work.

I hope Members will support the Appropriation Bill 2008.

Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Appropriation Bill 2008 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Appropriation Bill 2008.

Council went into Committee.

Committee Stage

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

APPROPRIATION BILL 2008

CHAIRMAN (in Cantonese): We are to consider the schedule first, in accordance with Rule 68 of the Rules of Procedure.

I now propose the question to you and that is: That the sums for the following heads stand part of the schedule.

CLERK (in Cantonese): Heads 21 to 28, 30, 31, 33, 37, 39, 42, 44 to 49, 51, 55, 59, 60, 62, 63, 70, 72, 74, 76, 78, 79, 80, 82, 90, 91, 92, 94, 95, 96, 100, 106, 112, 114, 116, 118, 120, 121, 136, 140, 143, 148, 155, 159, 160, 162, 163, 166, 168, 169, 170, 173, 174, 180, 181, 184, 186, 188, 190 and 194.

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 sums for the heads stated stand part of the schedule. 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): Heads 53, 137, 138, 139, 141, 142, 144, 147, 151, 152, 156 and 158.

DR YEUNG SUM (in Cantonese): Madam Chairman, I have proposed 12 amendments this time around. I wish to thank you, Madam Chairman, for allowing me to speak again.

The Government has proposed to further develop the political appointment system. The expenditure on remuneration for Deputy Directors of Bureau and Political Assistants is already included in the Budget this year. Apart from Head 142 concerning the Offices of the Chief Secretary for Administration and the Financial Secretary where no Deputy Director of Bureau will be appointed but the appointment of Political Assistants will involve an increase of \$3.94 million in their expenditure, the expenditure to be incurred by the remaining 11 Policy Bureaux will be \$4.65 million each. In other words, the changes introduced by the Government to the political system of Hong Kong will incur an additional expenditure of \$55 million. The Financial Secretary has said that it is a principle of fiscal management to spend money where necessary. But should this amount of money be spent in such a way? This, to members of the public, is questionable.

The Democratic Party has opposed the creation of these two ranks right from the outset. I, therefore, propose to strike out this part of the expenditure in the Budget, and in the Legislative Council meeting next week, Mr Albert HO will propose a resolution to repeal the Order made by the Government to add Under Secretary in schedule 6 to the Interpretation and General Clauses Ordinance, in order to completely express the Democratic Party's view on the new structure.

Madam Chairman, since the Government made this proposal in 2006 the Democratic Party has expressed opposition to it on various occasions. The most important reason is that we consider that the governance of the Chief Executive does not have the people's mandate when there has not yet been full democracy in Hong Kong. Fundamentally speaking, under the so-called accountability system currently in force, the Directors of Bureau are ultimately accountable to the Chief Executive, while the Chief Executive is ultimately accountable to the Central Government. Members of the public, however, never have the political right to cast their votes to elect the Chief Executive and

empower him to form his own political team. Such being the case, the creation of an additional tier in the political appointment system still cannot turn the accountability system into one that is accountable to the public.

Moreover, the appointment of Deputy Directors of Bureau and Political Assistants will quite significantly change the political landscape of Hong Kong. The Democratic Party is not afraid of this change, and such institutional change would be naturally considered justified so long as it is made on the basis of democracy. However, what the Chief Executive has been doing now is to create an additional tier of political structure according to his own wish, and this is why we oppose this proposal.

When we debate this issue with the Government, the Government made the point that this could nurture political talents for Hong Kong. In fact, whether in democratic countries overseas or Hong Kong, the way to pursue a career in politics is generally to join a political party or switch from the Civil Service to politics. But one must eventually run in elections to obtain support from voters. Even under the ministerial system of the United States, appointments are made by the President with the people's mandate. Ministers will be replaced when the President completed his term of office, and if they wish to go into politics, they still have to run in elections in the end. Therefore, the argument of nurturing political talents under a Hong Kong-styled ministerial system is basically unsubstantiated, especially as rumour has it that the SAR Government's list of Deputy Directors of Bureau will include members of political parties. I must ask: Why should the Government nurture political talents for political parties with public coffers? This is a very big problem.

Pro-government political parties can take part in the elections of various tiers of parliamentary assembly in order to nurture their own political talents. With the support of unlimited resources, they are already in a position to actively carry out work in district and face the voters. The Democratic Alliance for the Betterment and Progress of Hong Kong has been able to obtain quite a number of seats precisely in such a way over the last couple of years. But this is in general still a competition between political parties to win support from voters through elections and so, we certainly have no objection to this.

However, when the Government will appoint members of political parties to be Deputy Directors of Bureau or Political Assistants, that would be a brazen attempt to nurture political talents for pro-government political parties with

public coffers. This is precisely an obvious example of the Chief Executive practising his advocacy of differentiation of closeness in relationship. What is most serious is that this entirely smacks of political trade-offs. The Democratic Party cannot support this proposal.

The Government said that enhancing government structure can improve the Government's ability in governance. I think the most immediate outcome is that Deputy Directors of Bureau will replace Directors of Bureau in attending meetings of the Legislative Council or meetings of various committees. To Directors of Bureau, it would naturally be best if they do not have to attend meetings of the Legislative Council to take questions. I would guess that in the beginning of the new system, the Directors of Bureau may still attend meetings of the Legislative Council or meetings of various committees, but I think we may only see their stand-ins in meetings at various levels of the Legislative Council in future except when it comes to a critical stage of enticing votes from Members.

In a democratic country, the executive and the legislature monitor each other and exercise mutual checks and balance on each other. If Ministers of the ruling party are doing everything they can in order not to attend meetings of the legislature and if they only send their subordinates to the legislature to explain government policies, they will likely face harsh questioning by representatives of public opinions in the legislature and discontent among the voters would lead to a constitutional crisis.

However, under the political system in Hong Kong, we all understand that the Chief Executive is not returned by the people. He does not have to be responsible to voters in Hong Kong, and our legislature has long been belittled by the executive. Once it has become a practice for Directors of Bureau not to attend meetings of the legislature, such a practice will only continue and the subsequent deterioration of the relationship between the executive and the legislature is imaginable.

Madam Chairman, this may actually be the last time that I speak on the Budget in this Chamber. Looking back on the past 17 years of my political career, it is my biggest regret that a democratic system has not yet been developed in Hong Kong and "a high degree of autonomy" of "Hong Kong people ruling Hong Kong" has not been fully realized. The constitutional system in Hong Kong has developed at a snail's pace; it is conservative, slow, and a complete departure from the main trends in the world; it goes against the

mainstream opinion in society of calling for a full universal suffrage in Hong Kong and as a result, the vision of an executive-led system and strong governance so often vowed by the Chief Executive can never be put into practice.

Hong Kong is a very modernized community, and on the basis of "one country, two systems", Hong Kong has made contributions to the country not only on economic front. Our rule of law, Civil Service and diverse culture also have a role to play. I think a leading role in the development of democracy is most important. Hong Kong is not just an economic city, but also a mature civic society. The people of Hong Kong truly very much deserve a democratic, open political system which is responsible and accountable to the people. Such a system can only be developed on the pre-requisite that the Chief Executive and the Legislative Council are returned by full universal suffrage, so that the Chief Executive will have the full mandate from the people while the Legislative Council will have a majority party to support the governance of the Chief Executive. Only in this way will good governance be made possible, and only in this way will a people-oriented society be developed and political talents being nurtured from one generation to another.

Madam Chairman, the Government's proposal in the Budget to further expand the accountability system by creating the ranks of Deputy Directors of Bureau and Political Assistants is only a hollow, impractical political spin that attends to trifles to the neglect of essentials, which will only further shatter the well-established Civil Service system in Hong Kong.

This Hong Kong-styled political accountability system is built on quicksand and lacks the basis of universal suffrage. Everyone refuses to review the inherent defects of this system and the crises caused by it in governance in recent years. If we go further to support this funding request of the Government and expand this system which is neither fish nor fowl, we would only see differentiation in the closeness of relationship being entrenched in the governance of the Chief Executive who would become tyrannical and act only according to his own wish to the neglect of public sentiments.

Madam Chairman, I understand that my amendment and speech are unlikely to stop this funding request from being passed but I still have to take this valuable opportunity to say what is on my mind. In the future, history will prove that this so-called "Hong Kong-styled accountability system" which lacks the basis of full universal suffrage is destined to be a failure.

In Taiwan on the other side of the Strait, a party rotation has happened twice and yet in Hong Kong, the development of democracy has still progressed at a snail's pace. Is this not worthy of in-depth reflection on ourselves? Judging from Hong Kong's foundation in politics and diverse culture, I firmly believe that Hong Kong has the conditions for the development of democracy to be taken forward to reach greater maturity and hence enter a glorious page in the history of Hong Kong. I hope that people who believe in democracy will persevere with their convictions and actively strive for room and opportunities for implementing full universal suffrage to the benefit of our future generations.

Madam Chairman, I so submit.

Dr YEUNG Sum moved the following motion:

"RESOLVED that head 53 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 137 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 138 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 139 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 141 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 142 be reduced by \$3,940,000 in respect of subhead 000."

"RESOLVED that head 144 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 147 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 151 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 152 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 156 be reduced by \$4,650,000 in respect of subhead 000."

"RESOLVED that head 158 be reduced by \$4,650,000 in respect of subhead 000."

MRS ANSON CHAN (in Cantonese): Madam Chairman, I speak in support of Dr YEUNG Sum's motion.

Without careful and thorough consideration, the SAR Government implemented the Accountability System for Principal Officials rashly. Without any public review and scrutiny, the Government obstinately proposed last October the expansion of the Political Appointment System by introducing two new tiers of political appointees, namely, Deputy Directors of Bureau and Political Assistants. On 14 December, the pro-establishment camp, having obtained sufficient votes and ignoring whether there was sufficient understanding and discussion in the community, granted funding approval in the Finance Committee for the creation of positions for 11 Deputy Directors of Bureau and 13 Political Assistants, resulting in an additional annual expenditure of \$55 million, or a total of \$275 million for five years.

The Government has explicitly indicated that people with political backgrounds would be recruited to fill the posts of Deputy Directors of Bureau and Political Assistants, who would "serve as another channel to enable the Chief Executive and the SAR Government to have connection with the various political parties and groupings of this Council, which means there can be communication and co-operation." It is laughable that the salaries of these Deputy Directors of Bureau and Political Assistants, who will only be responsible for communication and co-operation with political parties and Members of the Legislative Council, are several times higher than those of Members of the Legislative Council. It is also said that they mainly come from the pro-government political parties and pro-establishment camp. No wonder there are comments describing this as a typical example of dividing political spoils, offering political bribes and affinity differentiation.

The Political Appointment System is expanded by the Government under the high-sounding pretexts of tallying with political development, paving the way for universal suffrage, attracting political talents and enhancing its ability of governance. This is putting the cart before the horse. To put it simply, it is the first step of the Government seeking to expand the powers of the Chief Executive who is still not returned by universal suffrage. The governing team, which can sway all the policies of Hong Kong and listen only to the orders of the Chief Executive, will be further expanded from 15 people to 39 people through a process which does not have any mandate from the people. Thus, the Chief Executive is condoned to continue to build up his supreme authority with public money.

Since the implementation of the Accountability System for Principal Officials, who are political appointees, a gradual change has emerged inside the Government. The Chief Executive, who is not elected by the public, can handpick and control the three Secretaries of Department and 12 Directors of Bureau. He will even have the power to dismiss the Deputy Directors of Bureau and Political Assistants in future without being subject to any check and balance. In recent years, the flattery culture and subservience culture have slowly taken root inside the Government. It is obvious that those who obey their superiors will get promotion, thus leading to the gradual corruption of the quality civil service system.

Before the implementation of the dual elections of the Chief Executive and Legislative Council Members by universal suffrage, the introduction of such a political appointment system will give rise to two immediate impacts on the political landscape of Hong Kong. Firstly, the resources for making political rewards by the Chief Executive will immediately increase by multiple folds to the extent of, possibly outstripping the total amount of funding of all the political parties.

Secondly, after the implementation and expansion of this system, many special interest groups, consortia or political parties will wish to plant their trusted followers at the side of the Chief Executive through developing such a political relationship. Perhaps the Chief Executive is also glad to consolidate their support for him by means of this political balancing tactic. A fact which must not be neglected is that this will precisely give rise to opportunities for collusion between business and the Government and for political trade-offs.

The Government said that the expansion of the Political Appointment System would enable the political appointees and civil servants to play their respective roles and the neutrality of civil servants could be maintained. I believe many civil servants will take exception to this view. Is it really possible for the Deputy Directors of Bureau and Permanent Secretaries to be independent of each other and the neutrality of civil servants to be maintained? When the Director of Bureau is out of town, the Deputy Director of Bureau, who is at D6, will act up and instruct the Permanent Secretary, who is at D8, to work according to his order. Moreover, the Deputy Director of Bureau can also, on behalf of the Director of Bureau, request civil servants to prepare and provide information in order to support him in discharging his duties. Thus, the line of command between civil servants and political appointees is still unclear. Furthermore, according to the Government, when dealing with important policies, the Permanent Secretaries still have the duty to assist the Director of Bureau in explaining the policies and lobbying for the support of Members. When something happened, the ambiguities in respect of their powers and duties will lead to many grey areas enabling them to shirk responsibilities. Regarding the civil servants, this system will only reduce their promotion prospect. If they are required to take care of the political trainees who totally lack administrative experience, it will only mean helping to build up the Chief Executive's personal team and dealing a heavy blow to the morale of the civil servants, thus leading to a deterioration of efficiency and impeding the realization of good governance.

The implementation of democracy requires a large pool of political talents. As revealed by many well-developed political systems, political talents come from political parties which are baptized by direct elections and accountable to the public. To allocate more resources to political parties for nurturing and strengthening the political landscape is the most pressing task for Hong Kong. It will go against the objective of democratization should the Government expand the Political Appointment System blindly.

Madam Chairman, I so submit.

MS EMILY LAU (in Cantonese): Chairman, I speak in support of Dr YEUNG Sum's motion.

As we have said time and again in this Council, many people do not accept the arbitrary insertion of this system by the authorities which tried to do so by surreptitiously substituting one thing for another. Secretary Stephen LAM invariably says that this is the practice of overseas countries where political

appointees can be found at several levels. However, he did not mention that the system in foreign countries is built on the basis of political parties returned by elections. Through elections, the party which can win the majority of votes or the highest percentage of votes will become the ruling party. And the second and third tiers of its members will become Under Secretaries or Assistants. There is a set of logic and system behind it.

However, what Secretary Stephen LAM excels is to surreptitiously substitute one thing for another. He said that we have to learn from foreign countries. But where is the credibility of the authorities? Which party is the ruling party or the ruling coalition? We do not have such things. And then, the Legislative Council is requested to grant funding approval to the Administration so that it can recruit members of its own team, as Mrs Anson CHAN and Dr YEUNG Sum just said. And as Mrs Anson CHAN said, there is even collusion between business and the Government. In future, the Administration will recruit members not only from political parties, but also from the business sector, and their salaries will be exorbitantly high. So, I really do not know how such a practice can pull the wool over the eyes of some political parties and the community.

I hope the public can understand that this sum of money should not be spent and these ranks should not be created. If party politics is to be developed in a proper way, the most senior members of the ruling party can be appointed as ministers and directors of bureau and if they are appointed to take up these posts of different ranks, I believe the public will accept this. However, the current situation is not like this. Rather, it is up to the Administration to decide who will be handpicked and appointed. Moreover, the required qualifications have not been set out — we have no idea of the qualifications for their appointment, even though the qualifications for Administrative Officers or other civil servants are clearly specified and the applicants for these posts are even required to sit for the Basic Law Examination. Nor do we know whether these political appointees are required to sit for the Basic Law Examination. There is no stipulation of such requirements at all. The Administration has created positions for people who are the apples of its eyes in a way as if Money King plucking a strand of hair from his body and changing it into something else, which will cost us hundreds of thousand of dollars. So, I think this is really most scandalous and ridiculous.

So, I very much hope that I have no idea. Some people who may have gained benefits from this will certainly express their support. However,

the creation of such posts at the expense of taxpayers' money will lead to government-business collusion and deal a blow to the Civil Service. Mrs Anson CHAN, a former Chief Secretary for Administration, has pointed out how this will deal a blow to the Civil Service and the Administrative Officer Grade. I believe the Administration should give consideration to this. If the civil servants think that their morale is low and that it will further deteriorate in the future, the governance of Hong Kong will be getting worse and worse and if that happened, should the Chief Executive and all government officials be held responsible?

I believe the Administration will not bother to consider these. It can do whatever it wants because there are sufficient votes to pass the motion and funding is available, just like the day when the Accountability System for Principal Officials was introduced — I think you, Madam Chairman, knows this and I have also mentioned this — they have even taken away the last cent because the civil servants concerned can leave the Civil Service and get the pension plus a new job. Other civil servants said that they have received double benefits as they are not affected at all even though they have quitted their jobs. For instance, the three Secretaries of Department who have their own official residences were required to pay 7.5% of their salaries as rent (which is in fact very trivial), but they are no longer required to pay any rent after being appointed as Principal Officials. Some civil servants also asked me whether I have heard of the term "extreme greed". Each one of these political appointees has even taken away the last cent and all the benefits. So, Chairman, how can people be convinced that this is not an excellent tool for transfer of benefits?

So, our taxpayers have been fooled because these political appointees have taken away all the money, but after getting the money, can they truly fulfil the duties expected of them? I have serious doubts about that. Chairman, when the Special Finance Committee discussed the Budget, it is set out in government papers that these political appointees will serve as a channel for communication. I asked what kind of communication Mr Norman CHAN, Director of Chief Executive's Office, has conducted. Has he not attended the meeting of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) in Shenzhen? Why did he attend only one meeting? The then Chairman of the Finance Committee had forgotten his role and it seemed that he had suddenly turned into the Chairman of DAB, explaining that it was just an invitation. I said it is not written here that communication will be conducted by invitation only, and communication is communication. Chairman, at that time, all Members from the Democratic Party, the Civic Party and League of Social

Democrats indicated that no one had ever communicated with us. So, on the very same day, I requested an audit be conducted by the Director of Audit right away in order to look into why the objective is said to be high-sounding and the details have even been laid down but in fact, Chairman, no communication whatsoever has been taken place between us. Do you not think that this is "cheating money" out of the people?

Today's situation is the same. The same things are said again, and they mentioned communication. Chairman, let us see whether there is any communication in the future. Many colleagues have also told me that they would like other political parties and groupings to carry out communication. As a matter of fact, it would be a waste of energy if the Administration sent them to communicate with me. I will give them a cold shoulder. If I really want to discuss with the DAB, why should I talk to its second or third-tier members? If there is a need to have discussion with them, I can talk to TAM Yiu-chung and Jasper TSANG. So, is such a design really effective? When civil servants are assigned to discuss things with us, we will still be willing to talk to them although, in our opinion, they are technocrats. But now, the Administration is sending people with party affiliations and political backgrounds to discuss things with us. Will this really serve the purpose? So, I think we have absolutely been fooled.

Just now, Dr YEUNG Sum made it very clear that these people would seldom show up in the future. Chairman, surely this is going to happen, even though you will be here for just a few more months. Unlike a prediction by a feng shui master which can be verified only in 10 or eight years, such a situation can be seen instantly. On the first day when Secretary TSANG Tak-sing assumed office, I, as well as many colleagues, told him to bear in mind that he should attend our meetings more often. The Secretary promised that he would attend our meetings unless he must attend some other meetings. I said, "Secretary, you should regard meetings of the Legislative Council as your top priority and you will certainly come if you adhere to such a principle." What happened afterwards? What I said has fallen on deaf ears and he was not seen in all our meetings. He seldom attended our meetings except on occasions when approval for funding would otherwise be rejected.

Chairman, concerning the Financial Secretary's attendance at our meetings, you also expressed concern last week on his absence from the Chamber when Members were delivering their speeches. Members also have strong views on this. So, the Chairman of the House Committee sent him a

letter on our behalf last Saturday. What did the Chairman say in the letter? During our debate, the Secretary was not in the Chamber for most of the time. Other Directors of Bureau also did not have time to listen to Members' speeches although the dates of the debate had been scheduled well in advance. The Chairman of the House Committee also said that on previous occasions, the Financial Secretary would sit through the Council meetings during the resumption of the Second Reading debate on the Appropriation Bill. So, the incumbent Financial Secretary is very special. Chairman, you have also indicated that you would like to ask the executive authorities whether the established practice has been changed.

What else is said in this letter on behalf of Members? Chairman, it said, "..... as provided in Article 73 of the Basic Law, one of the Legislative Council's functions is to examine and approve budgets introduced by the Government. Being the public officer in charge of the Appropriation Bill, Financial Secretary has a constitutional obligation to consider the views of Members on it. The poor attendance of Financial Secretary and Bureau Secretaries during the debate is a disrespect to the Basic Law, and reflects the lack of importance attached by the Executive to the views expressed by the Legislature." Chairman, what did we ask for? On our behalf, the Chairman of House Committee asked for the Financial Secretary's response. What should the Financial Secretary say in response? He should tell us in his reply whether the established practice that the Financial Secretary would sit through the Council meetings during the budget debate has changed. Moreover, as he was not in the Chamber most of the time, we would like to know where he had been and what he had done.

Chairman, today, the Financial Secretary has given us a reply. But as usual, his reply is tantamount to giving no reply at all because he did not mention the points we raised and he only said that although he was not present — as he said just now — he listened to our views through different channels and arrangement had been made to collect our views before a response was made. We did not only ask him whether there was any channel. Chairman, why should the Financial Secretary come to our meetings? Because our meetings are also broadcast on television. So, all government officials need not attend our meetings because they can sit in their offices or bedrooms watching the meeting while drinking coffee. However, on previous occasions, the former Financial Secretaries would sit through the Council meetings, and the time that they spent in the Chamber was at least almost 97% or 98% of the meeting. But this time

around, it is not the case. Many Bureau Directors were absent and we are then given such a reply, which is tantamount to getting no reply at all. It will even be more laughable in the future because the Deputy Directors of Bureau will attend our meetings instead.

So, Chairman, if we support the proposal of the Administration today and endorse the creation of these posts, I believe we in the Legislative Council are really digging our own grave. In fact, as we can see, the Chairman of the House Committee has pointed out in the letter that the Executive disrespects us or pays no heed to what we said, particularly when it heard many people say that they would vote for its proposal — we have been targeting issues, not people. If what is done is right, we will vote for it. However, mutual respect is very important. On such an important occasion, we even have to ask you, Madam Chairman, to take all the trouble to put this point across to the authorities and yet, no reply has been received from the Administration. Our question on whether the established practice has been changed is not answered. Moreover, why did the Financial Secretary not attend our meeting on that day? Is it due to some urgent matter, for instance, meetings which must be attended as Secretary TSANG Tak-sing said, thus resulting in his absence from our Chamber for more than 90% of the time? Similarly, no reply on this has been given.

So, Chairman, I believe if the original motion today as mentioned by Dr YEUNG Sum can be passed and the posts are created, or Mr Albert HO's motion to be moved next week is negated, I wonder who will be appointed by the Administration to take up these posts, how government-business collusion will take place and how collusion among political parties will take place and as a result, improvement in governance would only become impossible. We have attached great importance to Hong Kong's development. Will we support such a practice?

Sometimes, I really think that the Administration is hypocritical because while saying that it supports constitutional development and the development of political parties, it refuses to lend its hand when its assistance is truly required. Worse still, it has deployed such a tactic. It is hoped that the Administration will properly support the development of political parties and elections or give support through other means, such as giving support to think tanks, so that political parties will really be given powers and responsibilities, and talents can then be nurtured. Because a frequently asked question by the people is: Why should such posts be created in view of the fact that these appointees do not have any administrative experience at all?

Of course, talents can be groomed persistently by first allowing people from political parties a chance to acquire administrative experience. However, the Administration has totally stifled such a process. Without justifications, it has requested the Legislative Council to grant approval for such a huge sum of money for the creation of these posts. Among the appointees, how many of them really have administrative experience? How many of them have people's mandate? How many of them have credibility? And how many of them have run in elections? It is really ridiculous!

If the Administration has acted in such an absurd way, including its performance during the Budget debate, and if I cannot convince Members or make them realize that the proposal is unacceptable, then I think some Members would have to replace their brains.

I so submit.

MR RONNY TONG (in Cantonese): Chairman, democratization of the political system has been the goal of the democratic camp. Apart from dual elections by universal suffrage and the abolition of appointment system which we have always talked about, democratization of the political system also requires the implementation of many other support measures on the road to universal suffrage. Chairman, I hope I will be allowed to move a motion two weeks later so that we can have a detailed discussion on these measures in this Chamber. However, the proposal of the Government has neither been fully discussed in the Chamber nor thoroughly considered. The fundamental objective of the proposal is contrary to the continuous democratization of the political system mentioned by me just now. Chairman, what we are now discussing is the use of public money by the Government to attract some individual political parties to join the Government through offering rebates to them.

Chairman, undeniably, the Political Appointment System is a retrogression of democratization. First of all, what we are talking about is a mistake in timing. As I just said, before the realization of universal suffrage, the SAR Government's original intention of implementing the Political Appointment System is entirely contradictory to our ideas of improving governance and implementing accountability politics. Now, our Chief Executive, who is not elected by universal suffrage, does not have the mandate of the people. In the absence of the people's mandate, these Political Assistants, who are handpicked by the Chief Executive himself and whose training and

background are different from those of the Administrative Officers, will not perform better than the conventional Administrative Officers in absorbing public opinions, because under this system, they are only accountable to the Chief Executive who is not returned by the people. Will these newly appointed Deputy Directors of Bureau and Political Assistants really listen to public opinions?

On the premise of lacking the mandate of the people, the most important function of appointing these Deputy Directors of Bureau and Political Assistants is not nurturing political talents or upgrading the ability of governance of the SAR Government. In fact, the most important purpose of appointing these Deputy Directors of Bureau and Political Assistants is to exchange political interests using public money, a feeble political device of the SAR Government for covering up the lack of the people's mandate.

The list of candidates circulated among the media gives us an inkling of the matter. At present, the candidates on the list circulated among the media can be divided into three categories. The first category is the successors of pro-establishment parties. It is not difficult to understand why they have become the frequent and welcomed guests of Chief Executive Donald TSANG. On the one hand, the Chief Executive wishes to gain dominance over the pro-establishment parties or curry favour from them. On the other hand, as these people are most reliable politically for they will toe the line of the Government, they will be given other political benefits even if they are not appointed as Under Secretaries or Political Assistants. The second category is those who have participated but lost in a political election. Cherishing a naïve illusion about the appointment system, they may throw themselves into electoral politics again after having served as Under Secretaries for a number of years. However, I think such an idea is rather naïve. Basically, if some people have been defeated in an election, that means they cannot win the trust of the voters. If resources are used to them at this moment, it will, to a certain degree, be a disrespect to the voters. The third category is people on the middle and upper hierarchy of the media. Well-versed in the use of public opinions, they may become spin doctors after joining the Government. Their most important function is whitewashing and covering up the faults and mistakes in the governance of the SAR Government. They may be able to manipulate public opinions, but it is very doubtful as to whether they will, after a few years of political grooming, eventually participate in democratic elections in order to be baptized by democratic politics for the people to decide whether they can become

leaders of the SAR Government. After spending \$60 million a year on nurturing these so-called political talents, can the SAR Government eventually identify some people who are determined to participate in democratic politics?

From a more practical point of view, Chairman, if they can easily take up such high-pay political positions without making any efforts, they will be more vulnerable to the lure of political trade offs. Let us think about this: Will they, after accepting such benefits from the Government, easily give up such jobs which come easy to them and for which they are paid hundreds of thousand of dollars per month, only for participation in direct elections, the results of which are unpredictable, so as to become Members of the Legislative Council with a remuneration amounting to only a quarter of their original pay and a status which confers no powers on them but demands accountability to the public? Chairman, in fact, I can hardly think of anyone who will do so. If a person who is basically committed to democracy, he will not take a short-cut. He will not serve the community through this channel. If he has no commitment to democracy, it will only be a political deal, as I just said, and will not be conducive to the democratic development of Hong Kong at all.

In fact, if the SAR Government is genuinely committed to nurturing political talents so that more young people will take part in politics, the most direct way is the promotion of party politics and the revamp of district administration so that powers can be delegated to the parliamentary assembly at district level, or the District Councils can be elevated to a status equivalent to or higher than that of the former Municipal Councils. In so doing, those who aspire to taking part in politics can gain practical experience in district administration before they stride forward to become leaders of the Government. In the past, there was no lack of such experience in Hong Kong. I cannot understand at all why the SAR Government has chosen a more difficult way of doing this.

Chairman, recently or in the past six months or so, I have spent a lot of time making contact with professionals in the hope that I can lure them into participating in the Legislative Council Election. But why was I turned down all the time? The reason is that those who are committed to democracy think that it is an unworthy sacrifice to join this Council and their future will become unpredictable, because after becoming a Member of the Legislative Council, they have to give up their professional achievements, sit here and speak to empty chairs every day. To them, such an occupation is not attractive at all. However, if they are asked whether they will take up the position of a Deputy

Director of Bureau, they are all the more reluctant to do so because they have been persevering with their convictions on democracy and cherished a vision for the future of Hong Kong. They are unwilling to accept such an arrangement which is almost tantamount to a temptation strategy.

Chairman, in the absence of democracy and universal suffrage, the SAR Government has further developed the Political Appointment System by creating the ranks of Deputy Directors of Bureau and Political Assistants. This has in fact turned the whole system into a double-blade sword which serves the purpose of consolidating the practice of favouritism, strengthening the division of political spoils and causing a split to the people's power. To put it simply, the SAR Government has successfully swapped the concepts on the sly such that some democratic elements have been turned into anti-democratic poison. We absolutely oppose such a proposal. I support Dr YEUNG Sum's motion.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the Secretary has just stepped out of the Chamber the Financial Secretary? Yes, the Financial Secretary. I have made a mistake. I am sorry. I did not intend to sound as if he had become NIAN Geng-Yao who had been demoted 18 grades in a row. However, he is very irresponsible. In fact, to be fair, he can really refuse to attend the meeting because he has got enough votes after doing some counting. What is the point of his coming here? What is the need of lobbying? I see many civil servants roaming in the Legislative Council Building, counting the number of Members going in and out. In fact, this is unnecessary because they have obtained enough votes this year. It is precisely because of such a mindset that the Financial Secretary thinks that his presence or otherwise makes no difference and so, he decided not to come.

I remember that in a recent interview by a newspaper, the Financial Secretary quoted the remarks of CHOMSKY, saying that he himself was an anarchist in the institution. This time, he has really acted on his words as he comes and goes as he likes. This is what he meant. I really have to write to CHOMSKY to ask whether this is what he meant when I have time. By anarchism in the institution, does it mean that when a person has joined the Government and occupied an important position, he has to suppress or despise those who hold different views so as to show his authority? I really have to ask the Secretary this question — no, it should be the Financial Secretary, sorry — the Financial Secretary has left the Chamber.

In fact, what we are talking about today is the Government's ploy of absorbing politics into the Executive which has been practised for many years. At present, many who have taken up the post until now I mean those who were engaged in the teaching profession but are now working for the Government are also playing the same trick. Why do they still do the same today? In fact, we can see some mysterious clues for the election of the Chief Executive or the Legislative Council by universal suffrage in the future. It has been said that in the election of Chief Executive by universal suffrage in the future, some people will be elected first. In other words, a handful of elites will be selected as the *creme de la creme* who are identified to compete with each other for the top post. It will be conducted in the name of universal suffrage because it has absorbed the experiences of TUNG Chee-hwa and Donald TSANG. In fact, both of them were wearied to different degrees and both have strengths and weaknesses. TUNG Chee-hwa did not have any experience in administration and commanded no public support while Donald TSANG is experienced in administration but he also has no public support.

So, in the bogus election of the third term Chief Executive, Donald TSANG continuously depicted a picture that it was an election encompassing public opinions. Have you ever heard of an election in which voters were asked who they supported after the election was over? It is not necessary at all. If it is conducted by one person, one vote, the election will close at the end of the vote. Now, 800 people will elect the Chief Executive — although I am one of them, I have not cast my vote — after the election was over, the people of Hong Kong are asked who they support. This is simply a waste of public money, right? And then

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, although you are giving a nice speech, would you say a word or two about Deputy Directors of Bureau and Political Assistants?

MR LEUNG KWOK-HUNG (in Cantonese): Yes, surely I would. What is the reason? In future I believe many colleagues in this Council have watched horse races in the Hong Kong Jockey Club. Certain criteria must be met in order to participate in a derby race, right? The horses should be at the age of three to four. In fact, I do not know much either. But I know that some criteria have to be met in order to participate in a derby race. The same applies

to the election of the Chief Executive. What requirements must a candidate meet? He should have experience in administration and be baptized by direct election. Let us do some calculation. If Hong Kong people are lucky and if we do not put up resistance, universal suffrage will be implemented in 2017 the soonest. If we are that lucky, we should put up resistance much earlier. According to the timetable, we can elect the Chief Executive by universal suffrage in 2017. Let us think about this: Who in the pro-establishment camp will dare to run in a direct election? Very few indeed. A very courageous lady has run in an election. She can meet the requirements as has been baptized by universal suffrage and she had been a high-ranking government official. But this is still unacceptable and we cannot allow somebody to have her preordained.

Here is the crux of the problem. In a small-circle election, if some people want to create such an environment in this pie-sharing game so that the candidates are required to have experience in administration, which means that the top post should be filled by Administrative Officers, and also experience in running in a direct election and in view of these requirements, those who have no experience in administration but have run in an election are recruited into the Government. By donning the emperor's robe on the selected candidates, some people will be able to fulfil both requirements. It is the expectation of the Central Government that the candidates will have public support and administrative experience. On the contrary, these people cannot choose to work as civil servants responsible for administrative work right at the beginning. Nor should they run in an election after having served as Directors of Bureau under the accountability system, right?

So, what is the purpose of such a tailor-made arrangement? It is to ensure that all those who wish to participate in the race are handpicked by the Government. In other words, for people who have run in an election — take me as an example as I have run in an election. If I wish to be the Chief Executive or a government official at the ranking of a Secretary of Department, I will take up public office in order to go through a process of soaking and dyeing, so as to indicate that I have run in an election and acquired administrative experience. On the other hand, although some high-ranking officials are so keen on these posts, it is too late for them to make all these preparations because they are too old.

So, what is the problem now? We have wasted so much public money. But it is wrong to say so. It is more than \$200 million. Are they really

hankering after such salary? Of course, it is possible that some people are, and I suspect that some people are really keen on it. However, from a broader perspective, since he was criticized by Mr Alan LEONG in the last election that he had not run any election, it is necessary to create such an environment for those who will run for the office of the Chief Executive in the small-circle election in the future.

This is to absorb politics into the Executive. In other words, the Hong Kong-British Government had absorbed different political views into the Executive so that these views could not be expressed independently. This had dealt a fatal blow to party politics. It is because party politics, be it under the constitutional democracy of the United Kingdom or the radical revolutionary democracy of France, is, by nature, the formation of parties and factions. In the past, those who participated in open debates would be beheaded right after their speeches, such as Maximilien DE ROBESPIERRE. They had to be held responsible for what they said. The parliamentary democracy of the United Kingdom is the same. The greatest thing is that somebody could chop off the head of the King with a knife and the King was dead.

So, party politics is in fact not the best system because everyone has to be held responsible for his platform. I will be held responsible for what I said today. The Deputy Directors of Bureau and Political Assistants we are now discussing are a different system. Even the Chief Executive does not have to be held responsible, right? If CHEN Shui-bian is good-for-nothing and "PK" (approaching his doom), the Democratic Progressive Party (DPP) must stop him, right? The DPP would force him to step down. Why? Because this is to prevent the downfall of the whole party.

How about our current electoral system? Even if the Chief Executive is backed by a political party, he has to dissociate from his party once he has been elected. Just like Donald TSANG, why should he be held responsible for his whole team? He will not be held responsible. Even if he quitted, he would not be held responsible for his party. In other words, no person or party can rein in him except the Central Government above him. It is provided in the Basic Law that the appointment of all Secretaries of Department and Directors of Bureaux has to be reported to the Central Government. Now a duplicate structure has been created. I wonder whether this is a violation of the Basic Law. Perhaps it is not, is it?

In fact, what are we doing now? We are now delegating political powers to these people by such a system which is tailor-made for them. I would like to ask Members of the pan-democratic camp: Why? Why are you not approached by the Government? Because you will never have any experience in administration, do you understand? Even if you are elected, a coup d'etat could be organized on the pretext that there would be no electricity and water supplies if Hong Kong is governed by these people. This is quite a vicious ploy, but our future Chief Executive will be elected in this way. Although I am not interested in a system whereby top guy will be selected from the cream of the cream, I cannot but speak out for fairness sake. This is a political conspiracy. We should not think that it is meaningless to give them \$200,000-odd. Only one remark is enough in the pork barrel politics of Hong Kong. We can see that most of the tycoons among those 800 people have been rewarded by the Government, right? Donald TSANG has given each one of them benefits disregarding of what consortium they belong to. And these are sufficient to illustrate the point.

So, on this question, we should not focus our attention only on the additional allocation of \$200-odd million, thinking that lucrative jobs will be created for some people. This is not the point. The Chief Executive has taken up his job not because of his salary but for the sake of the future of a group of people. We can see the coming and going of some high-ranking officials, such as Rafael HUI who was not required to go through the sterilization period before joining the private sector. Then he came back and now, he is employed by a consortium again. It is really doubtful whether they have any political integrity.

Let us take a look again at what important appointment does the Financial Secretary have? I really have to ask him when he is back. Perhaps it is very strange. It always happens whenever I speak. To put it simply, when we look at the problem as a whole, we can see the entire

CHAIRMAN (in Cantonese): Please wait, Mr LEUNG Kwok-hung. Mr Martin LEE, do you have a point of order?

MR MARTIN LEE (in Cantonese): Chairman, it seems that we do not have a quorum.

CHAIRMAN (in Cantonese): Mr LEUNG, please sit down first, and you may resume your speech later. Clerk, will you please ring the bell to summon Members back to the Chamber.

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

CHAIRMAN (in Cantonese): A quorum is now present. Mr LEUNG Kwok-hung, please go on.

MR LEUNG KWOK-HUNG (in Cantonese): Although the Financial Secretary is not in the Chamber, I can do nothing about it. I have brought him a pair of glasses, a pair of glasses with biased vision. (*Laughter*) It should be put on like this. I originally wanted to say that he was involved in collusion between business and the Government. This pair of glasses symbolizes that he can only see with one eye as there is only glass on one side of the frame, meaning that the person wearing it will look at people with "a different eye". It is in fact quite an elegant description of him by saying that he looks at people with "a different eye" or "with good graces", for he can only see the rich people. Their appointments are certainly important. Insofar as the constitutional system is concerned, he thinks that incompetent people are unimportant. This is in fact not right. But I will show him this pair of glasses again when I comment on collusion between business and the Government later on. I will certainly make him see this pair of glasses.

To absorb politics into the Executive is a trick of the British. It is also the quintessence of Chinese culture. Let us take a look at the eight democratic parties in the Mainland. Everything concerning these parties, ranging from salaries to party offices, is all taken care of by the Communist Party. These eight parties will toe the same line and press the button together when an order has been issued. Today, such a thing does not work in Hong Kong. The British, who were the colonists, would certainly wish to control Hong Kong and yet, they could not go too far and so, they could not do so. But we are now doing this, as a Government Party is formed through the appointment of accountable officials behind closed doors. This Government Party excludes all outsiders. It tells the rich that if Long Hair is proletarian and revolutionary, they will be in bad luck. This is all done behind closed doors, like an ancestral

shrine giving off a stench. People will then be dragged into it and get killed if he is screened out. As it is so plain that the Government is trying to form its own group of supporters for private gains, just like the Guards in Embroidered Coats and the Eastern Depot in the Ming Dynasty, I really do not understand why we should give it the money.

Members, these people can join the Civil Service if they aspire to serve the community because civil servants are governed by their own code of practice and the principle of neutrality. As these Political Assistants and Deputy Directors of Bureau will certainly support the governance of the Government, why do we have to create positions for them? Why should those incumbent Secretaries of Department and Bureau Directors who are considered not quite right by Donald TSANG not be ousted, so that these people can fill their positions?

So, we can see the expansion of the bureaucracy — a major symptom of Parkinson's disease, and PARKINSON has died — Now the dead has a hold over the living. We continue to expand our bureaucracy. We continue to allocate more money for all systems to create more posts. Members, do you understand that people even feel the pinch over breakfast under a rampant inflation? How can we spend this sum of money? We oppose political reward in whatever form. So, Members, please do not give it any money again. We should hold it responsible for this. It should shoulder its own political responsibility. The Chief Executive must be directly accountable to us.

DR KWOK KA-KI (in Cantonese): Chairman, the appropriation of \$60 million indicates that today is a day of darkness for the political development of Hong Kong.

Earlier on, I saw a very special article which had quoted the comments of Mr James TIEN, Chairman of the Liberal Party, who said that Deputy Directors of Bureau and Political Assistants were basically not of any help to the political development of Hong Kong and queried why \$60 million should be spent on them. Why did even a pro-government party say this? In that article, it is also said that the cost of each vote cast in the Legislative Council election has been increased from \$10 to \$11. What can we see by reading these two points together? The Government's remarks that the creation of the posts of Political Assistant and Under Secretary is for the democratic development of Hong Kong are all lies and humbug. The political development of Hong Kong has precisely been stifled by the Government.

According to the Basic Law, universal suffrage will be implemented in 2007 and 2008. But we are deprived of that. In the way forward, we even have no idea of how the 2012 Legislative Council Election will be held. Neither do we know in what way the direct election of the Chief Executive in 2017 will be held. We do not have the answer even today. The so-called direct election in 2017 may fall far short of public expectations. Basically there will be plenty of thresholds and screening processes, thus limiting the number of eligible candidates. This is like a lie being repeated for many times will be regarded as the truth. This is like the claim that there will be direct election and universal and equal suffrage in 2017, or that democracy is really not far away in Hong Kong, or that the system of Deputy Directors of Bureau and Political Assistants is introduced truly for the political development of Hong Kong.

We have to see clearly who will become Deputy Directors of Bureau and Political Assistants and who is the designer of such a system. An elected government with the people's mandate can design some proposals, including proposals on the political system and the restructuring of the government. With people's mandate, it should do so because it has been empowered by the people. Regarding our Government, how was Donald TSANG elected? He was elected by a clique of 800 people. How were these Principal Officials appointed? Have they gone through a process which confirms their acceptability by the people? It is not necessary for them to do so.

So, in the development of the system as of today, the Financial Secretary is the best example. During the 14 hours of Budget debate, he could only spare three hours in the Chamber. He can tell us that he was listening to our speeches while watching television. He can tell us that he had more important things to do. He can tell us that he had delegated a member of his staff — as he has done so right now — to step into his shoes. Of what quality is he as a government official? A government official of such quality is seeking our support for changing the political system. Actually, he does not have to be accountable to us because he clearly knows that his boss is not these people here.

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

I have heard that the incumbent Financial Secretary will be a potential candidate to run in the election of the Chief Executive for the next term. He is

also aware of that and understands what is in store for him. His boss is not here. Nor are Hong Kong people his boss. If he has the opportunity to run in the election for the office of the Chief Executive in 2012, then his boss is not here either. Instead, his boss is in the North and the clique of 800 people. So, he can simply ignore these people in this Chamber even though they are elected by the people.

This is the quality of our Government that we can see. Government officials of such quality have told us that their reform package can realize democracy and take forward the political development of Hong Kong. A small bit of trust in them will be too much.

If this Government wishes to further the development of our political system and democratization, it has to tell us now how direct election of all Members of the Legislative Council and the Chief Executive can be made possible. The Principal Officials appointed by an elected Chief Executive will be accountable to the public. Now it must tell us what accountability is all about.

At present, even though he has done a lot of things which go against public opinion or are basically unwelcomed, he can still sit here shamelessly. There will not be any problem because neither the political system nor the Legislative Council can hold him in check.

If we still pretend to be unaware of such a regrettable development although we are facing it, it only shows that we lack political conscience. We certainly hope that there will be further development in the politics of Hong Kong. We certainly hope that more talents will join the political arena for development and work. This is what we all wish to see. However, what kind of opportunity and remuneration has been provided by the authorities? These people well understand that this is all about getting reward for doing nothing, exchanging benefits on the sly, and black-box operation in a small circle. There are lots of elites in Hong Kong, and many potential candidates for Deputy Directors of Bureau and Political Assistants are in this Chamber. They understand that in order to be appointed, it is not necessary for them to come out and talk about their vision and beliefs. It is not necessary for them to say anything to the voters or public. They only have to be accountable to their bosses.

Who are their bosses? Of course, the Chief Executive is the biggest agent and he is only an agent. There are lots of interests behind him, including the interest of the clique of 800 people, the interest of the North, the interest of those who are pulling the strings from behind. With the consent of these stakeholders, these people will come up and more talents will be attracted. There are really many talented people waiting for this opportunity, but will it result in nurturing more political talents in Hong Kong? Will this open up new horizons for Hong Kong? Certainly not.

Who has single-handedly strangled the democratic development of Hong Kong? Who has brought the democratic development of Hong Kong to a standstill in the past decade or so, making it impossible for us to attract talents of a higher caliber? The incumbent Government is the executioner. But what are we asking for? How did this government come about? The way how a government is formed will determine what policies it will propose and what talents it will nurture. This is the truth.

Precisely because of this, the proposal of creating the posts of Deputy Directors of Bureau and Political Assistants will only extend such a corrupt system and as a result, nepotism, implicit interests and exchange of benefits will grow and spread further. This will not be conducive to the governance of Hong Kong. Hong Kong is a mature community with ability, and we also have ability. Our voters, after so many elections, are well-versed in the meaning of elections. They are capable of electing the Chief Executive but they are deprived of such an opportunity.

Now the Government is cheating them by saying that there may be direct elections in 2017. But we basically do not know how the election and the screening process will be conducted and yet, we think that there will definitely be universal and equal suffrage. In my opinion, Hong Kong people would be too stupid and naïve if they believe this.

Under such a system, how can government officials of such a quality improve the political development of Hong Kong? For instance, how can they ensure that public finance management in Hong Kong can be further improved? Today, the Financial Secretary has staged a show again. The largest share of the candies has gone to the business sector, not the general public because he has kept on reducing the profits tax and the standard rate of salaries tax and wine

duty. But what the general public have been given are only one-off benefits, or a small share of the candies, *vis-a-vis* the long-term "candy ticket" for the business sector. However, he still sought to rationalize this and argued categorically that, for instance, medical expenditure is too exorbitant for the Government to provide subsidy and so, a greater share of the burden should be taken up by the middle class. Is he in any position to say this? What authority has he been given to say this? Have the voters agreed to what he said? Have Hong Kong people agreed to such changes and the philosophy behind the changes to the tax regime? However, as such a political system has condoned the existence of these people, he therefore needs not even attend our meetings here. We should bear some responsibility too. Many of our colleagues, including the pan-democratic camp, have not made use of our votes to express the wish that we should express. We should have some responsibility because of our connivance of these people.

Even though the pan-democratic camp has refused to connive at what he has done, it does not matter because the Government has obtained enough votes, right? Even though lobbying is necessary in some aspects, a compromise has been reached, right? A compromise has been reached regarding certain tax items. I would not believe it if I am told that no compromise has been reached with the persons concerned regarding the profits tax, wine duty and hotel accommodation tax. In these aspects, plenty of votes have been secured, thus rendering discussion unnecessary. In fact, the Financial Secretary and many government officials are all elites and extremely smart, and they are fully aware that it is a waste of time discussing these matters here. They could solve the problem over a glass of wine or two elsewhere.

These political talents will act in this way in the future. What they have to learn is the artifice of governance of these government officials. What kind of people will be nurtured under a system which is not aboveboard, tested or genuinely accountable? These people, who are nurtured at a cost of tens of millions of dollars, will continue to carry this corrupt system forward, so that these people can reproduce like political parasites. If Hong Kong's political system is to be further developed, why was it not revitalized earlier this year or even before this year?

The functional constituencies we are now discussing can be dated back to the fascist era a century ago, Deputy Chairman, and yet, they are trying to

rationalize them by all means, saying that they should be expanded and that more sectors should be added. Issues that we consider to be disgraceful are put on our agenda for further discussion. However, Deputy Chairman, I am sure in the future Stephen LAM will have an Under Secretary who will, on his behalf, continue to promote proposals which we would consider laughable.

Just now, some colleagues said that even such low-quality government officials would be hardly seen in the future. Surely, they will have one more justification for their absence in the future because their Under Secretaries or Political Assistants would attend the meetings. It is the Legislative Council which has approved funding for their recruitment to carry out political lobbying here on their behalf.

Once the appropriation has been approved, we would have nothing to say in the future while he could argue strongly that the Appropriation Bill passed on 23 April 2008 has granted him the authorization to recruit these people to carry out on his behalf work shunned by him and considered by him as time-wasting.

We should understand what sort of political system we are now facing. It is an absurd political system. What sort of government is it? It is a government that needs not take up any responsibility. Of what quality are these government officials? They are a group of officials who are not genuinely accountable. What is their accountability? To whom they are accountable? Have they been accountable to Hong Kong people? These lies, as I just said, have been repeated continuously, making Hong Kong people think that this \$60 million is worth spending. The authorities have even boasted that some of them have given up jobs with a salary of millions of dollars a year in order to take up these posts, sounding as if they have suffered a loss. But it is Hong Kong people who have suffered a loss. It is Hong Kong's political system which has suffered a loss. It is our future which has suffered a loss.

If we do not have transparent, universal and equal suffrage, and if our Government and the Chief Executive are still returned by small-circle elections, the proposal of creating these posts of Deputy Directors of Bureau and Political Assistants should not be raised.

Only when all these Principal Officials have been proved to be genuinely accountable and gained credibility through people's votes, and when even the

Chief Executive is returned by an one person, one vote election without any thresholds or screening procedures and when a system which can truly embody democracy is in place should the authorities raise this proposal again for the endorsement of the Legislative Council. So, the Legislative Council should not approve this appropriation today because this is not only a waste but will also cause the politics of Hong Kong to become even gloomier.

Thank you, Deputy Chairman. I so submit.

MISS TAM HEUNG-MAN (in Cantonese): Deputy Chairman, Dr YEUNG Sum's amendment ultimately seeks to abolish the posts of Deputy Directors of Bureau and Political Assistants. Last week, Financial Secretary John TSANG disappeared and did not sit through the Council meeting in this Chamber to listen to our views. Later, I did think about whether it is necessary to create the posts of Deputy Director of Bureau and Political Assistant in order to help the Directors of Bureau in dealing with trivial and less complicated matters.

Today, Financial Secretary John TSANG explained that he was too busy last week and unable to spare time for our meeting. Therefore, he had to listen to our meeting elsewhere. He also told us that he had heard of the story about Fat Choy candy told by us. Of course, Financial Secretary John TSANG is not in the Chamber at the moment. I understand that he is having his meal. I also hope that he can listen to a popular Cantonese song called "Love has come too late". If he has listened to our views too late or turned a deaf ear to our speeches, I am really worried that his popularity rating, as he said, will really fluctuate like roller-coasting stock market performance. I hope he will not make us misunderstand that he is reluctant to spend time in the Legislative Council and that he looks down upon our views. Even though he is in the Legislative Council, now, he is still in the dinning hall, not interested in listening to our views.

In fact, not only Financial Secretary John TSANG, other Directors of Bureau have also acted in the same way. Apart from the Financial Secretary, only a few Directors of Bureau have spoken in response to Members' views. What about other Directors of Bureau? Do they think that it is not worthwhile to respond to Members' views? Or is it because they are really too busy and unable to spare even a little bit of time to respond to Members?

If Members are really so busy, I will think that they really need more support in order to deal with their political tasks. However, even if there is a need to establish the posts of Deputy Directors of Bureau and Political Assistants, we still have to deal with a host of issues. Otherwise, too much haste in creating these posts will render the result counter-productive eventually.

First of all, will the duties of the political appointees overlap those of the Administrative Officers in the Civil Service? For instance, at present, each Director of Bureau has an Administrative Assistant. When the post of Political Assistant has been created, will their duties overlap that of the Administrative Assistant? Will this lead to overlapping of resources? Will this lead to a waste of public money? The Government must give us a clear explanation on these questions.

Another problem is that these new political appointments may easily become a means of political trade-offs. The Chief Executive of Hong Kong is still elected by a small circle and the Deputy Directors of Bureau and Political Assistants are appointed by the Chief Executive. The Chief Executive can propose to the electors in the small circle that if they vote for him, they themselves or the people whom they support will be appointed to fill high-ranking posts in the Government. In such a case, will the new political appointment system be a temptation for people to break the law? It will be too dangerous to introduce such an accountability system without a genuine universal suffrage.

Deputy Chairman, I can point out the disadvantages of such a system in just a few words. With a galaxy of talents, the Government could not have been oblivious to these problems. Today, the Government is trying to "hard sell" the new political appointment system and it certainly should have the solutions to fully address my concern. So, I will listen attentively to the response of the Secretary. If the Government cannot give me a satisfactory answer, I can only vote for the amendment. Thank you, Deputy Chairman. I so submit.

MR FREDERICK FUNG (in Cantonese): Deputy Chairman, before I come to my speech proper, I would like to declare that I have no conflict of interest on this issue. I have received no invitation from the Government to take up any posts as Director of Bureau, Deputy Director of Bureau or Political Assistant.

As far as I know it, so far, no member of the Hong Kong Association for Democracy and People's Livelihood (ADPL) has been approached or invited by the Government to take up any of these posts. But I cannot support Dr YEUNG Sum's amendment.

The main reason is that since the election of the Chief Executive or the promulgation of the Basic Law in 1997, and as the election of the Chief Executive is different from the appointment system previously adopted for the Governor of Hong Kong, the nature of the Government of Hong Kong has been changed on the whole. For no matter the Chief Executive is elected by a small coterie, or by universal suffrage in future, the Chief Executive is returned by election; the Chief Executives may not necessarily belong to the same political party or grouping, and may not even share the same vision in governing Hong Kong. Under such circumstance, Chief Executive A may have his own blueprint in governing Hong Kong while Chief Executive B may adopt a new one when he assumes office.

Surely, there is still other possibility. From 1997 to the present, we have observed one fact, that is, no matter the Chief Executive is elected by a small coterie or universal suffrage, the Chief Executive may come from either the Civil Service or non-civil service sector. These two different backgrounds are reflected by the two Chief Executives selected so far. If the Chief Executive is from the Civil Service, he may maintain the system and introduce no changes upon his assumption of office, which means the appointment system of Directors of Bureau and Deputy Directors of Bureau would not have been established, and instead, Hong Kong would still be governed by Administrative Officers (AOs) as it was under the colonial rule. In other words, if the Chief Executive is from the Civil Service and all Secretaries of Department and Directors of Bureau are civil servants, the Civil Service as a whole will form a party. Will we consider such a scenario acceptable or agreeable? The ADPL and I oppose this vehemently and resolutely, for we disagree with the AO-dominated mode of governance adopted during the colonial era.

On the other hand, if the Chief Executive is not from the Civil Service, as in the case of the first Chief Executive, TUNG Chee-hwa, he who will be encircled by civil servants will be isolated. As the system, culture and even values of civil servants may differ from those of the Chief Executive, I wonder how he can implement his governing blueprint in Hong Kong even if he has one.

It is exactly because of these two problems that we consider the continued implementation of the AO-dominated governing mode adopted during the colonial rule unacceptable — I again stress that the ADPL and I consider this unacceptable — we think this governing mode should be ended.

In 2000, the ADPL and I pointed out to former Chief Executive TUNG Chee-hwa that the prevailing system adopted by the SAR Government at the time was impracticable and that a ministerial system should be established — the ADPL used the term "ministerial system" at that time. We pointed out two issues which could only be addressed by the establishment of a ministerial system. First, every Chief Executive elected can form his own team. If the Chief Executive can identify suitable candidates in his team to be policy secretaries (that is, Directors of Bureau), they can offer effective assistance to the Chief Executive in the implementation of his platform disregarding whether or not they agree with it, as I am referring to the administrative and management work, not political values or the values of the platform.

Second, we are more eager to see the withdrawal — I stress that it is the withdrawal — of civil servants from the decision-making roles or functions and the establishment of a civil official system. Why should a civil official system be established? During the British rule, the Governor was appointed by the British Government. Basically, the entire Civil Service had to obey the Governor, and even the civil official system as a whole followed the British culture. However, the situation has become different after 1997, for if the Chief Executive of each term does not come from the same system, they may have different values and cultures. If the original civil service system is maintained, I do not see how the authorities can deliver good governance in the SAR in future. For this reason, the ADPL made this proposal at that time. What was the response from the former Chief Executive, Mr TUNG? He said, "Frederick, it is not going to work, for the Central Authorities will not agree with this." At that time, Mr TUNG, the former Chief Executive, told members of the ADPL face to face that this was not going to work.

In 2002, Mr TUNG introduced the accountability system for principal officials. The ADPL considers this a "ministerial-like system", which is similar to the ministerial system, and the two systems bear close resemblance with each other. Given the conclusion that we made at the time, we considered that we had no reason to oppose the proposal put forth by the Chief Executive in

principle. We could only state that we agreed with the direction and approach of the proposal in principle. But regarding the implementation and handling of the appointment system, we held that this could be further discussed. Therefore, we agreed in principle the establishment and development of this "ministerial-like system", as we called it, or the accountability system for principal officials.

Certainly, we agree and support that dual universal suffrage, including universal suffrage for returning the Chief Executive and the Legislative Council, is most important and warrants emphasis insofar as the constitutional system is concerned. However, we still consider that implementation by the executive is another vital component in the constitution system that cannot be neglected, and this should also be developed. I entirely and firmly oppose the preservation of the AO-dominated governing mode adopted during the colonial rule, for it would bring us to a standstill.

We advocate that civil servants should genuinely break away from the past political system and political roles and positions, so that they can be independent of the political decision-maker, or put in another way, to remain "neutral". If this remains unchanged, civil servants will become hangers-on of the decision-maker. But I do not want them to be hangers-on. It is most desirable that they can provide service to every Chief Executive, be it Chief Executive A, Chief Executive B or Chief Executive C. I think this is the very essence of the so-called "ministerial-like" system or ministerial system.

In the past, civil servants, particularly AOs, were responsible for all policy matters, from planning to drawing up policies, and from implementing to monitoring policies. To put it plainly, I find them "unbearable". Above all, under the AO system, they will not be held responsible for any wrong decision in policy-making. They are only subject to the laws of Hong Kong and will only be held responsible when they break the law. They are also subject to the civil service regulation. However, if any wrong decision is made, do they have to be held responsible? There are plenty of such examples, and let me cite just a few. For example, in respect of housing, which is of utmost concern to us, Members may remember that in 1980s and 1990s, there were a lot of housing problems, including the redevelopment problem of public housing estates at the time and the short-piling incidents later. However, no Director of Housing or Secretary for Housing was willing to step down. No one had voluntarily stepped down, or being forced to step down, because of these incidents. Even in the

short-piling incidents in the 1990s, the one who stepped down was the Chairman of the Hong Kong Housing Authority, not the Secretary for Housing. It is evident that under the governance by AOs in the Civil Service, the question of accountability can in no way be addressed. Should we allow such a system to run continuously? I think this is unacceptable. Let me stress once again that I consider it unacceptable.

On the other hand, let us look at the system of Bureau Secretaries introduced in 2003. Certainly, this system is beset with problems. The Bureau Secretaries under the system lacked co-ordination. They do not have a consensus, nor do they share common political visions. They have no mutual understanding. They do not come from the same political party and each has their own background. Though they are brought together, they work separately on their own. If anyone makes a mistake, they wish that they will not be involved, and that person will bear all the responsibility. This may be attributable to the inadequacy of the system, or it may simply be human nature. Despite the problems found in the system at initial implementation, I still supported the implementation of the system judging from the general direction of the system, so as to allow time for gearing-in and trying out the system. However, Members may notice that since the introduction of the accountability system for principal officials by the SAR Government, many officials, Directors of Bureau and Secretaries of Department have been held accountable for policy failures. They did really step down, whether they did so on the excuse of lack of time, sickness or pain in the legs. I can name a few examples: the former Financial Secretary, Mr Antony LEUNG; the former Secretary for Security, Mrs Regina IP; the former Secretary for Health, Welfare and Food, Dr YEOH Eng-kiong, and the former Chief Executive, TUNG Chee-hwa. During the many terms of Governors in the past, and even during the term of the first Chief Executive, there had never been so many senior officials stepping down, regardless of the reasons behind. If it was not because of the so-called accountability system for principal officials, I could hardly think of any reason why so many Directors of Bureau and Secretaries of Department were willing to step down. I think this is exactly the difference between governance by AOs and the accountability system for principal officials, though the latter is far from perfect and beset with problems.

Actually, under the existing civil service system, particularly the AO-led system, can civil servants remain neutral? I think they have not yet achieved this. Because at present, the Government still has to rely on civil servants, and

the political culture in the past still exists. My impression is that at present, Directors of Bureau and even the Chief Executive still rely on Permanent Secretaries and Deputy Permanent Secretaries, particularly in making decisions. Therefore, decision making and administration really have to be separated clearly. In that case, civil servants who only aim at finding a job when they joined the Government and do not intend to be a decision-maker, or to hold power or take part in politics can really "just get their job done". On the other hand, those who really aspire to take part in politics and join the governing team may do so through another channel but not the civil service system. By juxtaposition, I do not see that the civil service system and the AO-dominated governing system is democratic, for they are not elected by the public and do not observe the principle of accountability. How can we accept that AOs were appointed under a democratic system in the past? When we consider it unacceptable that the Chief Executive is not returned by democratic elections, when we consider the appointment system unacceptable, and when we cannot accept the AO-led system when AOs are not selected by democratic means, and when we consider the two systems unacceptable, can we propose the third system? In the absence of the third system, I would rather opt for the implementation of the appointment system to enable the system to be gradually improved after it has been implemented for some time.

I stress that we consider the civil official system the ideal system. However, under the present system, civil servants are neither fish nor fowl. Let me cite an example. Before 1997, the Secretary for Constitutional Affairs — I wish I got the title right — Mr Michael SUEN was required to promote the policy of the then Governor, Christ PATTEN. He therefore went all around convincing people of the merits of abolishing the appointment system for the District Board. After 1997, the Chief Executive took office. The Chief Executive said that the appointment system should be reinstated. Mr SUEN then went all around again lobbying support and describing the appointment system as flawless. Anyone who heard what he had said would burst out laughing. The same person was presenting two totally different and self-contradictory arguments, and refuting his own words. This is the problem with governance by AOs. Do we wish to see this going on?

My conclusion is that we should no longer tolerate the continuation of the colonial system led by AOs. The question is when we should start tackling the problem. Actually, I think we should have started doing so the first day in 1997. If China and the United Kingdom were on good terms, they should have

started handling the issue before 1997, say, in 1995 and 1994. However, since they were in conflict at the time, the issue could not be handled. At present, I think the issue should be dealt with before the election of the Chief Executive by universal suffrage. I do not know if it will be 2017 or 2012, but I strive for the election of the Chief Executive by universal suffrage in 2012. Can we deal with the issue after universal suffrage is implemented for the election of the Chief Executive? I think it will be too late. Let me cite an example to illustrate this. The system can be likened to a ship and the Chief Executive the captain. In that case, should we have a ship or a captain first? Should we first build the ship for the captain to steer it, or should we recruit the captain before building the ship? Members should bear in mind that a captain may not necessarily know how to build a ship, and he may only know how to steer a ship. Therefore, I think these two tasks should be carried out concurrently. If the election of the Chief Executive by universal suffrage is to be held in 2012 or 2017, we should at the same time build a ship. It is now time to do so. For even if we decide to build a ship, it cannot be built in one day, nor can it immediately sail on waters smoothly once it is built, because we do not even know whether or not the ship leaks or whether there are other problems. So we have to try out the ship first.

Certainly, in implementing such a system, I think the Government must consider three important factors. First, the system must be highly transparent, enabling the public to see clearly that there is no collusion between business and the Government, and no cronyism. It is inadequate for the Government to only think this way. It should let the public see so. Second, the system must be subject to the supervision of society. And when society considers that certain appointment or policy is problematic, it should really reflect on itself and make improvement. Third, the appointment system should not be over-expanded, but should be maintained at a scale which is just sufficient. Concerning the appointment of candidates, the questions of whether there is nepotism, whether candidates of his favourite political parties will be appointed, and whether candidates from the business sector will be appointed have nothing to do with the system, but individual Chief Executives. Different Chief Executives will adopt different approaches. I believe the two groups of people appointed by Chief Executive Donald TSANG and former Chief Executive TUNG Chee-hwa respectively are totally different. Thus, I will not debate who is right and who is wrong here.

I just want to point out one thing. The more eager the Government wishes to promote party politics, the more efforts it should put in to separate

AOs from decision-making. There will be no party politics as long as dominance by AOs prevails in politics. In the past, was there not a club for retired senior officials? After they left their posts, they became senior staff members of the Trade Development Council, the MTR Corporation Limited and the Kowloon-Canton Railway Corporation. If I go on with the list, Members will notice that many senior staff members of these organizations are retired civil servants. Is this not another kind of collusion between business and the Government and an instance of cronyism? Whenever people are involved, there will be problems. However, I think what is most important is the intended purposes. First, it is for the establishment of a civil official system. Second, it enables party politics to start developing. Third, we have to allow a new accountability system to start. We should then wait (*The buzzer sounded*)

DEPUTY CHAIRMAN (in Cantonese): Your speaking time is up.

MR FREDERICK FUNG (in Cantonese): for the election of the Chief Executive by universal suffrage.

DR FERNANDO CHEUNG (in Cantonese): Deputy Chairman, I speak in support of this amendment of Dr YEUNG Sum. This so-called further development of the political appointment system is indeed a proposal to include in this Budget the expenditure for Deputy Directors of Bureau and Assistants to Directors of Bureau (Political Assistants). However, the word "political" is used, and it is really disappointing. Though we have a lot of money, should we spend it this way? Deputy Chairman, we have to spend tens of millions a year on these political rewards only for the sake of affinity differentiation, to further consolidate this development and to further pave the way for self-flattery. The Government and the pro-establishment camp are using public money to help each other, accommodate each other and support each other. The Government is utterly deceiving the people of Hong Kong in so doing and attaching no importance to the interest of the people of Hong Kong in its governance.

This system is ludicrous. In the letter of Secretary Stephen LAM, he pointed out to us that the present arrangement on Deputy Directors of Bureau and Political Assistants sought to achieve several objectives. First, it aims to cope with the constitutional development and pave the way for universal suffrage.

Deputy Chairman, I do not see how the creation of these posts can cope with our constitutional development and pave the way for universal suffrage. If it aims to pave the way for universal suffrage, why should the appointment arrangement be further expanded? Since universal suffrage is clearly said to be an objective, the principal officials, the Government and parliamentary assembly members, that is, politicians, should all be accountable to the public through an open and transparent channel, but not by appointment. Certainly, if all ruling parties are elected and authorized by the people, it is inevitable that they have to make certain political appointments in the political framework and various government departments. This is only natural. However, for a dictatorial government not authorized by the people through "one person, one vote" universal suffrage, the further development of such political appointment arrangements will only consolidate the element of dictatorship and intensify the problem of not heeding public views and not being accountable to the public. For this reason, in what way can this kind of system be implemented in line with the undertaking of "one person, one vote" universal suffrage made to the public in the Basic Law? Genuine universal suffrage should be open, transparent and allow equal participation, but the present approach runs counter to this direction and in no way agrees with this objective.

Second, he said that it would enable the Government to absorb talents from all sectors, thereby enhancing governance. Does it really aim to absorb talents from all sectors? Deputy Chairman, this is certainly not the case. How will the authorities absorb people holding dissenting or maverick views, or even people who hold different political views from the present Government? Besides, Deputy Chairman, the authorities have made it clear at the outset that there will be affinity differentiation. We can just wait for the announcement of the list of candidates in future and see how many of them are people holding different views. If the Government really intends to absorb talents from all sectors, are these people not talents? If it can only accept "one voice" but not opposing views, how can it enhance its governance?

Third, it aims to strengthen the support for its political work in line with the people-based principle. Deputy Chairman, the entire accountability system for principal officials has never been accountable to the public and is in no way people-based. To further reinforce the accountability system for principal officials by means of the appointment system will only distance the Government further from the people rather than taking forward the people-based principle, and worse still, it will even go against this principle.

The last objective is to allow politically appointed officials and civil servants to perform their respective roles and maintain the neutrality of the civil servants. Deputy Chairman, I do not see how they can perform their respective roles under such an arrangement? Which tasks intended to be undertaken by politically appointed officials cannot be performed by civil servants? Which duties to be undertaken by these officials cannot be carried out by existing permanent secretaries, deputy permanent secretaries, assistant secretaries or other senior civil servants? I believe the increase in the number of politically appointed officials will only make the senior structure more cumbersome and their duties more confusing. It will be even harder for them to know who should remain politically neutral and who should be totally biased.

Indeed, it is impossible to achieve these four objectives through the further development of the appointment system. Deputy Chairman, it is pointed out in the consultation paper on the relevant policy that Deputy Directors of Bureau and Political Assistants, unlike other civil servants, have to undertake political work. It seems to suggest that civil servants will be responsible for non-political work. I do not know clearly how much work in the government operation can be divided so distinctly into political and non-political in nature. According to the consultation paper, Deputy Directors of Bureau will mainly be responsible for handling political work related to the Legislative Council. When it comes to the political work related to the Legislative Council, over the years, many civil servants have communicated and given explanation to the Legislative Council on behalf of the Government. Should the work carried out by those civil servants be regarded as political work? If so, is it a violation of the principle of neutrality of civil servants? In that case, should all the work done by civil servants in the past be regarded as wrong? This is impossible. However, from now on, while certain work is categorized as political work for no reason, while some other work is not considered non-political work. It is really laughable. If the handling of work related to the Legislative Council is political work, should work unrelated to the Legislative Council be regarded as non-political work? Is it not the responsibility of the Government to meet the public and heed different views? Is the Legislative Council not representing the voice of people, expressing the views of the public and the highest organ representing public opinions? I really do not understand how the authorities will differentiate between political and non-political work.

The case of Political Assistants is even more absurd. However, I would like to look at the work of Deputy Directors of Bureau for the time being. It is also said in the paper that Deputy Directors of Bureau will deputize for Directors

of Bureau during the latter's absence. There is no reason to create a post for someone to deputize for the Directors of Bureau during their leave. A well-established and effective deputizing policy has already been put in place in the civil service system, and the creation of this special post is unnecessary. So, there is another motive for so doing. As pointed out by Dr KWOK Ka-ki earlier, the arrangement allows them to stand in for the Directors of Bureau in attending meetings of the Legislative Council. In other words, Directors of Bureau do not need to attend meetings of the Legislative Council any longer, and they do not have to face Members anymore. The "obnoxious" work here will be taken up by Deputy Directors of Bureau and Political Assistants, so that the Honourable Directors of Bureau will have more leisure time to watch television.

(THE CHAIRMAN resumed the Chair)

Moreover, Deputy Directors of Bureau have to follow the instructions of Directors of Bureau and liaise with Members of the Legislative Council on a regular basis to ensure that views and comments of Members are incorporated in the course of policy implementation. Chairman, is it not part of the routine work done by the Government? Is it not something that the Government has all along been doing? Why is it necessary to create additional posts of Deputy Directors of Bureau to undertake such work? I always think that it is the responsibility of Directors of Bureau to work for the passage of bills, motions or proposals on public projects by the Legislative Council. Why is it necessary to bring in a few more people? Moreover, I think it is also the responsibility of Directors of Bureau to attend public occasions and forums to explain and defend the decision of the authorities on proposals put forth by political organizations, and to respond to questions raised by Members of the Legislative Council and the public, which are spelt out as duties of Deputy Directors of Bureau in the paper. It is because principal officials of the Government have all along been performing these tasks. With regard to maintaining close liaison with the media and facilitating the media to understand the concept of certain government policies, such work has also been carried out continuously. Why should we spend tens of million dollars extra to employ someone to test the water? I think this is unnecessary.

The case of Political Assistants is more ludicrous. It is pointed out in the paper that Political Assistants should provide views to Directors and Deputy Directors of Bureau from a political angle for their reference. Moreover, Political Assistants must work under the instructions of Directors and Deputy

Directors of Bureau to draft speeches, addresses to the media and other articles — Wow, is it necessary to spend more than a hundred thousand dollars to recruit someone to draft speeches? Furthermore, they have to offer suggestions to Directors and Deputy Directors of Bureau in the handling of invitations and correspondence with political parties and groupings. The cost is really high. It seems that the Government is now spending more than a hundred thousand dollars on the employment of a senior secretary. Chairman, it means that a Political Assistant will give his views to the Deputy Director of Bureau on a letter sent by us, and then the Deputy Director of Bureau will give their views to the Director of Bureau on the same letter. Is it necessary to do so? Moreover, Political Assistants have to lobby support from political groupings and listen to their concerns, but these duties overlap those of Deputy Directors of Bureau. The other duties of Political Assistants include canvassing support from the Legislative Council, business and industrial sector, professional bodies and community organizations on issues within the purview of the Directors of Bureau, and liaising with the media according to the instruction of Directors and Deputy Directors of Bureau.

Chairman, many of their duties are overlapping. Members can imagine that following this logic, manpower has to be increased on all tiers, from Directors of Bureau, Deputy Directors of Bureau to Political Assistants. Though our resources are in abundance, it is unseemly to use such an enormous amount of resources to increase one's own political chips, or offer reward to political groupings for their support. We have had enough free political lunches like this, and some people are getting very fat because of this. This practice has been carried on for years, and should be stopped. We have already pointed out that one cannot depend on these free political lunches forever, so this must be stopped. No place in the world heads in this direction. We should go for universal suffrage and the implementation of democracy. The Government really has to reflect the demand of the public and stop engaging in small coterie activities. But the Government is now doing the opposite. It is making more and more arrangements of this type, and it is even using public money to achieve this end.

Pardon me, Chairman, I can hardly agree with such practice. Our resources are precious, and if they are spent on people's livelihood, many needy people will benefit. These so-called political talents from all sectors do not need to accept these free political lunches. So, please stop doing it.

Chairman, with these remarks, I support Dr YEUNG Sum's amendment.

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

(Mr CHIM Pui-chung raised his hand)

MR CHIM PUI-CHUNG (in Cantonese): Chairman, it seems that a quorum is not present. I hope you can summon Members to return to the Chamber.

CHAIRMAN (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

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

CHAIRMAN (in Cantonese): A quorum is now present. Mr CHIM, you may now speak.

MR CHIM PUI-CHUNG (in Cantonese): Chairman, I speak on Dr YEUNG Sum's motion against the \$60 million appropriation.

Politics in Hong Kong is deformed. Why? For it is evolved from the colonial era. I have once said that there is no prospect to engage in politics in Hong Kong, for no political party will be qualified to rule Hong Kong, nor will they have such an opportunity. If they cannot rule, they will have no power. If they have no power, they will have no influence. And no influence means no interest. I am not saying that they should go after interest, but political parties do need a lot of funding. Political parties can hardly survive if no one offers support to them. So, no interest means no votes. When a party cannot win any votes, it will eventually wither as the Democratic Party now does — I do not mean to tease you. In that case, we should look back on the fact that the Chief Executive is appointed by the Central Authorities. I once criticized bluntly in public that Hong Kong is still under the Hong Kong-British Government but without a British flag. Surely, the Central Authorities may not necessarily agree with this, but I am stating the fact and no one dares to challenge me. Chairman, do not worry, for I will say what I am allowed to with reference to my powers. *(Laughter)* Under this circumstance, I strongly believe that the Central Government has only delegated the authority to the SAR Government

and definitely has not imposed other restrictions or control. Therefore, the SAR Government should be accountable to all the people of Hong Kong and to the Central Government. The SAR Government should in no way evade this responsibility. Whoever becomes the Chief Executive, together with his ruling team, should have the courage to make commitments and be daring to do what they should do.

Nine Members have spoken earlier, and undoubtedly, they all criticized the present framework and organization of the Government, including the proposal on the creation of the posts of Deputy Directors of Bureau and Political Assistants. However, concerning this proposal, I personally think that since the proposal has already been discussed and endorsed on other occasions, it will only be futile to further dwell on it now. I strongly believe that the Appropriation Bill 2008 will eventually be passed today. That said, we still have to understand the political structure in Hong Kong.

Despite the separation of power among the executive, the legislature and the judiciary, it is stipulated in the Basic Law that the Hong Kong Special Administrative Region is executive-led. However, I firmly believe that it is not the equivalent of governing. The executive can take the lead in all aspects, but it has to gain the support and co-operation of Members of the Legislative Council in all aspects after all. But the SAR Government has failed to do so. We as Members of the Legislative Council should also reflect on ourselves. I have all along been saying that we have the responsibilities to first, oversee the operation of the Government; second, to hold debates, like the one we have today, on appropriation applications and grant approval. Certainly, there are many other tasks. From my personal point of view, I call on Members of the Legislative Council to reach a unanimous view on issues other than political issues — for in politics, there is no way for Members to reach common ground given their positions, perceptions, background and different aspirations, and thus the arguments hence arisen do not really matter, but they should come to unanimous views on issues concerning the interest of all the people of Hong Kong, people's livelihood, education and health, and so on. When the Government is doing the right thing, we should support it; otherwise, we should oppose it all. This will enable the Government to sense and feel the public pulse, so that its governing role can be brought into play.

Concerning the criticisms against the Government expressed by Members, such as their comments about whether or not the appointment of Deputy

Directors of Bureau and Political Assistants is right or wrong, I think this pertains to the powers of the Government. This is the political system, and members are still criticizing that the Chief Executive is not returned by universal suffrage, but this is the reality. What is the point of dwelling on it? If the pan-democratic camp keeps dwelling on this point, it will become the troublesome-democratic camp, bringing troubles to the public, for the public are tired of hearing this. But do you still have to keep troubling them with the issue? You are striving for the implementation of dual universal suffrage in 2007 and 2008, but the time has passed, and why do you still keep mentioning this? If you want universal suffrage in 2012, it all depends on whether you can gain 20 votes in the election to be held on 7 September this year to oppose the relevant proposal. I personally think that the pan-democratic camp may get 21 votes, but the support of two to three votes may be wavering. You cannot blame others for this, and you can only blame yourselves. Absolutely, politics is realistic. There is no charity in politics. So, instead of striving for those two to three votes, you should by all means strive to achieve your political aims and attain your other interests in the legislature. I may have said this too early, but you can just listen to it patiently, for this will gradually be proved then.

Therefore, on this issue, I request that the Financial Secretary, if he has the opportunity to speak again later, should undertake to convey this message to the whole SAR Government, and to the Chief Executive in particular. For future meetings of the Legislative Council, Directors of Bureau and Secretaries of Department, must attend whenever possible, unless for special reasons. Because the posts of Deputy Directors of Bureau and Political Assistants are created not to enable Directors of Bureau to evade their responsibility of attending meetings of the Legislative Council. As I said earlier, the Legislative Council has to oversee the operation of the Government and be accountable to all the people of Hong Kong. For this reason, if they evade their responsibility in this respect, they are likely to come into more direct conflict with the Legislative Council in future and make co-operation impossible. Under this circumstance, harmony in the Government cannot be achieved, nor will there be a harmonious environment as expected by the Central Authorities. Therefore, I hope that the SAR Government will give this undertaking. As I said earlier, the Central Government has delegated power to them, but it has not requested them to act this way. I do not believe the Central Government will act against the interest of the public. This is crystal clear.

We all know that the term of the Chief Executive still has four years or so. In future, Mr TSANG may have a chance for the fourth term. *(Laughter)* Do

not laugh, but you can if you like. *(Laughter)* If the opportunity arises, he should listen to public opinions and the aspirations of Members of the Legislative Council. Under this circumstance, I hope that the Executive Council and the Legislative Council of the SAR Government will put in more efforts to strive for the interest of the public in future and work in a way to more effectively respond to the aspiration and demand of the Central Government. We should not be confrontational. We should meet the aspirations and deal with them properly. I firmly believe that the Appropriation Bill 2008 will be passed later, but it does not mean that the Government can hold in contempt and ignore its responsibility as well as our aspiration. Thank you, Chairman.

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

MR TAM YIU-CHUNG (in Cantonese): Chairman, I have heard from the speeches made today that first, the Financial Secretary is criticized for playing the trick of "disappearing" in the debate. He is, therefore, taken to task for this reason. But he is in the Chamber now. It is marvellous, for it means that he has accepted the views of Members. However, Chairman, I would like to point out one thing here, that is, one of our colleagues is not only playing the trick of "disappearing" but also playing a trick on Members. Why do I say so? I noticed that Mr Martin LEE, who has probably taken his lunch, returned to this Chamber at around one o'clock, and not long after he sat down, he requested for a head count. At that time, Members were actually having their lunch at the dining hall. We thought that this was nonsense because we all knew that Members were having their lunch and yet, that Member made such a request. Who was that Member? He was Martin LEE. He did not only playing the trick of "disappearing", but even resorted to such tactic. Later, when all Members returned to the Chamber, he again disappeared. Chairman, I will now come to the topic. *(Laughter)*

Actually, the topic of today's debate has been discussed for a number of times at different meetings and other relevant meetings, including meetings of the Finance Committee. As the Chairman of the Finance Committee, I have allowed as many opportunities as possible for Members to speak at the meetings. Certainly, Members eventually voted for the proposal. I am not disapproving of Members discussing this issue again, for this is the cost of democracy. Also, I respect the rules of the legislature which allow Members to express their views.

I have listened attentively to the views expressed by Members. Among them, I think Mr Frederick FUNG who sits right in front of me — perhaps the Hong Kong Association for Democracy and People's Livelihood (ADPL) has changed its policy direction recently. In the past, it employed the tactic of "negotiating and criticizing", but now, it has adopted a reasonable and assertive approach. I think

CHAIRMAN (in Cantonese): Mr FUNG, do you have a point of order?

MR FREDERICK FUNG (in Cantonese): Yes. I have never said what he said just now.

CHAIRMAN (in Cantonese): In that case, you may clarify this afterwards, but you should not interrupt when he is speaking. Mr TAM Yiu-chung, you may continue with your speech.

MR TAM YIU-CHUNG (in Cantonese): That is not the case. Actually, I was praising him. Really, it is not easy to be nice. I praised him for I read from the newspaper — although I did not take part in meetings of the ADPL — the newspaper said that the ADPL has changed their approach from "negotiating and criticizing" to being reasonable and assertive.

Indeed, I consider the speech he just delivered reasonable and assertive. I do not know how the others in the Chamber think about it. Why do I say that he is reasonable and assertive? First, he told Members that we should stop using the Administrative Officer (AO)-dominated mode of governance adopted in the colonial era, for it is now time for change. He said that society today should no longer adopt the colonial mode of governance, and that change is a must.

He then gave a detailed account of the background of the accountability system for principal officials, explaining the reason for introducing the accountability system for principal officials at that time. He pointed out that the Housing Authority had done something at that time which had caused considerable dissatisfaction in society and the Legislative Council. As a result,

a motion was put forth by Members, which had nearly led to the condemnation of the then Director of Housing, Tony MILLER, and called for his resignation, just that the accountability system had not yet been put in place at that time. He explained the reason for the establishment of the accountability system for principal officials and pointed out that the system must be refined gradually. Indeed, he does not have to worry about this. I very much agree with his explanation earlier on the introduction of the accountability system and his views on how we should support it to enable continuous improvement of the system. His remarks are much better than those Members who keep expressing negative views whenever the accountability system is mentioned, as they will criticize the system as dividing political spoils and offering political bribes, or lacking thorough consideration. I think they should listen to the earlier speech made by Mr Frederick FUNG again. As Ms Emily LAU said, some Members do need to replace their brains, and I think they should think in this direction. Certainly, in Ms Emily LAU's view, those who need to replace their brains might not be her friends, but I think some adjustment must really be made.

Moreover, in speeches delivered by Members objecting to the further expansion of the accountability system for principal officials, I notice that they all mentioned a number of factors in common. First, dissatisfaction with the Chief Executive. They consider it nonsensical that the Chief Executive has to seek assistance from other people and so, they kept on scolding and criticizing. Second, it is about the candidates for appointment. Though the list of candidates has not yet been announced, there are already a lot of negative speculations, saying who and who will be appointed, and that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) may benefit the most.

There is another factor which is related to the salary. Because under the government structure, there is a great difference between their salaries and the remuneration now received by Members. Therefore, in their speeches, many Members mentioned that the appointees would be said tens of thousand of dollars. A Member said earlier that these appointees would be earning a high salary of more than \$100,000, while the salary of a Member is only \$60,000, which is obviously far lower than that of the appointees. This has thus drawn a lot of comments. I think the Government should think it over: Should there be such a significant difference between their salaries, which can lead to the deterioration of the relationship between the executive and the legislature? However, I have to clarify that the DAB is not requesting a pay rise here. We

are only trying to analyse the factors causing the dissatisfaction and objection as reflected in the relevant speeches. Certainly, many other factors are involved. But I am not going to analyse all these factors one by one.

Having gone this far, I would like to talk about the views of the DAB on the further expansion of the accountability system for principal officials. Actually, as we already said at the outset, we think that universal suffrage will soon be implemented. As Mr CHIM Pui-chung said earlier, the public has accepted the timetable. Particularly after the decision made by the Standing Committee of the National People's Congress at the end of last year, the public understand that universal suffrage would soon be introduced. Thus, we must properly make preparations for universal suffrage which will come to us soon. Democracy is now developing in Hong Kong. These are the facts. This direction is also recognized by the public and we should thus get ready for it. Therefore, after the accountability system for principal officials is put into operation for some time, the Government should conduct a review to give us the opportunity to air our views. What should also be put under the review is the addition of two tiers under the accountability system for principal officials by the Chief Executive and the recruitment of 20-odd persons to assist him. I think the arrangement is reasonable and sensible. It is no big deal at all. Though a bit more money has to be spent, the operation of the entire system may be improved. Concerning this point, we should look at it from a broader perspective.

Regarding how talents can be recruited following the further expansion of the accountability system for principal officials, I heard some Members saying in their speeches that the Government should recruit talents from different political parties and groupings. I agree with this view. As talents from political parties have had contacts with the public or run in elections, they thus have a better grasp of the sentiments and views of the public. These talents have higher sensitivity in politics, and they can maintain better and closer contacts with the public. Actually, these are their strengths or characteristics. Therefore, I think it is reasonable to identify talents from political parties. Naturally, when it comes to identifying talents from political parties, some people may say who and who will benefit from the arrangement, and it all depends on how the Government will handle the issue.

From the DAB's standpoint, if the Government requests us to introduce or recommend some people to join the government structure, we will be willing to consider the request. But will this bring great benefits to the DAB? I do not

think so. Members should not consider the issue from this perspective. For if the candidates we recommended are recruited by the Government, it means that our party will lose those talents. We will suffer a loss, because talents do not come by easily in political parties. Particularly for those who are recommended by us and recruited by the Government, they must have great potentials and high quality or must be very capable. However, from the point of view of the DAB, if our members have the opportunity to serve our society and the public, we are willing to give them away and let them go. But certainly, this will only involve a small number of members, because after all, we have to retain some talents for our future development.

I hope that with the further expansion of the accountability system for principal officials and additional manpower, the governance and operation of the Government will be smoother, the sentiments and views of the public can be reflected more accurately and the policies formulated will meet the aspirations and demands of the public better. It is actually on this premise that we support the Government to further expand the accountability system for principal officials. Certainly, having given our support to the Government, we hope the Government can really achieve these objectives. It should not fail the expectations of this Council and the public.

Though I have 15 minutes to speak, I do not want to speak too much, for a long speech may not necessarily be appealing. I hope that my remarks today will not spark off too much controversy, for I am only stating the facts.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Albert HO.

(Mr Frederick FUNG raised his hand)

MR FREDERICK FUNG (in Cantonese): Chairman, I

CHAIRMAN (in Cantonese): Mr Frederick FUNG, I have forgotten about it. Do you wish to make clarification? But you can only clarify what you said in your earlier speech.

MR FREDERICK FUNG (in Cantonese): Yes, I do wish to make clarification. I have already indicated my support for the accountability system for POs of the Government. However, Mr TAM seemed to be suggesting that the ADPL changed from the "negotiating and criticizing" approach to the reasonable and assertive approach only after the review recently. He seemed to suggest that the change is made for this reason. But this is not the case. Actually, as I said in the past, we proposed the ministerial system to the former Chief Executive, Mr TUNG Chee-hwa, in 2000, and our attitude towards the accountability system for POs is the same as that we have towards the ministerial system. Indeed, since 2003, we have shown our support in all debates and votes on this issue.

MR ALBERT HO (in Cantonese): Madam Chairman, yes, this is not the first time this topic is discussed in the Legislative Council.

I remember that when we discussed the accountability system for principal officials in 2002 when the relevant bill was tabled to the Legislative Council, a thorough debate had been carried out. However, regarding the further expansion of the accountability system for POs by creating the posts of Deputy Directors of Bureau and Political Assistants now under discussion, I recall that it has only been discussed at the meetings of the Finance Committee or the relevant Panels and has never been debated at the meetings of the Legislative Council. I think we need to set the record straight in history. We have to explain clearly to the public once again our justifications and put on record these justifications in the records of meetings of this Council, so that the people of Hong Kong and the next generation will know clearly the vote cast by each Member here today and our justifications for casting our votes.

I recall that last week, or a few days ago, during the debate at the meeting of the Panel on Constitutional Affairs, I told Secretary Stephen LAM angrily that "I hate hypocrites the most." I have to repeat this line today. If the Chief Executive wants to expand his power, consolidate his executive-led governance and further strengthen his affinity with pro-government political parties, he can say so honestly. But he must not be so hypocritical as to hide these intentions behind a façade of grandiose reasons. On hearing these reasons, every person with political common sense will feel extremely furious and consider this an insult to their wisdom.

Over the years, we have stated clearly that the people of Hong Kong are striving for democracy. We hope that apart from elections, which are a direct way to realize democracy, an overall development in various aspects can also be

achieved, and there is a complementary relationship between these developments. Today, the Government may be of the view that since the decision of the Standing Committee of the National People's Congress has rejected the increase of directly-elected seats in 2007-2008 and 2012, we should thus consider other development.

In 2003, TUNG Chee-hwa introduced the accountability system for POs. Today, the Government intends to expand this political appointment system on the grounds of promoting democratic development. Indeed, I am really baffled why someone would dare to cite these reasons or make these remarks. It is obvious to all whether or not the executive as a whole is now genuinely accountable to the legislature. Since the reunification, we have not seen any official who is truly accountable to the public through this Council for the policies implemented. Worse still, we find the situation deteriorating. We notice that the executive is overriding the Legislative Council more and more seriously and has become more and more dominating to such extent that the role of the Legislative Council is even dwarfed by it.

Actually, we foresee that these posts of Deputy Directors of Bureau to be created in future will enable these Deputy Directors of Bureau to carry out the duties on behalf of Directors of Bureau, lead the work of the Bureau, command Permanent Secretaries and come to this Council to present political views on behalf of the Directors of Bureau. As colleagues mentioned earlier, in future, Directors of Bureau really can abdicate their responsibility further and need not come to the Legislative Council, for somebody will formally step into their shoes and undertake this responsibility on their behalf.

Madam Chairman, the Government says that one of the objectives of the further development of the accountability system for POs is to pave the way for universal suffrage. However, according to my observation, this is only done to empower the executive to further concentrate its powers, which is indeed a departure from the development of genuine democracy in the political system.

The Government says that it has to absorb talents. But what kind of talents does it wish to absorb? Madam Chairman, will it be political talents genuinely striving for a democratic system or executive talents bowing to dictatorship and authority? We will soon find out what kind of talents they are.

Today, the Liberal Party has not spoken, while Mr TAM Yiu-chung of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has spoken with a soft and uncritical attitude. I wonder if it is because the two

political parties have to embrace the system and so, it is inexpedient for them to speak their mind, because you would think, or at least the public would think, that you are the stakeholders of the system. We can see that you, as the stakeholders, will recommend your own talents to join and support the Government, so that upon the completion of their training in future, these talents will rejoin and serve your political party.

However, Madam Chairman, what talents do we actually need? After identifying these talents, will they develop in themselves the conviction to fight for democracy? Are they political talents that can stand up to the challenge of and be baptized by the democratic system? I believe many colleagues will shake their head.

Madam Chairman, indeed, I prefer the Government to state it unequivocally. If the Government intends to reinforce its affinity with the pro-government political parties in the legislature in order to secure their support for the Government and form a strong, stable ruling alliance, it should stop concealing the facts and revealing only half the picture, and it should stop meddling in hypocritical politics. Instead, it should appoint these members from political parties in a clear-cut manner, so that they will form part of the Government, sharing the governing work and responsibilities of the Government. It should have the courage and commitment to do so. I think this will give people the impression that the Government has the integrity and uprightness expected of politicians. But this is not the case now.

At present, a political party may send a member to receive training, and during the training period, the member may take temporary leave from the party. Many people had done so in the past, such as the former Secretary for Justice Elsie LEUNG and the incumbent Chief Secretary for Administration Henry TANG. I do not know whether you will take temporary leave from your party when you join the Government to receive training. Then, you will tell your fellow party members who are interested or people interested in joining your party, "You see, we have very good prospect. If you join our political party, you can receive training in Beijing and Qinghua, and you can also receive practical training in the Government. The prospect is really good." I remember that LAU Kong-wah had once expressed his views on participation in political parties in a radio programme. He said that joining a political party was like stock investment, as one should pay attention to the performance of the stock in the market, and he thought that the performance of the DAB was not bad nowadays. He gave a very vivid account of his views, and so, I heard it very clearly.

Honourable Members, I would rather see the Government act in an open and righteous manner. If the Government wants to recruit these political parties to be its reliable political allies, please state it overtly. It should stop stirring up unnecessary troubles, stop putting forward proposals that are neither fish nor fowl, and stop deceiving the public. I think the people of Hong Kong can see clearly what is actually going on.

Concerning the impact on the Civil Service, I do not think I need to say any more about it. Now, with the introduction of this additional tier of Political Assistants and Deputy Directors of Bureau, it is really hard to predict what further impact these appointees will create on the civil official system in the Civil Service. Many people have never engaged in politics during their lifetime, Madam Chairman, they have never stood in an election or joined any political organization, and they may not be interested in political theories or comments. For instance, if the Chief Executive hand-picks a professional or a member of the business sector, who holds a high position and has administrative experience in a certain organization, and recruits him into this system, this appointee will be commanding Administrative Officers who have been working in the Government for two to three decades. These Administrative Officers have a lot of professional and administrative experience, and over the years, they have built up a strong political sense. Under such circumstance, will they find the arrangement convincing? Will this lead to any positive gearing-in?

Madam Chairman, the greatest damage done by this system is that it has selectively copied from certain so-called overseas systems purely for fulfilling certain objectives which are probably the objectives of the Chief Executive. What are his objectives? To consolidate a *de facto* political hierarchy which centres on one person with the support of various political parties. But who else is behind the Chief Executive? Certainly, we can all imagine that he may be under the control of an invisible hand. We are not sure, but we have reasons to worry and question that the system will be absolutely unfavourable to the implementation of "one country, two systems" and "high degree of autonomy" in Hong Kong in the long run.

Mr TAM Yiu-chung said a lot just now. He said that it might probably because we were dissatisfied with the high salaries offered to these appointees or that we were discontented that the Chief Executive only anointed certain political parties. It is perhaps a reflection of his breadth of mind that he has considered things from this angle. However, this thought has never come to us, for the long-term development of a system is always our main concern. The

Democratic Party and supporters of democracy have said repeatedly that as long as a fair and democratic electoral system is introduced and implemented in Hong Kong, we definitely do not mind seeing political parties holding different views from us winning the election and ruling, or continuously ruling, Hong Kong. We support such a system and the results brought about by this system. Every one of us desires the establishment of such a system, so that there will be lasting political stability, smooth governance and harmony. However, the appointment system promotes the division of political spoils, which will, in the long run, do a lot of damages politically and exert very negative impact on the development of democracy.

I hope that today, colleagues will turn back before it is too late and stop supporting the further development of the political appointment system.

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

MR ALBERT CHAN (in Cantonese): Chairman, Mr CHIM Pui-chung remarked just now that he was just speaking the truth, and no one thus dared to refute him. At the very beginning of my speech, I must state that I want to refute him. His argument is wrong. He said that Chief Executive Donald TSANG's ascendancy to power was in effect just another change of the flag, signifying the return of the British-Hong Kong Administration. I do not quite agree to this argument. As a matter of fact, over the past 10 years, whether under TUNG Chee-hwa or Donald TSANG, there has been no change to the very nature of the ruling regime. Mr CHIM's viewpoint is in some ways similar to mine, but he does not dare to make it all clear.

Since the reunification in 1997, the Union Jack has of course disappeared. However, despite the change of flag Before 1997, Hong Kong people were second-class citizens, but despite the change of sovereignty in 1997, despite the hoisting of the Chinese National Flag, the 7 million Hong Kong people are still second-class citizens, with the exception of those belonging to the functional constituencies and the 800-member coterie of the Election Committee. Basically, ours is still essentially a highly centralized and dictatorial political system. There has been no fundamental change over the past 10 years. We are therefore still second-class citizens. The Union Jack? The return of the British-Hong Kong Administration? Basically, all these questions are not relevant.

Chairman, the topic under discussion today is about Deputy Directors of Bureau (Deputy Directors) and the accountability system for principal officials (accountability system). I think that the Government's attitude when introducing the proposal on Deputy Directors of Bureau and Political Assistants is basically no different from its attitude when discussing the issue of constitutional reform several years ago — playing tricks with concepts in both cases, and calling a stag a horse, so to speak. Chairman, regarding the appointment of Deputy Directors and Political Assistants, Mr Albert HO has already mentioned many conceptual issues. I am not going to make any repetition here. As a matter of fact, this new system will lead to the upsurge and prevalence of villains. The appointment of Deputy Directors and Political Assistants is completely incompatible with the original civil service system and the accountability system.

In the past, Administrative Officers could move up to the very top echelons of the Government. Whether we approve of the colonial system, we must admit that all Administrative Officers must at that time survive numerous tests, out-compete many others and sacrifice only Heaven knows how many people before they could rise to high positions. And, they must also look for the right "stables", right? If they did not know how to choose the right "stables", and if they did not have the nerve to sacrifice others, they would still be relegated after elevation.

Administrative Officers are selected under an open system with stringent screening criteria. For many years, joining the Administrative Officer Grade has been the dream of many a university graduate. One may not intend to apply, or simply disdains to apply, or does not like to apply though one considers oneself having the required qualities. Whatever the case may be, the system is always there, and candidates will only be selected after a screening process. The screening criteria may be political correctness, petty cleverness and better appearance — Administrative Officers are generally better in appearance than Executive Officers. Chairman, this is some kind of historical tradition. Administrative Officers can get where they are only because they were selected under a screening system. For years, such a screening system has been operating effectively in Hong Kong and has come to be regarded as some sort of imperial examination, in which only the capable are selected.

The accountability system is, however, a bit odd. Its introduction was supported by all years ago. Well, of course, TUNG Chee-hwa made a mess of everything. He virtually turned all good things into bad ones, and bad ones into

calamities. When the accountability system was put forward, I was basically in full support of it. But I also made one thing very clear at that time. I pointed out that the accountability system must not be all about the appointment of one single Bureau Director to a Policy Bureau for policy formulation and execution. I predicted that things would not work out that way, explaining that in case a Bureau Director was opposed by civil servants from all sides, he would surely become a nonentity no matter how capable he really was, and that a lone Bureau Director could never harness a Civil Service which had been in existence as a team for so many years.

Eventually, most part of the accountability system has been proven unsuccessful. If the Bureau Director concerned is selected from among civil servants, the situation may be slightly better. If not, it is virtually impossible for Bureau Directors who do not have any Civil Service background to lead a team dominated, controlled and manipulated by civil servants. Things will be different, of course, if a Bureau Director simply wants to do nothing, having just a liking for ribbon-cutting and attending as many as six banquets an evening. But such a Bureau Director will certainly be ridiculed by the public. Any Bureau Director who is slightly more capable will often face disputes. I have heard of many cases where the Director of a certain Bureau is at loggerheads with the Permanent Secretary, where the Deputy Director refuses to take orders and even employs a stalling strategy, trying to evade responsibilities on various specious excuses. In such cases, even the replacement of the Permanent Secretary may not help, as one simply does not know how the successor will behave. Therefore, it is very difficult to resolve conflicts and build up any team spirit.

For this reason, I did point out at the time that if the accountability system had to be implemented no matter what, then Bureau Directors must need to bring along their trusted followers to their Bureaux before they could act as leaders of civil servants in the making of policy decisions politically. I also added that policy execution should be left to civil servants while political responsibility, including policy explanation to the public and the Legislative Council, should be borne by politically appointed teams. But the present accountability system is neither ass nor horse. This is exactly what I mean when I chide government officials for calling a stag a horse. They simply cannot tell an ass from a horse.

If a Bureau Director is unable to lead his Bureau, conflicts and problems are bound to result. But equally, the appointment of Deputy Directors and Political Assistants has nothing to do with fostering team spirit either. The case

of Secretary TSANG Tak-sing is an example He has left the Chamber and is not present Suppose he is from the DAB's traditional network, it will be all fine even if his entire Bureau is filled with DAB supporters, traditional leftists. It will not matter at all even if a Chinese Communist Party member, a person who planted many home-made bombs during the riot, is appointed as the Bureau Director, because leftism is their ideology, conviction and value. They may appoint all these people, those who have the correct political lineage, to take charge of district work and the District Councils. Then, the rest will depend on people's acceptance or otherwise. The public should be left to make their judgment.

But the situation is not like this now. I do not know in which Bureau the Liberal Party will be planted to become its member, nor do I know whom the DAB will recommend to take up a post in which Bureau. I do not know which "kinsmen" of the "Emperor" will be appointed to the various Bureaux. All appointments are simply arbitrary in a state of pandemonium. We do not know who the Deputy Directors and Political Assistants are. We know nothing about their backgrounds. There is a complete absence of any open and recognized mechanisms for screening and assessment. All those people or political parties may have supported Donald TSANG's assumption of office as the Chief Executive, so political rewards are paid to them now. The more a political party or grouping accounts for among the 600 or so votes, the greater will be its share of the booty. This may possibly be the case.

In the end, the whole system will not only fail to help enhance accountability and leadership but will also intensify internal conflicts. Some civil servants are not given due recognition for their ability after serving many years as Administrative Officers. Or, just when some of them finally see prospects for promotion, Deputy Directors simply cut in the queue and get ahead of them. Some competent civil servants must work under muddle-headed Deputy Directors who are unable to analyse and explain any policies, who possess no leadership ability, and who are completely ignorant of policy issues. How can such Deputy Directors act as leaders of their Bureaux in formulating policies and explaining them to the public?

I can remember that at the inception of the accountability system, some Bureau Directors virtually panicked when attending meetings of this Council. Their assistants never stopped handing slips and whispering to them. The situation started to improve slightly only after six months to one year. Similarly, both Deputy Directors and Political Assistants must undergo a period

of exposure before they can get to know their actual work well. When it comes to the nurturing of political talents, one cannot possibly turn a certain person into a political talent simply through a process marked by pre-ordaining, nepotism and handing out political rewards. Many government officials present here used to be Administrative officers. They have been working for the Government for some 20 years. They all started as Administrative Officers working in the districts. And, it is only after years of exposure in many different government departments that they have gradually reached this level of competence.

Chairman, back in 1991, I could not have spoken like this. Since 1991, I have been arguing with the Government. And, as time goes by, I have gradually turned emotive. Chairman, my emotive outbursts are genuine. Many people accuse me of making a pretence. But the truth is that whenever I deliver a speech, my blood pressure will rise. It will be slightly better during the first five minutes. But after five minutes, my blood pressure will rise by 10 mmHG. And, five more minutes later, it will rise by a further 20 mmHG. At this moment, it should have risen by 30 mmHG already. If I go on, I may simply black out. So, I must start winding up my speech.

Chairman, I really hope that First, right at the very beginning, I already made my support for the accountability system very clear. But I also asked the Government to put forward a complete set of concepts and a well-thought-out and feasible system, rather than just giving us something which was neither ass nor horse, or even calling a stag a horse. Some Bureau Directors have a liking for doing so. Mrs Anson CHAN has advised us to distinguish between good people and bad people. I have long since been able to do so, right? I have long since been able to tell whether a person is capable, whether one possesses the required qualities. I have long since been able to tell all this. I am some kind of a physiognomist now, and judging from one's facial features, I can tell whether one is good or bad.

Chairman, on the accountability system, I must sincerely exhort the Government not to focus only on short-term benefits and the formation of short-term, interest-based relationship. Any myopic over-emphasis on such relationship and the handing out of political rewards in the short run will certainly undermine the entire system. We must not perpetuate the mistakes made by TUNG Chee-hwa. The perpetuation of his mistakes will not victimize the high-ranking government officials here, because most of them have already

reached the retirement age. They do not have any more worries. Some of them even own many properties. And, others are even famous for being very good at property speculation. Since they own so many assets and have so much money, they of course do not have any more worries. But the 7 million grassroots people must rely on the Government for leadership and assistance to improve their lot.

I held a meeting with the Development Bureau yesterday. I frequently support the work of the Development Bureau. Although I seldom support the Government, I will nonetheless render my support if policy direction is correct. The public must rely on the leadership of the Government. In case there is really an upsurge and prevalence of villains, many problems with policies will emerge, and governance will also be plagued with problems. If there are problems with keeping the Civil Service together as a team, if there are any problems with the team spirit of civil servants, both the Government and the ordinary masses will be the ultimate victims.

Chairman, I certainly do not wish to see such a situation. I therefore hope that Members can support this amendment and oppose the appropriation request. Thank you, Chairman.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, the Neighbourhood and Worker's Service Centre which I represent and also I myself both oppose the accountability system for principal government officials (accountability system) under discussion today.

Chairman, if Members have been following the news, they will know that several days ago, the President-elect of Taiwan, MA Ying-jeou, announced his governing team. He wants to enlist the support of these people for the functioning of the new administration and intends to start working right after the swearing-in ceremony on 19 May. Is it 19 May? I may be wrong. Anyway, he will be sworn in around the middle of May.

Frankly speaking, it is only natural for a government to form its own governing team. This is a perfectly normal practice all over the world. For this reason, some Members disclose today that the organizations they are

affiliated to will make nominations for the governing team. I think it is only normal for the Government to accept the making of nominations because it must enlist the support of those who share its political convictions. There is nothing wrong with that. What will become of the Government if the governing team simply consists of people whom it cannot work with? I think it is only natural that the convictions, political stances and approaches of those selected must be particularly similar to those of the Government. If not, how can the Government deal smoothly with policy problems?

Some Members have remarked that the whole thing may well be a distribution of the political booty. I am of the view that as long as the sharing of the booty does not involve any pecuniary interests, the whole thing should be only normal. What then is the reason for my opposition? Chairman, the main reason is connected with accountability. The general public all aspire to an accountability system. Who doesn't desire accountability anyway? If a person can do things without any accountability, he will certainly do anything he likes. With an accountability system, if the Government does anything wrong, it will be held responsible. It may have to step down or penalized. This is the virtue of an accountability system.

What exactly is the accountability system we have been discussing? To whom is the Government accountable? To whom should it be responsible? In other countries, if a government official performs poorly and adversely affects the whole government, or the whole governing team, he may not be the only one who must step down. The whole government may have to do so. This is what accountability is all about.

What is accountability system in Hong Kong like? In case a government official performs poorly, to whom will he be accountable? He is answerable only to the Chief Executive, who appointed him in the very first place. This is exactly where the problem lies. If the Chief Executive finds him still acceptable, if he sees nothing wrong and does not penalize the government official, the Chief Executive will have to assume responsibility. But to whom is the Chief Executive accountable? To his constituents. How many constituents are there? Only 800. The general public are not his constituents.

Therefore, the root of the problem is that while there is no objection to the accountability system, people do object to the *modus operandi* of this present system.

I can remember that when I first took part in social movements in the 1970s, I already started to criticize the colonial administration for lacking in accountability. The then government was peremptory, and however poorly it performed, we could still do nothing. I can remember that there was a certain Secretary for Transport who made a blunder on taximeters. But he was not disciplined, and it was only after a very long time that he was finally transferred to another post. Members of the public at that time, therefore, held many discussions on why there was no accountability. This issue has in fact been discussed for many years, Chairman.

No one will object to the concept of accountability. But people all have questions on the way the present system works. This is the most important point.

We may look at the new Bureau Directors as an example. When Secretary Dr York CHOW first assumed office, I noticed that he was the only Bureau Director who could deliver an unscripted speech. I was very impressed by him and I thought that he was a brilliant Bureau Director. Not only this, his speeches were even marked by personal insights. What is more, during most part of the year following his assumption of office, he would invariably show up every time when he was requested to meet with a certain organization.

I can still remember a meeting he held with a group of Chinese Medicine practitioners and I. At this meeting, the government-appointed membership of the Chinese Medicine Council of Hong Kong was discussed, and I remarked that members of Western Medicine advisory bodies were elected from among Western Medicine practitioners. I asked him whether he, as a Western Medicine practitioner, would support the same practice for the Chinese Medicine Council of Hong Kong. He replied in the affirmative, saying that the idea was good, and that since Western Medicine practitioners could do so, the Chinese medicine profession should naturally follow suit. I told him that it was very good for him to think so. The meeting was held in April or May, and they were due to be reorganized in September. I therefore asked him to consider the idea in the meantime. He replied that he would. However, after a very long time, nothing was heard from him. It was not until I followed up the matter with him that he finally expressed disapproval. The reason for this, as mentioned by Mr Albert CHAN, might be that he was strongly advised against the idea by civil servants. He therefore withdrew his support.

Chairman, having agreed that this was indeed a proper practice, he withdrew his support later on. If there had been any genuine accountability at all, the situation would not have been as simple, Chairman. He approved of the idea, but then he silently withdrew his support later on. How can one claim that there is accountability? Even when I discussed the issue with him, I could do nothing. What could we possibly do after he had so decided? Chairman, we really could say nothing. He is not accountable to the public and he is not answerable to them. He will only be answerable to the Chief Executive. We are so helpless.

Such an accountability system and such accountability officials can never do any justice to the public, nor can they effectively make the public feel that government policies are in line with people's interests and positions. Since they fail to do things well, since they cannot offer any explanation and hold themselves accountable to the public, it is only natural for us to desire an accountability system. But the present accountability system is meaningless and will only render government officials unable to give full play to their real abilities and expertise.

Therefore, when we discuss the present accountability system today, we must tackle the problem at source. As long as the political system remains exclusive, undemocratic and so incapable of facing the public; as long as the public cannot monitor the Government and hold it accountable, the so-called accountability system will just be a hollow one, a fake but not genuine one.

The aspiration in our society nowadays is very concrete. It is not imaginary, so it cannot be answered by any sham. Any meaningful answer must be marked by real substance. What is the present accountability system like? Solely enhancing its internal operation is of course a good thing from a certain perspective, for such enhancement may lead to smoother operation. But what will be the consequences? First, as already pointed out by many Members, a very great blow will be dealt to the civil service system. The effects will be very far-reaching, and I am not going to make any repetition here. Second, this will add to the unfairness and inequality of our political system, and the goal of accountability cannot be achieved either.

Therefore, if we are to support the accountability system today, we must first ask for the fulfillment of one pre-condition: there must be a democratic political system, under which power is vested with the people. This means that

whenever an accountability official handles things improperly, the people should have the power of holding the official accountable. They should be empowered to ask those in power to step down or replace the ruling team. Only such a system is meaningful. Anything other than that is completely meaningless from the perspective of the accountability system we actually desire.

Chairman, I so submit.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Constitutional and Mainland Affairs to reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, on behalf of the Government, I rise to speak against the 12 amendments put forward by Dr YEUNG Sum on reducing the funding set aside in the Budget for creating the posts of Deputy Director of Bureau and Political Assistant.

In October last year, the SAR Government submitted a report to the Legislative Council, proposing to create two tiers of politically appointed posts, namely, the posts of Deputy Director of Bureau and Political Assistant. This issue was subsequently brought up for discussions in the Legislative Council Panel on Constitutional Affairs.

In December last year, we obtained the support of Members in the Legislative Council Finance Committee. Formal approval was given by the Finance Committee for creating 11 posts of Deputy Director of Bureau and 13 others of Political Assistant with effect from 1 April 2008.

Therefore, the funding set aside in the 2008-2009 Budget for the creation of these posts is actually consequent upon the Finance Committee's approval for their creation in the civil service establishment. We have already started the recruitment process, and it is believed that the first batch of political appointees can assume office within a few months.

The 12 amendments put forward by Dr YEUNG Sum all aim to reduce the funding of \$55.09 million and to check the further expansion of the system of political appointment.

I would like to take this opportunity to explain why the Government has proposed to create these new posts and expand the system of political appointment.

First, the addition of these new tiers of politically appointed officials will perfect the SAR Government's governing team, as they can enhance the support for the Secretaries of Department and Directors of Bureau, assist them in dealing with the relevant political work, upgrade the Government's capability of governance, and eventually facilitate the Chief Executive's work of fulfilling the undertakings in his election platform.

Second, the Government may also expand the room for political participation. We hope that a wider variety of channels can be subsequently made available to absorb the political talents in Hong Kong. These talents may be from political parties, from the academic circle, from the professions, from the commercial sector, from the mass media or even from the Civil Service itself. Subsequent to the creation of these posts, people wishing to pursue a career in politics may choose to join the Government in addition to running in Legislative Council elections or District Council elections.

Third, we hope that with the expansion of the political appointment system, there can be a clear-cut division of duties between politically appointed officials on the one hand and their civil servant colleagues on the other hand. Politically appointed officials can concentrate on the political aspects of policies, thus further enabling their civil servant colleagues to focus on policy analyses, recommendations and execution. From now on, both within and outside of the legislature, there will be a greater number of politically appointed officials to shoulder political responsibility and bear political pressure for civil servants. This is an added protection for the professional, permanent and politically neutral Civil Service in Hong Kong, which all of us treasure so much. Besides, this can also serve as a thicker "fire wall" between politics and the system of civil officials in Hong Kong. From now on, politics in Hong Kong will be brought under the purview of the Secretaries of Department, Directors of Bureau, Deputy Directors of Bureau and Assistants to Directors of Bureau.

Mr CHIM Pui-chung wondered whether principal government officials would avoid attending Legislative Council meetings following the creation of the posts under discussions. I can tell Members in no uncertain terms that this will never happen.

The SAR Government attaches very great importance to its accountability to the Legislative Council and to its duty to gain the legislature's understanding of and support for the proposals we put forward. Therefore, at the time of putting forward the proposal on creating the posts of Deputy Director of Bureau, we already made it very clear that we intended to assign Directors of Bureau or Deputy Directors of Bureau to attend the monthly meetings of the relevant Panels for the purpose of handling those issues and topics considered more important and politically controversial by Members. And, we also explained that explanations to Members on technical issues and comparatively common policy matters would be left to civil servants.

Last year, when I put this proposal before the legislature, I already stated clearly that by expanding the system of political appointment, the SAR Government actually aimed to pave the way for electing the Chief Executive by universal suffrage. But even today, many Members are still sceptical. I hope that Members can stop dwelling on the "chicken and egg debate". The SAR Government has studied the issue for a very long time, and it has decided on a clear stance. It thinks that now is the time to expand the system of political appointment and pave the way for electing the Chief Executive by universal suffrage.

Dr YEUNG Sum, Mr Albert HO and Dr KWOK Ka-ki have separately questioned whether the present indirect election system for selecting the Chief Executive is compatible with the expansion of the accountability system. We are of the view that under the existing constitutional system and social context of Hong Kong, we should be able to complete the task. The reason is that whenever it puts forward any bills, budgets and policy proposals, the SAR Government must obtain the support of Members and the various political parties and groupings in this Council. Without such support, we will be unable to make any "headway" at all. In the case of the Budget under discussion today, for example, Members have put forward some amendments. If we fail to obtain sufficient support from Members, we will not be able to implement all the proposals made by the Chief Executive in his policy agenda last year. Besides, while Hong Kong has yet to implement universal suffrage, its mass media are highly transparent, active and free. As principal and politically appointed

officials, we must explain our positions to the public through the mass media, in addition to holding ourselves accountable to the public in the legislature.

As a further response to the position expounded repeatedly by Mr Frederick FUNG in his speeches, I can say that ever since the inception of the political appointment system for Secretaries of Department and Directors of Bureau five or six years ago, our system of public and political accountability has gradually taken shape. In the "penny stocks incident" and the case of SARS outbreak, politically appointed Directors of Bureau had to hold themselves accountable to the public and bear the political responsibility. A team spirit has gradually taken shape and increased in strength. As Members are aware, in the incident relating to the Kowloon-Canton Railway Corporation, the whole governing team could fix the problems indeed very swiftly within just a couple of days and following some internal discussions. What is more, since the incumbent Chief Executive was successfully re-elected as the third Chief Executive last year, we, I mean, the entire governing team comprising the Secretaries of Department and Directors of Bureau, have all been working very hard to implement the Chief Executive's election platform. The Budget under discussion, the implementation of the "10 major infrastructure projects", the introduction of the "3-3-4" academic structure and the promotion of social enterprises are all good examples of our concerted efforts and improving co-ordination.

Let me now respond to the views of Ms Emily LAU. She has remarked that if we really want to see the mature development of local political parties, thoughts should be given to equipping political party members with some public administration experience. Precisely because of this consideration, we now intend to allow some of the Deputy Directors of Bureau and Political Assistants we are going to appoint to have political party backgrounds. They will not be required to withdraw from their political parties after joining the Government. We also hope that with all these channels, while the unofficial Members of the Executive Council can have political party backgrounds, some of those in the administrative framework, such as Directors of Bureau, Secretaries of Department, Deputy Directors of Bureau and Political Assistants can also have similar backgrounds. In the long run, this can better equip us for the formation of a governing team and political alliance to support the work of the Government.

Miss TAM Heung-man and several other Members have questioned whether the creation of the new posts concerned will lead to overlapping

functions in the Civil Service, and whether the intended parallel lines of responsibility are indeed feasible. We have actually studied the experience and systems of many different countries. In the United Kingdom, for example, there are several tiers in its system, namely, the tiers of Secretary of State, Minister of State and the Permanent Secretary. In other words, apart from politically appointed Secretaries of State and Ministers of State, there are also Permanent Secretaries similar to those in Hong Kong. We believe that what works in other countries will also work in Hong Kong.

Mrs Anson CHAN has questioned whether the proposed system will result in collusion between business and the Government. The answer is certainly "no", because everyone treasures the core values upheld in Hong Kong. All politically appointed officials — Secretaries of Department, Directors of Bureau, Deputy Directors of Bureau and Political Assistants alike — must: first, resign from their posts in private enterprises or leave their private professional practice; second, declare their investments and various interests before assumption of office; and, third, abide by anti-corruption legislation and undergo integrity checks.

Mrs Anson CHAN has also emphasized that universal suffrage should first be implemented as a means of supporting the system of political appointment. On the issue of universal suffrage, the Government actually realizes that many Hong Kong people used to ask for the introduction of universal suffrage in 2012. But we now know that under the decision made by the Standing Committee of the National People's Congress in December last year, we will be able to introduce universal suffrage for electing the Chief Executive in 2017 and the Legislative Council in 2020. This is also an acceptable and pragmatic timeframe.

I am of the view that when discussing policy issues in this Chamber, both government officials and Members must bear in mind the "Truthfulness of Rhetoric" as their guiding principle. This means that they must state the facts and respect history in their remarks. One fact is that when Mrs Anson CHAN was the Chief Secretary for Administration, the then Government did not conduct any public consultation on introducing universal suffrage or put forward any timeframe. In contrast, the present Government has already done both. Therefore, my response to Members in this regard is very straightforward — facts speak louder than words. When compared with any previous Governments, the present Government is far more progressive and advanced in the promotion of democracy. In brief, in the coming nine years in the run-up to

2017, we will move in the direction of electing the Chief Executive by universal suffrage.

The Chief Executive Election last year was already marked by a high degree of competition. Mr Donald TSANG and Mr Alan LEONG had to participate in a debate on television similar to the presidential debates in other countries. They must explain to the public their political platforms and philosophies of governance for the following five years. I believe that in 2012, people's concern about the election of the fourth Chief Executive will only increase, and competition will continue to exist. And, in 2017, prospective candidates must first obtain the support of different political parties and groupings, sectors and social strata before they can be nominated by the Nomination Committee. Not only this, they must also face all the 7 million people and 3.3 million electors in Hong Kong and undergo the severe test of "one person, one vote".

In order to pave the way for implementing universal suffrage within 10 years, we must seek to widen the channels of political participation right now, so that a greater number of political talents can emerge in the meantime, both from the elections of representative assemblies and also from the Government's political appointment system. In this way, when universal suffrage is implemented for the election of the Chief Executive in 2017, it will be possible for each candidate to have the assistance of an integrated team in drafting his or her political platform, canvassing the support of different sectors and conducting door-to-door campaigning. And, following his or her election success, the Chief Executive-elect may even form the cabinet or governing team from his or her election team. All these aspects are inter-related. On the one hand, we will attend to the hardware, that is, an electoral system based on universal suffrage. On the other hand, we will also strive to improve the software by promoting the nurturing of talents and upgrading the quality of political talents.

The Budget under discussion today, therefore, is marked by foresight, and I sincerely hope that Members can support the creation of the posts of Deputy Director of Bureau and Political Assistant. I also urge Members to oppose Dr YEUNG Sum's amendments.

DR YEUNG SUM (in Cantonese): Madam Chairman, I shall be very brief because many Members have already spoken at length to express their views.

The Secretary has pointed out clearly that this so-called further development of the political appointment system is intended to pave the way for the implementation of universal suffrage. But I think the whole thing is actually meant to pave the way for electing the Chief Executive by universal suffrage in the future. I suppose the intention is to enable him to form a team, which can write up an election platform and conduct visits to people's homes for him. In this connection, it must be pointed out that this Chief Executive candidate in the future will certainly have the approval and the blessing of the Chinese side. But is this fair to other candidates? We can be sure that since such a system can pave the political path for the Chief Executive candidate blessed by the Central Authorities and enable him to line up his team, the Central Government and pro-government elements will certainly render their full support. However, I think that the use of public money to pave the political path for one particular Chief Executive candidate will be extremely unfair to other candidates.

There are three issues which I think must be brought up again. I agree with Mrs Anson CHAN that the further expansion of the political appointment system will deal a further blow to the civil service system. The Secretary may of course argue that politically, this will not be the case. Rather, they will add that there will be a clear-cut division of labour, as all the political work can be dealt with by Bureau Directors, Deputy Directors and Political Assistants, while civil servants can concentrate on the technicalities of policy implementation. Can there really be such a clear-cut division of labour? There is always the question of gearing in. I believe that if Secretary Denise YUE is present, she will surely admit that this is a big headache. I wish her good luck and hope that she can gear in successfully, so that there can be a clear-cut division of labour between two types of people from different work cultures and with divergent political aspirations. However, from her long years of civil service experience, Mrs Anson CHAN is extremely worried. The Government must pay heed to her advice and must not dismiss her experience for the reason that she is now a Legislative Council Member. I think this is a piece of advice from the bottom of her heart.

Second, Mr TAM Yiu-chung's speech just now sounded very disinterested, and he seemed so generous. While he admitted having a list of nominations in mind, he added that the contribution of one person would mean the loss of one talent for the DAB, and that since there was a shortage of talents, they did not think that they would get any benefits anyway. Madam Chairman, this is precisely the meaning of "sharing the political booty", a term we frequently refer to. A certain number of members of the 800-strong Election

Committee supported him, and he will surely remember all those who gave him full support during his electioneering campaign. In the future, he will certainly give them rewards according to their contributions. This is what is meant by sharing the political booty. It is all very well even if they want to share the political booty, but they must not use any public money for the purpose. It is immoral to use any public money for the purpose. Mr TAM sounded so disinterested. Basically, many Members think that they may well share the political booty in private, but it will be totally immoral to do so by using government systems and public money. This will also encourage political deals between the Government and political parties. I do not think that this is something Hong Kong people should take pride in.

Third, I wish to discuss the nurturing of political talents. I must point out once again that such vainglorious, unrealistic expansion of the political appointment system is tantamount to putting the cart before the horse. If the powers of District Councils can be expanded When the Government abolished the municipal councils, it told us categorically that municipal services would be delegated to District Councils. But the so-called pilot schemes being implemented only involve very simple management work concerning the opening hours of swimming pools and libraries. Such schemes seldom involve any personnel matters, policy issues and resource deployment. If there is any genuine intention of nurturing political talents, and if the responsibilities of the former municipal councils can be further delegated to District Councils, I am sure that talents from all over Hong Kong will decide to run in District Council elections. What is more, if universal suffrage can be implemented to provide more opportunities of political participation, many political talents will emerge. In that case, there will be no need to resort to any back-door methods, political deals and other inglorious means to identify political talents. I think that to do so is to put the cart before the horse.

I know that in the end, all will support the Government. I am not talking about any unanimous support from us in the democratic camp. I am saying that Members belonging to "royalist parties" will support the Government unanimously. But I still wish to put on record that Members in the democratic camp are strongly against the present system. Mr Frederick FUNG, who expressed his support, is an exception. And, he was commended by Mr TAM Yiu-chung. But he seemed a bit "concerned" about such commendation. It seems that he did not quite accept the commendation regarding his rationality and pragmatism. So much about history. We must all be held responsible for the remarks we made. I want to speak responsibly to Members today, and I hope

that my remarks can be recorded in history. Such sharing of the political booty and attempts to put the cart before the horse will deal blows to the time-tested civil service system. Members who still want to render their support must remember that all will be put down on record.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment of Dr YEUNG Sum to reduce heads 53, 137, 138, 139, 141, 144, 147, 151, 152, 156 and 158 by \$4,650,000 respectively and head 142 by \$3,940,000 in respect of subhead 000 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)

Dr YEUNG Sum rose to claim a division.

CHAIRMAN (in Cantonese): Dr YEUNG Sum 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 proceed to vote. 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 Raymond HO, 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, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

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

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr LI Kwok-ying 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, 27 were present, six were in favour of the amendment and 21 against it; while among the Members returned by geographical constituencies through direct elections, 28 were present, 16 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the sums for heads 53, 137, 138, 139, 141, 142, 144, 147, 151, 152, 156 and 158 stand part of the schedule.

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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Head 122.

MR JAMES TO (in Cantonese): Chairman, I move that head 122 be reduced by \$47,790,000 in respect of subhead 000. This sum equals the estimated total annual expenditure of the Complaints Against Police Office (CAPO).

Chairman, in the Ante-Chamber, many Members asked me for how much longer I intended to continue with the debate on this issue. As many as 20 Members asked me this question. I can only tell Members that the Democratic Party has been proposing the deletion of this subhead for nine years in a row. Some Members also asked me, "I have already heard all you have to say. Do you have any new ideas at all? I know that you want to discuss the problem of policemen investigating complaints involving policemen, right? I do not agree to this arrangement either. But in some cases, what we can do is just to hope that the Government can itself make some progress. Is such insistence the best approach? Not necessarily indeed." I can only tell them that there are several new points which I want to let them know. They need not worry, as I am not going to repeat all the speeches I delivered in the past eight years.

First, I wish to mention a recent case which is quite interesting in a way. The complainant was what I would say a district-level "votes deliverer" of "royalist" political parties. He used to hate me. But having personally encountered police abuses, he started to realize the rationale behind what I had

been advocating. He even encouraged me, saying that since the present Independent Police Complaints Council (IPCC) was useless, it would be a good idea to establish a "police monitoring committee". When I asked him what he meant, he replied that he was referring to a committee on monitoring police abuses. He remarked that there were now many "coalitions" in Hong Kong, "coalitions" of "aggrieved property owners", "victims" and so on. So, he wondered whether it was possible to establish a "coalition of police abuse victims in Hong Kong", or a "police monitoring committee" in short. Thinking that this was a good idea, and since he was all the time engaged in organization work, I suggested, "Let us make a start today and see if we can establish a coalition of all police abuse victims in Hong Kong."

There is the second new point. We have been saying that the police do not conduct any independent investigations. Where exactly does the problem lie? The problem lies with the complainant's involvement in criminal cases. Usually, when such a complainant wants to lodge a complaint with the CAPO, he will be reminded that he is involved in a criminal case, and that in case he gives a statement in the course of complaining against the police, the CAPO will establish a file on his case for follow-up actions. He will be further advised that the statement must be provided to the prosecution, and that according to legal advice, this may not be advantageous to him (The complainant may of course seek his own legal advice before making a decision). As a result, after making their own enquiries and finding out that this may indeed be disadvantageous to themselves, many victims will choose not to give any statements. In such cases, the CAPO will not have to conduct any investigation.

This will not happen if the CAPO is made independent of the police. There is actually a very simple example. Even if the person reporting a case of police corruption to the Independent Commission Against Corruption (ICAC) is involved in a criminal case, the ICAC will still establish a case file, carry out eavesdropping and surveillance and deploy undercover agents. The criminal case is investigated in parallel with the handling of the complaint, but the ICAC may outpace the criminal investigation and find out that the police officer is indeed involved in corruption, in machinating a frame-up.

However, this is not possible under the present circumstances. The reason is that under the law, criminal investigation by the police and complaint investigation by the CAPO cannot be conducted in parallel. This is actually a

long-standing problem, one which cannot be solved at all. It is indeed because of this system that independent investigation are made impossible in some cases. As a result, no file on the victim's complaint can be established forthwith, thus precluding any immediate investigation to ensure the instantaneous preservation of evidence and upholding of justice.

However, I have recently found out something new. What is it? Suppose a complainant is not involved in any criminal cases, and he only sues the police for damages under civil proceedings, what will happen? The CAPO will reply that in such cases, they will not conduct any investigation into the complaint. I have asked them for a reason. Their answer is simply that this is their current practice, under which no investigation will be conducted in cases where the complainant sues the police under civil proceedings. I have thought about the reason for a very time, and I have finally figured out the answer. The reason is very simple. A complainant who instigates civil actions against the police must have no confidence in the CAPO. The CAPO will consider these cases in which civil proceedings are instituted against the police, and in some cases, the police may reach a settlement with the plaintiff and must thus pay him "hush money". This means that after receiving the money from the police, the complainant must observe some confidentiality provisions and consider the whole case completed. And, he must not say anything more about the case, not even the amount of damages. Since the complainant has received money from the police, he will not lodge a complaint with the CAPO and ask for investigation, right? In this way, the CAPO can deal with one less complaint. Therefore, the payment of money under civil proceedings is a more desirable outcome for the CAPO. Why? The number of complaints will be smaller. After paying "hush money", they can of course stop all investigation.

Therefore, if a person wants to complain against the police by instigating civil actions, the CAPO will not conduct any investigation into his case. But we can actually observe that if the complaints mechanism is independent, civil actions and complaint investigation should be two separate issues. There will be no need to consider whether investigation should be conducted. We must ask this question: in case a victim takes civil actions against the police to claim damages for abuses of power, assaults and unlawful detention, and if the police subsequently pay money to the victim under a settlement agreement, why must they make the victim observe confidentiality provisions? The answer of the police is very simple: this is the usual practice in civil cases.

But the point is that the Government must now be subject to accountability. We have held a debate on the accountability system for principal government officials just now. Under this system, principal government officials must be held accountable to the public, and they must disclose the truth to society. We must need to know the truth, we must need to know whether the disciplined forces in Hong Kong have committed any abuses of power. It is only by knowing the truth that we can improve our society as a whole. To this end, we must bring pressure to bear on them. But then, we now realize that after paying monetary compensation, they can withhold the truth. How can they talk about any openness and accountability? Should any responsible government do anything like this?

It must be noted that the Government is no ordinary defendant in civil actions of this kind. The Government must be subject to accountability, must be answerable to the public and must ensure that things are all done properly. If the truth is withheld and swept under the carpet, if money is used as the final solution, how can we make any improvements? What is more, we can also see that the truth in complaint cases is denied not only to outsiders but also to members of the IPCC. This is ironical because the IPCC is appointed by the Government itself as the first line of monitoring. I am sure that when the Secretary speaks later on, he will certainly boast of the "great achievements" of the IPCC.

Chairman, I am not going to say too much on this, for we are bound by the legislation on the IPCC. If I disclose too many details, I will violate the Rules of Procedure, right? The Secretary will not speak too much on this either. But he will surely keep mentioning the IPCC. We must realize that even the IPCC is denied the truth in some cases. The legislative provisions make no mention of this aspect, so we do not need to be afraid, and we can debate all these matters here.

In the Coroners Ordinance, there is a special provision which is related to the topic under debate now. Under this Ordinance, Of course, all cases handled under the ambit of this Ordinance will involve dead people. But the point is that police abuse cases may not necessarily involve any deaths. There may be no deaths, or the case may involve a person who is half-dead. What I want to say is that if death is involved in a certain case, the Coroner shall have the power to require the Commissioner of Police to conduct independent inquiry under special procedures. During the scrutiny of the amendments to the

Coroners Ordinance, both the Director of Administration and the Deputy Director of Administration asserted that this particular provision was of immense importance. Why?

I pointed out at that time that eventually, the whole thing would once again end up having policemen to investigate cases involving policemen. In other words, investigation would still be circumscribed by the police, thus precluding any independent investigation. They explained (as they were trying to sell the amendment bill to me and other Bills Committee members) that this would not be the case because under the special provision just mentioned, the assistance of foreign law-enforcement agencies and even the ICAC could be sought. They assured us that this could ensure the independence of investigation. The two high-ranking officials responsible for the bill at that time, Mr Stephen FISHER and Mr Paul TANG, gave such assurance.

I first thought, "Yes, this must be the outcome of compromise." But after careful analysis, I wanted to ask them whether the ICAC could establish files on the cases referred to it. The ICAC has no power to establish any files on non-corruption related complaints. Unless legislative amendments are introduced, it will not be possible for it to do so. Besides, can foreign governments and their law-enforcement personnel render any assistance? They cannot because they do not have any law-enforcement authority in Hong Kong.

This may be possible if the past practice of the British is adopted. In the past, the relevant personnel were sometimes seconded from Scotland Yard and appointed as temporary members of the Hong Kong police. There was such a practice in the past. Some Superintendents (mainly stationed in Kwai Chung and other parts of the New Territories) were appointed to their posts under special circumstances. Otherwise, foreign law-enforcement personnel has no authority in Hong Kong. They will be just like the escort teams in the Olympic Torch relay. They are just escorts, not law-enforcement personnel. Foreigners do not have any law-enforcement authority in Hong Kong. How can they conduct any investigation? The summoning of certain persons under the Coroners' Ordinance alone cannot give them sufficient investigation power. What is more, the ambit of the ordinance covers only the dead. As for the half-dead, sorry, the ordinance does not apply. In brief, asking policemen to investigate cases involving policemen will never reveal the truth.

In the past, the Secretary cited some examples to support his question of whether independent investigation was the one and only fair solution. He

mentioned the case of medical practitioners and lawyers, questioning whether fairness should be taken to mean the complete absence of the involvement of any medical practitioners or lawyers in the investigation process. I hope the Secretary can realize the trend that there are more and more investigations involving the various professions. He should also realize that investigations with at least a certain degree of outsider participation, such as the involvement of non-medical practitioners and non-lawyers, have become a general trend.

We once proposed that it might be a good idea to implement a gradual reform, questioning whether it was possible to appoint an outsider as the head of the CAPO (who is currently a Chief Superintendent of Police). In other words, we questioned whether it was possible to follow the examples of the ICAC and the Office of the Privacy Commissioner for Personal Data and appoint a suitable outsider to the post. However, the Government replied in the negative, precluding the presence of even one single outsider.

Chairman, I was not the first one who initiated this idea. The people who first initiated this idea were the Chairman and members of the IPCC several terms ago. The IPCC is the front-line monitoring body appointed by the Government itself. They knew and understood the situation most clearly. They knew that IPCC must command credibility. They also proposed that since the Government and the police might not accept a full replacement of the whole team all at once, it might be a good idea to replace just the head of the CAPO. They believed that this could at least give the public some more confidence. They wondered whether this was possible. But the IPCC has replied in the negative all the same. In other words, not even the presence of one single outsider can be allowed. Some may think a strategy of alternate negotiations and struggles should be adopted. They may propose that all investigation teams In Kowloon, for example, there are three investigation teams, and in Hong Kong, there are also three. They may think that it is a good idea to include one outsider in each of these teams. They wonder whether this is possible. I do not know whether any political parties have made such a proposal for the Government's consideration. Actually, this proposal is a very safe one indeed. There are eight to 10 policemen in each team. The presence of one outside will not matter so much. He or she will not be able to "make any trouble anyway".

However, the Government has replied that even one outsider will not be allowed. It has simply kept on talking about how effective the IPCC is. I am not going to repeat all my points here. I just want to summarize all my points

by saying that the IPCC is an organization with "Three noes" — "no investigation power", "no power to reach any verdict" and "no punitive power". Besides, I have also discovered that even the situation of the head and legal advisors of the secretariat proposed by the Government will also be very miserable, because all their salaries are to be decided by the Chief Executive. I only hope that the Government can stop talking about how the IPCC can help the work of investigation. Doing so can never restore its credibility.

Yes, I have been moving amendment on this issue for nine consecutive years. But the passage of nine years has never shaken our belief in justice. We will continue to fight for the IPCC's independence until the Government is willing to squarely address and solve this problem, until justice is upheld.

There may come a time in the future when the pan-democratic or democratic camp is elected to power. When that time comes, we may raise the proposal again, and this issue may thus become an electioneering topic. But for the time being, we still very much hope that the Government can nonetheless introduce a minor reform despite its opposition to my amendment. In its lobbying letter, the Government claims that it will carefully consider all views on the IPCC bill. During our meetings, Members, including those belonging to "royalist" parties and groupings, can often hear such a claim. Frankly speaking, the requests made by many Members are really very humble. But the government officials concerned have simply kept on saying "no" like tape-recorders. This reminds me of a certain government official of the Home Affairs Bureau nicknamed "tape-recorder". He was surnamed LO. I hope that the Government can consider whether it is possible to give people more confidence and do them justice under the existing system. Can the Government do so?

Mr James TO moved the following motion:

"RESOLVED that head 122 be reduced by \$47,790,000 in respect of subhead 000."

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I am very grateful to Mr James TO for putting forward this issue. He has given his opinions in great detail.

My local offices frequently receive complaints about excessive police powers or their violation of justice in the course of enforcement. But most of these complaints will be referred to the Complaints Against Police Office (CAPO) for handling. I once told of a case in this Chamber, a complaint about the broadcasting of BEETHOVEN's symphony by Dick LEE. When the time

finally came for the handling of my complaint, Dick LEE had been promoted to the position of heading the IPCC. He was in other words in charge of the IPCC, so it was impossible to proceed with any investigation. Life is forever more dramatic than drama. Things like this really do happen.

This case can indeed point out where the problem lies. But things like this have never stopped happening. I sometimes feel very sad after meeting with those complainants. I believe that any sensible persons or persons with sympathy for others will also feel very sad because if people see any unjust incidents which should not have occurred under the system Such cases should not occur if public powers are under checks or subject to discipline. But the victims all sound so certain in their allegations. I will usually ask them to approach the IPCC — no, the CAPO. But in most cases, there are no results.

This is the dilemma faced by the public in their daily life. The situation is actually very terrible because one simply does not know when one will be involved in all such unnecessary trouble. Nor will one know how long such trouble will last. Such a system is totally against with the principle of checks and balances in modern political science. The logic is very simple. When we said that the anti-corruption branch within the police did not work, when we said that it could not fix the problem and the Independent Commission Against Corruption must be established, we were actually saying that the police themselves could not be relied upon to investigate police corruption cases.

As part of the state apparatus, the police are subject to discipline, but at the same time there is also a kind of "brotherhood" spirit. It will be very difficult to ask them to investigate their own peers. Therefore, if we admit that police corruption must be dealt with by another department, should we also agree that their dereliction of duties and power abuses must also be tackled by another department? The Government has never answered this question.

Why? Is that because the Royal Hong Kong Police in the past, now renamed the SAR police, have been given inoculations? Is it the case that they are not inoculated against corruption but they are indeed inoculated against power abuses and unlawful detention, not to speak of unlawful wiretapping which we mentioned before?

I have recently handled a case in which a villager sent for the police because some people wanted to demolish his house. When police officers

arrived, they simply watched the whole thing with folded arms, allowing the complainant's house to be demolished. It only came to their attention later on that this should not be allowed. Despite any land ownership disputes, no one should be allowed to demolish the house. The case is still being handled. But according to the complainant, one of the police officers at the scene was a Probationary Inspector who happens to be the son of the Commissioner of Police. So, he fears that his complaint will not receive fair treatment. I have told him that this will certainly not be the case, because the whole incident has been "exposed".

But why is there such a worry? Why do so many people think that the police are partial or will harbour certain people? It must be due to some problems with our system rather than any groundless fears of the public. The reason is that there is really a lack of any independent mechanism for monitoring the police, for investigating and handling complaints about the police. If the Government continues to adopt its present approach, the approach of relying on the IPCC, it will be putting the IPCC in a very vulnerable position, turning it into some kind of appetizer to be devoured before anything else. The IPCC is deficient in financial resources. It is staffed by people seconded from the Government, and its members do not work for it on a full-time basis. In other words, it is deficient in manpower, financial resources, material resources and authority. In brief, it is battered by "Four Deficiencies". May I ask the Secretary how it can still deliver any results?

So much for that. We have advised the Government that it should instead establish an independent organization for investigating complaints against the police. But the Government has replied in the negative. My dear government officials, we Legislative Council Members are all here today to monitor you and your superiors, right? Under the Basic Law, there is a clear division of political powers, specifying that the Government is not supposed to monitor itself, so it should be monitored by the Legislative Council. But why is the same practice not adopted for police powers, which affect the life of 6.9 million people every day? It is very hard to explain why.

The Government has told us year after year that Mr James TO is like a dog trying to catch mice, meaning that he tries to do something he is not supposed to do, so his proposals should not be supported. But still, this legislature has been doing so all the time. Frankly speaking, the situation is unbearable, and I must say that they have not discharged their duties diligently. The reason is that if

we conduct a This meeting is being broadcast on television. Suppose an opinion poll on "whether the police should be monitored by an independent body" is now conducted by Cable TV, NOW and other mass media, I will immediately admit defeat even if the findings reveal that only five respondents answer "no". Such a mechanism will ensure the safety of 6.9 million people, and only the police and the Government will be inconvenienced as a result. Why does the Government refuse to adopt this mechanism? The Government has obviously failed to discharge its duties.

The Government wants to activate the state apparatus, and once activated, the state apparatus will rumble on. It seems that I often "bother" them. But in fact, I am often "bothered" by them, arrested by them, right? Regarding the charge of assaulting police officers brought against me, I must say that I was at the time burning a vehicle tyre in protest, trying to deliver the message that the remarks made by QIAO Xiaoyang in Hong Kong had fouled our air. I was expressing my opinions peacefully, but some police officers came up to me and attacked me with some sprays. When they did this for the first time, I ignored them. But when they did this for the second time, I pushed them away, telling them that they must not do so. If they had had the slightest respect for people's right to stage a protest, they should have first warned me against burning anything and explained to me that this might cause harm to others. They should have warned me first, right? The police should have told me that such acts would foul the air and make it difficult for others to breathe. Then, they could arrest me under environmental protection legislation. But they did not do so. Since they did not want people to see anything unsightly on television, they extinguished the burning tyre. In an attempt to protect my right to stage a protest and my private property, that is, my tyre, I stood in their way. But they accused me of assaulting police officers. Do Members understand the case? Once the state apparatus is activated, it will rumble on. Therefore, I beg members of the public who are watching the live broadcast of this meeting not to criticize Legislative Council Members for having nothing better to do, for repeating the same old arguments over and over again. Honourable Members, you will understand what I mean if such unnecessary harm is also inflicted on you one day.

I very much agree to Mr James TO's remarks just now. I myself also dealt with many people who hated me. I could smell their hatred as soon as they entered my office. They all held a newspaper, a newspaper noted for always chiding me. They came to me for advice. To put it crudely, their

cases were all at the terminal stage of cancer, meaning that nothing more could be done. Why did they still come to me? Not because my relationship with the Government was good. Rather, they simply wanted to find out what I would say. They perhaps wanted to protest against me in a different way like this. But, please forgive me for being rude, they just want to badmouth me even if they cannot get what they want.

Honourable Members, what we have been seeing are people's uprisings as a result of oppression. People now waylay officials to lodge their complaints. All these should only be found in feudal societies. But under our existing mechanism, the ordinary people simply think that no ombudsmen of any kind can be of any help. So, they choose to waylay government officials. Is this something we want to see? Do we really want to see another LEUNG Tin-loi¹? Therefore, system-wise, if they cannot explain to us why it is impossible to replace the CAPO with an independent body to be monitored in turn by an independent police complaints council The reason is that only such a mechanism of "double independence" can be of any use. But some may wonder how much this will cost. I must ask them, "Will this cost as much as the 'festive' events to be hosted by the Government — the East Asian Games and the Equestrian Olympics, for example?"

Honourable Members, I know very little about political science. It is the duty of a government to enable the people to enjoy freedom from fear. Buddies, the situation may be slightly better if the state apparatus is under proper command. If, however, it is under poor command, it may well crush people to pieces. The situation will be especially terrible when political views in society are split to the extent of causing political confrontations, when the government orders the state apparatus to trample on the people's rights. What we must do today is to stop this from happening before it is too late. In Hong Kong today, the worst scenario, the scenario of the police degenerating into the worst part of the state apparatus, has not occurred. I mean, the scenario of people being crushed to pieces, which I have mentioned, has not occurred. If Members do not believe me, they can do some reading. They will then see that Eastern Europe, not to speak of our Motherland, is a perfect example.

¹ LEUNG Tin-loi was the only survivor in a family tragedy that occurred in Qing Dynasty, in which all his family members were burned to death by a local bully who wanted to demolish LEUNG's house for feng-shui reasons. LEUNG subsequently appealed all the way up to the Imperial Court in Peking, and the local bully was brought to justice.

Our fear is that our present system may develop into the systems found in these places. We fear that the unnecessary harm currently inflicted on the people may continue, thus conniving at the Government making use of the state apparatus. If the Government does not accept Mr James TO's proposal, it will never allay people's anxieties. You often advise me that the legislature is a place for rational arguments. So, today, let me argue with them rationally. Can they give me any answers? No, they cannot. Can they name any democratic countries that adopt such a system? Some may cite the United States as an example. But please do not try to deceive me. The United States is no example. Its system is not like this at all.

Honourable Members, I must therefore make it clear that if the Government still fails to offer any explanation despite Mr James TO's repeated requests today, if it still refuses to introduce any reform, it will fail in the discharge of its fundamental duty, the duty of preventing the law-enforcement agencies and organizations vested with public powers from inflicting harm on the people, or of giving the people the right of self-defence when any harm is inflicted on them. We are entitled to this right even without any relevant constitutional provision. Now you have refused to take on the facilitating role to support us and you have refused to let us do it. Are you, being a holder of the public purse strings, not doing a disservice to us?

Secretary, I know you are a believer. Am I correct? Do you know why Jesus of Nazareth was born to this world? He came to this world for the salvation of mankind, for the good of people. Therefore, you should do good to the people today. You should accede to our request.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I would like to ask whether the Secretary for Security wishes to do so.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO has moved an amendment to the Appropriation Bill 2008, proposing that head 122 be reduced by \$47,790,000 in respect of subhead 000 (the Hong Kong Police Force "Operational Expenses" subhead). This amendment is intended to delete the funding for the Complaints Against Police Office (CAPO). The authorities are opposed to this amendment.

As pointed out by Mr James TO himself, for the past nine years, he has been moving the same amendment to the Appropriation Bills scrutinized by the Legislative Council. According to Mr TO, the main reason for moving this amendment is to prevent police abuses. Honestly speaking, Mr TO is not the only one who wants to prevent the power abuses of law-enforcement personnel. We in the Government similarly do not want to see such abuses of power. And, this is precisely the reason for establishing the CAPO and the Independent Police Complaints Council (IPCC).

Mr TO has cited several examples, talking about how people were beaten to death or beaten half-dead. Mr LEUNG Kwok-hung, on the other hand, has expressed the fear that our police force may be turned into a state apparatus that oppresses the people. Actually, for nine years, Mr TO has been moving an amendment on deleting the funding for the CAPO. But if members of the public look at the situation over the past nine years impartially, what will they think about the problem of police abuses in Hong Kong? Has the problem worsened or lessened? Have we been developing towards the better or the worse? Over the past nine years, have the police committed any massive abuses of powers and become a state apparatus that oppresses the people? Have our Police Force and officers thus lost their credibility? If Members can study some impartial surveys, they will observe that all along, especially since the reunification, people's ratings regarding the services and probity of the police have been rising continuously, and this is also the case with people's recognition of the Police Force as a whole. If I can remember correctly, in the past two years, the police were able to command a confidence rating of 70% among the public. Hong Kong people's confidence in their Police Force is almost unique in the whole world. This can show that our Police Force is a highly professional team. Of course, I will not rule out the possibility that some officers in the 20 000-strong Police Force may make mistakes in the course of discharging their duties. This a problem found in all countries in the world. But the CAPO will impartially handle each and every complaint it has received.

And, the findings will be referred to the IPCC for examination. The passage of Mr TO's amendment will not help improve the existing police complaints system. Quite the contrary, the resultant lack of funding will render the CAPO unable to function, thus depriving the public of a complaints channel.

Mr TO has also cited another example. According to him, if a complainant is at the same time involved in a criminal case, his complaint will not be processed by the CAPO, but if the complainant turns instead to the Independent Commission Against Corruption (ICAC), his complaint will be handled. I do not think that this is a very appropriate example. The reason is that if a person's complaint is related to the criminal case he is involved in, the police must respect the court trials to be held and withhold its investigations for the time being. This is only understandable. But if a person's complaint is connected with the criminal acts of a police officer, then, despite the person's involvement in any criminal case, the police will definitely conduct investigation until the truth is ascertained, but the job will be carried out not by the CAPO but by another division in the Police Force.

Mr James TO has pointed out that in the case of some police complaints, a settlement may be reached under civil proceedings, and the settlement may include confidentiality provisions. This is actually one of the ways to settle civil disputes under our legal system. I fail to see why people should think of "hush money". In such cases, the Government and the persons concerned both agree to resolve their disputes by reaching a settlement under civil proceedings. This is something permitted under our legal system. I totally disagree to any reference to "hush money".

At present, police complaints are handled by the CAPO under the Hong Kong Police Force. Actually, the CAPO is a unit that operates independently, and it is completely independent of all other police departments. What is more, after completing the investigation into a complaint, the CAPO must submit a report to the IPCC. The IPCC is empowered to request the CAPO to furnish further information on the complaint. IPCC members may even interview witnesses directly, and IPCC members and Observers may also conduct pre-arranged or surprise visits to the CAPO to observe its investigation work. At present, in addition to the 18 IPCC members, the authorities have also appointed 78 Observers.

Mr LEUNG Kwok-hung has remarked that the IPCC is deficient in resources and therefore useless. I totally disagree with him. Mr James TO used to be an IPCC member, so I do not think he will agree that the IPCC is a completely useless organization.

When examining complaint cases, the IPCC

CHAIRMAN (in Cantonese): A point of order? Secretary, please pause for a moment. Mr TO, do you have a point of order?

MR JAMES TO (in Cantonese): Chairman, the point of order I seek to raise is that I have never been an IPCC member.

SECRETARY FOR SECURITY (in Cantonese): I am sorry. I withdraw this remark. When examining a complaint case, if the IPCC has any doubts about the CAPO's investigation, it may request the CAPO to offer further explanation or conduct a fresh investigation into the case. Or, it may even submit the case together with its recommendations to the Chief Executive. The CAPO will carefully consider the IPCC's recommendations and take follow-up actions. It will also offer a thorough and reasonable explanation on the points of elucidation sought by the IPCC. During the three-year period from 2005 to 2007, the CAPO revised the investigation outcomes of 190 allegations after considering the views of the IPCC. From this, we can see the IPCC's effective monitoring under the complaints system.

Over the past few years, the authorities have introduced a series of measures to perfect and further improve the police complaints system of the CAPO. Such measures include the opening of certain regular meetings of the IPCC and the CAPO to the public and the establishment of a monitoring panel on serious complaint cases under the IPCC. On a monthly basis, the CAPO is required to submit to the monitoring panel progress reports on specified serious complaint cases.

The existing police complaints system is already marked by effective monitoring and sufficient checks. I therefore think that it is a fair system. Under the system, police officers' professional expertise and their in-depth

understanding of police work are effectively utilized to ensure that all complaints are thoroughly investigated. If the IPCC can become a statutory body, the fair treatment of complaints can be ensured in a much more effective manner. I think the existing system, whereby the CAPO is responsible for investigation while the IPCC plays the role of monitoring and review, is both appropriate and fair. If Mr TO's amendment is passed, the operation of the CAPO and all complaint investigations will come to a halt. It will then be impossible to handle public complaints against the police. This is not in line with the public interest. I urge Members to support the Government and oppose Mr TO's amendment.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, I believe that even if the CAPO is abolished tomorrow, the reputation and popularity of our Police Force will remain equally high. Why? The reason is that currently, most complaints cannot be substantiated, and there are thus no outcomes. In other words, the presence of the CAPO or otherwise will make no difference at all. However, I think if people argue the other way round, saying that the police have been able to enjoy high popularity because the present police complaints system is sound and effective, there must be something wrong with their logic.

Perhaps, I should take this opportunity to explain why I have not participated in the work of the IPCC. I was actually invited by several former Chairmen to join the IPCC, because they knew that I was quite familiar with its work. But I told them that since my long-standing struggle for the independence of the IPCC was not quite in line with the position held by most of their people, I did not think that I should do so, as there would be problems of co-operation. I therefore turned down their invitations. However, this does not mean that I am not familiar with the operation of the IPCC. I know its operation very well, as I have actually been closely monitoring its work over a very long time. And, it is precisely for this reason that I can identify the problems in great detail.

First, I wish to say a few words on the CAPO. Perhaps, I should give the Secretary a challenge. If the Secretary is at all sincere, he should find time to arrange a sequence of undercover operations. He must of course obtain prior exemption from the Secretary for Justice because some of these operations may

involve mock cases. Let me first tell him the procedures involved; otherwise, a complete mess may result. The Secretary should try lodging a complaint. Ideally, the test should be conducted by the Secretary, for he was once the Commissioner Against Corruption.

If the Secretary lodges the same complaint separately with the CAPO and the ICAC, he will observe that the responses of the two are entirely different. I have some tape-recordings with me, from which we can hear that the ICAC is very concerned about the complaints it receives. It very much hopes that the complainant can supply information, so that it can combat corruption. The ICAC thus shows very great concern, and it will not treat complainants like criminals. If the complaint is about police corruption, it will ask, "Is the officer concerned an undercover? Does he have any difficult problems that cannot be disclosed? Is his situation difficult? Can it be possible that the complainant cannot appreciate his situation?" Front-line ICAC staff will not behave like CAPO staff.

But if the complainant turns instead to the CAPO, he will observe that the CAPO is just like an "Anti-Complaints Against Police Office". I mean, it simply wants to do away with all complaints (I have all along refrained from saying so). CAPO staff will question the complainant whether he knows the operation of the police, whether he has blamed the police wrongly, whether there is any misunderstanding of the police officer, and whether there is any misconceptions about the police procedures.

Why do CAPO staff members behave like this? What is the problem? The Secretary's reply is that the CAPO is independent and does not belong to any other departments. As pointed out by Mr LEUNG Kwok-hung just now, the police officer under investigation may suddenly be transferred back to the CAPO or he may even become its head. What is to be done in cases like this? Actually, officers of lower ranks will be transferred here and there more frequently, so those under investigation may at any time become their superiors. But this is not the greatest problem. The greatest problem is that sympathy and empathy for one's peers are values upheld in the disciplined services, and they all treasure their comradeship in dangerous missions and feelings of sympathy and compassionate understanding. They all work at the frontline, so investigators may be influenced by their sympathy with the officers concerned. As a result, they may think that their peers might truly be facing a very difficult situation when the incident took place. In the course of investigation, investigators may

be influenced by such feelings, and they may tend to sympathize with their peers. This is inevitable, and I have not gone so far as to say that they will make deliberate attempts to help out their peers.

In contrast, ICAC investigators will not behave like this. What kind of training do ICAC investigators receive? What they learn from their training is that if they suspect any corruption, they must sustain their suspicion until the end, until there is any evidence proving otherwise. They are told that if there is no such evidence, they must carry on their investigation no matter what. At the time of entry The Commissioner Against Corruption The Secretary was once the Commissioner Against Corruption, so he should know only too well the aptitude demanded of investigators at the time of entry. An attitude of scepticism and disbelief is demanded of investigators at the time of entry, and they are required to search for evidence and persevere until the very end.

Similarly, investigations into police abuses must also require such doggedness. The authorities must stop telling us and Hong Kong people that only policemen are professional enough to investigate complaints involving policemen (Please do not think that we are so ignorant). If what the authorities tell us is really true, then what can they say about the cases handled by the ICAC? Can they tell us how many cases of frame-up, corruption, narcotic drugs and police abuses the ICAC has handled so far? Admittedly, the authority of the ICAC is limited by the relevant legislation. But still, are the police the only organization that knows how to investigate such cases? No. The Customs and Excise Department, for example, also arrested some police officers in the past in a number of cases relating to its duties. How can it be said that there are no other organizations that know how to investigate such cases? How can they claim that other organizations are unable to carry out such investigations?

The Secretary made a very ridiculous remark just now. He said, "I fail to see why people should talk about any 'hush money' when the Government requests the plaintiff of a civil claim for damages to properly observe certain confidentiality provisions. Under the laws of Hong Kong, the plaintiff and the defendant of a civil case are permitted to conclude a settlement based on any terms (including confidentiality provisions). If we, as the Government, have paid monetary compensation, and if we also want the plaintiff not to disclose the particulars of the case to the public, then it is only natural for us to exercise our right in such civil cases. Why should people talk about any 'hush money'?"

Chairman, I find his remark ridiculous because he fails to see why. If the Secretary fails to see why the public and Members all regard any such monetary compensation as 'hush money', I really think that he must get to know more about accountability, fairness, openness, the people's right to know and how society can monitor the government. The point is precisely that a government is not necessarily entitled to all the rights to be enjoyed by ordinary litigants in all lawsuits. And, the Government must also note that it is not supposed to exercise all these rights in all cases. Sometimes, due to many factors, such as political needs, accountability requirements and the people's right to know, it must give up certain rights that it can enjoy as a litigant. The rationale is very easy to understand, because it is necessary for society to monitor the Government in some cases. Now that the Secretary has given us such a reply, I think it will probably be very difficult for us to receive any positive feedback regarding our queries on the IPCC and the information and documents we have asked for, because such is the thinking of the Secretary.

The worst thing is If there is a settlement based on confidentiality provisions, it is still a cogent argument that all is based on mutual agreement. But in case the plaintiff of a civil case on police abuses wins the lawsuit and is paid damages, damages amounting to just \$1, maybe (we have asked this question before), will the Government still follow up the case? Will the police officer concerned be disciplined? Sadly, we have not received any reply so far.

The standards of civil proceedings are of course not as high as those of criminal proceedings. But the standards of civil proceedings are still very stringent, as the whole process still requires the conduct of court hearings, cross-examination and so on. If the Court is of the view that the likelihood of the police officer having beaten up the plaintiff is higher than 50%, that is, higher than the likelihood of the officer's not having beaten up the plaintiff, it will rule that the police officer did assault the plaintiff. Since it is the Court's verdict that the police officer concerned did assault the plaintiff unlawfully, the amount of damages will be irrelevant although it is as small as just \$1, and I must therefore ask, "Should the police officer be spared any disciplinary actions?" If their answer is "yes", I must ask, "Are they saying that the Government's powers should supersede those of the Court, and that the Court's verdict can be ignored? Is ours a society upholding the rule of law?" At the meetings concerned, the government officials present kept saying that civil proceedings and criminal proceedings are different, that civil proceedings and disciplinary proceedings are different, and disciplinary proceedings and criminal proceedings are also different. Do I really need them to tell me all this? All these

proceedings are of course different. But the point is that it is the Court's verdict on this civil litigation that the likelihood of the police officer having assaulted the member of public concerned is higher than his not having done so. A verdict is a verdict and must be treated as such. Can they simply ignore it, refusing to take any follow-up and disciplinary actions? I can now understand why the Government has been so insistent on not vesting the IPCC with the powers to pass any rulings and take any punitive actions. If the IPCC is vested with such powers, of course, There are a dozen or so members in the IPCC. What are they supposed to say in that case? Are they supposed to say that there is indeed no need for any punitive actions? Their saying so will certainly cause problems, and the whole IPCC may well have to step down amidst boos, right? But the Commissioner of Police has the grit to protect his subordinates in this way. Such is the view of the police. Such is the attitude of the police towards the handling of complaints. It looks like the Commissioner of Police thinks that his powers are above those of the Court. If not, why did he comment on who should be regarded as friends and who should not in the sex photo scandal? And, why did he make such bold remarks on this and that? Here is where the problem lies. He seemed to think that he was better in judgment than the Court. He said that he had consulted many members of the Obscene Articles Tribunal, and that since these members all agreed that the photos were obscene, it was not necessary to submit the photos to the Tribunal. Such a way of handling things is a total defiance of the Judiciary. Such is the present mentality of our government officials.

Chairman, I know that my amendment may not be passed in the voting today. But I am convinced that the pressure for changes will be sustained. And, I also hope that the police will not be complacent about their generally satisfactory performance. What the police need to do is to ferret out the black sheep and make all front-line officers realize that all black sheep will be ferreted out. That way, they will have the determination to introduce reform and make improvements. Such determination is precisely what we need. In this way, members of the public and society at large will believe that there will be fair trials and investigations. We will continue with our fight in this regard.

CHAIRMAN (in Cantonese): I now put the question to you as stated, and that is: That the amendment moved by Mr James TO 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 James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO 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 KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr LEE Wing-tat, 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, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mrs Anson CHAN 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, 26 were present, six were in favour of the amendment and 20 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 10 were in favour of the amendment and 10 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.

MR JAMES TO (in Cantonese): Chairman, I move that head 122 be reduced by \$80,000,000 in respect of subhead 103.

Chairman, the title of this subhead is "Rewards and Special Services" (R&SS) and many members of the media or Honourable colleagues would call it "informer fees" in short. Such a short form of expression is not very accurate. Even in the letter from the Secretary to Members, the same explanation is offered. However, what is being referred to is actually expenditure of a secret nature.

I am the deputy chairman of the Panel on Security and in the past I also had the chance of serving as the chairman of the Panel as well as its member. I understand very well that the police or other law enforcement agencies do need to spend some money to pay for what is commonly called informer fees or to meet some covert needs such as purchasing some equipment and so on. However, when we ask some very basic questions such as, of the sum of \$80 million expenditure, whether or not there are any expenses involving manpower, the Government will not give any reply. If there are such expenses, then why is this item of expenditure so mysterious? Another example is that we may ask, what are the percentages taken up respectively by manpower and equipment? What is so mysterious about that? What is there that may give an opportunity to unlawful elements to know about?

This is the same argument that is given to matters like surveillance and wiretapping. That is to say, if the number of warrants issued each year is disclosed and a breakdown is given on crime prevention and security, how can it be said that this will give a chance to the unlawful elements to know about our enforcement capabilities? For example, this year we have wiretapped on 3 000 occasions on cases related to security, that does not mean that our capabilities in wiretapping security matters are necessarily for 3 000 cases. We may have great capabilities, but for this particular year, the number of cases that requires wiretapping is actually 3 000 and that is all. If the Government cannot disclose information on a major item by such a basic breakdown, then I would think that expenditure in that regard is actually not under any monitoring at all and our mind will never be at ease with respect to the entire scope of operations.

Why am I saying so? There are two reasons. The first is that expenditure under R&SS used to be an item of expenditure under the Special Branch during the colonial times. Hence, people are particularly worried about it. Second, although we say that the sum of \$80 million is not that much, I can tell you that amount does not include the expenditure of the Security Wing. There is a Security Wing in the police and under it there are units like the anti-terrorism squad and so on. It has several hundred people and it has an expenditure of about \$100 million. But the sum of \$80 million is not included in the expenditure of the Security Wing. In addition, there are also several hundred people in the Criminal Intelligence Bureau and they are commonly called the paparazzi and their expenditure is about \$100 million. And that sum is not included in the \$80 million either.

In addition, we have handled applications for the purchase of some special communications equipment in the Criminal Intelligence Bureau and irrespective of whether the equipment are computers or telecommunication equipment, the funding involved is often likely to be \$100 million on each occasion. We have approved all such applications. We have also approved applications for replacing digital equipment or adding transfer stations or portable equipment and even equipment used in the Special Duties Unit and so on. Work in the Unit is very tense and all squad members must act at the same time and there cannot be a split-second delay. The current Commissioner of Police TANG King-shing used to be a member of that Unit and while in action the unit members are asked either to shoot or abort. Everything has to be decided on the split of a second and every member must act with perfect synchronization. They have such good

teamwork. As for the beehive confidential telecommunications equipment used by the unit members, that is also not included in the \$80 million.

Besides, the confidential computer systems used in the Organized Crime and Triad Bureau, the Narcotics Bureau, and the Criminal Intelligence Bureau are not paid out of that sum of \$80 million. In other words, there is a funding request each year for that sum of \$80 million and its use is not specified in advance. I do not know if the Financial Secretary is interested in this kind of information. He was the head of the Customs and Excise Department and he should know this only too well. And the actual expenditure of the police, or the expenditure of the Customs and Excise Department rather, is by comparison much less. Are there any differences between the use of that sum of \$80 million or the other sum of a few million dollars? Actually, I would like to ask the Financial Secretary to look into that, especially when he has the experience of serving in the security forces. He should make more considerations and weigh all the possibilities to see if the Secretary is true in saying that once the breakdown is disclosed, the cat will be let out of the bag and police operations will be put at risk. I hope that the Financial Secretary can look into that since he has the relevant experience.

I am certainly supportive of anti-terrorism operations as well as all operations that protect the safety of Hong Kong. But unfortunately, we have no way to know even the general items basically covered by that sum of \$80 million. So we will just have to listen to the Secretary when he says, "It is really like that; it does not matter whether it is one thing or more than one, as you just have to trust me." We must remember that even for an intelligence agency in another country — in the case of Hong Kong, it is not an intelligence agency and it is just a civilian police, not the kind of intelligence agency that we are talking about — and even for more sensitive organizations like a national assembly or a law enforcement agency, they are to hold themselves accountable to a committee formed specifically for such a purpose and often that committee will hear some reports under confidential circumstances. The most obvious example is that the Central Intelligence Agency is to hold itself accountable to a special committee in the two houses of the American Congress. I would think that this is the most natural thing and it is just fair to do so. This is because the public may actually be the one who is being put under surveillance or supervision.

The situation in Hong Kong is still somewhat sensitive. This representative assembly returned by the people of Hong Kong — I would not

comment on the question of whether it is democratic or not, but at least half of the Members are returned by the people — it cannot even set up a committee to carry out some sensitive work such as overseeing public expenditure. This is because the Government forbids it.

I have made this suggestion for a few years already. I suggest that the authorities may issue an order of confidentiality and require that the information can only be obtained inside a special meeting room. We have done that before. Members have gone to the police headquarters for a briefing on matters which the Government claims to be highly sensitive, such as a briefing on the situation of the triad societies held once every few years. Actually, the matters discussed are not really highly sensitive but the Government wants us to go there for fear that there will be divulgence. But why can information on such kind of expenditure not be done in this way at all? What kind of secret is that there cannot be disclosed? If the Government says that there are some Members out of the 60 Members in total who cannot be trusted — actually I have no idea which Members it thinks cannot be trusted — then can the Government discuss with Members on how a group can be formed, one that Members think is representative enough and that which the Government thinks after reaching a compromise that it is trustworthy so as to proceed with the matter? But never, never has such a thing happened.

I do not know why there has never been such a thing. If it is said that someone should be nominated as a member of that group, among the pan-democrats, I would say that I should not be nominated. In my stead, Mrs Anson CHAN would be a better choice. Mrs Anson CHAN used to be the Chief Secretary for Administration and the Government should have vetted her suitability thoroughly. I believe when she was the Chief Secretary for Administration, she would have knowledge of a lot of confidential matters inside the Administration, for she would have the chance to read about them. Right? I have made the suggestion that instead of me, she should represent the Members and take part in the group. But even such a suggestion is not accepted. Right? If even such a thing cannot be done, then the position of the Government in this issue should speak loud and clear. Put it simply, I can say that if Mrs CHAN is to speak today, I do not know if she would, she will say that she has misjudged a person. She cannot help but saying that. It turns out that if someone serves in the Government, that person has to be so closed, and he or she is forced to be not accountable and twist something that is obviously true and say something false as

true. This is like pointing at a deer and saying that it is a horse. There is no way to do anything about it. It is because under the leadership of Donald TSANG, our government has adopted the style passed down from TUNG Chee-hwa and it has to be done that way. Is it because of some special reasons that things must be handled this way? I really have no idea.

The greatest problem is that the spectre of the Government's intention behind the attempt to legislate on Article 23 still looms large, just that the attempt is put aside for the moment. I have often asked the Government if anything can be done to arrive at some sort of a balance so that we will not be unnerved by these expenses. The former Secretary pledged that when the deliberations on the Interception of Communications and Surveillance Ordinance was over, some thoughts would be given to better express the uses of this sum. However, the deliberations on the Interception of Communications and Surveillance Ordinance are already over, but the pledged is not honoured. No mention is made of it any more. I do not know if this means that it covers so much as being mentioned in the Interception of Communications and Surveillance Ordinance. But not all the expenses are related to the interception of communications. The greatest problem is that if this is how the authorities would explain it, the money spent on the interception of communications is only on these few items and these may take up only a very small part of the sum. For if it is said that the money is spent on purchasing equipment, then there are many telecommunications equipment and devices which can be paid out of the some ten billion dollars spent by the police each year. Does the purchase of a powerful video camera or a pair of binoculars have to be made out of that sum of \$80 million? Of course, there is no need for it. Then what kind of secret is involved? The expenses should have been included in that some \$10 billion expenditure of the police. So where is that \$80 million spent? All in all, no one knows. Not only that no one knows any details about it, no one knows the general items of expenditure under this sum. Hence there is a possibility that it is abused.

I can tell Members a real case of abuse. There is a person who used to be the Commissioner of Police. Once his home was broken into and the loot took on a tortuous route and ended up in Macao. As the home of the former police chief was broken into and the loot appeared in Macao, the loot had to be redeemed. So the police was forced to do something and money was paid out from that sum of \$80 million for that purpose. At that time there was a person of the rank of chief superintendent and he was in charge of signing the papers and giving the approval. I know that person's name and he had retired. He retired

after he had been promoted. Before the reunification, I once asked the Government if that incident had ever happened under that heading. No reply came from the Government. If that incident had never happened, the Government might as well say it did not happen. It can even say, "Sorry, Mr TO, you are mistaken." The Government has to be very careful about that incident because it has no idea how much information I have got. Of course, it would be better not to give any reply.

Perhaps we can comment on an action to redeem lost property for a person. We can just think, I know that there are one or two Members whose homes have been broken into and if so happens that the loot is brought to Macao, can we ask the Government to use the money under the "informer fees" and redeem the lost property? Of course, that cannot be done. If this is how the sum is used, a simple way is to say that it is used to buy some necessary equipment. I have no idea if buying back the loot should come under such an item of expenditure. If this is really the case, the operation will need to be so secretive. But put it simply, this is just improper. Right?

Now there is no way the citizens and Members can monitor how the money is used and there is no way any committee can be formed to monitor it. On behalf of the pan-democrats I recommend that Mrs Anson CHAN be a member of that committee to oversee such matters. I hope the pan-democrats can agree to my recommendation and I think the Government should agree that she is a credible person. Can this not be done? If even that cannot be done, then it would mean that nothing at all can be done, right? Perhaps it is because Mrs CHAN has now got the recognition from the people that she has lost the recognition from the Government and is no longer regarded as credible.

That is all about this item. I hope Honourable colleagues if the Government does not do anything about it, then the problem can never be solved. There are many Honourable colleagues including those Members from the pro-establishment or the pro-government camps who have talked to the Government and asked it to think of an occasion or some circumstances under which the matter can be monitored. Or else, there can be no solution to it. There is no monitoring at all regarding such matters. The Government says that this is how things are. But how can this be acceptable?

Mr James TO moved the following motion:

"RESOLVED that head 122 be reduced by \$80,000,000 in respect of subhead 103."

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

MR LEUNG KWOK-HUNG (in Cantonese) When I levelled criticism at the Secretary for Security earlier, it seems that he does not know what is meant by the term state apparatus.

State apparatus is a very special part of a country used to help it maintain law and order. An example is under the rule of a totalitarian government or a certain social class, these state apparatuses would help it suppress the people. So not every person who works in the police is part of the state apparatus and that apparatus is

CHAIRMAN (in Cantonese): Mr LEUNG, can you come back to the theme of the discussion?

MR LEUNG KWOK-HUNG (in Cantonese): Now I am talking about it. I am going to do so. Well, this is related to it.

So not every person in the police is part of the state apparatus and if no improvement is made to the system, he will have to either follow the crowd and be corrupt or else he will have to quit the job. Therefore, as Mr TO has said, it is no big deal about this sum of \$80 million and as Hong Kong is so rich, the money can be spent anywhere.

Now as we ask where this sum of \$80 million is spent, we are asking this question on behalf of the people. So do not think that it is James TO who asks the Government this question. In all the questions we ask, such as why a trial should be conducted in public, this is because the Court is to let the justice of a trial be seen to be done. Why should the meetings of this Council be made public? This is to let the public know through the media how Members are to monitor the Government and that these efforts can be seen.

It is unfortunate that the Secretary has not explained — I think he may make some explanation later — as to how the money is used. One must be frank about everything that one does. If there are certain things that this Government does that cannot tell the people, then it should state clearly that these cannot be told and why they cannot be told. Is it because they are state secrets, anti-terrorist operations or simply things that must be kept secret? I do not think up to now we have heard anything of that sort.

According to what Mr James TO has said, formerly most part of this sum of money was used in the Special Branch, which has ceased to exist now. Secretary, this is something I asked you personally before. I asked you whether there was any Special Branch around and your reply was there was no Special Branch. Then I said, "I can put up my head as a stake and say that there are people now doing the work of the Special Branch." Now my head is still there. Of course, there is no win or loss about this bet. For you are part of the state apparatus and you have the right not to answer our questions. Not every Director of Bureau is part of the state apparatus. But you are and you are exercising this power on behalf of the Government.

Therefore, Secretary, if you tell everyone in the Council, "I am not going to reveal the details", the case is like an old story that I like to tell often. There can only be one government and according to common sense in political science, there can only be one government. There can never be government A which is called the state apparatus and government B which is called the Ministry of Home Affairs. This can never happen. Therefore, when you cannot make any reply, you are in fact putting the entire Government into shame and if the Government has a chance to read this speech and if it does not make any response, then it is willing to put itself in shame.

I just want to confirm one comment and see if it is true. I think the police may think that Mr James TO is a nuisance. But in fact this is not the case, Mr James TO. I have met many policemen and they say that they want us to do something and help them make their reputation clean and ask the Secretary to listen to the voice from the police. Of course, there are some people in the police who think I am a great nuisance and so, Chairman, this is why I have said just now that the state apparatus does not equal to the police and not every member of the police is part of the state apparatus. The state apparatus is an institution.

Now we are always asking questions about matters in the police and what we are doing is to clean up the reputation of those policemen who really want to be a policeman and who really want to keep law and order and protect the basic dignity, human rights and liberties of the common people. Where in fact is this sum of \$80 million used? Secretary, you cannot give an answer to that. There are no breakdowns and there are not even any general items of expenditure. The lucky thing about it is that you are working for the Government and if you were working in a private organization and if you take a sum of \$80 million and then you say that you do not know where the money is spent, do you think you can do that? No, certainly not.

But we are the boss — I am the boss, every one here is the boss, every one who plays a part in contributing his or her efforts to make our economy and resources grow is the boss. We are asking you on behalf of these some three million bosses this question: what on earth are you doing? Up to this very moment you still refuse to answer. Earlier on you said that I was wrong when I said that the IPCC was useless. I said not long ago that the IPCC was an organization with "four noes". It has no powers, no money, no manpower and no authority. This is as simple as that. I am not saying that it is useless and it is because of these "four noes" that it cannot help but being useless.

About what is said in this Chamber today, I am sure that many people would be tired of hearing it, for Mr James TO has been talking about it for so many years. He is talking about it year after year and every time he failed. But I really want those members of the public sitting in front of the TV to see the point that we are talking about a basic right.

That this Government is a good or an evil one, perhaps no one will ever know. But why do we ask for such system of checks and balance? This is because we assume that the government is evil and there will not be a need for such system if we assume that it is good. This is populism and people-based philosophy. They assume that a government is necessarily a good one and it is kind-hearted and so there is no cause of fear in the people and there is no need to monitor it.

I have often been criticized for holding populist thoughts. But what they are doing now is precisely populism and people-centred philosophy. They said, "You do not have to care about it as long as we are popular. According to opinion polls, Donald TSANG has popularity rating of over 80% — but we have no idea how many votes he has got — and since we have this level of public support, it follows that what we have done is good. Then James TO, why are you pursuing the question of how the sum of some \$80 million is used?" This is not right. If we really respect the principle of democracy and if we really respect the constitutional system, we should reply to every question that can be replied and for those questions that cannot be replied, we should give some similar reply and let the people ask more questions.

I have said many times that even in a society where there is a normal separation of powers, the powers of the executive tend to be more and more centralized and the national assembly would be sidestepped. Things are more

obvious if the bipartisan system is adopted. And there is public opinion, we can ask questions through public opinion. Secretary, I raise this question to you today and of course, you may choose not to answer. But if you are faced with dozens of microphones and the question directed to you is where the sum of \$80 million is spent, you will not feel embarrassed if you do not reply once. But if you do that twice, your face may probably turn red. And if you do that for the third time, I am sure you will squirm with embarrassment.

This is why we are pursuing this question all the time, and what we want is only to let the people know that under this separation of powers system which is in a shambles, there is a greater civil society out there which is fighting for itself. To be frank, if we do not ask so many things today, who will know how this sum of \$80 million is used? No one will ever know and no one will know that the Government does not even want to mention it. And no one will know that this \$80 million used to be set aside for the Special Branch.

I want to be frank by saying that I suspect that you have used that sum of money to do what the Special Branch used to be doing or for briefing out work. In an event of such a magnitude as the invasion of Iraq by the United States, it turns out that the abuse of prisoners can be outsourced. This can really be said to be internationalization and globalization. It would be an even more serious thing if the Government uses the money in contracting out such services. This is because the law on wiretapping cannot be invoked to regulate private organizations. If there are people who gather around me and try to wiretap my conversations or if I am put under their close surveillance, when I report the case to the Secretary, he will say, "Sorry, they are not intimidating you and we cannot do anything." This is also an experience shared by some of my constituents. The person concerned, was harassed by collectors for default in loan payment. He reported the case to the police but the police said to him, "They do not beat you and there is no actual bodily harm inflicted on you. That is only red paint, not blood. So the case will not be entertained." Therefore, such things are very dangerous and now our system is in a shambles.

When the Government spends this sum of \$80 million on outsourcing and given the fact that Chinese-owned companies have a lot of people who have been trained to carry out such tasks, will my life not be in danger if these people are taking up such work? If I give a report to you, it is like washing hands with one part of bleach diluted in 99 parts of water and nothing can be seen. Secretary, you may think that "Long Hair" is exaggerating things and saying nonsense here.

Well, you may as well say so and please prove that I am talking nonsense and there is no such thing as "one part to 99 parts" and nothing is done with public money to carry out unaccounted for activities by contracting such jobs out, or some cover-up work is done to spy on or put some people whom you think are dissidents under surveillance.

Secretary, such covert surveillance is a crime and there are two meanings to it. First, it is a moral crime and you have committed it already. Now the question is: in terms of law, I do not know if it is a breach of law, for I do not know the law, I mean I do not know your laws. Therefore, when we discuss this topic today and if Members just do what they are supposed to do, that is, press the buttons — just now the number of votes cast by Members returned by direct elections is less than those returned from the functional constituencies — we cannot do anything should such extraordinary and inversely proportional things happen under this proportional representation system we have. On each occasion what we do is to sit here and listen to officials making some wide-off-the-mark comments in response and we put the matter to vote. With respect to this issue, I hope the Secretary can make a response again. Actually, I have asked you before whether or not you are still carrying out wiretapping activities like those done by the Special Branch before and whether or not the \$80 million is used for that purpose.

Secretary, if you really know nothing about it, then please say no. Do not say, "I am not going to tell you." This is because if you really do not know, then I will ask somebody else. I may ask Financial Secretary John TSANG or Chief Secretary for Administration Henry TANG. You do not have to bother giving a reply here. Yesterday I read a funny article in which the saying "silence is golden" is mentioned. The meaning of the saying is to ask us to be silent. However, I would think that this interpretation is not very correct. The meaning of "silence is golden" does not mean that you will get rich by not uttering a word. Actually, the most precious thing is that if you want to tell a lie, silence is really like gold. If you want to say something against your conscience, silence is even more important than gold.

Secretary Frederick MA says that he wants to buy 59 cups for us. I hope he can give these cups to his colleagues. This is because they will find this proverb "silence is golden" all the more useful, whereas for us, we do not need it. For them, it is likely that they will feel like stumbling on gold if they can remain silent. So if Secretary Ambrose LEE really says later that he does not

know anything, then I will ask Financial Secretary John TSANG. If it turns out that he too does not know, I will ask Chief Secretary for Administration Henry TANG. If he knows nothing, I will ask Chief Executive Donald TSANG. Secretary, please do not talk any nonsense just to silence us. If you know nothing, then please say so. Tell us what you do not know. And there are the Secretaries of Department who are watching, right? If you tell us that, I will pursue the question with the Secretaries of Department. Therefore, I really hope that you will know what is meant by silence is golden and talk less about those things you do not want to say and talk more about things that the public and Members want to know.

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 Security, please speak.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO seeks to move an amendment to the Appropriation Bill 2008 to the effect that head 122 be reduced by \$80,000,000 in respect of subhead 103, that is, the Rewards and Special Services of the Hong Kong Police. We are against the amendment.

The two Members who have spoken earlier, that is, Mr James TO and Mr LEUNG Kwok-hung, both mentioned the Special Branch. Mr LEUNG has even asked me directly whether or not there is still any Special Branch in existence. Mr TO even said that this sum of \$80 million used to be the expenditure of the former Special Branch. As a matter of fact, I really do not know. And I do not know why Mr TO can know things that I do not know myself by saying that this sum of \$80 million used to be the expenditure of the Special Branch. However, there is one point I wish to state solemnly in this Council and that is, the expenditure under this subhead is definitely not, I repeat, definitely not used for political purposes.

Mr TO has also talked about abuse of this subhead. He cited an example which I do not know. He alleged that the sum under this subhead was used improperly by a former Commissioner of Police. Honestly I know nothing of the matter. However, to ensure that public money is used properly, the authorities have set up a very stringent vetting and approving as well as monitoring system in respect of the Rewards and Special Services subhead of the police. With respect to internal monitoring, the police have devised a set of detailed vetting and approving, as well as monitoring procedures for subhead 103, including vetting and approving every item of expenditure by a designated senior police officer and a blitz check will be conducted from time to time on the details of the expenditure under that particular subhead. The audit section of the police will audit expenses that come under subhead 103 each year and apart from that, the senior officers from the Audit Commission will undertake an independent audit of the accounts under subhead 103 pursuant to the Audit Ordinance. Such measures can ensure that all related officers shall adhere strictly to financial and accounting rules of the Government.

Mr TO has also mentioned earlier that if the expenditure does not involve any political activities, then why Members cannot be informed. Actually, whether or not detailed information on expenditure under the Rewards and Special Services subhead can be disclosed is different from our trust in Members. The two matters are different and cannot be mixed. The authorities have the responsibility to protect and properly handle confidential information and the information will be disclosed in an appropriate manner only when operational needs so warrant.

The funding under subhead 103 involves confidential operations of the police such as in combating terrorist activities, serious crimes, drug offences and so on. Owing to the sensitive nature of the information concerned, we must reduce to the minimum the number of persons who can have access to such information. Mr TO has just pointed out that with respect to the more general items or smaller figures, it would not cause any harm if only one or two such items or figures are disclosed. Actually, we will make the relevant figures public each year and as this is done every year, people outside will know the extent of our law enforcement capabilities. This is because if it is done every year, then it will show that we can only deal with say, 300 cases or 500 cases. So we consider that there is a need to protect such confidential information.

We understand that Members hope to enhance the transparency of the expenditure under subhead 103, thereby increasing their monitoring of the

situation. At the same time, due to the confidential nature of the operations, we must be very careful about things such as making public the information on the expenditure involved in such operations, in order to ensure that the criminal elements will not know the operation tactics of the police by analyzing the distribution and trends of the expenses. Such criminal elements can then evade their legal responsibilities or even endanger the safety of front-line police officers and informers to the police. Hence, we must strike a suitable balance between upholding transparency and accountability, as well as the enforcement efficiency of the law enforcement agencies.

In order to enhance the transparency of the expenditure under subhead 103, the authorities have in recent years disclosed relevant statistics of the uses of the funding under this subhead, while not compromising on the enforcement capabilities of the police. An example is making public the total number of cases of rewards and the total amount involved as well as the total number of the payment of rewards. In addition, in the Interception of Communications and Surveillance Ordinance enacted in August 2006, the criteria regarding the authorization of interception of communications and covert surveillance are clearly drawn up; and an independent Commissioner on Interception of Communications and Surveillance is also appointed to oversee compliance of the statutory requirements by the enforcement agencies. The Commissioner is to submit an annual report to the Chief Executive, listing many items of statistical data related to covert operations taken by the law enforcement agencies, including the number of authorizations issued for covert operations, the time limit of the authorizations and the types of crimes involved. The Chief Executive will act according to the requirements of the Ordinance and arrange for the submission of the report to the Legislative Council for its scrutiny. The first annual report of the Commissioner on the implementation of the Interception of Communications and Surveillance Ordinance covers the period from the commencement date of the Ordinance up to the end of December 2006. The annual report was laid before the Legislative Council in October 2007, thereafter the Panel on Security has on a number of occasions discussed the report. Through these various measures in making the relevant information public, the transparency of the special operations undertaken by the law enforcement agencies concerned has been greatly enhanced.

The expenditure under subhead 103 is of vital importance to the investigation, detection and prevention of crime by the police. The authorities have always been striving to achieve a proper balance between the transparency

and accountability of the confidential operations, as well as the effective enforcement efforts of the police. If the amendment proposed by Mr TO is passed, this will seriously impair police efforts in keeping law and order, hence causing a serious adverse impact on the law and order as well as security of Hong Kong. I therefore implore Members to oppose Mr James TO's amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, why is it said that the sum of \$80 million used to be the expenditure of the Special Branch? The Secretary has said that he does not know. It does not matter if he does not know. It would be alright if he works hard and learn more. Certain information does exist and it has only recently come to light after a prolonged ban as classified material. In Hong Kong a person who is hotly tipped to be a Deputy Director of Bureau has written a few books. He has worked very hard in the libraries of the United Kingdom, making use of such declassified material to write an interesting account of how the Special Branch of the Hong Kong Government used to put people under surveillance, the relationships of these people and the locations in which such activities were carried out. The Secretary may say that he does not know, or he does not want to read it. He has the right to do so. Besides, there are still people from the Special Branch who are still in Hong Kong whereas some are living overseas. The police have been in recent years quite active in recruiting some former staff of the Special Branch to carry out some work. Also, when Secretary Ambrose LEE was in the Immigration Department, when he was doing debriefing work in the borders during the 1990s, he had questioned offenders who were to be repatriated and there was certainly a lot of information given to the Special Branch for some purposes. The Secretary may not know all about it but he had certainly worked for the Special Branch. When he was deployed in the borders and assumed the post of a supervisor there, he was one of the members of the team responsible for collecting information. I hope that the Secretary will not crack any jokes here and take pride in the fact that he knows nothing and feels happy that he does not know anything. There are certain things that should be debated in an objective manner and sensitive matters should be dealt with as well. They should be discussed seriously and there should be proofs in support of the arguments advanced.

Also, the Secretary says that the applications are to undergo very stringent internal vetting and approval, but why were the informer fees or the Rewards and Special Services expenditure used to redeem the jewellery stolen from the wife

of the Commissioner of Police? The reason was that the amount applied for had reached that requiring of an approval from a Chief Superintendent and the amount was not too great after all. However, even if the amount was indeed very great, who dared not give the approval? This is especially true considering the fact that it was back in the 1990s. The Secretary says that trust in Members and confidentiality in the Administration are two different matters. I think this argument sounds very ridiculous. Why? I have said earlier that these are actually two different matters, but why are they related? The reason is that in a parliamentary assembly of an overseas country, there is a special committee to which such actions should be held accountable and to which reports are heard. But we do not have such an institution, then why should we not have one?

As the Secretary was once the head of the ICAC, so he will know certainly that there is an Operations Review Committee (ORC) which examines reports of graft. That committee is a highly confidential one and there are Members of this Council — not Mrs CHAN, but at least I know that Ms Margaret NG was one of its members. I am sure at least that there are some Members of this Council whom the Government can trust and with whom it can even discuss some highly confidential matters. So the Secretary should not say to me or the public that trust and confidentiality of the Administration are two different matters. The ICAC has such a committee but the police does not have one. The IPCC is not used for this purpose. It is only responsible for the handling of some complaints and the nature of such complaints is often not as sensitive as those cases handled by the ORC of the ICAC.

As to how the problem can be solved, I have racked my brain during these past few years in search of an answer. I hope to see some compromise from the Government and see if that can be done. Actually, there are just a few possibilities to it. Let me try to list them. First, the Legislative Council may set up a committee of inquiry or a select committee and the chairman of that committee can consult and negotiate with the Government and convey to it the views from people belonging to various groups and holding different ways of thinking and then, some mandatory action can be taken to obtain information and hear reports. This would put the mind of the public more at rest. Second, the Chief Executive may act under the Commissions of Inquiry Ordinance and appoint certain people such as the Chief Justice or some people whom the Government may have confidence in, although quite reluctantly, such as Mrs Anson CHAN, to be members of the commission of inquiry and hear reports. Some recommendations and conclusions may be made out of these two channels.

In this way, I think at least the first step can be taken and it is much better than what we hear from the Secretary for so many years. There are certain words which I would prefer not to say them but they have almost come out of my mouth, those vague and insubstantial words lacking in persuasiveness. Such recommendations and conclusions may be more constructive and can inspire greater confidence in the people.

The reason why I have made these two points is to give some foods for thought to the top echelons of the Government — now that there are so many top officials in the ranks of Secretaries of Department sitting here. As the Government has always tried to maintain a high degree of confidentiality while it also wants to uphold accountability, protect the right to know and facilitate public scrutiny either through representatives or the existing system, I think these can serve to be some possible actions to take. I am not saying that things should be achieved at one go. I must say that before the enactment of legislation for the implementation of Article 23 of the Basic Law, if this kind of mechanism which I would tentatively call a compromise is not set up to disclose detailed information, I cannot see how, after the legislation for the implementation of Article 23 is enacted, the Government can have any room to manoeuvre.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO 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 James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division shall take place after the bell has rung for three minutes.

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 results be displayed.

Functional Constituencies:

Ms Margaret NG, Mr SIN Chung-kai, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted in favour of 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, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Mr LEE Wing-tat and Mr LEUNG Kwok-hung voted in favour of the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mrs Anson CHAN 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, 24 were present, four were in favour of the amendment and 20 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 11 were in favour of the amendment and 11 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the sum for head 122 stand part of the schedule.

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 of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the schedule stand part of the Bill. According to Rule 68(4) of the Rules of Procedure, this question is neither amendable nor debatable. 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): We are to consider the clauses of the Bill. I now propose the question to you and that is: That the following clauses stand part of the Bill.

CLERK (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

APPROPRIATION BILL 2008

FINANCIAL SECRETARY (in Cantonese): Madam President, the

Appropriation Bill 2008

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 Appropriation Bill 2008 be read the Third time and do pass.

According to Rule 70 of the Rules of Procedure, the question shall be voted on without amendment or debate.

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 CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division will ring for three minutes, after which the division will start.

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

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

Mr James TIEN, Mr Albert HO, Mr Martin LEE, Dr LUI Ming-wah, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr Chan Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Prof Patrick LAU, Mr Albert CHENG, Mr KWONG Chi-kin and Mrs Anson CHAN voted in favour of the motion.

Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the motion.

Mr LEE Cheuk-yan and Dr KWOK Ka-ki abstained.

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

THE PRESIDENT announced that there were 51 Members present, 45 were in favour of the motion, three against it and two abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Appropriation Bill 2008.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Mainland Judgments (Reciprocal Enforcement) Bill.

MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL**Resumption of debate on Second Reading which was moved on 7 March 2007**

PRESIDENT (in Cantonese): Ms Margaret NG, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MS MARGARET NG: Madam President, in my capacity as the Chairman of the Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill, I shall highlight the main deliberations of the Bills Committee.

At present, there is no arrangement between Hong Kong and the Mainland on reciprocal enforcement of judgments. To enable judgment creditors to seek summary enforcement of court judgments of one jurisdiction in the other jurisdiction without going through the time-consuming and costly litigation proceedings, the Mainland and Hong Kong signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned (the Arrangement) on 14 July 2006. The Arrangement covers judgments that:

- (a) require payment of money in business-to-business contracts;
- (b) relate to disputes in which the parties concerned have agreed in written form to either designate a people's court of the Mainland or a court of Hong Kong as the forum to have exclusive jurisdiction for resolving such disputes; and
- (c) are "final" and "conclusive" as defined.

The Arrangement requires the enactment of local legislation for implementation. The Bill, which is modelled on the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319), provides for:

- (a) the enforcement of Hong Kong judgments in civil or commercial matters that are given in the Mainland;

- (b) facilitating the enforcement in the Mainland of judgments in civil or commercial matters that are given in Hong Kong; and
- (c) matters connected therewith.

In the Mainland, the Supreme People's Court will promulgate a judicial interpretation to set out the details of the procedures for implementing the Arrangement. The Administration has undertaken to provide a copy of the judicial interpretation to the Legislative Council when it is available.

Long title of the Bill

The Bills Committee has made two comments about the long title of the Bill. First, given that the Bill seeks to give effect to the Arrangement and contains special provisions which are different from Cap. 319, for example, the special meaning given to "finality" which addresses a problem under the common law, the Bills Committee considers it logical for the long title of the Bill to contain a reference to the Arrangement. After consideration, the Administration has agreed to move an amendment to this effect.

Another comment which members have made is whether the expression "civil or commercial matters" in the long title is appropriate as only judgments arising from commercial matters will be covered by the Bill. The Administration has advised the Bills Committee that it is proper to adopt the expression in the Bill where appropriate, having regard to the usage of the expression of "civil and commercial matters" under various Mainland laws and the purpose of the Bill, and for the sake of consistency. The expression will not in any way have any impact on the scope of the Bill.

Registration of Mainland judgments in Hong Kong

(i) Recognized Basic People's Court

Under clause 5(2) of the Bill, a Mainland judgment will be registered in Hong Kong if, among other conditions, it is given by a designated court pursuant to a choice of Mainland court agreement. A "designated court" is defined in the Bill and includes a recognized Basic People's Court.

A "recognized Basic People's Court" is defined in the Bill to mean any Basic People's Court specified in a list provided from time to time to the Government by the Supreme People's Court. The list of 47 recognized Basic

People's Courts is not included in the Bill, but annexed to the Arrangement. The Bill provides that the Secretary for Justice shall from time to time publish in the Gazette a list of the recognized Basic People's Courts.

Some members have expressed serious concern about designating Basic People's Courts for resolving disputes under the Arrangement as the quality of justice and the propriety of the judicial officers of some Basic People's Courts, especially the ones in more remote area, are questionable. The Administration has explained that any suggestion to exclude these courts from the Bill would contravene the Arrangement. It is for the Supreme People's Court to decide on the competency of the relevant Basic People's Courts in dealing with foreign-related civil and commercial matters, and the need to authorize such courts.

In response to members' concern that the list of recognized Basic People's Courts is subject to addition or deletion by the Supreme People's Court without prior consultation with the Hong Kong Government, the Administration agrees that parties' autonomy should be respected and any amendment to the list of recognized Basic People's Courts should not affect the enforceability or otherwise of a judgment under the Arrangement. The Administration will introduce a new clause in this respect.

(ii) Scope of "choice of court agreement"

Under clause 3 of the Bill, "choice of court agreement" means "an agreement concluded by the parties to a specified contract and designating a court in Hong Kong (or the Mainland, as the case may be) to determine a dispute which has arisen or may arise in connection with the specified contract to the exclusion of courts of other jurisdictions". The Administration has advised that the expression "designating a court" should mean "a court" or "courts" so designated. Members consider that the expression reflects neither the Administration's intention nor Article 3 of the Arrangement.

Members have also expressed concern about the scope of "choice of Mainland court agreement" and discussed at length different scenarios, for example:

- (a) where a judgment is given by a Mainland court which has not been chosen by the parties but is seized with the case either of its own accord or by application from either or both of the parties; and

- (b) where, in reaching a choice of court agreement, the parties have mistakenly designated a wrong Mainland court to deal with their dispute.

The issue raised is whether the judgment given by such a Mainland court, which is a designated court under the Bill, would satisfy clause 5 of the Bill, notwithstanding that it is not the particular court chosen by the parties under a choice of court agreement.

The Administration has advised that:

- (a) if the judgment in question is given by a people's court which has properly exercised its jurisdiction following the transfer of the case from the court chosen in a choice of Mainland court agreement in accordance with the Mainland law, then it should be recognized and enforced according to the provisions of the Bill; and
- (b) on the other hand, if a party or parties choose to submit the dispute to a court other than the court chosen under a choice of Mainland court agreement, the judgment should not be regarded as a judgment for the purpose of clause 5 and could not therefore seek enforcement by invoking provisions of the Bill.

After considering members' concerns and comments, the Administration will amend the expressions "designating a court" in the definition of "choice of court agreement", and delete the references to the expression "pursuant to" in various provisions in the Bill when it is used in relation to a judgment. Amendments will also be made to the Bill so that the relevant judgments should be given by a chosen court which is a designated court, or a designated court to which the case was transferred according to the law of the Mainland. Further, where such judgments are subject to appeal or a retrial, the Bill should also cover the resulting judgments made on appeal or in a retrial in these cases insofar as they were delivered by a designated court.

Some members remain concerned about the risks for the Hong Kong business community to resort to the Arrangement. They have suggested that additional safeguards should be provided in the Bill, such as provisions to set aside the registration of a Mainland judgment on the ground that the judgment

was given by a court which had no real and substantial connection with the dispute, to guard against unequal bargaining power of the parties to a choice of court agreement, to require parties to a choice of court agreement to expressly opt in the enforcement regime under the Arrangement, and to cap the maximum judgment sum to be enforced in a contract. The Administration has explained why these proposals cannot be pursued.

(iii) Mainland judgments which require performance in stages

The Administration has explained the need for a judgment creditor to make separate applications for registration of a Mainland judgment which requires performance in stages. To address members' concern about the cumbersome procedure for enforcement of such judgments, the Administration will simplify the documentation requirement for an application for registration of a part of a Mainland judgment that is preceded by the registration of any other part of the same judgment.

(iv) Identification documents

Under the Bill, the Administration has proposed a consequential amendment to Order 71A of the Rules of High Court to require a judgment creditor to exhibit a certified copy of identity card upon an application for registration of a Mainland judgment. In view of the comments of the Office of the Privacy Commissioner for Personal Data that the proposed requirement may entail a risk of exposing the personal data of the judgment creditor, members' views have been sought on the proposed requirement.

Given that the proposal is intended to implement Article 6(4) of the Arrangement and the evidential requirements to support applications for enforcement of Mainland and Hong Kong judgments under the Arrangement should be familiar, members consider that the proposed requirement should be retained.

After further consultation with the relevant parties, the Administration has decided to delete the relevant rule, as there is no comparable requirement relating to the registration of foreign judgments pursuant to Cap. 319, and the current procedures should be sufficient for the purpose of verifying the identity of the party who wishes to file an affidavit for or on behalf of oneself.

Finality of Mainland judgments

For a foreign judgment to be enforceable in Hong Kong at common law, it must be for a fixed sum of money and it must be final and conclusive. In view of the trial supervision system in the Mainland, there were instances where the Hong Kong courts ruled that judgments of the Mainland courts could not be considered final and conclusive for the purpose of seeking enforcement in Hong Kong.

The Bills Committee notes that for the purpose of the Arrangement, special procedures are adopted in the Bill to address the common law requirements of finality. Clause 5(2) stipulates that a Mainland judgment seeking enforcement in Hong Kong must be, *inter alia*, final and conclusive as between the parties to the judgment. The meaning of "final and conclusive as between the parties to the judgment" for the purposes of this Ordinance, is provided in clause 6(1). The Administration has advised the Bills Committee that the judicial interpretation to be issued by the Supreme People's Court will set out the special retrial procedures applicable to Mainland judgments sought to be enforced in Hong Kong under the Arrangement. An explanatory document on the new procedures will be drawn up and distributed by the Supreme People's Court before the Arrangement comes into effect.

Grounds for setting aside registration of registered judgments

Members have requested the Administration to review whether the defence of natural justice is covered under clause 18 which sets out the grounds for setting aside the registration of Mainland judgments.

Taking into account the interpretations in various common law jurisdictions and the comments explained in the Explanatory Report on the 2005 Hague Choice of Court Agreements Convention, the Administration concludes that the defence of natural justice is encompassed by the public policy defence which is reflected in clause 18(1)(j). In addition, the notion of natural justice also has a considerable overlap with the elements of fraud which is a defence in clause 18(1)(g). This being the case, the Administration considers that the natural justice defence is adequately covered under clause 18 of the Bill.

Members point out that the formulation of clause 18 is different from the relevant provision in Cap. 319 and have requested the Administration to clarify

whether the defence of "public policy" against enforcement of a foreign judgment can be raised at the court's initiative under clause 18. After consideration, the Administration considers it appropriate to follow the drafting of section 6(1)(a) of Cap. 319 and will amend clause 18(1) accordingly. The amended provision would leave the court with the discretion to invoke the public policy ground on its own volition.

Madam President, the Administration will introduce amendments to address members' various concerns arising from the discussion of the Bills Committee and other minor and technical amendments. These amendments have the support of the Bills Committee. These are my remarks on the deliberations of the Bills Committee.

MS MARGARET NG (in Cantonese): Madam President, in my personal capacity, I will now talk about the arrangement, the entire background and the significance of the Bill.

Madam President, Hong Kong has a sound legal system, which is far superior to that in mainland China. Before the reunification in 1997, the two legal systems were separate and independent of each other, and Hong Kong people, as well as the international business community based in Hong Kong, were protected by the rule of law in Hong Kong and this is a major factor in maintaining confidence. Insofar as litigation is concerned, Hong Kong people still do not have confidence in mainland courts. However, since it is in fact difficult to enforce Mainland judgments in Hong Kong, even if one loses a case on the Mainland, at the most, only one's assets on the Mainland will be affected and those in Hong Kong will still remain untouched. Therefore, this can also be regarded as a kind of protection.

However, after the reunification, although it is said that "one country, two systems" is being practised, one cannot expect the two systems to remain completely separate. Moreover, since the interactions between the companies and people of the two places have multiplied, total segregation will also lead to many problems. Take legal proceedings as an example. If the judgments of Hong Kong courts and those of the Mainland cannot be reciprocally enforced in a summary way, it is likely that legal actions over the same matter have to be taken separately at the two places and one can imagine how much inconvenience this will cause. Not only will this be tiresome to the public and cause financial distress, it will often lead to a situation in which one party seizes the initiative to

file a case in a court at a certain place because it believes that taking legal action at that place is more favourable to it, whereas the other party may also seize the initiative to file a case at the other place and this will only cause greater confusion. Therefore, it is only natural and even inevitable that negotiations between the two places on the arrangement for reciprocal enforcement of court judgments will take place.

However, it is also only natural that the legal and business sectors are averse to and uneasy about this move. After both places decided to hold discussions in December 2001, this matter was discussed in the Panel on the Administration of Justice and Legal Services. The Panel also invited representatives of the legal, academic and business sectors to express their views. At that time, although the representatives did not oppose holding discussions, they did voice a number of concerns, in particular, that about a lack of confidence in the legal system, judicial independence and the professionalism of judges on the Mainland. Besides, the administration of justice may be affected by corruption and so, there were concerns that it would be difficult to prevent people from obtaining unfair judgments on the Mainland and seeking their enforcement in Hong Kong. In that event, it would not be possible to prevent people from doing so.

Another area of concern is that the so-called "reciprocal enforcement" would only be too idealistic and in most cases, what will actually happen is that most of the Mainland judgments will be strictly enforced in Hong Kong because Hong Kong has a sound legal system, whereas one cannot be optimistic about whether the judgments given in Hong Kong can be enforced on the Mainland because there are often difficulties even in enforcing Mainland judgments on the Mainland. Several years ago, we passed a piece of legislation on the mutual enforcement of arbitral awards. However, up to now, we still do not have any specific figures showing whether or not the enforcement of Hong Kong arbitral awards on the Mainland is satisfactory. In contrast, we have a lot of specific evidence indicating that mainland arbitral awards were enforced without glitches in Hong Kong.

The legal profession also has reservations about a legal principle, namely, the issue of "finality", or the concept of being final and conclusive. According to the principles of the common law, one prerequisite of local courts in enforcing a foreign judgment is that the judgment must be "a final and conclusive judgment in that court". This prerequisite reflects what is called "*res judicata*", that is,

the principle that a judgment has been given by a court and the parties concerned are not allowed to take any further legal action. There is also the same condition and requirement concerning the enforcement of foreign judgments in Cap. 319 of the Laws of Hong Kong.

According to mainland laws, in the case of a judgment made by a people's court of the Mainland, a decision on retrial may be made in accordance with the trial supervision procedure, or the Supreme People's Court may make a decision to bring up the case for retrial. These two procedures are both at odds with the concept of "finality", and a number of judgments of Hong Kong courts have stated this point. This is also the reason why it is difficult to enforce Mainland judgments in Hong Kong thus far. The Bar Association believes that this common law principle should be respected.

Madam President, from 2001 to 2006, at various stages of the negotiation between the two places, the Government also consulted the Panel and various sectors of the community a number of times. These consultations served to allay the concerns of various sectors. During this period, I also consulted the legal profession, in particular, solicitors who had worked on the Mainland for extended periods of time, to listen to their views and experience. The impression I got was that although they took a cautious view on this matter, they were also quite positive. They believed that the professional standards of mainland courts and judges were gradually improving, and the implementation of reciprocal enforcement might become an impetus for improvements. For this reason, I respect such a view and this is also the reason for my feeling more at ease.

Madam President, I believe that we share a common direction and objective, that is, to seek a practical solution, to cautiously retain the existing safeguards and to provide mainlanders and Hong Kong people having business dealings with each other an optional channel for the summary enforcement of court judgments. I fully agree with this attitude and I am also very grateful to the co-operative attitude and flexibility displayed by the authorities throughout the entire consultation and deliberation process. The only regret is that although the Bar Association once proposed that the arrangement of reciprocal enforcement should be implemented on a trial basis in regions and courts on the Mainland in which people have the greatest confidence, so that after everyone has become familiar with such arrangement, confidence can be established

quickly and improvements be made to any irregularities identified at an early stage, the proposal unfortunately did not receive the support of the authorities, even though the proposal was a good one. Of course, the authorities were concerned that there would be some difficulties in doing so on the Mainland.

Madam President, since the main points of the Bill and the views on these main points are explained in detail in the Report to this Council tabled by me on behalf of the Bills Committee today and in my earlier speech, there is no need for me to repeat them now and I only wish to raise two points:

The first point is that it is obvious that the design of the entire Bill is to allow individuals to decide freely whether or not to make use of the reciprocal enforcement arrangement under the Bill. The Bill states clearly that it is necessary to conclude a "choice of Hong Kong court agreement" or a "choice of Mainland court agreement" in writing before the arrangement can be binding on both sides. If such an agreement has not been concluded, the arrangement will not have any effect on them at all, which means that any party who wants to enforce a Mainland judgment in Hong Kong still have to overcome the existing difficulties. If such an agreement has been concluded, it will be fully subject to the restrictions of this piece of legislation and the restrictions will also be set out clearly in the legislation. To a party from Hong Kong, if a "choice of Mainland court agreement" is concluded, legal action will have to be taken on the Mainland should there be any dispute over a contract. In the case of a party from Hong Kong or a party from the Mainland taking legal action over a contract on the Mainland, the "trial supervision" system and the retrial right of the Supreme People's Court will both be subject to the restrictions of the new special procedures.

Paragraph 73 of the Report of the Bills Committee also states clearly that (and I quote), "The Supreme People's Court of the People's Republic of China will issue a judicial interpretation to set out the special retrial procedures applicable to Mainland judgments sought to be enforced in Hong Kong under the Arrangement. An explanatory document on the new procedures will be drawn up and distributed by the Supreme People's Court before the Arrangement comes into effect.". Madam President, in view of this, our major understanding is that while a case can actually be retried for an unlimited number of times on the Mainland, once a "choice of Mainland court agreement" is concluded, the new rules and restrictions will have to be followed. Therefore, such agreements will impose some restrictions on the freedom of both parties in legal proceedings.

For this reason, both parties have to think clearly before deciding whether or not to enter into this kind of agreement. Of course, after concluding such an agreement, the arrangements of reciprocal enforcement are also quite complicated, so one has to examine the legislation before deciding whether or not one is willing to do so. In other words, the statutory arrangement of reciprocal enforcement should by no means be automatically applied to all litigation and judgments in Hong Kong and the Mainland. I think this point is very important.

The second point is related to the issue of "finality". This is dealt with by means of special agreements, special definitions and special procedures. This is clearly provided for in clause 6 of the Bill not in an attempt to change the principles and definitions of the common law. I feel particularly gratified by this. In fact, many points in this Bill are different from the principles and definitions of the common law and Cap. 319. The Bill does not aim to reflect these principles and definitions. Rather, it is designed to specifically implement the 19 articles concluded with the Mainland. Madam President, in fact, in the process of scrutinizing the Bill, we often examined how the provisions of the Bill could reflect the Arrangement. Therefore, if we want to propose any amendment but if it is at variance with the Arrangement, we could not propose it. So, the entire Bill is in fact dictated by the Arrangement. This is the reason why the Bills Committee insisted on moving a Committee stage amendment to include a reference in the Long Title, stating that the intention of the Bill is to give effect to the Arrangement.

I note the stance expressed by the Law Society of Hong Kong to the Bills Committee in a letter pointing out that the Law Society of Hong Kong has no comment on the Bill as it only serves to implement the Arrangement. Although the letter is short, its content carries great significance. It shows that the Law Society of Hong Kong does not dispute any legal concept and it is generally optimistic about reciprocal enforcement.

Lastly, I wish to conclude my personal comments with a positive message. There is no telling how great the actual purpose the Bill will serve after its passage. However, in the process of negotiation, particularly after the scrutiny of the Bill had commenced, the two sides still made continuous efforts to hold discussion. I think both sides have gained a better understanding of the details, underlying concepts and operation of each other's legal system. This is the greatest reward for me and I hope greater progress will be made in the future. Thank you, Madam President.

MR JAMES TO (in Cantonese): President, concerning this piece of legislation, in the past few years, when I learnt that this piece of legislation was in the pipeline, I actually had the same worries, concerns and reservations. Perhaps allow me to first relate a little bit of history. When I was a trainee solicitor, I was attached to a Chinese law firm with a lot of business and one of my mentors was the late Dorothy LIU Yiu-chu. Since the law firm was engaged in a lot of Chinese businesses, I had some interesting experience. The fates of those people in the middle management at that time are that they are now either in jail for corruption or in very senior positions. There were quite a lot of complexities and intricacies involved. I therefore had the chance to know many friends and we understand each other well. Since we had known each other from a young age, we would bare our hearts to one another. Occasionally, we would also evaluate the standard of the rule of law, the state of corruption, and so on, on the Mainland. When we talked, there was often no need to hide anything and as friends, we would share with each other our analyses candidly. Many of them were businessmen.

I still remember some interesting dialogues of the past. For example, in one case, I represented one of the four major companies in Hong Kong in taking legal action against a mainland company, so I had to consider whether I should file a case in Hong Kong or on the Mainland. I found that it would be unfavourable to us to do so in Hong Kong because the contract of our side was not as well drafted, and our grounds were not as strong as the other party. The person-in-charge of our side simply said, "Alright, let us not take any legal action in Hong Kong. I will fix it on the Mainland.". I asked him how he could fix it. He said that the unit to which he belonged was larger than the one to which the other party belonged, so he said that the problem would be fixed and that our side would win the case. Consequently, the person-in-charge of our side settled the case on the Mainland. However, if our side had stronger grounds, the person-in-charge of our side would have taken legal action in Hong Kong.

Members, in the past, people still tended to avoid this kind of situation because should any problem arise, be it a case of a Chinese company versus another Chinese company or a case of a Chinese company versus a Hong Kong company, it would still be possible to negotiate with each other to reach a compromise, so both sides would still try to negotiate as far as possible. If it was not possible to reach a compromise, sometimes, the parties would be forced to go to court and occasionally, there would be cases of asset being frozen or

confiscated. Why did I cite this kind of interesting dialogues? Even when I recently came across a friend from the Mainland, whom I got acquainted with in my former company, we also talked about an interesting anecdote after greeting each other. My friend from the Mainland said that recently, his car was hit by another car in a car park. I asked him what he had done then. He said that he did not do anything much and the other party was someone with a powerful background. I asked him how things eventually turned out. He said that the case was heard in court, so I asked how the matter was handled. He said that it was only a very simple matter. The court to which he referred to is one of the designated courts. He told me that it was simple. He visited the wife of the judge through the arrangement of his friend and did something with her. After that, the judge ruled that he won the case. That was what he told me personally. He was really smart as he thought of visiting the wife of the judge presiding over his case. In fact, the wife of the judge was a doctor. It was in this way that he settled this litigation relating to a traffic accident to his advantage.

Although I have recounted so many stories of the past, I still concur with Ms Margaret NG's comment that in the past decade or two, great progress had indeed been made on the Mainland. There have been more objective arguments and objectivity has been enhanced. In particular, many matters involving foreign companies are dealt with cautiously. In fact, foreign companies include those from Hong Kong because public opinions in Hong Kong can be equated with international pressure. In fact, people on the Mainland also wish to see greater progress but there are still a lot of limitations. For example, some people say that if quality judges are required to fully implement a certain kind of system, it is likely that 80 000 or 100 000 judges would be required, but they do not have sufficient judges of this standard. Therefore, sometimes, it is necessary for people to make exchanges.

Having said so much, in the final analysis, I have to deal with this Bill with very mixed feelings. This is because I know that it is not those large companies, mega enterprises or multinational corporations that will be most affected and therefore, the major foreign business chambers in Hong Kong are not terribly concerned about this matter. Why is this so? Because if mega enterprises such as those in the *Fortune Magazine*'s list of top 500 and top 1 000 are involved, if something is not done properly and if some people are unruly, thus leading to such problems as political problems or image problems and as a result, everything was deemed problematic, these people will then exert pressure

with the backing of their entire country in carrying out negotiations. Therefore, it is impossible to operate in this way and for this reason, I am not concerned about the mega enterprises at all. Moreover, mega enterprises have their own legal departments and they will consider carefully what terms are acceptable.

This being so, at present, who will fare the worst of all? It is the numerous small and medium enterprises (SMEs) in Hong Kong which, as we can see from many cases, are struggling for survival. The contracts concluded by these SMEs may involve \$10,000, \$100,000 or even millions of dollars and I have even handled contracts involving tens of millions of dollars. This kind of enterprises is at greater risk because they are caught in the middle. If the incident involved is a minor one and not much money is involved, there is no cause for concern and extra caution may not be necessary because they have nothing to lose, right? If no particularly valuable assets are involved, what problem will there be? At the most, one only has to declare bankruptcy and if one owns a house worth hundreds of thousand of dollars, one can pay the debt with it and that will settle the matter. However, if the situation is not like this and the amount involved is not considered small although it may be huge and stands at hundreds of thousand of dollars or several million dollars, in that event, even to people whose assets amount to over \$10 million, if a Mainland judgment is enforced in Hong Kong, what they possess can really evaporate very easily. I agree with the comments made by Ms Margaret NG because Professor ONG Yew-kim also said so. Professor ONG is a legal expert on the Mainland. He said that although the agreement was reciprocal in nature, initially, it was likely to be implemented only by one side. Why? The Hong Kong side will implement it faithfully because we have the rule of law and when the Mainland really passes onto us judgments that meet the requirements, we will really enforce them and seize the assets involved. However, when we pass our judgments onto the Mainland, as the saying goes, "the mountains are high and the emperor is far away", will those provinces or local authorities really enforce a judgment on the relevant company which has assets in those places? That will really be questionable. Therefore, Professor ONG said that in these circumstances, it was necessary to proceed very carefully.

Of course, I believe that the future Chief Executive, the Secretary for Justice (I do not mean that he will be the future Chief Executive) — what I mean is that the incumbent Chief Executive and the future Chief Executive, the incumbent Secretary for Justice and the future Secretary for Justice — will have to shoulder heavy responsibilities in this regard. Why? Because they must

pay close attention and see if our judgments can really be enforced after they have been passed onto the Mainland, particularly at those faraway places. I think Hong Kong companies or overseas companies doing business in Hong Kong will perhaps have a lot of complaints about the implementation of this agreement. Of course, ultimately, what we must ask is: Do we want this piece of legislation or not?

This is what I think and what I ultimately have to say is that people have the freedom to enter into contracts, so both parties must be willing parties. Some people may say that in fact, there may not be many choices because if people do business on the Mainland, not only do they have to take contractual risks and legal risks, even their personal safety will be at risks because businessmen may be arrested at any time and a civil proceeding can suddenly turn into a criminal proceeding. We have also dealt with many such complaints cases. Through the Complaints Division of the Legislative Council, several Members, including Mr CHEUNG Man-kwong, Ms Emily LAU and I have received hundreds of such cases and in the course of more than a decade, we have really handled many cases of this kind. Therefore, it is necessary to take all sorts of risks in doing business, so businessmen have to think about this. Therefore, even if one is willing to take the risks of entering into contracts and choosing a jurisdiction and even if the amount involved in a business transaction stands at only tens of thousand of dollars or hundreds of thousand of dollars, it is still necessary to bear in mind that a Mainland judgment may order the payment of compensation amounting to hundreds of million of dollars, tens of million of dollars, hundreds of thousand of dollars or millions of dollars. In that event, the assets of these people in Hong Kong will all be gone and seized. Just one business dealing can make a person lose all his assets. Therefore, businessmen have to think about this, do they not? Of course, in doing business, the greater the gamble, the greater the profit. The opportunities on the Mainland are many but so are the risks.

I understand that people have the freedom to conclude contracts. However, SMEs do not have their own lawyers and they do not know the detailed provisions of the law. If the Bill is passed in this way, do SMEs really know how to protect themselves? I hope that the SAR Government or legal groups and even people like us who are concerned about this matter, including other Members and I, will make an effort to advise them to be more careful and pay particular attention. Of course, by dint of our speeches today or the special news coverage of the mass media, it may be possible to raise their vigilance somewhat. If they really make such a choice in the contracts they enter into,

that is, if they conclude a so-called choice of court agreement and they choose a certain court, they will have to take such risks and they may even find themselves in a situation in which they have nothing to fall back onto. Of course, the courts in Hong Kong will try their best to protect them by means of the law insofar as those so-called Mainland judgments are concerned, so that they will not encounter problems involving underhand tactics, corruption, and so on. However, they also have to bear in mind that if they want to take legal action concerning this kind of cases, that is, legal action claiming that a Mainland judgment is flawed, they have to institute proceedings on their own initiative. Moreover, it is certain that a mainland court will not admit that it is wrong, so it will be necessary for the party concerned to provide evidence and information in order to overturn the original judgment. In fact, doing so is not easy; in addition, when they go back to the Mainland, they will be terrified because by the time they get to Shenzhen, they may find that the province concerned has already notified the Public Security Bureau in Shenzhen to arrest them. The mainland authorities also attach great importance to contracts. If one puts forward arguments to overturn a Mainland judgment, this is tantamount to making a serious allegation against them.

We have come across these aggrieved Hong Kong businessmen and their situation was really miserable. This is because many of them had no recourse for their grievances and they were afraid of going to the Mainland, still less collecting information to prepare for a legal proceeding in Hong Kong claiming that there were problems with a Mainland judgment. In view of this, will it be possible for these people to gather information? Will they be able to prove their case? Of course, if we disregard all these concerns, some steps can be taken to protect themselves. Here, I would like to offer a little advice and provide some free information for the consideration of the SMEs. I am just trying to offer them a little help.

For example, first, of course, if no such agreement is concluded, this piece of legislation will not be applicable. However, even if no such agreement is concluded, how should an agreement be like so that it will not be construed as an agreement of this kind? A party to a contract may not be very familiar with this when a contract is drafted. A provision in the contract may be used by the other party to prove that the contract concluded is exactly this kind of agreement, so it is necessary to be very careful.

Second, is it possible to impose a cap on the amount of losses by, just as our stock analysts suggest, setting a stop-loss order? Can it be specified in the

contract that although legal action will be taken in a mainland court, the liability for compensation will be restricted to, say, less than \$1 million? That means if a Hong Kong company loses \$1 million of its assets in Hong Kong, that will be the end of the matter. However, sorry, specifying things in this way may not work. Why? Because there is no telling if a mainland court will definitely enforce such terms limiting the amount of compensation in this kind of agreement. Will it think that certain terms in the agreement should not be enforced? In addition, if a mainland court eventually decides on an amount of compensation that exceeds the prescribed limit in the contract, can a court in Hong Kong take actions under this provision to protect the party who has to pay compensation and limit the amount of compensation to less than \$1 million? This may not be possible. Of course, it is always better to include such a term than not doing it. If the contract is for the purchase of a batch of goods worth just \$50,000, is it possible to limit the amount of compensation to 10 times the value of the contract, that is, \$500,000? This may not be possible. Therefore, it would be best if the amount of compensation involved will not be too high. Otherwise, one may lose all of one's assets. Therefore, it is always better to include such a term than not doing it.

The third is asset separation. For example, if I am to enter into this kind of agreement with a party on the Mainland, I will establish a shell company with few assets and use it as the party to the contract. Even if the capital is completely withdrawn, one can just forget about it. This is what is commonly referred to as "a company without substance". In the end, the company can be liquidated; everything will be gone but that is all. However, things may not turn out this way because a mainland court may think otherwise, that conspiracy is involved in respect of a contract, so it can rule that the related companies should also be held responsible for compensation. If we choose a Hong Kong court to hear a case, does it mean that the judgment will not require the payment of compensation? I dare not guarantee this. Therefore, there are still some risks and one has to think about this. Of course, it is always better to arrange for asset separation than otherwise. For this reason, it is possible that the business of accountancy firms or law firms in Hong Kong will increase substantially.

Since this piece of legislation is awaiting passage, I call on businessmen doing business in China and Hong Kong, Hong Kong companies with branch offices on the Mainland, business associations for Taiwanese companies and even the business chambers of various countries to publish brochures on this as far as possible yesterday, when we talked about public space, we also

noticed a similar situation. Small property owners found only after purchasing a flat that a park factored into the price of the flat was in fact a public park. I often said that we should publish the information in large, bold prints to remind the people concerned how risky such matters are, what problems are involved, what kind of protection is available, and so on. For example, are the "wise plans" hatched by the "wise guys" today useful? How can they be adopted quickly and cheaply and in a simple way to protect oneself? Will they work? Is there any specific method to put them into practice?

Lastly, the SAR Government has to provide protection. Since this piece of legislation is introduced by the Government for enactment, we must follow up whether this piece of legislation is enforced reciprocally or not. Is it being enforced appropriately? Is it being enforced lawfully? Is it being enforced properly? I believe the SAR Government has a major responsibility in this regard. Even if just one such case has arisen and if there are a lot of complaints or serious problems, it will develop into a big issue after it is put in the limelight. I think this will shatter our confidence.

For this reason, I hope that the SAR Government can really take follow-up action, be it in education or publicity. If we look at it the other way round, can we gain any benefit from the enforcement of a judgment on the Mainland? If the answer is in the negative, why should we do such a thing? The authorities refused to adopt a gradual and orderly approach. The Law Society of Hong Kong suggested that we proceed slowly instead of full implementation in one stroke but the authorities refused, saying that it may give rise to the situation of some courts being superior to others, similar to the perception relating to Chinese secondary schools and English secondary schools and so, this may not be very desirable. However, if the approach of full implementation is adopted, I hope the SAR Government will take follow-up action carefully and study whether or not we can really benefit from reciprocal enforcement and hence, whether or not it is worthwhile to take the risks in this regard.

MR LI KWOK-YING (in Cantonese): Madam President, the exchanges between China and Hong Kong have intensified, and their economic, trade and non-governmental contacts have increased in recent years. Since the signing of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) between the Mainland and Hong Kong in 2003, further opportunities for co-operation have been opened up for mainland, Hong Kong and overseas investors. Signing the CEPA has turned Hong Kong into a springboard

facilitating business expansion by mainland enterprises overseas, and attracting foreign investors to set up branches in Hong Kong with a view to exploring the abundant business opportunities in the mainland market. It goes without saying that increased mobility of people in China and Hong Kong often gives rise to disputes, which have to be settled by arbitration and legal proceedings. The Mainland Judgments (Reciprocal Enforcement) Bill (the Bill) with the objective to make provisions for the reciprocal enforcement of judgments given in Hong Kong and on the Mainland will strengthen economic and trade exchanges between China and Hong Kong and promote the development of judicial and professional services in the two places, which would be greatly beneficial to Hong Kong and the Mainland. Therefore, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the Second Reading of the Bill.

In fact, the judicial systems of Hong Kong and the Mainland are different. While the former practises the common law, the latter practises the continental law. As the legal systems of the two places are different and involve no relationship of subordination, and given the lack of a common set of rules and regulations, Hong Kong and mainland courts cannot enforce the civil and commercial judgments given in the other jurisdiction, making it very convenient to the parties concerned in China and Hong Kong. For instance, if a party in the proceedings having assets on the Mainland may not have assets in Hong Kong or *vice versa*, the court judgment given in one jurisdiction will be useless to the other party in the proceedings in the other jurisdiction. In that case, the party in the proceedings has to initiate legal proceedings again on the Mainland or in Hong Kong with extra costs incurred and time taken. The need to spend more money and time aside, given different judicial systems in the two places, the party in Hong Kong, for example, may not be able to comply with the rules and procedures of the Mainland in respect of jurisdiction or proof of claim.

The reciprocal enforcement of civil and commercial judgments of the two places can reduce unnecessary proceedings for handling disputes arising from civil and commercial activities, which will be in the interests of mainland, overseas and local parties. Particularly, in respect of commercial activities, reciprocal enforcement of judgment can facilitate the development of Hong Kong into a centre of mediation and legal services for commercial disputes. I believe all of us would understand that we have this advantage because both parties to proceedings can enter into an agreement to designate Hong Kong courts to have exclusive jurisdiction over their disputes. Upon the implementation of the Arrangement, there will be an increased demand for mainland-related legal

services, which will create plenty of opportunities for local legal professionals, whether in the stage of concluding contracts or in the circumstances when litigation or arbitration is required for resolving disputes.

By then, even the arbitration of disputes involving international joint venture can take place in Hong Kong. Many overseas investors have set up branches in Hong Kong since the implementation of CEPA, and the legislation will turn Hong Kong into an ideal place for resolving disputes on the Mainland related to international business transactions.

The Chief Executive reiterated in his policy address last year the importance of a sound judicial system and comprehensive legal services for dispute resolution to Hong Kong as an international financial centre. The SAR Government and the judicial sector in Hong Kong have all along made joint efforts to enhance Hong Kong's attractiveness as a litigation centre. For example, the ongoing civil justice review and the earlier passage of a bill by the Legislative Council which enables civil proceedings to be conducted in Hong Kong in a more expedient and cost-effective manner. These measures have created the conditions for Hong Kong to become a centre for the resolution of commercial disputes.

Madam President, the passage of the Bill will foster the ties between the judicial sectors of the SAR and the Mainland. As Ms Margaret NG has just mentioned, she lacked confidence in the enforcement of judgments on the Mainland, and she also made reference to the proposals of the Bar Association. In view of this, the Bill will be implemented in a progressive manner. The arrangements will only be implemented in selected courts initially, and the reciprocal enforcement of judgments in the two places will be extended and judicial co-operation and exchanges will be enhanced after the two places have become familiar with the mode of operation. Owing to the fact that there is no reciprocal enforcement arrangement between China and Hong Kong courts before, and the public generally do not know much about the mainland judicial system, I agree with Mr James TO that the Government should enhance the understanding among the public, especially the business sector, of the Bill after its passage. Only when the public have gained sufficient understanding and knowledge will we be able to give full play to the merits of the Bill and facilitate the development of Hong Kong to become a centre for the resolution of commercial disputes and the provision of legal services for the international business community.

Along with frequent commercial and trade exchanges between China and Hong Kong, the passage of the Bill will not only benefit our judicial sector but also create more opportunities for development to other professional sectors in Hong Kong. The DAB looks forward to the early passage of the Bill.

Madam President, I so submit.

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

MR RONNY TONG (in Cantonese): President, this is actually a technical piece of legislation originally intended to facilitate the settlement of commercial disputes by businessmen in the two places by seeking enforcement of judgments through the courts in the other jurisdiction.

However, President, it will be quite dangerous if a technical legislation does not have regard to some basic principles. President, what principle does reciprocal enforcement of judgment involve? Let me give a very brief explanation. President, in this age of information explosion with increasingly frequent transnational commercial activities, a party will certainly seek legal protection in the event of transnational or cross-boundary commercial disputes, and once a judgment is given in his favour, he naturally wants to enforce the judgment in the other party's hometown, and this is the most basic requirement in today's modern business world.

Before the implementation of such technical legislation to deal with the above situation, in common law countries, a court having real and substantial connection with both parties to a commercial dispute is considered in the international community to have adequate jurisdiction to handle the case. President, the reason is very simple. If the court has no connection with a dispute, all the witnesses and documents will not be there. The court is not aware of the details of the dispute, nor is it familiar with the legislation to be invoked in regard to the dispute. If a dispute is handled by such a court, problems will certainly arise and a fair judgment will not be given. Unfair judgments should not be enforced in other countries.

On the contrary, if a commercial dispute is tried in a court with which it has real and substantial connection, for instance, both businessmen are doing business in that place, the dispute occurred in that place, the witnesses and

documents are available in that place and the law in force is the law of that place, then the judgment made by this court will be authoritative and respected and enforced by other countries. The Arrangement has the merit of not encouraging the parties in a dispute to seek judgment from the courts with which they are familiar or over which they can exert an influence. The legal term "forum shopping" refers to the practice adopted by some litigants to bring their case to be heard in the court which they consider to be most favourable to them, in the hope that a judgment will be given in their favour. This is a common behaviour in the modern business world, which is very dangerous for it is *de facto* a challenge to the rule of law.

President, as there is a very big discrepancy between the legislation and the principles that I just mentioned, I have strongly expressed certain views during the scrutiny of the Bill. The Administration's response was that our worries were unwarranted because the legislation specifies that the parties must reach a consensus and conclude an agreement to designate a court for settling the dispute. Hence, the scenario of the parties respectively seeking judgment from the court which they think are more favourable will not occur.

But President, I think the idea is far too simple and has overlooked two essential factors for consideration. First, some cross-border commercial activities — of course, I am referring to big business such as a business running dozens of shops involving huge amounts rather than just buying a hamburger in Shenzhen. The bargaining power of the two parties may not be equal. A simple example is that a small businessman in Hong Kong wants to open 20 fastfood shops on the Mainland, and he certainly desires successful business negotiation. His bargaining power and that of the mainland businessman is not equal, and he will probably agree if the mainland businessman insists that disputes should be settled by a court in Tibet.

Second, President, a weakness of most businessmen, a rather common weakness of them, I should say, is that they have never taken into consideration the fact that doing business may give rise to disputes. All of them basically want to complete business deals and unsuccessful business deals are never on their agenda. They will not consider the problems arising from unsuccessful business deals for they do not think about the distant future. President, if all of them are far sighted enough, they will solve all the problems themselves, thus leaving nothing for lawyers to do. Yet, a common weakness of businessmen is that they do not think about how they would handle disputes which may arise one

day. They only want to reach an agreement and complete business deals as soon as possible, and they hope that disputes would never arise. Disputes do not very often arise but in the event of disputes, problems also emerge.

In this connection, President, there are two points to note. In other words, we have to meet two requirements to make the Arrangement a success. The first requirement is that both parties must believe that the court handling the dispute is of high credibility and that its judgment is impartial, open and transparent. The second basic requirement is that there must be a foundation for dovetailing the legal systems of the two places so as to uphold the rule of law, because if the two places have divergent views on the rule of law, the court judgment will hardly be considered by both parties as reasonable or impartial. In other words, President, our real challenge is that we must not only sign an agreement stipulating that there are provisions in the two places about the designation of a court in case there are problems, but also ensure that the parties must agree to the court judgment given and their enforcement in the two places. Actually, it is not that simple.

President, I have just said that two requirements must be met to make the Arrangement a success. In other words, we hope that the Bill will give effect to the Arrangement to safeguard fair treatment for Hong Kong businessmen doing business on the Mainland and mainland businessmen doing business in Hong Kong. The Government still has a lot of important work to do in this regard and this is just a beginning. I really hope that the Secretary for Justice will take note of our speeches today, and he has to admit that this is just the beginning of his work. Hard work is required for meeting the two important requirements: First, the courts in the two places should enjoy sufficient credibility and recognition among the business community of the two places; second, there should be a foundation for dovetailing the legal systems of the two places so as to uphold the rule of law. The second requirement is very high and challenging. If we fail to meet the two most basic requirements, I can say that Hong Kong and mainland businessmen certainly will not accept the Arrangement as provided for in the Bill. To put it very simply, a possible outcome is that after the enactment of the legislation, no parties will adopt the Arrangement in concluding a contract and agree to designate the courts in a particular place to preside over disputes.

President, I certainly do not wish to see the failure of the Arrangement. I am going to vote in support of this legislation today because I believe this legislation, being technical in nature, is basically viable. But the Arrangement

will be a failure without matching software support. Yet, the problem lies not in the legislation itself. Rather, it hinges on the judicial system of Hong Kong (or rather, the Mainland), because more efforts must be made to enhance the credibility of the courts in the two places and consolidate the foundation for dovetailing different legal systems so as to uphold the rule of law. I believe the Arrangement is worth supporting.

Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the objective of the Mainland Judgments (Reciprocal Enforcement) Bill is to provide a mechanism for implementing the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned (the Arrangement) signed between the SAR Government and the Supreme People's Court on 14 July 2006, to facilitate the reciprocal enforcement of the relevant judgments on civil or commercial matters made by mainland and Hong Kong courts by summary procedures.

The Bills Committee has held 13 meetings. I am most grateful to the Chairman, Ms Margaret NG, and members of the Bills Committee for their dedicated efforts in the deliberation of the Bill and their constructive opinions on the clauses of the Bill. I would also like to extend my thanks to the Hong Kong Bar Association, the Law Society of Hong Kong, various business organizations and individuals who are concerned about the Arrangement for their precious views submitted during the course of deliberation. I will later propose Committee stage amendments and some technical amendments in light of the views of the Bills Committee and various bodies.

Ms Margaret NG has earlier on explained in detail the more important clauses of the Bill. First of all, I am going to briefly explain a number of more important amendments. Under the Arrangement, the Bill is only applicable to the Mainland judgments given by "designated courts". "Designated courts" include the Supreme People's Court, a Higher People's Court, an Intermediate People's Court, and a recognized Basic People's Court authorized to exercise jurisdiction on foreign-related civil and commercial cases. Since the list of "recognized Basic People's Courts" may be amended in future, it is specified in the Bill that the Secretary for Justice shall from time to time publish in the Gazette a list of the recognized Basic People's Courts. Members of the Bills Committee have expressed concerns about the effects of the addition to and deletion from the list. In this connection, I will propose an amendment to add a new clause to the Bill, specifying aptly how to determine whether or not the Bill will be applicable to the judgments given by a chosen court becoming or ceasing to be a "recognized Basic People's Court" under the principle of respecting the wish of the parties. I will go into details about the proposed new clause when I move the Committee stage amendments later.

The Bill is only applicable to judgments which order the payment of money on disputes arising from civil or commercial contracts, and the parties must express agreement in writing to designate a court of the Mainland or Hong Kong to have exclusive jurisdiction for resolving any dispute. The Bills Committee proposed that the written agreement may designate one court or more than one court in Hong Kong or on the Mainland for resolving a dispute. Another proposal is for the Bill to specify that the judgments covered by the Bill must be given by a court chosen by the parties by agreement in writing. We accept the proposals and are going to propose amendments to these effects.

The Standing Committee of the National People's Congress amended the Civil Procedure Law of the People's Republic of China in October 2007, and one of the amendments concerns the time limit for application for the court's execution of judgments. The provision as amended specifies that the time limit for an application for the Court's execution of judgment by a natural or legal person is two years. The Administration and the Supreme People's Court agreed after negotiation to amend the provision in the Arrangement on the time limit for application for the execution of judgment to reflect the provision on application for the execution of judgment in the newly amended Civil Procedure Law. In view of this amendment to the Arrangement, I am going to propose an amendment to the relevant provision of the Bill accordingly.

With reference to the relevant provisions in the Arrangement, the Bill originally required a judgment creditor who is a natural person to provide certified copies of identification documents in support of an application for registration of Mainland judgments. The Office of the Privacy Commissioner for Personal Data has reflected to the Administration that this requirement may induce the disclosure of the personal information of the judgment creditor. Having consulted the Bills Committee, the Judiciary and the relevant business organizations on the opinions of the Privacy Commissioner, the Administration has noted that it is not necessary to require an applicant to provide identification documents insofar as processing an application for enforcement of a judgment is concerned, be they local or foreign judgment. Having taken the views of various parties into account, we agree to delete the provision in the Bill on the provision of identification documents.

In accordance with the Arrangement, the Bill specifies that if a Mainland judgment is required to be performed in stages, the judgment creditor may file with the court of first instance an application for registration of any part of the judgment. For the convenience of the parties and reduction of unnecessary expenses, the Bills Committee has asked the Administration to simplify the procedures for registration of a Mainland judgment requiring performance in stages. The Administration has adopted the proposal of the Bills Committee after consulting the Judiciary. I will propose an amendment specifying that if an application is preceded by the registration of a certain part of the same judgment as ordered by the court, the applicant, when applying for the registration of any other part of the judgment, is only required to file an affidavit, stating any relevant information relating to the current application, and exhibiting a copy of the last court order in respect of the different part of the same judgment. I believe the proposed amendment will suitably simplify the procedures for registration of a Mainland judgment requiring performance in stages, and reduce the expenses incurred by the parties in completing the procedures.

Apart from the major amendments above, I will also propose Committee stage amendments on some minor and technical issues. Madam President, I would like to respond briefly to the speeches of some Members. Ms Margaret NG has mentioned that many people are concerned about the different legal systems, and we do understand their concerns. But as Ms Margaret NG has stated, we have seen continuous improvements in the courts and legal system of the Mainland, and although we still have to allow them more time, improvements have constantly been made. I would like to emphasize one point, that is, this

Bill has not substantially changed the existing laws. For instance, before the Arrangement is introduced, application could be made for the execution of Mainland judgments in Hong Kong under common law principles, despite more complicated procedures. Another point is that under the prevailing mainland laws, the contracting parties of foreign-related contracts can choose to have the case heard by a court other than a mainland court. There is already this arrangement. I also wish to stress that, as Ms Margaret NG has just mentioned, the Arrangement is not adopted automatically or on a mandatory basis. I must particularly stress that those who wish to adopt the Arrangement to apply must make an exclusive choice of court agreement in order to give effect to the Arrangement in the relevant contract.

Mr James TO who is not in the Chamber at the moment has mentioned that some SMEs may not understand the relevant legislation well. First of all, I have to emphasize that upon passage of the Bill, we will make our best efforts to promote it and clearly explain it to the business sector. I would like to say that many people doing business in China will take into consideration the legal requirements and framework of the Mainland and make corresponding business plans. They are absolutely able to seek advice if they have worries about the existing arrangement. But as Mr LI Kwok-ying has just said, we would like to look at the Bill from a more positive angle, in the hope that more people will choose Hong Kong courts for dispute resolution, thus achieving our objective of promoting Hong Kong as a regional dispute resolution centre. In addition, there is a great demand for judgments given in Hong Kong to be more easily executed on the Mainland. We wish to stress that there is a substantial demand and we are proactively working on this. Insofar as protection is concerned, I have to stress that the Bill has provided for the circumstances under which a registered judgment will be set aside, as Members have also mentioned earlier. I very much agree with Ms Margaret NG that the Arrangement or similar arrangements will better the understanding of the two places about each other's judicial system and enable the Mainland to know more about our common law principles. Furthermore, Mr Ronny TONG has just said that this will help promote recognition of the two legal systems. I earnestly believe that the Arrangement is a very effective means to this end. Mr Ronny TONG has reminded us that this is just a beginning. We attach much importance to how further development can be made on this basis.

In regard to the Arrangement signed with the Supreme People's Court, we all know that problems may be encountered in the course of implementation, so Article 18 specifies that in the event of any problem arising in the course of implementing this Arrangement or where an amendment of this Arrangement is

necessary, it shall be resolved through consultations between the Supreme People's Court and the SAR Government. We will certainly follow this up upon the passage of the Bill. We must continue to follow up the areas requiring further improvement as identified in the course of implementation. I very much hope that Members will look at this positively and provide an effective platform for further promotion of reciprocal judicial assistance between the two places. In particular, Ms Margaret NG has stressed the question of finality. The Bills Committee has held detailed discussions over the matter. Clause 6 of the Bill specifies the special procedures to provide a mechanism in line with the common law requirements of finality. I do not wish to go into the details but I would like to cite an example. The Arrangement shows that both parties are willing to flexibly take steps to achieve the same objective while meeting the respective legal requirements of the two places, which is a very good experience.

Lastly, I would like to talk about the worries mentioned by Mr Ronny TONG. At a meeting of the Bills Committee, he asked if the "forum shopping" problem would emerge, that is, whether there will be irregularities in the choice of courts by the parties concerned. He particularly stressed that if the chosen place of litigation or foreign court does not have a real and substantial connection with the case itself, this may be a reason for denying, reversing or cancelling a registration. We have considered this in detail but I wish to emphasize that refusal on this ground actually departs from the common law rule and is inconsistent with the principles of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) which has not specified that the reason given by Mr Ronny TONG is a reason for not recognizing a judgment. Insofar as the basic principles are concerned, we understand that both the common law and Cap. 319 prescribe that the contracting parties can freely choose a suitable court for the resolution of disputes. As they have signed a contract or agreement, the court will have jurisdiction over the matter and this will therefore serve as a basis.

In addition, I would like to stress that we cannot add such a provision because it has fallen outside the scope of the Arrangement signed between the Government and the Supreme People's Court. Mr Ronny TONG is concerned that this will lead to unequal bargaining. I would like to enunciate that these problems can hardly be solved by legislation, and they can hardly be addressed within the scope of the Bill. Even though Cap. 319 deals with similar issues, there is no provision dealing with equal bargaining power. As I have just said, those doing business on the Mainland are certainly aware of the situation, and I believe they will make suitable deployment in light of its legal framework and

commercial principles. Madam President, this is my response to the views expressed by a few Members earlier on.

Madam President, these are my remarks, and for the reasons that I have explained, I hope Members would support the Bill and the amendments that I am going to move. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Mainland Judgments (Reciprocal Enforcement) 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): Mainland Judgments (Reciprocal Enforcement) Bill.

Council went into Committee.

Committee Stage

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

MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Mainland Judgments (Reciprocal Enforcement) Bill.

CLERK (in Cantonese): Clauses 1, 4, 8 to 13, 15, 16, 20, 22, 23, 24 and 26.

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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 2, 3, 5, 6, 7, 14, 17, 18, 19, 21 and 25.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. I now briefly introduce some of the important amendments. First of all, the amendments to clause 3.

Clause 3 sets out the meaning of "choice of Hong Kong court agreement" and "choice of Mainland court agreement". We agree to make the amendments to clause 3 as proposed by the Bills Committee to improve the clarity of the clause in relation to the "choice of Mainland court agreement" by providing that the parties may generally specify the courts in the Mainland or any of them as the court to determine a dispute to the exclusion of courts of other jurisdictions. Consequential amendments have also been made to the meaning of "choice of Hong Kong court agreement".

The amendments to clause 5 seek to prescribe that the relevant Mainland judgment should be a judgment given by a court chosen by the parties under a choice of court agreement concluded by the parties in writing, or other designated courts to which the case was transferred. We accept the proposal made by the Bills Committee to amend clause 2(1) by adding the definition of "chosen court". As to the amendments to clause 5, they provide that the relevant Mainland judgment should be given by a chosen court; if a case is transferred under the law of the Mainland from a chosen court to a designated court, the designated court may apply to have the judgment registered in the Court of First Instance, provided that other requirements are satisfied. As regards a judgment given by a Hong Kong court which is a chosen court, we have also made consequential amendments to clause 21 of the Bill.

The amendments to clause 7 seek to reflect the requirements in respect of the time limit for applications of execution of judgments prescribed under the Civil Procedure Law of the People's Republic of China recently amended in 2007. As I mentioned just now, in view of the amendment of the Civil Procedure Law, the two places have agreed to amend the provisions relating to the time limit for applications of execution of judgments under the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Arrangement), and for that reason, consequential amendments have to be made to clause 7 of the Bill to prescribe that the time limit for making an application for registration of a Mainland judgment in Hong Kong shall be two years.

The amendments to other clauses are minor technical amendments.

The above amendments have been discussed and endorsed by the Bills Committee. I hope Members will support their passage.

Proposed Amendments

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 7 (see Annex I)

Clause 14 (see Annex I)

Clause 17 (see Annex I)

Clause 18 (see Annex I)

Clause 19 (see Annex I)

Clause 21 (see Annex I)

Clause 25 (see Annex I)

MS MARGARET NG (in Cantonese): Chairman, the Bills Committee and I support the amendments moved by the Government. I only wish to express my views on several points.

On clause 3 concerning the "choice of court agreement", this is not just about the choice of court agreement, rather, it is necessary to specify whether it is a "choice of Hong Kong court agreement" or a "choice of Mainland court agreement". In other words, if the parties wish to conclude an agreement stipulating that the Arrangement will be applicable to a contract in future, it is necessary to specify when signing the contract whether a case will be dealt with by a Hong Kong court or by a mainland court. If they choose to have it dealt with by a Hong Kong court, in the future, it will not be possible for a mainland court to deal with it. If a mainland court is chosen to deal with a case and it is wished that the judgment would be enforced in Hong Kong in future, there will be great difficulty in doing so. In fact, it will be impossible to do so. However, if one chooses to have a case dealt with by a mainland court, the case cannot be dealt with again in a Hong Kong court either.

Chairman, why do I have some views on this? My query is about the need to specify the choice of a Hong Kong court or a mainland court to deal with a case when concluding a contract. Of course, doing so will restrict the degree of flexibility and freedom. However, a "choice of court agreement" will mainly allow both parties to a contract to know and state clearly that they accept the Arrangement. This, I support. Moreover, when the Panel was consulted, we also supported this so-called opting-in arrangement, that is, to express by an action the willingness to be subject to restrictions. However, when the Panel was consulted, our understanding was that it would do by only stating that the

case will be heard in a Hong Kong court or a mainland court and the parties would still have the right to choose freely whether a Hong Kong court or a mainland court would deal with their case when disputes arise.

However, it turned out that a case must be heard in a mainland court or it must be heard in a Hong Kong court. We think there are several problems in doing so. First, it will increase the difficulty in concluding a contract. Why did we say just now that the two parties would be unequal or in an unequal position? If it is said right from the beginning that in the future, a case must be heard by a Hong Kong court, will it not be rather difficult to do so? If both sides think that there are problems in doing so, what will happen is that all contracts will specify that a mainland court will be chosen to deal with a case and this will deviate considerably from the idea put forward by the Secretary for Justice just now of further developing Hong Kong into an arbitration centre. I hope the Government will follow this up in the future by finding out whether the majority of people have chosen a mainland court or a Hong Kong court if a judgment can be enforced in the other jurisdiction no matter where the case is heard.

Chairman, in the Bills Committee, we found that this could not be changed, that is, it would not be possible to revert to the state when consultation was conducted, because Article 3 of the Arrangement says clearly, that an agreement in written form be made in which a people's court of the Mainland or a court of the HKSAR is expressly designated as the court having sole jurisdiction. In other words, if you specify the choice of a Hong Kong court, only a Hong Kong court will have sole jurisdiction. If a mainland court is specified, it will have sole jurisdiction.

Chairman, why did things turn out this way? I suspect that this is because at present, when a mainland court deals with this kind of cases involving an overseas party, a major problem has occurred, namely, the problem of "parallel proceedings". When I spoke earlier, I also mentioned that if one party considers it more favourable to have a case heard at a certain place, he would rush to have the case dealt with in that jurisdiction. If it is a case involving Hong Kong courts and foreign courts, there would be procedures to determine which jurisdiction has the power to hear the case. If both places have the power to do so, it should then be decided which court should deal with it. However, since Hong Kong and the Mainland belong to the same country, no such discussion will be held, nor are there any rules and procedures, still less any mechanism that will enable mainland courts or Hong Kong courts to make

decisions over where a case should be heard in the event of disputes. Therefore, they think that parallel proceedings, concurrent proceedings or hearings conducted one after another will cause a great deal of confusion and it will be very difficult to resolve such matters. However, if this is specified beforehand when concluding the "choice of court agreement", at least, such a situation will not arise insofar as those contracts are concerned.

I do not know if my conjecture is wrong but on one rare occasion, I was allowed to return to the Mainland to attend a legal forum and one of the judges made this very clear in his speech. He talked about the problem of parallel hearings of cases involving a party in Hong Kong or overseas. This made me think that it was necessary for judicial officers on both sides to spend more time on discussing such issues. This is because if such issues make it necessary for us to make a choice well before, rather than being able to choose freely whether a case would be heard in a mainland court or a Hong Kong court under the original arrangement, then I think this is quite a pity. This point has to do with clause 3.

Chairman, in addition, concerning the point about changing the time limit from six months to two years, that is, about clause 7(2), this has to do with clause 13 concerning the performance of Mainland judgments in stages. For example, a court rules in your favour but the defendant is ordered to make payments to you in stages, that is, to pay a certain amount after one month, a certain amount after six months and a certain amount after 12 months. In the process of discussion, the authorities concerned think that it is necessary to apply for registration for a number of times because although the first payment is due, the next payment (that is, the payment to be made six months later) is not yet due, so it is not possible to allow registration and enforcement and so, you have to register again after six months. Originally, the time limit for making an application for registration was six months — because clause 7 provides that registration must be made within six months — apart from being too short a time, there is also the problem of repetitive registration. However, the authorities concerned said that they had also looked into this matter with the mainland side. Since the time for payment is not yet due, the order still cannot take effect, that is, it is not yet time for enforcement and therefore, registration is not allowed. However, we find this a great pity. It will be a great pity to continue to do so because when we say that a judgment has come into effect, it should mean that the order for enforcement in stages has also come into effect. That the order on payment in stages has come into effect does not mean that if a party applies for registration of the judgment today, he will receive the payments

in all stages on the same day; rather, he will receive the payments in stages. Therefore, it is really unnecessary to require an application for registration to be made in so many stages.

However, Chairman, since there is already a very clear provision in the Arrangement, it is impossible for us to make any change. However, as stated in Article 18 of the Arrangement, if there is a need to make changes due to the occurrence of a lot of problems in the course of enforcement, I hope the Department of Justice will continue to follow this up, so as to simplify the procedure.

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 Justice, you may speak now.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I wish to make a brief response. Insofar as clause 3 is concerned, I have actually made clarifications in the Bills Committee in respect of Ms Margaret NG's understanding of the relevant proposal during the initial consultation period. Just now, Ms Margaret NG also mentioned that the Arrangement has specified the relevant provision, and so, it is impossible to make any changes now. Nevertheless, I wish to emphasize that the current approach requiring a choice of Hong Kong court or Mainland court is consistent with the approach of the Hague Convention on Choice of Court Agreements. In fact, this is not a unique approach introduced by the Arrangement.

The other point is about parallel proceedings. Ms NG mentioned earlier in her speech that after an agreement has been reached through the Arrangement, it could in fact help prevent the occurrence of parallel proceedings, which means that the parties would rush to bring the case to a court in a certain place. In fact, from my contacts with mainland judicial officers, I feel that they have a good grasp of the issues in this regard, in particular, they have a rather strong competitive edge in the development of international arbitration services. In

this connection, they actually have a good understanding of the judicial problems that may arise. I very much agree that it is necessary for us to continue to follow up the matter in this regard, and we will definitely make further improvement if there is room for us to do so.

The last point is about the issue of performance in stages, and I wish to provide some supplementary information in this regard. Under the mainland laws, if any part of a judgment has not become due, from my understanding of mainland laws, it will not be legally enforceable, thus it is difficult to execute it before it is due. Such a restriction is not only spelt out in the Arrangement, but also in the mainland laws.

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 Justice 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, 6, 7, 14, 17, 18, 19, 21 and 25 as amended.

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

(Members raised their hands)

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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 25A.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move that new clause 25A be added to the Bill.

Proposed Addition

New Clause 25A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 25A 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): Schedule 1.

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 Schedule 1 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.

(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 JUSTICE (in Cantonese): Madam Chairman, I move the amendments to sections 2, 3 and 4 of schedule 2, as set out in the paper circularized to Members.

Earlier today, I have explained the reason for moving amendments to these provisions in my speech on the resumption of the Second Reading of the Bill. The objective of the proposed amendment to Rule 3 of Order 71A of the Rules of High Court is to delete the requirement that a judgment creditor (who is a natural person) must exhibit identification documents upon an application for registration of a Mainland judgment; and amendment to Rule 11 of Order 71A is proposed in response to the recommendation of the Bills Committee to simplify the registration procedures for enforcement of a Mainland judgment which requires performance in stages, with a view to reducing the parties' expenses on the relevant procedures.

Moreover, we propose to delete section 3 of schedule 2. Originally, this section proposed to amend the Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance (Cap. 46), so that Cap. 46 would not be applicable to Mainland judgments which satisfied the requirements of the Bill. In response to the views of the Bills Committee, the Administration agrees that Cap. 46 is not inconsistent with the Bill after reviewing the need for the amendment, and therefore it is not necessary to make this amendment. We now propose to delete section 3 of schedule 2 from the Bill. Other amendments to schedule 2 are minor and technical in nature.

Madam Chairman, the above amendments have been discussed and endorsed by the Bills Committee. I hope Members will support their passage.

Proposed Amendment

Schedule 2 (see Annex I)

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

MS MARGARET NG (in Cantonese): Chairman, the Bills Committee supports the amendment. I only wish to raise one point concerning Order 71A in section 3(2), that is, the deletion of the requirement for a natural person to exhibit his identity card. That is to say, this requirement is unnecessary. The Bills Committee has had detailed discussion on this. Well, why is it necessary to delete this provision? Just now, the Secretary for Justice said in his speech that this was because the Privacy Commissioner for Personal Data considered that

privacy issues were involved and so, the identification requirement should not be imposed. The Bills Committee did not agree with this view. This is because if the Mainland requests a Hong Kong court to enforce a Mainland judgment, the party in Hong Kong has the right to know if the person requesting enforcement is really the person with that identity and not another person.

For this reason, this is in fact totally unrelated to privacy. If someone wants to sue you, how can he not reveal his identity? If he has the right to ask the court to enforce a judgment and seize your assets, why do you not have the right to know his identity for the purpose of verification? This is not justifiable at all. Therefore, this has nothing to do with privacy and the Bills Committee does not agree with the views of the Privacy Commissioner for Personal Data.

However, why do we agree with the proposed deletion? Because the Secretary for Justice was also right in saying that there was no such requirement in Cap. 319. Furthermore, the main reason is that when someone files a case in court, the court will check the identity of the person concerned and the other party will also be able to see it. Therefore, even if such a requirement is deleted, adequate protection can still be given to the person subject to execution.

However, the reason why I must rise to speak on this is that I think such a hypocritical course of action is in fact grossly inconsistent with the spirit of rule of law, so I think I must stand up and clarify this.

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 Justice, do you wish to speak again?

SECRETARY FOR JUSTICE (in Cantonese): I would like to make a brief response. I have listened to the views put forward by Ms NG in this respect. But on this issue, as I have said earlier, we have conducted an extensive

consultation with, among others, the Judiciary and the relevant parties. I have mentioned earlier that Cap. 319 does not prescribe the same requirement. Also, I must point out that it is actually stated in the affidavit of the application that the identity of the applicant would be verified.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Justice 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): Schedule 2 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That schedule 2 as amended 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.

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to the long title.

The objective of the Bill is to implement the Arrangement signed between the SAR Government and the Supreme People's Court on 14 July 2006 — I am not going to repeat the full name of the Arrangement — which enables the judgments in civil or commercial matters that are given by mainland courts to be summarily enforced in Hong Kong, and facilitates judgments in civil or commercial matters that are given by Hong Kong courts to be enforced in the Mainland. For the sake of clarity and to better reflect the objective of the Bill, the Administration has accepted the proposal put forward by the Bills Committee by moving an amendment to make reference to the Arrangement in the long title.

The said amendment has been discussed and endorsed by the Bills Committee. I hope the Members will support its passage.

Proposed Amendment

Long Title (see Annex I)

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

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

MS MARGARET NG (in Cantonese): Chairman, the Bills Committee is very grateful to the Department of Justice for accepting the views of the Bills Committee which will help increase the clarity of this legislation. For the sake of clarity, I would like to make one point concerning the reference to "facilitating the enforcement of judgments in civil or commercial matters that are given in Hong Kong" in the long title of the Bill. The Bills Committee has doubts about this because the Arrangement in the Bill is only applicable to the so-called specified contracts — designated or specified contracts? It should be specified contracts — and some provisions in the specified contracts actually concern

business-to-business contracts or contracts between business enterprises — of course, a business run by an individual person is also regarded as a business enterprise — they are business-to-business contracts or contracts between business enterprises, not contracts between individuals, and they must be commercial contracts, which do not include employment or consumer contracts. Strictly speaking, these are not civil or commercial matters. Why is the expression "civil or commercial matters" used? It is because the expression "civil and commercial matters" is used in judgments and some mainland laws and regulations are grouped together under the headings of "civil and commercial laws". As Hong Kong does not have this concept of "civil and commercial matters", the Bills Committee considered after discussions that the expression "civil or commercial matters" is a bit misleading. Hence, the public should read carefully the meaning of specified contracts in order to remove this misunderstanding. The expression "civil and commercial matters" does need to be clarified, for we have used the expression many times today. Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Justice, do you wish to speak again?

SECRETARY FOR JUSTICE (in Cantonese): No, Chairman, I do not need to speak.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Justice 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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

SECRETARY FOR JUSTICE (in Cantonese): President, the

Mainland Judgments (Reciprocal Enforcement) 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 Mainland Judgments (Reciprocal Enforcement) 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): Mainland Judgments (Reciprocal Enforcement) Bill.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Legislative Council (Amendment) Bill 2007.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2007

Resumption of debate on Second Reading which was moved on 19 December 2007

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

MR HOWARD YOUNG: Madam President, I speak on the report in my capacity as the Chairman of the Bills Committee on Legislative Council (Amendment) Bill 2007 (the Bills Committee).

The Bill seeks to amend the Legislative Council Ordinance to update the electorate of functional constituencies (FCs) and, where necessary, makes consequential amendments to the Chief Executive Election Ordinance. The Administration has confirmed that apart from the deletion of the Kowloon-Canton Railway Corporation from the Transport FC, the proposed amendments in the Bill have no impact on the electorate of FCs.

The Bills Committee has discussed the principle and criteria for delineation of electorate of FCs. Some members are concerned about the absence of standardized criteria for determining whether certain organizations should be included as corporate electors. The Administration has advised that various factors have to be taken into account in such consideration and it may not be appropriate to apply a single and standardized criterion to all cases.

Some members consider that the Administration should assess and verify the status of registered corporate electors of FCs on a regular basis to ensure that they remain to be eligible for registration as electors. The Administration has

explained the actions taken by the Registration and Electoral Office in updating the electoral records, such as including new corporate members of the umbrella organizations to register as electors, and removing corporate electors which are no longer members of the umbrella organizations from the electoral register.

The Administration has received 75 applications from organizations for inclusion in the electorate of FCs since 2003. Some members have requested the Administration to allow new corporate bodies with a status comparable to that of existing corporate electors to be added to FCs. Some members consider that the Administration should take the opportunity to expand the electorate of FCs in the current legislative exercise through, for example, replacing corporate electors with individual electors.

Some other members, however, have reservations about making any radical changes to the electorate base of FCs only a few months before the 2008 Legislative Council election, as such changes require careful consideration and consultation with the relevant sectors. These members also consider that the issue of expanding the electorate base of FCs is outside the remit of the Bills Committee and should be followed up by the Panel on Constitutional Affairs.

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

The Administration has explained that it cannot accept the 75 applications. In accordance with the interpretation of the Standing Committee of the National People's Congress on 6 April 2004, the 2008 Legislative Council election should be held on the basis of the existing arrangements, that is, the number and composition of existing FCs for the 2008 Legislative Council election should remain unchanged. However, in the course of examining the method of forming the Legislative Council in 2012, it will consider the views expressed by the 75 organizations along with the views put forth by others at a later stage.

Some members have queried whether the Standing Committee's interpretation prohibits changes to be made to the electorate base of FCs in the 2008 Legislative Council election. The Administration has clarified that it is a policy decision that the 2008 Legislative Council election should be held on the basis of the existing arrangements and only technical updates should be made. In the view of the Administration, it will be extremely difficult to secure consensus within the community and the Legislative Council to make substantial

adjustments to the electorate of FCs for the 2008 Legislative Council election given that the 2005 electoral package, which had been formulated after wide and extensive consultation with the public and political parties, failed to get passed in the Legislative Council.

The Administration has proposed to include the Hong Kong Sports Institute Limited in the Sports, Performing Arts, Culture and Publication FC, and the Tobacco Association of Hong Kong Limited in the Wholesale and Retail FC. According to the Administration, these two organizations are included in the respective FCs to replace organizations that ceased to exist and previously did have a vote.

The majority of members of the Bills Committee consider these two proposals in order. However, some members have queried whether it is appropriate for the status of a corporate elector/organization that ceased to exist to be taken up by another organization. They also consider the approach adopted by the Administration in handling these two applications and the 75 applications inconsistent.

The Bills Committee has also considered representations made by three organizations concerning the Information Technology FC. An organization has approached the Bills Committee concerning an amendment under clause 6(2) of the Bill. The organization's main concern is that the amendment relating to the eligibility requirement for its members to register as electors in the FC is discriminatory and not in line with that for other organizations in the same FC. The organization urges the Bills Committee to delete the relevant provisions from the clause. The Administration's stance is that the proposed amendment is in line with the principle of maintaining the electorate of the FC.

Two other organizations in the Information Technology FC have proposed to remove the existing "relevant period" requirement for members of these organizations to be eligible for registration as electors of the FC, as stipulated in Part 2 of Schedule 1D of the Legislative Council Ordinance. These organizations consider that the "relevant period" requirement is exceptionally high and not in line with that of other organizations in the same FC. The Administration's position is that the removal of the criteria would enable certain members of the two organizations, who are not eligible for registration as electors, to become eligible. This would broaden the electorate of the Information Technology FC.

Members have divided views on these proposals. The Bills Committee has decided not to take on board these proposals after voting.

The Administration has briefed the Bills Committee on a number of amendments to the Bill. These amendments are technical in nature.

Deputy President, these are my remarks on the deliberations of the Bills Committee.

MR HOWARD YOUNG (in Cantonese): Deputy President, I am going to express the views of the Liberal Party on the Legislative Council (Amendment) Bill 2007 (the Bill).

In the run up to the Legislative Council Election this September, the Government has introduced the Bill to make amendments in the light of the latest development of the functional constituencies (FCs) and the latest changes in the FC electorate. These amendments are technical in nature and do not mean to introduce substantial changes.

As everybody knows, constitutional development cannot be taken forward and has been forced to remain stagnant because the constitutional reform package introduced by the Government in 2005 was not adopted by a two-third majority vote in the Legislative Council. In accordance with the interpretation of the Standing Committee of the National People's Congress (NPC) on 6 April 2004, the 2008 Legislative Council election should be held on the basis of the existing arrangements, that is, the number and composition of existing FCs shall remain unchanged. Therefore, the amendments currently proposed by the Government are only technical amendments reflecting changes in the names or cessation of operation of corporate electors/organizations in the existing electorate of FCs. The Liberal Party thinks that these amendments reflect the actual situation and they have not brought about significant changes in the total number of FC voters or gone against the principles of the NPC resolution. Thus, the Liberal Party and I support these amendments.

Lastly, I would like to add that, just like Hong Kong people in general, the Liberal Party wishes to see that a democratic political system will be developed in Hong Kong and progress can be made steadily towards this direction, with a view to achieving the ultimate aim of universal suffrage as stated in the Basic Law, but we must at the same time act in compliance with the NPC resolution. The Liberal Party will proactively participate in discussions over the mode of the

Legislative Council election in 2012 on the basis of the NPC decision, with a view to facilitating the full implementation of universal suffrage in 2020. Nevertheless, we do not wish to see the Government just "reheating an old proposal in the microwave oven" then. The Government should actively seek social consensus and hold extensive discussions in order to come up with a new proposal that is acceptable to all.

With these remarks, I support the Bill.

MR SIN CHUNG-KAI (in Cantonese): Deputy President, the scrutiny process of the Legislative Council (Amendment) Bill 2007 is very different. First of all, the Legislative Council will generally invite organizations to express views on a bill before asking the Government for a response, but members of the Bills Committee decided at the beginning of the deliberations that it would be unnecessary to invite views from any individuals and parties because only technical amendments would be made. Therefore, the Bills Committee has not openly invited individuals and interested parties to submit their views on the Bill to the Legislative Council.

In the course of our deliberations, I have raised a question about the number of organizations which have contacted the former Constitutional Affairs Bureau or the existing Constitutional and Mainland Affairs Bureau, requesting to be included in functional constituencies (FCs) or to become corporate electors of a FC. The Government has replied that there are dozens of such organizations — more than 70 as far as I can recall — making such requests. We have further asked if the relevant information can be disclosed to illustrate the grounds on which the Government rejected their requests. Subsequently, in response to some developments — putting it simply, after the Institution of Engineering and Technology Hong Kong (IET) has submitted concrete views on the Bill — the Bills Committee has agreed to invite organizations to express their views.

Deputy President, why is the scrutiny process of the Bill so toilsome? Why is the expression of views so difficult? Is the Bill more superior than other bills? We have received submissions not only from one organization, and several organizations have expressed their views to us. They hope that their organizations will be more comparable to other organizations. In a nutshell, as a Legislative Council Member representing the Information Technology Functional Constituency (ITFC), I understand that there are different

requirements for the qualifications of members of organizations eligible to vote according to the law. The requirements of some organizations are higher and those of some others are lower, which is probably a problem left over by history. Some organizations, the newer ones in particular, may wish to adopt requirements that are closer to those of the older organizations. Their status can be more comparable to the older organizations, provided that the relevant requirements are not too stringent. Deputy President, these issues are highly technical and I do not want to waste too much time here because the details are already included in the report, and we have had long debates in the course of deliberations.

Deputy President, I do not like to say so but there is plenty of evidence indicating that the Government, by adopting this practice, can control the number of voters and hence manipulate the result of an election. Surely, the Secretary is going to deny that.

Deputy President, there are at least 70 000 practitioners in the ITFC. We know from relevant surveys conducted by the Productivity Council or VTC that there are 70 000 people in the sector. Although I am not sure about the number of voters in the sector on the latest FC register, there were only 5 003 voters in the ITFC, which accounts for less than 10% of the registered practitioners in the sector, in the most recent election of the Election Committee in 2006 for the election of the Chief Executive.

Why is there such a problem? It is because the ITFC is somewhat different from other FCs. How? Other organizations such as those in the legal and medical professions are very clear. In Hong Kong, doctors or lawyers have to be "licensed to practice". But, Deputy President, we all know that the ITFC is developing and there is no system of "licensed to practice" and practitioners are not required to hold a licence. Although many organizations award professional qualifications to our practitioners, such qualifications are not the prerequisites to practice. Some people want to obtain professional qualifications but possessing professional qualifications does not give them the privilege of being able to practise. On the contrary, a person who does not have professional qualifications can still be a practitioner. In fact, we all know that the IT sector is developing rapidly. Bill GATES is an exemplar, as he is not a university graduate and I believe he does not have particular professional qualifications but none of us can deny that he is an outstanding member of the IT sector.

Since the ITFC was created in 1998, what has the Government done in the past decade? I proposed to amend the legislation in 2000 but the amendments were negated. We also attempted to enlarge or expand this FC in the two ensuing years. The Secretary agreed in 2004 to expand this FC to include a few professional institutes. Yet, this is not enough and we always want to expand this FC for at least a larger proportion of the 70 000 practitioners to become voters. It is a very arduous task for IT practitioners to become registered voters of the ITFC at present. First, they have to join a professional institute paying at least \$500 as membership fees, and they may have to pay US\$100 to US\$200 for membership of some international institutes. Some voters cannot help asking why they have to pay a few hundred dollars to buy a ballot if voting is their civil right. Deputy President, we do feel helpless, but history keeps repeating itself in the past decade.

This is the last time for me to ask this question — at least, this is the last time for me to do so in this term and I do not know if I will be able to talk about this again in the future. Deputy President, I believe the result of an election can be manipulated or influenced by containing the increase in the number of voters. This is a clear fact and we will understand it by just looking at the FC election. Of course, the case of each FC will be different.

I have tried to express views on the amendments and invited some organizations to express their views, but all the proposals were rejected as in the past when a bills committee was controlled by the pro-government camps or "royalists". We feel so helpless and I can only propose an amendment on my own and yet, it was also rejected by the President, Mrs FAN, who ruled that my amendment is outside the permitted scope because the amendment of the Bill is restrictive.

Deputy President, I wonder if the Government could relax the constraints as far as permissible to allow amendments to be made to a greater extent. Mr Howard YOUNG has just mentioned that limitations have to be imposed after the constitutional reform package was voted down in 2005. Actually, the organizations have proposed their amendments on the original basis and they are not proposing the inclusion of non-eligible persons in their organizations or the ITFC. Deputy President, I think the Government has once again sought to manipulate the result of the election by controlling the increase or decrease in the number of voters, which is very dangerous. Certainly, Secretary Stephen LAM

may be able to claim credit as he may again have the chance to claim credit for his meritorious service in defending the pro-government camp.

Deputy President, I feel helpless in our debate today. In the past decade, I tried very strenuously for two to three times calling on the Government to expand this FC. Other amendments are actually very restrictive, mainly technical amendments to change some names or delete some institutes that no longer exist. I think these amendments are made only to reflect the actual situation.

I so submit.

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

MR RONNY TONG (in Cantonese): Deputy President, the Bill was described by the Government as a technical amendment when it was submitted to this Council. However, we could already sense that the amendment was absolutely not technical in nature, but very political instead, when we found that, despite the technicality of the amendment, representatives of the pro-establishment camp had been keen to become the Chairman of the Bills Committees. During the deliberation of the Bill, our doubts were found to be totally well-founded. The Bill deals with amendments to the functional constituencies (FCs). Deputy President, as everyone knows, the FCs *per se* have actually contravened the principle of equal and universal suffrage in the International Covenant on Civil and Political Rights, and represent a political system in breach of democracy.

During our discussions in this legislative amendment exercise, we found that the amendments had actually underlined the absurdities of the FCs. Deputy President, there are two major absurdities. First of all, some of the amendments actually involve the re-delimitation of the electorate of individual FCs, which will directly affect the number of electors. Of course, it should also be understood that, given the small number of FC electors, any amendments affecting the number of electors would actually directly affect the election results of individual FCs. Therefore, the so-called amendments are actually and absolutely by no means technical. In this respect, it has become a matter of our special concern that we found this problem particularly obvious when the composition of the Information Technology FC (ITFC) was discussed or scrutinized. This problem was also raised by Mr SIN Chung-kai just now.

Deputy President, the background of the incident involves the earlier merger between The Institution of Electrical Engineers Hong Kong (IEEHK) and the Institution of Incorporated Engineers and the subsequent change of name to The Institution of Engineering and Technology Hong Kong (IETHK). Before the merger, it was provided in law that members of the two Institutions could become eligible electors so long as they were entitled to vote. After the merger, however, two new requirements were included such that only persons registered as Chartered Engineers with the Engineering Council UK or Corporate Members of IEE Hong Kong before 15 October 2002 are qualified to vote. The Government's justification for the abrupt inclusion of the two requirements is to avoid expansion of the ITFC as a result of the relaxation of membership criteria.

Deputy President, the IETHK was extremely shocked when it learned of the amendments, and representatives from the IETHK immediately came forward to this Council to express their discontent. Their greatest difficulty was that they did not know how to explain to their members. They had two classes of membership, namely, first-class members who are entitled to vote and second-class members who could not vote. However, there is no difference between these two classes of membership in all other activities and eligibility for benefits. Under such circumstances, how can the membership problem be tackled? This is the first problem, and a relatively substantial one. We were greatly surprised when we discussed this issue with the Government. The Government's argument was that the amendment absolutely could not lead to an expansion of the electorate. Deputy President, this is totally contrary to the claims long made by the Government — vows so often made by it about making our political system a democratic one, and about moving in the direction of universal suffrage. We consider this situation utterly unreasonable. As pointed out by Mr SIN Chung-kai just now, we have already considered proposing an appropriate amendment, and we have also contacted the industry to find out if such an amendment is acceptable to the IETHK. However, it is a great pity that the industry chose to back out when it was approached by us, probably because it was under considerable pressure from the Government. At present, they would rather retain only the second-class membership than offend the Government. Deputy President, you can imagine how dark our political system is, and how it has made people seethe with anger.

Deputy President, the Government's arguments are absolutely specious. Judging from the present case involving the IETHK, there has been no particular

relaxation in the eligibility for membership. Membership will naturally expand as a result of a merger between two institutions. On the contrary, the two new requirements imposed by the Government on the members of the IETHK mentioned by me just now are tightening the eligibility for electors and lowering the number of electors. Such acts have easily aroused people's suspicion as to why the Government has to deliberately restrict the number of electors for this FC. Is an increase of 100-odd people so crucial? Does the Government think that a change in the number of electors might affect the chance of a certain candidate of being elected?

We have found another point hardly acceptable. What criteria has the Government adopted in introducing these amendments? Why does the Government consider that the electorate base of this FC absolutely cannot be expanded? What decision will the Government make in respect of other FCs? Is it the Government's concern that expanding the electorate base of individual FCs is tantamount to introducing direct elections into FCs, which is contrary to the Government's objective of maintaining FCs as small circles with vested interest? Is this the reason why the Government has to introduce some amendments to prevent the peaceful evolution of directly-elected FCs?

Deputy President, the second absurdity of the amendment exercise involves our discussion of how to judge which organizations can join or be included in FCs. Regarding this amendment exercise, the Government has rejected all requests made by members for expanding the FCs. The Government has shelved all these requests and considered them inconsistent with its policy and position. I wish to point out that, under the FC system, there is absolutely no way for us to achieve the international standards of equal and universal suffrage through changes in the number of members or eligibility for electors.

Deputy President, in response to the explanation by Mr ZHANG Xiaoming, Vice-minister of the Hong Kong and Macao Affairs Office, on the decision of the Standing Committee of the National People's Congress, the Government put forward the so-called economic contribution theory for FCs. The Government has apparently agreed to this theory which means that a decision on retaining a FC or otherwise should be made according to the data on the contribution of individual FCs to raising the Gross Domestic Product (GDP) of Hong Kong. In my opinion, the Government's argument is absolutely ridiculous. Furthermore, if this argument is truly tenable, why can the

Agriculture and Fisheries FC, with only 150-odd electors and accounting for only 0.1% of the GDP of Hong Kong, which is far less than the 22% contributed by the Import and Export FC, can still be retained, so much so that it can still have one seat, or one representative, in this Council? How can such a system be convincing and make people feel that it is logical and reasonable?

Deputy President, actually, introducing legislative amendments to FC elections will only give people a feeling of whitewashing. After these technical amendments relating to the FCs are passed today, we may still continue to discuss when and how FC seats can be replaced by directly-elected seats. But do we really have to make such hypocritical attempts of whitewashing, at least before a consensus is reached in this respect?

Deputy President, I absolutely disagree that this Council should be degenerated to a political tool for the purpose of whitewashing. What is more, I disagree that we are rubber stamps. Deputy President, it is a matter of principle that we absolutely cannot accept this so-called technical amendment. We oppose the passage of the Bill.

MR WONG TING-KWONG (in Cantonese): Deputy President, the purpose of the Legislative Council (Amendment) Bill 2007 (the Bill) is to update the names of some organizations in the existing FCs to reflect changes in the composition of the FCs. The basic principle of the Bill is to ensure that the electorate of existing FCs remains unchanged, and the number of electors is not reduced. The Bill actually deals with some details. To enable the Legislative Council election to be held smoothly this year, particularly for the purpose of commencing registration of electors for FCs, the relevant amendments are essential.

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) considers it understandable for the Government to introduce the Bill on the principle that the electorate of existing FCs should remain unchanged. As Members should recall, it is regrettable that the 2005 constitutional development package was not passed by a two-third majority of Members of this Council. According to the interpretation of the Standing Committee of the National People's Congress (NPCSC), we can only follow the method for forming the Third Legislative Council in conducting the election.

There are views that the electorate of FCs could still be expanded through the amendment of local legislation. However, we have actually lost a major opportunity of bringing our constitutional development forward. The so-called expansion of the electorate of FCs is nothing but small patch-up work without a comprehensive package of proposals, and the actual effects will be limited.

More importantly, lengthy discussion has been conducted on the 2005 constitutional reform package in the community. With the proposal being vetoed, the community has shifted its focus to constitutional development in 2012 and 2017. According to the decision made by the NPCSC on 29 December last year with respect to the two electoral methods in 2012 and the issue of universal suffrage, it is considered that the election of the Chief Executive may be implemented by universal suffrage in 2017, after which universal suffrage may be fully implemented for the Legislative Council. Therefore, the community should now focus its energy on ways to complement the elections to be held in 2017 and 2012. Any constitutional discussions held and proposals made at this stage should focus on this point. Should we continue to entangle ourselves with the arrangements for 2008, the matter can only be complicated further, and the focus of the community would hence be diverted.

Actually, judging from the experience in 2005, efforts have to be made over a long period of time in order to foster consensus in the community and launch a constitutional reform package. Now, with 2012 and 2017 before us, there is indeed a lack of time for us to go back to discuss how the electorate of FCs can be expanded in 2008. Members must not forget that, even on expansion of the electorate of FCs, views in the community are still diverse. Some people are worried that a broadened electorate might basically change the nature of the FCs. Some people oppose the broadening of the electorate, for they consider that this serves only to rationalize the coterie election, so to speak. Therefore, before giving comprehensive consideration to 2012 and 2017 and since we are required simultaneously to properly deal with the issue concerning the electorate for FCs this year within a limited period of time, we consider it inappropriate to do this hastily.

For this reason, despite the proposal made by some organizations during the scrutiny of the Bill to relax the eligibility of their members to become electors of the relevant FC, we consider that it is only appropriate for these views to be included in the discussion on constitutional development to be held in the future and be dealt with after changes to all the FCs have been fully considered.

During the scrutiny of the Bill, a number of colleges put forward different views on the value of FCs. I wish to take this opportunity to express my own views. Since the introduction of the election of the legislature in 1985, I think the mode of FC election has been playing an active role in the development of Hong Kong. Specifically, this arrangement has taken into account the interests of different social strata and manifested the principle of balanced participation. It has not only provided business professionals and people from other sectors with a channel for political participation and training opportunities, but also injected a wide range of knowledge, experience and opinions into the work of the Legislative Council. It is an indisputable objective fact that Hong Kong's success and achievements over the past three decades or so have been made possible under the FC electoral system.

In practical terms, in the Legislative Council today, a lot of members of the political parties opposing the FC system are Members returned by FCs, such as the Education FC, Information Technology FC, and Legal FC. From my personal viewpoint, the performance of these colleagues can definitely rival that of directly-elected Members. Many of them have even taken the role as spokesman for the relevant policy area in their political parties. What does this show? This precisely shows their value. Even their own political parties cannot deny this.

Of course, I do not mean to say that the FC system is perfect and needs no reform. If it is perfect, there would not be a need for the Basic Law to provide for the ultimate aim of forming the Legislative Council by universal suffrage. I only wish to point out that the constitutional development of Hong Kong should not be cut off from the past. It should not deny history; nor should it disregard experience, for this will only produce an adverse impact on our future development.

With these remarks, I support the Bill on behalf of the DAB.

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

MR LEUNG KWOK-HUNG (in Cantonese): I believe the amendment, whether it is technical or political in nature, has something to do with future policy arrangements. If these arrangements are not taken into account, we can hardly find out why this is so. Actually, the amendment proposed by the Government

is very simple, that is, the electorate cannot be expanded, even if innumerable changes will be made. In other words, the size of the electorate of FCs must be fixed. What is the point of doing so? From a microscopic angle, the reason may be that the Government might have learned from intelligence of the "invasion" of a group of people who would challenge the Government's preferred or favourite candidates. This is viewed from a microscopic angle. However, from a macroscopic angle, what is the reform preferred by the authorities (including the Communist Government and the SAR Government) in the future? Even if FCs are abolished, the original electors of the FCs might still be retained, from which certain people will be chosen to form a nomination committee.

Some people said that whether or not the electorate is expanded here and now actually does not carry much significance. However, the significance will be great in the future. With the inclusion of many people, the filtering process might be hampered. As a result, certain substances cannot be filtered. From a long-term strategic point of view, this can be said as forward-looking. Therefore, if Members do not look at the matter from this angle, they will not understand why the Government would be so stubborn. Frankly speaking, can a candidate win in an election with the support of 100-odd additional electors? However, it is well aware that the implications are far-reaching.

Second, once a precedent is set, resulting in an expansion of the electorate because of eligibility relaxation and changes, the same thing will certainly happen to all FCs in the future, right? There will certainly be competition in the future, and this will in turn lead to political challenge. The challenge will not only lead to conflicts between the pan-democrats and the "royalists" (or the pro-establishment camp), conflicts will also occur among the "royalists" as everyone will wish to pull the "Trojan horse" into the city. Therefore, the best option for now is to achieve stability and harmony, and to make it clear that there will be no more quarrels, and the size of the electorate will be kept unchanged, and everyone should keep their mouths shut. This is a manifestation of the scale and range of our future constitutional reform.

Actually, I cannot refrain from mentioning the relevant decision made by the Standing Committee of the National People's Congress (NPCSC). It has never said that dual universal suffrage will be implemented in 2012, or in 2017. This is not mentioned in its decision. Its decision is that dual universal suffrage will not be implemented in 2007 and 2008, and whether there will be it in 2012

or 2017 will hinge on the performance of Hong Kong people. In other words, sorry, if you cannot reach a consensus. Originally, "Grandpa" would like to give you a candy, and this does not matter. But if you fight among yourselves, how many candies will have to be handed out to be enough? This is actually like playing around with concepts. At present, Mr TSANG and his subordinates, including Secretary Stephen LAM, are waving a flag and making this remark with much fanfare, "What are you still fighting for since it has already been given to you?"

However, this is actually not the case, and this explains why the pan-democratic camp is put under a certain degree of political pressure. It all began in an evening in 2005 when Donald TSANG's face turned livid as if he was mourning the death of someone in the family while having his meal and told us that Hong Kong was at a crossroads, and that we would end up having nothing should the offer be rejected. From that day onward, Hong Kong people believe in the myth that there will be no democracy should the pan-democratic camp refuse to give in and that would be their fault. However, this is wrong.

Actually, I challenged Mr Donald TSANG on that day by suggesting him to simply formulate a major bill on the basis of public opinion for submission to this Council, since he believed public opinion was on his side. Should the bill fail to be passed, he could dissolve the Legislative Council and form a new one. In this way, public opinion could be manifested. A vote would then be taken, rather than asking the people who they like after the Chief Executive is elected. Let me cite a very simple example to illustrate my point. A son is told by his father that he may choose his wife, but the one chosen by him will definitely not be to the liking of his father. I know that his father will get him an ugly woman to be his wife, and there is no way he can put up resistance. Therefore, he would have to marry an ugly woman if he wishes to get married.

Therefore, that is actually a trick. The Communist Government or the Central Government said, "I will not accept your choice because the one you choose is not to my liking." Then, two other candidates were offered for the people to choose. There was also a hint to the people that their wish would be granted should they choose this one (who is Donald TSANG), and their wish might not be granted should the other candidate be chosen. In the end, everybody is saying, "Forget it. There is only one choice anyway, so let us listen to 'Grandpa'." Having read a lot of novels about the Republic of China period, we will find that the same story is being told in a trilogy entitled *Family*,

Spring and Autumn. In *Family*, Juemin and Juexin were given a set of criteria on the selection of their wives. In the end, their cousin, Mei, died. This is the case now. Hence, we can never walk out of this labyrinth if we do not look at our situation from this angle.

In brief, the Central Government and the SAR Government are behaving like a "prodigal son", who can get nothing at all if he does not listen to them. Some people will say, "Fine. We can do without it. It is just a matter of eight or 10 years." However, if an order is made by the Standing Committee of the Political Bureau of the Communist Party of China that universal suffrage cannot be implemented in Hong Kong over the next 10 years and anyone who violates the order will have to die, then the order will definitely be executed immediately, as the Standing Committee of the Political Bureau will not be held responsible. Moreover, a system of "limited terms" is implemented in the country. Like our system, only two terms can be served. Therefore, no one will be held responsible. Hence, today, if we do not look back on the background of the past, there is no way for us to get a full picture of the Legislative Council (Amendment) Bill 2007.

Members, what is the situation before us? If the Government is really sincere in turning FCs into direct elections or a system based on "one person, one vote", it should convey a message to the community, the pro-establishment camp and the conservatives today, a message that can set an example to them. In other words, it should give us hints of the thinking of "Grandpa": "I am telling you today that you should do this." Regardless of whether or not they act accordingly, "Grandpa" will know. However, it has not done so. On the contrary, we are being told that "Grandpa" will not like this and an ugly woman will be chosen. Can those people who want to get married refuse to choose an ugly woman?

We will understand what we are arguing today if we can see this crucial point. Actually, the pan-democratic camp — I am certainly a member of the pan-democratic camp — or my angle is very simple. If the Central Government issues an order telling us to do this and that in the coming decade, like the "new long march" after overthrowing the "Gang of Four", and to achieve a "quadrupling" effect (a term used by the deceased DENG Xiaoping), it will lose face if this is not achieved. If our Government tells the international community to stop arguing because it will take the responsibility if dual universal suffrage is not implemented in 2012, and it will take the responsibility and lose

face if, after the resumption of sovereignty by China, dual elections by universal suffrage in compliance with international standards are still not implemented in Hong Kong by 2017, then it would be fine, and what is going on at higher levels can be made known to lower levels. However, we are not given such assurances. Therefore, we can see from this whether or not the current reform is heading in this direction.

For instance, some people said that FCs are very important. Of course, they are important. There is also the upper house in other parts of the world. For instance, discussions can be conducted by the Upper House in Ireland at any time before a resolution is made. They can do nothing about the motions passed by the Lower House, and they can only continue to engage in endless discussions. From a rational angle, when a group of people are engaging in a discussion which will be broadcast directly, and they have their own parliamentary assembly, they will definitely exert pressure by way of public opinion, though they do not have the final veto power. People elected to the Lower House still have to argue with reasons. If they cannot convince the Upper House, do you think they will succeed even if they insist on doing what they want?

If the Government is really determined to return power to the people, elites should be allowed to engage in discussion, because this is the current trend of reform. Even the Upper House in Britain has its powers slashed. As Members may know, a nobleman has been stripped of his power to give invitations because he was found fooling around with his girlfriend. Actually, we have noticed the general trend that the past thinking of worrying about the development of the so-called "mob rule" or populism as a result of the introduction of democracy has actually ceased to exist. Meanwhile, the checks and balance that can be exercised by the Upper House, an advocate of so-called elitism, or by structures with other names, are diminishing.

Are we heading towards this path? We can opt for a path like this. FCs can be turned into a proportional representation system. Some countries where direct elections are implemented, like Germany, opt for a system with half of its seats returned by a listing system and the remaining half by appointment. It is feasible. Our problem is not that it is not feasible. The problem is that, we are being trapped in the thinking of how to ensure that people in FCs will agree to surrender their power. This is impossible. Secretary Stephen LAM, you have often argued with me on when the Chinese People's Political Consultative

Conference (CPPCC) will hold its meeting. Even the CPPCC has once pledged to overturn the Kuomintang. Should we continue to act against its wish, it will refuse to "play with us". The CPPCC has once passed such a resolution, right? Right, the Kuomintang refused to give it and stepped down. Is this what Hong Kong must do in order to survive?

If some people possess power and are allowed to share profits in a structural manner, this is what it means by "pork barrel capitalism". Can they be asked to surrender their "pork barrels"? Will they do as asked so easily? Therefore, it is most paradoxical that the Government is playing with concepts — people are asked to surrender their power before people who are deprived of powers can come to power. This is like negotiating with a tiger for its skin, right? It is a "rip-off".

Hence, on this point, I would like to point out through my speech today that if the Central Government is really determined to carry out reform, our proposal should be endorsed today, and even though Mr WONG Ting-kwong considers the time too short, it does not matter because our Government is executive-led. Our proposal will come into fruition if it is mentioned today and again by the Central Government tomorrow. This is like what we recently read from the news about the Olympics. At first, JIN Jing was hailed as a national hero. But later, she was condemned as a villain when she was praised by the French and she appealed to the people not to besiege the French. Now the Central Authorities have made an appeal through the *People's Daily* for the people not to act in this manner. As a result, JIN Jing has become a national hero again. We are particularly good at the system of power centralization. What is said today is valid only for today. It can be dismissed tomorrow and accepted again the day after tomorrow. So long as it has the good intention, changes can be made instantly, and everyone will follow suit. People opposing me today might say loudly tomorrow that "Long Hair" is right — Why? Because I was just being lucky for the Central Government happened to reverse its position. Members, this is the reality. Therefore, the problem before us today is whether or not the Central Government and the SAR Government has good intention.

I know that Secretary Stephen LAM is a Christian. Mrs Anson CHAN is not in the Chamber at the moment. She has once made the remark that she must be careful when getting to know someone. Actually, I would like to read the Secretary a few lines from Proverbs, "As a dog returneth to his vomit, so a fool

returneth to his folly." This means that if a person keeps telling lies, he would be acting like a dog going back to its own excretion or vomit and eating it, and the cycle just runs on. This is why I hope the Secretary can observe the principle of "silence is golden" and speak less. There should be no refutation if he really realizes he is wrong, because silence is golden. This Council will understand the reasons behind the Secretary's silence. I hope the Secretary can think and learn with prudence. I do not know whether I have been careful in getting to know someone, but I believe I have the wisdom of differentiating between people. I hope the Secretary can behave for his own good and show us that he can do it. *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, Deputy President.

DR KWOK KA-KI (in Cantonese): Deputy President, we are discussing the Legislative Council (Amendment) Bill 2007 (the Bill) today. Interestingly, the Bill should actually not be amended in such a way. It is provided clearly in the Basic Law that the implementation of universal suffrage shall take place in 2007 and 2008. Had the Standing Committee of the National People's Congress not made that regrettable interpretation on 26 April, I believe history would have to be rewritten. And what we would be discussing today should be a bill on the formation of the Legislative Council and the selection of the Chief Executive by universal suffrage in 2007 and 2008. However, it is greatly regrettable that things often do not turn out as we wish.

The issues being discussed today are, as described by many colleagues, ridiculous, unreasonable and against the wishes of all people. Many officials, including Secretary Stephen LAM and Donald TSANG, have resorted to sophistry in making their statements. At the very beginning, no one believed in their words. However, as Members know, when a lie is repeated once, twice, thrice, and again and again, the liar would believe that many people believe him. In the end, even he himself believes in his own lie. This explains why Mr LEUNG Kwok-hung cited from Proverbs earlier, comparing people who know that they are foolish and telling lies with a dog eating its own excretion. However, if a person can tell lies so skilfully that even he himself believes in his

own lies, then he will tell others that he is not lying, and that everything he says is true. This is pathetic. This is really the sorrow of Hong Kong, as well as the sorrow of Chinese people.

The Olympics happens to be held this year. When bidding for hosting the Olympics, our country made some promises, which certainly include the wish for Hong Kong, the Mainland, and even the entire nation to make more progress in human rights and freedoms. This is certainly something we would like to see. We will also be very pleased to see the hosting of this festive event in 2008. However, we should be very worried if we look at the recent developments.

Actually, the minor amendments we are discussing are a far cry from a truly attainable democratic political system. The 2008 Legislative Council election has not only failed to broaden the universal suffrage element, it can even be said that no consideration has been given to the many proposals raised in the community for expanding the FCs, which is a coterie with few hundred members, towards the implementation of "one person, one vote" in the election. When something is not going to happen, we will accept that as our fate, and so will the people of Hong Kong — as everyone knows, 2012, 2017 and 2020 are mere humbug because, first, no undertaking has been made; and second, even if an undertaking is made, it can still be changed. We all know that there are numerous ways and tricks to do it. For instance, 2008 can be postponed to 2017, or 2020. Even 2020 might just be our own wishful thinking. No one knows what will happen after 2017, since 2050 or 2060 will appear only after 2017. Anyway, it does not matter. Sometimes, Hong Kong people do demonstrate the "spirit of Ah Q" by looking at the positive side of everything. It feels good by just thinking about 2020.

However, 2020 is very far away. It is 13 years from the reunification in 1997 — no, it should be 23 years. According to the present state of affairs, how much longer do we have to tolerate? Some Members commented earlier in the debate that it is actually wonderful to have FCs and that the concept of FCs is indeed the world's greatest invention. I hope these Members can do some lobbying on behalf of Hong Kong to convince the entire nation and even the whole world and telling the people in the United States Congress, the British Parliament and congresses in other parts of the world that Hong Kong has this impeccable invention called functional constituencies. Under this system, the quality of Members is high, the operation of the Government is smooth and the society is just wonderful, so it should be followed by the rest of the world.

Sometimes, we (including myself) would have to meet Members of Parliament of other countries or representatives from other governments. I found myself facing great difficulty in every such meeting. When I was asked how I was elected, I would have to explain to them that we had FCs in Hong Kong, and I was a FC Member. Then they would ask who these people are, and I would reply that they represented certain sectors. Then, they would further ask where these people came from. I would answer their questions one by one. However, some people would frown on hearing my reply, not knowing what I was talking about. Some people would find it very interesting. There would always be some people who found that the idea of FCs sounds interesting. They would have this question on their mind: How can something like this still exist here? Sometimes, I would feel quite ashamed, but there was nothing I could do. The reality is so ridiculous that, if we give up these seats, the Legislative Council and Hong Kong would become even more ridiculous. Hence, we have been compelled to do something quite ridiculous.

However, even if we have done such degrading thing and follow this path, we are still being forced by the Government to accept it as a very desirable system — not only is there nothing wrong, it is perfectly correct too. Sometimes, I even have the feeling that I cannot extricate myself from this and I cannot swallow the shame. We are not allowed by the Central Authorities, or the SAR Government to implement direct elections. This is such a bad thing, but still we have to accept it. Sometimes, we should be true to ourselves. Only in doing so can we be true villains. However, the present situation is different. Instead, the whole thing is distorted in such a way that FCs are described as something good even if they have been slightly changed. They are even described as a panacea for maintaining a "high degree of autonomy", "one country, two systems", prosperity and progress, and everything else in Hong Kong. Can we accept all these? Should the world move in this way?

I believe we must think about this. Our country must think about this too. If we believe human society is progressive and the political system has to be progressive, then progress must really be made. If we believe the Basic Law has conferred on us the ability to predict our future with the knowledge that our constitutional development should proceed in this direction, I believe Members will find it extremely regrettable when they see what is happening. Had Mr DENG Xiaoping been able to see universal suffrage, which is provided clearly in the Basic Law, being interpreted in such a way by his descendants and has been delayed again and again, I believe he would probably rise from his grave in rage.

Basically, we are wasting our time in discussing these matters, because even if the Bill is passed, things would still remain unchanged. This flawed, backward and ridiculous system of ours will continue to exist without attracting much attention. I believe very few Hong Kong people are watching live television broadcast tonight, because no one will cherish such hopes. Very often, Hong Kong people will believe in what others said. For the time being, they may believe in those people who said that universal suffrage will be implemented in 2017. Hong Kong people feel contented very easily because they are relatively simple-minded. However, to a responsible government and a responsible official, there are things that they should know perfectly well, and if they are deceiving the people, they should tell the people that they are deceiving them. They should also tell the people if they are being provided with what they do not want. We cannot go against our conscience. Neither can government officials do so.

We understand that we are walking on a rugged path. Basically, we cannot see that the path would lead us to direct elections. I am not optimistic because, basically, there has been no real commitment. A political conclusion made by an imperfect system and an institution not based on the people is in itself a great regret. Let us examine how this conclusion is made. Even if we look at the existing selection process of National People's Congress deputies by the Central Government, we will find that we can still make a lot of improvements. The system itself has resulted in the way Hong Kong's constitutional development is interpreted today. Basically, it is far from perfect.

However, is it impossible to change what had been said? The answer is in the negative. I believe the Central Government, or "the exalted officials of the north" will issue the highest instructions. In fact, all officials of the SAR Government, including the Bureau Directors who are sitting here, are waiting for instructions or looking for ways and excuses to rationalize the matter. It is my hope that, with regard to our discussion in this debate, apart from putting it on record, the leaders of our country should also consider what sort of a road we have taken. How should the Legislative Council of the SAR proceed in future?

With the passage of time, many constitutional development opportunities have been lost. This has not only impeded Hong Kong's development, even the development of our country has been seriously hampered. Today, when the position of our Motherland on the world stage is being assessed by other

international communities, they would look at its promises, genuine changes, genuine constitutional changes, freedoms, human rights and development of democracy, and none of these can escape from their review.

If constitutional reform, or the implementation of a democratic political system in the foreseeable future, is truly the biggest issue faced by the country, as pointed out by President HU or Premier WEN soon after they took office, then I only hope that this point can be truly manifested, and that this spirit can also be truly manifested in our SAR Government. Otherwise, the SAR or the SAR Government will not only lag behind international developments as a whole, it might even lag behind the Mainland. If this is the case, how can we muster up sufficient courage to face other people?

We have recently seen the presidential election in Taiwan. Members might have probably forgotten that the Legislative Council election by "one person, one vote" was actually implemented in Hong Kong earlier than the election of the Legislative Yuan in Taiwan. When "one person, one vote" was implemented for the Legislative Council election, the political environment of Taiwan was not yet formally liberalized. However, we see that we are still marking time today. We have moved forward and gone backward again. Despite the abolition of the appointment system, appointments can continue to be made. Now, 11 years after 1997, the authorities can still make up a variety of excuses to tell the people that FCs should not only be retained, but also be further developed, and ask the people to come up with ways or exploit certain loopholes to increase the number of FC seats in 2012 — though this is not yet discussed — in an attempt to beautify them by concocting various excuses.

Sometimes, I, being a Hong Kong citizen, really feel ashamed. We should not, nor do we deserve to, have such a notion. We should not have such a government, such constitutional development package and such officials. But regrettably, this is the reality. We can only watch helplessly or deliberate such a totally meaningless Bill in this Legislative Council. However, I believe the Bill will still be passed in this Council. Hong Kong people can do nothing but to helplessly accept the fact that the Bill, or the so-called constitutional reform proposals to be submitted in the future, will do nothing to bring us any closer to the kind of democracy underpinned by "one person, one vote" elections. Instead, it will only draw us farther apart.

I so submit. Thank you, Deputy President.

MISS TAM HEUNG-MAN (in Cantonese): Deputy President, I believe Honourable Members should have read the novel *Journey to the West*. In this novel, the "Monkey King", first disciple of Monk TANG San-zang, has an unrivalled magical power, but by nature, he is naughty and wild. In order to make this naughty creature obedient, Monk TANG San-zang puts a band around the Monkey King's head to constrain him. As long as the naughty monkey is obedient, the headband is nothing but a decoration. However, if he becomes naughty, he will suffer as Monk TANG San-zang will chant a headband spell to tighten up the headband, and the pain will hurt so bad that the Monkey King has to roll on the ground as the headband becomes tighter and tighter. No matter how great his magical power is, and even if he can travel a distance of 108 000 miles in one somersault, he must listen to his master submissively.

Today, it seems that the same old story of the Monkey King being restrained by Monk TANG San-zang with the aid of the headband is repeating itself in the Chamber of the Legislative Council. Certainly, the person who is like being possessed by Monk TANG San-zang is Secretary Stephen LAM. Who then is the Monkey King? The answer is, we Members of the Legislative Council.

Please allow me to tell a story here. The magical headband is the Legislative Council (Amendment) Bill 2007 (the Bill) in today's debate. Originally, the Legislative Council may, within its ambit, make use of the Bill to promote democratization of the electoral system of the Legislative Council. However, the Government has confined the scope of the discussion this time around by making only technical amendments to this electoral legislation. As a result, it is extremely difficult for Legislative Council Members to go beyond the limits.

In these circumstances, Secretary LAM is using the "magical headband" to restrain our constitutional development, just as Monk TANG San-zang did to the Monkey King. During the debate on the Bill today, it seems that Secretary LAM is chanting the "headband spell" to make life difficult for those disobedient Members who insist on political reforms.

The Legislative Council Ordinance has made provisions on the composition, tenure, mode of operation, electoral procedures, electorate composition and relevant matters relating to the Legislative Council. In fact, if the Government has not imposed the "magical headband" on us, we should have been able to promote the democratization of the Legislative Council election

under the premise that the Basic Law is not contravened or amended. It is a pity that the Government's failure to do so has shattered all the hopes.

The Bill mainly seeks to make technical amendments to the eligibility of electors of certain functional constituencies (FCs). However, so long as we can have the blessing of the Government, we can expand the electorate base of FCs and take the Legislative Council election slightly forward in the direction of full universal suffrage.

During last year's public consultation on constitutional development, there were opinions that corporate/organization votes of FCs in the 2008 Legislative Council Election should be replaced by director's votes. All that the Government has to do is to propose a minor amendment to the definition of FC electors in the Bill in order to achieve this. A corporate or organization will have three to five or as many as 20 directors. Provided that the Government agrees to make such a move, the electorate size of some FCs may register a five-fold or even seven-fold increase.

Take the Accountancy FC to which I belong as an example. The Accountancy FC has a higher degree of representativeness since the constituency is made up of individual electors. However, I consider that there is still room for expansion of the electorate base of the accountancy FC. Recently, I have been urging members of the accountancy sector to register as an elector for the FC election, and I met an old friend on one occasion. I asked him whether he had registered as an elector, and he said that he was not eligible to register. Why? It turned out that he was a member of another association (for example, the Association of Chartered Certified Accountants) and he was also a member of CPA Australia, but not a member of the Hong Kong Institute of Certified Public Accountants (HKICPA). Therefore, he was not eligible to register as an elector.

Why is it that only members of HKICPA can become electors of the Accountancy FC? Does it mean that accountants who have received training from other professional bodies cannot represent the accountancy sector? Actually, some accounting bodies which are more maturely developed and have well-established professional examination mechanism can be included in the Accountancy FC, so that members of these bodies may become electors of the Accountancy FC. In that case, I am sure that the electorate size will exceed today's 20 000, and it will enhance the acceptability of the Member elected to the Legislative Council. However, it is useless to say this now.

Perhaps one may ask, the Central Government has already announced at the end of last year that universal suffrage would be implemented in 2017, while FCs would "die a natural death" in a decade or so, what is the point of still fighting for broadening the electorate base of FCs now? The answer is very simple, because FCs are not democratic enough, and they are an obstacle to the constitutional development in Hong Kong. Even though we are unable to root them out in one go, we should try all means to pare them off a little.

Honestly speaking, I would only be too pleased to see the election of functional constituencies being abolished tomorrow, but that is quite impossible in reality. For that reason, I will continue my relentless pursuit and guard this FC seat seized by the democratic camp after making much strenuous effort.

Deputy President, I believe that at this point, the Secretary has already jumped to the conclusion that colleagues of the democratic camp are as wild and rebellions as the Monkey King, thus he is prepared to chant the "headband spell" to subdue us. We have already experienced the "magical headband" of Secretary LAM. Secretary LAM recalls that Members of the opposition camp had voted against the constitutional reform package proposed by the Government in 2005, which has made it impossible for the Government to take forward democracy in Hong Kong, and has left us no room for the discussion on constitutional development today. This is how Secretary LAM has shifted the blame onto Members of the democratic camp and to make our life difficult.

Nevertheless, the Government's "magical headband" and "headband spell" can never obliterate our faith in pursuing a democratic political system. Disregarding whether the Government uses the "magical headband" or any other means to hinder the constitutional development in Hong Kong, it can never restrain people's aspiration for the early implementation of universal suffrage; no matter how many times the Government chants the "headband spell", they can never make us give up our principle.

Deputy President, actually, it is rather meaningless as to whether or not the Bill will be passed today. I hope the Government will stop using the "magical headband" and stop chanting the "headband spell". Instead, it should seriously sit down and discuss with the entire community how universal suffrage could be truly implemented in 2017. Will the Government learn from the benevolence of Monk TANG San-zang in *Journey to the West* and implement dual elections by universal suffrage in the overall interest of the community? I so submit. Thank you, Deputy President.

MS MARGARET NG (in Cantonese): Deputy President, if you look around this Chamber, you will find a recent statement made by a certain political party that "the Civic Party is fortunately still here" is of specific significance.

Deputy President, as pointed out by a number of colleagues earlier, the Bill involves rather technical amendments. I benefited a lot from the scrutiny of the Bill as we were given the opportunity to truly understand the real meaning of FCs, the origin of FC seats, whether or not there is a real need to retain professional contribution because we have made such contribution or, as pointed out by Vice-minister Mr ZHANG Xiaoming, whether or not people who have contributed to Hong Kong's GDP should be offered a FC seat or, as clearly indicated by a Member during the scrutiny process — he was a Member of the Provisional Legislative Council while I was not — whether or not certain people were already identified at that time as persons to be given certain powers. At least, I think this is absolutely clear in respect of corporate votes, which are basically employed as a means to offer some seats to certain specific bodies.

Why did I say so? Because during the scrutiny of the Bill, I once put the following questions to government representatives: What criteria are adopted in deciding on the persons or bodies to be qualified as electors? Why can certain specific bodies vote? On what basis was the decision made regarding which bodies can vote? Was the decision made on the basis of their names, representativeness or other considerations? The Government explained at that time that the bodies were chosen for their representativeness, scale, reputation, and so on. However, Members can see that there are flaws everywhere. First of all, the simplest flaw concerns the GDP. I have no intention whatsoever to ridicule any Member in this Chamber. However, the Agriculture and Fisheries sector, for instance, is given one seat although it accounts for 0.01% of the GDP. However, the Import and Export sector, representing 22% of the GDP, is also given one seat, and these 220 000 constituents have jointly contributed to 100% of the GDP. Even if Members were not angry with such a ridiculous conclusion, they would surely find the scrutiny process of the Bill highly entertaining.

Regarding the representativeness of those bodies, I once asked the Government this question: Will the Government be informed if the activity conducted by a certain body is no longer representative, or the scale of a certain body has diminished? Can the body still retain its seat? The reply given by

the Government at that time was positive. According to the Government, apart from conducting an annual survey, it would request those bodies to fill in certain documents or forms and return them to the Government. When we requested the Government to show us the documents or forms, we found that the Government had merely requested the bodies to fill in their names and addresses. There is simply no way to find out whether or not their activities are still representative or active, or they are still operating on a certain scale.

(THE PRESIDENT resumed the Chair)

On the other hand, some representative bodies would like to register as electors on the ground of their representativeness. The Government has often appealed to the people to register as electors. We, therefore, followed suit and appealed to others to register as electors too. However, when these bodies applied for registration as electors, they were not entertained by the Government. Therefore, the answer to the question about FCs (especially corporate votes) is very simple — it is purely a transfer of political benefits. Those people are entitled to secure seats through their own sector and allow someone to speak or vote on behalf of their interests. Simply enough, this has absolutely nothing to do with contribution.

By the same token, the most authentic and most traditional sectors — by most traditional, I was referring to those typical professional bodies and FCs (including mine) — though these are the traditional sectors, it should be time for them to retire, right? I am given to know that they will be accepted as members provided that they possess the required professional qualifications. However, where do their professional qualifications come from? These professional bodies may decide by themselves who is eligible to become a member. Provided that a person is a full member, that is, a member with voting rights, he or she would be taken as possessing the professional qualifications and eligible to vote. However, the cat is let out of the bag in the Information Technology FC because the organizations in the Information Technology FC are not allowed by the Government to make amendments even when certain people are considered by them as eligible members. Instead, the Government has made them exclude certain members by way of legislative amendments.

Here, two problems have arisen. The first one is related to professional autonomy. The Government's attitude has been insulting throughout the entire process, saying that their qualifications have been lowered. However, the relevant representatives insist that they have all along adopted the same standards, and there has been no lowering of qualifications, only that the Government does not believe them. This is the first point. Actually, the Government has offended their professional autonomy. Second, the Government has insisted that it has no intention at all to broaden the electorate. Instead, the *status quo* will be kept by all means. Once the number of electors is increased, the Government will tighten the requirements to compress the size of the electorate. Under such circumstances, the only conclusion we can draw is: The Government has given up and contravened its constitutional responsibility of developing in a gradual and orderly manner under Articles 45 and 68 of the Basic Law. When we put the relevant questions to the Government, we were told that matters pertaining to constitutional responsibility should be referred to the Commission on Strategic Development for discussion before progress could be made. In my opinion, no one would think that the Government has fulfilled its constitutional responsibility if they have read the two provisions.

Therefore, frankly speaking, President, it is really impossible for me to support the Bill. Thank you.

DR FERNANDO CHEUNG (in Cantonese): Ms Margaret NG has cited some interesting figures earlier and it turns out that the FC elections of this Council are related to economic contributions. As Hong Kong is a commercial city, the FCs are therefore essential. The Government in a bid to highlight the contributions made by the FCs has gone as far as submitting a paper during our deliberations of the Bill in which it is stated that the 28 FCs contribute as much as 90% of the GDP of Hong Kong.

This is really a stunning and ingenious move to couple economic performance with FC seats. It is absurd to a grotesque scale. For there are clearly some FCs that do not contribute at all to our GDP and these include the Heung Yee Kuk, the District Councils and so on. Members from these FCs are furious, thinking that they are looked down upon by the Government. In contrast, there are some FCs that are really awesome and one example is the Import and Export FC, a seat from the sector accounts for almost 23% of the

GDP. According to this logic, the Import and Export FC should have a few more seats. But this is not the case.

The reason is that in reality there is a vast difference between the number of voters in the FCs. From this fact it can be seen why the performance of Members from certain FCs is so different from Members from some other FCs. It can even be said that in general, these Members are so different from Members returned by direct elections in the geographical constituencies in terms of attendance of the meetings, the speeches made and the questions asked. President, if only we look at the number of their voters, we will see why there is actually no need for them to show any performance. The number of their voters is so small that discussions and consultations can be completed after holding a few tea gatherings. As a matter of fact, many of the Members from these FCs are returned uncontested without actually running in an election. Everything is settled beforehand.

President, now we are in the 21st century and Hong Kong is a self-styled Asia's world city and as we talk about a Legislative Council that is representative, it is shocking to find that there are seats in it that are returned by groups formed by so few people, and groups that are so few in number (these seats are mostly returned by corporate votes and these groups are controlled by a small circle).

President, since there are many members of the public who are not interested in it or do not have the time to read documents of this Council, so I may as well read out the number of voters in these FCs in order that the public may have some idea of that as they watch the telecast of this meeting. The number of registered voters in the Heung Yee Kuk FC is 151, the number in the Agriculture and Fisheries FC is 160, the number in the Insurance FC is 141, that in the Transport FC is 180. The labour sector has three seats and there are 556 voters. Just imagine three seats in the Legislative Council are returned from 556 votes cast. I really have a feeling that those Members of the Council returned by direct elections are being unfairly treated, for they probably become a Member only after getting some 50 000 to 60 000 votes. President, it seems to me that you have also got many votes and you are really terrific. You have tens of thousand votes. But some Members are elected just by getting some 100 votes. What kind of equivalence is that? President, is it because there is such a big gap between your contributions to the economy and those from other FC

Members? I think this is an offence not just to the President but also all other Members returned by direct elections.

Of course, I know that the Government does not only look at the economic contributions of these FCs but also their expertise and their representativeness in society. However, as these people have a certain degree of representativeness and they have the expertise and capabilities, then why do they not take part in the direct elections? Why can they not give a chance to these seats so that they can represent the interest of the public at large? To be frank, there is no justification for the existence of FCs and the only argument that can be advanced is that there was not yet any democracy when the FC was introduced, and so this system was used as a stopgap measure.

Even the Basic Law recognizes the fact that we should be heading towards universal suffrage, then why did we not take a further step towards universal suffrage when we amended the law on Legislative Council elections this year? Why did the Government have to besiege the Bill and close up on it during the deliberations and only allow certain technical amendments that had no bearing on furthering the cause of universal suffrage and democracy? Why is it that because this Council did not accept the two proposals in 2005 — actually, these two proposals are a retrogression in many aspects and they are making detours rather than progress — that there can be no gradual and orderly progress towards universal suffrage in the Legislative Council (Amendment) Bill 2007? It does not make any sense at all. If it is said that the interpretation of the Basic Law by the National People's Congress (NPC) in 2004 has barred us from increasing the number of seats returned by direct elections — that is because the number of FC seats and directly-elected seats must be in direct proportion — it is alright, but can the number of voters in the FCs be increased? If it is said that these FCs are so important and they reflect the interests of Hong Kong, why can the representative nature of these FCs not be enhanced as much as possible? Even in the principles mentioned in the interpretation of the Basic Law by the NPC, it is stated that there must be gradual and orderly progress. Since the direction is for gradual and orderly progress, then why does it remain stagnant?

In the FC which I represent, according to government information, there are some 11 000 registered voters. Actually, I should not just be representing the interests of these some 11 000 registered social workers. As a Member of this Council, I should represent the interests of Hong Kong people. By taking part in the FC election, I have the chance to be returned to this Council. I

would also like to make use of this opportunity to fight for the elimination and removal of the FCs and to return the privileges associated with small circle elections back to the people.

During the past few years, as a Member from a FC, I have my internal conflicts. Of course, taking part in FC election runs counter to the principle of fighting for democracy and universal suffrage which I hold dearly, so I had struggles about standing for the election. But I also realized that if I was to get into the Legislative Council and strive for democracy and universal suffrage, this election would be one of the possible ways. To be honest, during these years I have faced some role conflict. When the interests of the FC I represent or the interests of my voters are in conflict with the interests of the public which I think I should represent, how am I going to make a choice? Actually, FC Members are practical because for most of the time they are thinking this: if I am to stand in the election and solicit the voters' support, I must put their interests above everything. Then would such kind of conflicts appear? Yes, and there are plenty of them.

Often times government policies on people's livelihood may not be reasonable and there are also resource implications. Some of the resources may be allocated to various groups in my FC or other bodies that can employ social workers. These groups benefit from these policies, though these policies may not be entirely reasonable. Nevertheless, these groups will still come to the defence of these policies. Perhaps their consideration is that they may need government funding in the future and if they always oppose the Government, they fear that they may be placed at a very disadvantageous position. Can I not listen to these voices from the sector? However, if I look at the issue from the interests of the general public, I will find that these policies and measures are very unreasonable. We will stand up and tell the Government that this will not work. But there are voices from my sector calling me to keep silent because making noises will just upset things and the allocation of resources may cease. This kind of conflict is precisely what has appeared. That such conflicts appear in this kind of small circle FC seats is only natural and inherent. The interests of those small coteries in FCs, especially a FC with mostly corporate votes, are not necessarily in line with public interest. There may often be conflicts. This is evident in the Commercial FCs in particular. We can just see what happens in the property, construction, shipping and transport trades. If the right to vote is concentrated in the companies or the chambers of commerce, their interests

would override those of the public. In such circumstances, what can these FCs give Hong Kong? It is the protection of the interests of small coteries. On the protection of the interests of small coteries, would this be helpful to the future of Hong Kong, our constitutional development and the people's living? No, definitely not. Therefore, this explains why we are always calling for an early achievement of the goal of universal suffrage.

On this piece of legislation on the Legislative Council election, it is unfortunate that it is not heading in this direction at all and it cannot even conform to the spirit of gradual and orderly progress advocated by the Basic Law. Why should it be done in such a way? And why should they put it in such a disgruntled manner? During the deliberations, the authorities were always mentioning that it was because of our opposition to the two constitutional reform proposals made by the Government in 2005 that we now have nothing and that nothing can be changed. And Annexes I and II to the Basic Law shall continue to apply. President, nothing in Annexes I and II to the Basic Law forbids us to enlarge the number of voters for the FC seats or to move forward in the direction of universal suffrage in a gradual and orderly manner. What is universal suffrage? When more people can take part, and when the election is more popular and equal, the closer to universal suffrage we will be. If we are to protect the interests of organizations in FCs and form small circles and offer free lunches, President, what I mean are free political lunches, what good will such a system bring to Hong Kong?

President, what I wish to express is that it is very hard for me to take in the situation as it is. In 2004 when we ran for the Legislative Council election, the principles we upheld and the slogans we chanted were elections by universal suffrage in 2007 and 2008. Many Members of this Council sitting here and the major parties all stated clearly in their election platforms that their goal was to fight for elections by universal suffrage in 2007 and 2008. Now it is 2008 and this Bill on the Legislative Council election in front of me only makes some vague remarks about universal suffrage and furthering and promoting democracy. All that has been mentioned is only some technical amendments bordering on the verge of meaninglessness. This is in complete contrast to the aim and intention of my attempt to seek election to this Council. Therefore, it is very hard for me to accept the motion today.

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 not, I will now call upon the Secretary for Constitutional and Mainland Affairs to speak.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, a motion was moved on 19 December last year on the Second Reading of the Legislative Council (Amendment) Bill 2007 (the Bill) and after that, the Bills Committee, with the concerted efforts of its members, held six meetings in a short space of five weeks and completed the scrutiny of the Bill. I sincerely thank the Chairman, Mr Howard YOUNG, Deputy Chairman, Mr WONG Ting-kwong, and other members of the Bills Committee as well as colleagues in the Legislative Council Secretariat.

First, I wish to briefly sum up the main points of the Bill. The Bill mainly seeks to amend the Legislative Council Ordinance to update the electorate of functional constituencies (FCs) and make consequential amendments to the Chief Executive Election Ordinance. The major amendments involve the updating of the names of corporate electors or organizations in the existing electorate of some FCs to reflect changes. The FCs involved are Education, Import and Export, Information Technology, Transport, Sports, Performing Arts, Culture and Publication, and Wholesale and Retail.

Second, the Bill removes the Kowloon-Canton Railway Corporation from the Transport FC to reflect the Corporation's cessation of transport operation under the Rail Merger Ordinance.

Third, the Bill proposes to replace two corporate electors/organizations which ceased to exist by relevant corporate electors/organizations. The amendments involve the inclusion of the Hong Kong Sports Institute Limited into the Sports, Performing Arts, Culture and Publication FC to replace the dissolved Hong Kong Sports Development Board, and the inclusion of the Tobacco Association of Hong Kong Limited into the Import and Export FC to replace the Tobacco Institute of Hong Kong Limited which has been wound up.

Fourth, the Bill reflects a restructuring of membership of two organizations in the Information Technology FC, and contains consequential amendments to the Schedule to the Chief Executive Election Ordinance to reflect the amendments made to the composition of the relevant Election Committee subsectors.

After the Bill had been tabled to the Legislative Council, we received updated information on the corporate electors and organizations of FCs. In this connection, we have drawn up Committee stage amendments which I will move in the Committee stage later.

The Bills Committee has conducted detailed discussion on the Bill and the Committee stage amendments and listened to the views of six Information Technology organizations on the Bill.

I am very glad that the proposals made in the Bill are generally supported. The Bills Committee has also put forward a lot of valuable views on the Bill and the relevant issues. I would like to sum up and respond to a number of important issues.

A major issue discussed by the Bills Committee is whether the interpretation made by the Standing Committee of the National People's Congress (NPCSC) on 6 April 2004 in respect of Article 7 of Annex I and Article III of Annex II to the Basic Law allows room for the expansion of the electorate of FCs in the 2008 Legislative Council election. In accordance with the interpretation made by the NPCSC, if no amendment is made to the methods for selecting the Chief Executive and for forming the Legislative Council as stipulated in Annexes I and II to the Basic Law, the provisions relating to the two methods in Annexes I and II to the Basic Law will continue to apply. In 2005 we introduced a package of proposals for the methods of selecting the Chief Executive in 2007 and forming the Legislative Council in 2008. This package of proposals was drawn up after extensive and comprehensive consultation with the public and political parties.

Back in 2005 we put forward the "District Council proposal" to include all District Council (DC) members in the Election Committee for selecting the Chief Executive and enable DC members to elect from among themselves more Members of the Legislative Council to represent the views of districts. This would, in fact, indirectly broaden the electorate base. While the proposal was

supported by 60% of the public and over 50% of Members of the Legislative Council, it did not receive the required two-third majority support of Members of the Legislative Council. Therefore, the 2008 Legislative Council election should be conducted on the basis of the existing arrangements, which means that the number and composition of FCs should remain unchanged and only minor technical updates will be made. For this reason, the applications for inclusion into the electorate of FCs received after the amendment of the Legislative Council Ordinance in 2003 were not accepted.

That said, however, the Government of the Hong Kong Special Administrative Region (SAR) is fully alive to the community's aspirations and expectations for universal suffrage and considers that the work to roll forward Hong Kong's constitutional development should not be brought to a halt. In this connection, the Green Paper on Constitutional Development was published in the course of the first six months of the current term Government to consult the public on the models and timetable for implementing universal suffrage. We later published the Report on the Green Paper Public Consultation, and the Chief Executive also submitted a report to the NPCSC. Having considered the Chief Executive's report, the NPCSC promulgated on 29 December 2007 a decision that appropriate amendments may be made to the methods for selecting the Chief Executive and for forming the Legislative Council in the year 2012, and that the Chief Executive may be elected by universal suffrage in 2017 and the Legislative Council may be formed by universal suffrage in 2020. We are actively discussing the two electoral methods in 2012 through the Commission on Strategic Development.

In fact, Madam President, it is not the wish of the SAR Government to see the 2008 Legislative Council Election basically remaining stagnant, as things now stand today. As we can see, competition will be very keen for the 60 seats in this fourth election of the Legislative Council this year, and political parties have been discussing whether they should contest the election under one, two, or more lists. This is precisely why, back in 2005, I repeatedly stated to various political parties and groupings, including leaders of the opposition parties and groupings, that we had the duty to open up new channels for people in the second or third echelons of various political parties and groupings to join politics and that the creation of the 10 seats for this very purpose would be vitally important to the constitutional development of Hong Kong. But regrettably, our advice was not taken on board at the time and as a result, no progress can be made this year. However, there is now a timetable for implementing universal suffrage, and appropriate amendments may be made to the electoral methods in 2012. I

hope that one day if the creation of new seats or broadening of the representativeness of the elections is proposed in respect of the electoral methods in 2012 and in particular, the composition of the Legislative Council, Members will not again stubbornly hold onto their misguided course. I hope they will make concerted efforts for the further development of democracy in Hong Kong and forge a consensus.

On the other hand, during the discussion of the Bills Committee some members expressed concern over the criteria for delineation of electorate of FCs as well as their composition, such as the criteria for including an organization as a corporate elector.

In the previous amendment exercises for the Legislative Council Ordinance, if the amendments involved the electorate of FCs, the relevant factors had been taken into consideration in light of the circumstances of individual FCs. When considering the composition of corporate electors in FCs, factors being taken into account generally include nature of business, scale of operation, track record and experience, involvement in the relevant sectors, as well as the situation of similar bodies in that FC.

We had also made reference to the latest developments in the community and the sectors concerned, including changes to the statutory registration and licensing systems. In considering the relevant amendments, the Government had provided detailed explanations to the Legislative Council and gauged Members' views. Organizations and representatives from the relevant sectors could also express their views in this process. So, there were ample opportunities for the Legislative Council, the relevant sectors and the public to take part in discussions and express their views in the process of delineating the electorate of FCs.

The Bills Committee has invited six Information Technology organizations to attend the meeting to express their views on the Bill. I would like to respond to the views of these organizations.

Regarding The Institution of Engineering and Technology Hong Kong (IETHK)'s view on the proposed amendments to Section 20Z of the Legislative Council Ordinance, (Appendix 1) I wish to reiterate that the relevant amendments proposed in the Bill are in line with the general direction that the number and composition of the existing FCs will remain unchanged in the 2008 Legislative Council election.

On the other hand, regarding the views of The Information Systems Audit and Control Association Limited (ISACA) and the Professional Information Security Association (PISA) on the proposed amendments to the Legislative Council Ordinance, I wish to point out that the two organizations were included in the Information Technology FC as umbrella organizations through the Legislative Council (Amendment) Ordinance 2003. As we clearly explained to the relevant Bills Committee back then, given the "specialist" nature of the two organizations, we considered it appropriate to only allow experienced members who were holders of the recognized certification to be registered electors. Following our discussion with the Bills Committee, the Legislative Council agreed that in order to be eligible for registration as an elector in the Information Technology FC, an ISACA member must be holders of the Certified Information Systems Audit Certification for four years or more and a PISA member must also be holders of the Certified Information Systems Security Professional Certification (CISSP) for four years or more.

As regards ISACA's proposal to delete the qualifying period requirement and PISA's proposal to delete the requirement of having attained the qualification of CISSP, we consider that their proposals should not be processed in the current legislative exercise as they would broaden the electorate of the Information Technology FC.

As for the proposal made by the other three organizations of opening up the Information Technology FC for all IT professionals to become eligible for registration as electors, as I have explained earlier, insofar as the 2008 Legislative Council election is concerned, as the number and composition of the existing FCs will basically remain unchanged, the proposal to broaden the electorate of the Information Technology FC will not be processed in the current amendment exercise. On the various proposals to broaden the electorate, we will consider them together with the other views received at a later stage in the course of examining the method for forming the Legislative Council in 2012.

In his speech Mr SIN Chung-kai particularly asked whether the Government intended or attempted to manipulate the Information Technology sector or the electorate and votes in the Information Technology FC. I wish to point out that the 28 FCs have 30 seats with a total of 220 000 registered electors. The Information Technology FC alone already has over 4 900 registered electors while the number of eligible electors is 7 200. Mr SIN

Chung-kai or other Members may consider that there are not many electors in this FC, but disregarding whether the electorate is composed of 220 000 electors or just a few thousand electors, manipulation by the Government or anyone else is still impossible. As Members can see, Mr SIN Chung-kai has won in the election for many times. Facts do speak louder than words.

Mr Ronny TONG particularly brought up again issues relating to the IETHK. I wish to stress again that under the IETHK's latest proposal, the new requirement for its membership will increase the number of electors in the FC by almost 1 000. Before the end of last year and before the Bill was tabled, the IETHK told the Bureau that they would accept the proposals in the Bill. So, they have not been subject to any pressure from the SAR Government, as we have discussed this with each other.

Mr LEUNG Kwok-hung particularly mentioned Proverbs of the Bible and drew my attention to it. I wish to respond also by citing from Proverbs 16:9: "A man's heart deviseth his way: but the LORD directeth his steps." I think in Hong Kong, the community has been trying for some time to devise the way for implementing universal suffrage. Now that a timetable for implementing universal suffrage has been provided, and it is already very clear as to in which direction we will move forward and how we should make a start. There is indeed a way for us to go and achieve our aim. In fact, a lot of constitutional or political developments in Hong Kong do not come by easily. "One country, two systems" does not come by easily. The stability and prosperity of Hong Kong today do not come by easily. The timetable for implementing universal suffrage that we now have in Hong Kong, which sets out that the Chief Executive will be selected by universal suffrage in 2017 and the Legislative Council formed by universal suffrage in 2020, does not come by easily. I, therefore, hope that Mr LEUNG Kwok-hung or other Members will not belittle the achievements that have been made by Hong Kong.

The speeches made by Members in this debate today are quite amazing. Apart from Mr LEUNG Kwok-hung who cited from the literature of Christianity, Miss TAM Heung-man also talked about *Journey to the West*. I read *Journey to the West*, but I must make it clear that I do not think that I can be in any way compared to Monk TANG San-zang. The comparison drawn by Miss TAM Heung-man may be an overstatement of the Government, and this may not be entirely fair to the Legislative Council because Monk TANG San-zang is the hero while the demons that appeared in *Journey to the West* are

the villains. Apart from wishing to be the Monkey King, I wonder if Miss TAM has ever wished to become one of the other demons, such as Princess Iron Fan. I think she may not wish to. But speaking of *Journey to the West*, Monk TANG San-zang ultimately assisted the disciples to receive enlightenment and forgiveness for their sins after he had retrieved the Buddhist scriptures in India. Now that we have a timetable for implementing universal suffrage, and I believe with the concerted efforts of Members, constitutional development may also achieve "enlightenment" one day in that apart from the timetable, there will also be the roadmap and the model for implementing universal suffrage.

Madam President, subject to the passage of the Bill, we will make continuous effort to actively commence the work of the 2008 Legislative Council election, while ensuring that the election will be conducted under the principles of fairness, impartiality and openness in line with past practices.

Madam President, I implore Members to support the Second Reading of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Legislative Council (Amendment) Bill 2007 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Ronny TONG rose to claim a division.

PRESIDENT (in Cantonese): Mr Ronny TONG has claimed a division. The division bell will ring for three minutes, after which the division will start.

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

PRESIDENT (in Cantonese): Will Members please check

MR LEUNG KWOK-HUNG (in Cantonese): I pressed the wrong button.

PRESIDENT (in Cantonese): You pressed the wrong button? How would you like to vote?

MR LEUNG KWOK-HUNG (in Cantonese): I wish to press the "No" button.

PRESIDENT (in Cantonese): You may now press the right button.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you.

PRESIDENT (in Cantonese): You can do it now. Have you done it?

MR LEUNG KWOK-HUNG (in Cantonese): Yes. My apology.

PRESIDENT (in Cantonese): If there are no queries, voting shall now stop and the result will be displayed.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the motion.

Mr LEE Cheuk-yan, Ms Margaret NG, Mr James TO, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Ronny TONG, Miss TAM Heung-man and Mrs Anson CHAN voted against the motion.

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

THE PRESIDENT announced that there were 33 Members present, 20 were in favour of the motion and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Legislative Council (Amendment) Bill 2007.

Council went into Committee.

Committee Stage

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

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2007

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Legislative Council (Amendment) Bill 2007.

CLERK (in Cantonese): Clauses 1 and 3 to 6.

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.

(Members raised their hands)

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 and 7 to 10.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move the deletion of clause 2 and amendments to clauses 7 to 10.

The amendments can be classified into three categories. The first category of amendments intends to reflect the most up-to-date information of corporate electors/organizations. Earlier, the Registration and Electoral Office (REO) has sought updates on records from corporate electors/organizations in functional constituencies (FCs) listed in the Legislative Council Ordinance. In consideration of the updated records, we propose to make amendments to clauses 7, 8 and 9 of the Bill to reflect the changes in the names of four corporate electors/organizations and delete two corporate electors/organizations which have ceased operation or been dissolved.

In view of the time of the resumption of the Second Reading of the Bill, the second category of amendments is proposed to delete the provision on the date of commencement in clause 2.

The third category of amendments is proposed given that the Hong Kong Mass Media Professionals Association Limited under item 30 of Part 3 of Schedule 1B of the Chief Executive Election Ordinance has been dissolved. I have mentioned just now the proposed amendment to clause 8 of the Bill on the deletion of this association. It is necessary to amend clause 10 of the Bill accordingly in order to include a consequential amendment to the Chief Executive Election Ordinance.

The Bills Committee has been consulted and members of the Bills Committee have no objection to the proposed amendments. I urge Members to vote in support of these amendments.

Proposed Amendments

Clause 2 (see Annex II)

Clause 7 (see Annex II)

Clause 8 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (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 Constitutional and Mainland Affairs 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)

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

CHAIRMAN (in Cantonese): As the amendment to clause 2, which deals with deletion, has been passed, clause 2 is deleted from the Bill.

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 of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 6A.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam Chairman, I move that new clause 6A be added to the Bill.

Proposed Addition

New Clause 6A (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 6A 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2007

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

Legislative Council (Amendment) Bill 2007

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 Legislative Council (Amendment) Bill 2007 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): Legislative Council (Amendment) Bill 2007.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 30 April 2008.

Adjourned accordingly at seventeen minutes past Nine o'clock.

Annex I

MAINLAND JUDGMENTS (RECIPROCAL ENFORCEMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	<p>(a) By deleting “Make provisions for” and substituting “Give effect to the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Agreements between Parties Concerned made between the Supreme People’s Court of the People’s Republic of China and the Government of the Hong Kong Special Administrative Region (as amended from time to time), and for that purpose to make provisions for”.</p> <p>(b) By deleting “which afford reciprocal treatment to judgments given in Hong Kong;” and substituting “and”.</p> <p>(c) In the English text, by adding “to provide” before “for matters connected”.</p> <p>(d) In the Chinese text, by deleting “；並利便” and substituting “，及利便”.</p> <p>(e) In the Chinese text, by deleting “在內地執行” and substituting “在內地強制執行”.</p>
2(1)	<p>By deleting the definition of “recognized Basic People’s Court” and substituting –</p> <p style="padding-left: 40px;">““recognized Basic People’s Court” (認可基層人民法院) means any Basic People’s Court which is specified in a list published in the Gazette under section 25(1) from time to</p>

time;”.

- 2(1) By adding –
- ““chosen court” (選用法院) means the court or any of the courts specified in a choice of Mainland court agreement or choice of Hong Kong court agreement, as the case may be, as the court to determine a dispute to which the agreement applies;”.
- 2 By deleting subclause (2).
- 3(1) By deleting “designating a court in Hong Kong” and substituting “specifying the courts in Hong Kong or any of them as the court”.
- 3(2) By deleting “designating a court in the Mainland” and substituting “specifying the courts in the Mainland or any of them as the court”.
- 5(2) By deleting paragraph (a) and substituting –
- “(a) the judgment is given on or after the date of the commencement of this Ordinance by –
- (i) a chosen court which is a designated court;
 - (ii) a designated court upon a transfer of the case under the law of the Mainland from a chosen court;
 - (iii) a designated court upon an appeal against a judgment of the case given by –
 - (A) a chosen court; or
 - (B) a court to which the case has been transferred under the law of the Mainland from a chosen court; or
 - (iv) a designated court upon a retrial of the case which has been tried in –

- (A) a chosen court; or
- (B) a court to which the case has been transferred under the law of the Mainland from a chosen court;”.

- 5(2) In paragraph (b), by deleting “judgment is given pursuant to a choice of Mainland court agreement” and substituting “relevant choice of Mainland court agreement is”.
- 5(2) In paragraph (e), in the Chinese text, by deleting the comma at the end and substituting a full stop.
- 5(2) In the Chinese text, by deleting “而有關的判定債權人提出證明令原訟法庭信納下述規定已獲符合” and substituting “則在有關判定債權人提出證明令原訟法庭信納若干規定已獲符合的情況下，原訟法庭須命令將有關內地判決按照本條例登記，該等規定為”。
- 5(2) In the Chinese text, by deleting “則原訟法庭須命令將該判決按照本條例登記。”。
- 6(1) By deleting paragraph (d) and substituting –
“(d) it is a judgment given in a retrial by a designated court of a level higher than the court whose judgment has given rise to the retrial.”.
- 7(1) By deleting everything after “shall be” and substituting “2 years.”.
- 7 By deleting subclause (2) and substituting –
“(2) The time limit specified under subsection (1) shall be calculated –
(a) where a period for performance of the

Mainland judgment has been specified in the judgment, from the last day of the period; or

- (b) in any other case, from the date from which the judgment takes effect.”.

- 14(1) By deleting “A” and substituting “Subject to section 15, a”.
- 17(1) By deleting “may specify” and substituting “shall specify”.
- 18(1) By deleting “the Court of First Instance shall set aside the registration of the judgment if the party has proved to the satisfaction of the Court of First Instance” and substituting “the registration of the judgment shall be set aside if the Court of First Instance is satisfied”.
- 18(1) In paragraph (c), by deleting “choice of Mainland court agreement pursuant to which the judgment was given” and substituting “relevant choice of Mainland court agreement”.
- 18(1) By deleting paragraph (f) and substituting –
- “(f) the judgment debtor who did not appear in the original court to defend the proceedings –
- (i) was not summoned to appear according to the law of the Mainland; or
- (ii) was so summoned but was not given sufficient time to defend the proceedings according to the law of the Mainland;”.
- 18(1) In paragraph (h), by adding “or an arbitral award on the same cause of action between the parties has been made by an arbitration body in Hong Kong” after “Hong Kong”.

- 18(1) In paragraph (i), by deleting “has been made by an arbitration body” and substituting “on the same cause of action between the parties has been made by an arbitration body in a place outside Hong Kong”.
- 18(1) In paragraph (k), in the Chinese text, by deleting the comma at the end and substituting a full stop.
- 18(1) In the Chinese text, by deleting “原訟法庭須將該判決的登記作廢”.
- 19 By deleting “the party has proved to the satisfaction of the Court of First Instance” and substituting “the Court of First Instance is satisfied”.
- 21 By deleting subclause (1) and substituting –
- “(1) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by –
- (a) the Court of Final Appeal or the High Court which is a chosen court;
 - (b) the Court of Final Appeal or the High Court upon a transfer of the case under the law of Hong Kong from a chosen court; or
 - (c) the Court of Final Appeal or the High Court upon an appeal against a judgment of the case given by –
 - (i) a chosen court; or
 - (ii) a court to which the case has been transferred under the law of Hong Kong from a chosen court,

the High Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(1), issue to the judgment creditor a certified copy of the judgment.”.

21 By deleting subclause (2) and substituting –

“(2) Where a judgment creditor intends to enforce in the Mainland a Hong Kong judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) and the judgment is given on or after the date of the commencement of this Ordinance by –

(a) the District Court which is a chosen court;
or

(b) the District Court upon a transfer of the case under the law of Hong Kong from a chosen court,

the District Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed by the rules of court made under section 23(2), issue to the judgment creditor a certified copy of the judgment.”.

25 In the heading, by deleting “**recognized**”.

25(1) By deleting “the recognized Basic People’s Courts” and substituting “Basic People’s Courts for the purposes of this Ordinance”.

New By adding –

**“25A. Special provisions for chosen courts
becoming or ceasing to be recognized
Basic People’s Courts**

(1) If any chosen court was not a recognized Basic People’s Court at the date of the choice of Mainland court

agreement, the chosen court shall not be regarded as a recognized Basic People’s Court for the purposes of this Ordinance even though the chosen court has subsequently become a recognized Basic People’s Court.

(2) If, in relation to any Mainland judgment, any chosen court was a recognized Basic People’s Court at the date of the choice of Mainland court agreement and it remained as such at the date of the judgment, the chosen court shall be regarded as a recognized Basic People’s Court for the purposes of this Ordinance even though the chosen court has subsequently ceased to be a recognized Basic People’s Court.”.

Schedule 2,
section 2

In the proposed Order 71A, in rule 1, in the definition of “choice of Mainland court agreement”, “judgment creditor”, “judgment debtor”, “Mainland”, “Mainland judgment”, “original court” and “registered judgment”, by deleting “2(1)” and substituting “2”.

Schedule 2,
section 2

In the proposed Order 71A, in rule 1, by deleting the definition of “identity card”.

Schedule 2,
section 2

In the proposed Order 71A, in rule 3(1)(a)(ii), by deleting everything after “copy of the” and substituting “relevant choice of Mainland court agreement;”.

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 3(1)(a)(iv) and substituting –

“(iv) where the judgment creditor is a body of persons, the documents specified for the purposes of this sub-subparagraph in paragraph (2);”.

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 3(2) and substituting –

“(2) The documents specified for the purposes of

paragraph (1)(a)(iv) are –

- (a) if the judgment creditor is a body of persons incorporated, formed or established under the law of Hong Kong, a verified or certified or otherwise duly authenticated copy of its certificate of incorporation or similar documents;
- (b) if the judgment creditor is a body of persons incorporated, formed or established under the law of any place other than Hong Kong, a verified or certified or otherwise duly authenticated copy of documents stating that its incorporation, formation or establishment was in accordance with the law of the place where it was so incorporated, formed or established.”.

Schedule 2,
section 2

In the proposed Order 71A, in rule 11(1), by deleting “In the case” and substituting “Subject to paragraph (2), in the case”.

Schedule 2,
section 2

In the proposed Order 71A, by deleting rule 11(2) and substituting –

“(2) Where –

- (a) the Court has under section 5(2) of the Ordinance ordered a part of a Mainland judgment to be registered; and
- (b) the registration has not been set aside under section 18 or 19 of the Ordinance,

then notwithstanding rule 3, any application subsequently made for registration of any other part of the judgment under section 5(1) of the Ordinance shall be supported by an affidavit specified for the purposes of this paragraph in

paragraph (3).

(3) An affidavit specified for the purposes of paragraph (2) shall –

- (a) cite the Mainland judgment;
- (b) state to the best of the information or belief of the deponent –
 - (i) that the sum of money ordered to be paid under the part of the judgment sought to be registered under the application is due; and
 - (ii) any other information relevant to the application; and
- (c) exhibit a copy of the last order made by the Court under section 5(2) of the Ordinance for registration of any other part of the judgment.”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 1, in the definition of “choice of Hong Kong court agreement”, by deleting “2(1)” and substituting “2”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 1, in the definition of “Mainland”, by deleting “2(1)” and substituting “2”.

Schedule 2,
section 2

In the proposed Order 71B, in rule 2(2)(a), by deleting everything after “copy of the” and substituting “relevant choice of Hong Kong court agreement;”.

Schedule 2

By deleting the cross-heading “**Foreign Judgments (Restrictions on Recognition and Enforcement) Ordinance**” immediately before section 3.

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|--------------------------|--|
| Schedule 2 | By deleting section 3. |
| Schedule 2,
section 4 | In the proposed rule 6(1) of Order 42, in the English text, by deleting “in the Court” and substituting “the Court”. |
| Schedule 2,
section 4 | In the proposed rule 6(2)(a) of Order 42, by deleting everything after “copy of the” and substituting “relevant choice of Hong Kong court agreement;”. |
| Schedule 2,
section 4 | In the proposed rule 6(6) of Order 42, in the definition of “choice of Hong Kong court agreement”, by deleting “2(1)” and substituting “2”. |
| Schedule 2,
section 4 | In the proposed rule 6(6) of Order 42, in the definition of “Mainland”, by deleting “2(1)” and substituting “2”. |

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional
and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the clause.
New	By adding - <p style="margin-left: 40px;">"6A. Composition of the Agriculture and Fisheries Functional Constituency</p> <p style="margin-left: 80px;">(1) Item 59 of Schedule 1 is repealed.</p> <p style="margin-left: 80px;">(2) In the English text, item 71 of Schedule 1 is repealed and the following substituted -</p> <p style="margin-left: 120px;">"71. The Hong Kong Branch of the World's Poultry Science Association."."</p>
7	By adding immediately before subclause (1) - <p style="margin-left: 40px;">"(1A) Item 1 of Schedule 1A is repealed and the following substituted -</p> <p style="margin-left: 80px;">"1. Parking Management and</p>

Consultancy Services

Limited."."

8 By adding -

"(1A) Item 6 of Part 1 of Schedule 1B is repealed and the following substituted -

"6. Kwai Tsing District Sports Association Limited."."

8 By adding -

"(2A) Item 27 of Part 3 of Schedule 1B is repealed and the following substituted -

"27. The Hong Kong Intellectual Property Society Limited."."

8 By adding -

"(2B) Item 30 of Part 3 of Schedule 1B is repealed."

9(2) In the proposed item 49 of Schedule 1C, in the Chinese text, by adding "(1970)" after "鞋業".

9 By adding -

"(4A) Item 91 of Schedule 1C is repealed."

10

By adding -

“(3) Section 12(2)(d) of the Schedule
is amended by repealing “30,”.

Appendix 1**REQUEST FOR POST-MEETING AMENDMENTS**

The Secretary for Constitutional and Mainland Affairs requested the following post-meeting amendment

Lines 1 and 2, third paragraph, page 219 of the Confirmed version

To amend "..... view on the proposed amendments to Section 20Z of the Legislative Council Ordinance," as "..... view on the proposed amendments to Section 20Z(1)(f) of the Legislative Council Ordinance " (Translation)

(Please refer to lines 2 and 3, last paragraph, page 6526 of this Translated version)