

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 30 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.

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

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

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, S.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 BERNARD CHAN, G.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

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

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

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

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 EDWARD YAU TANG-WAH, J.P.
SECRETARY FOR THE ENVIRONMENT

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

CLERKS IN ATTENDANCE:

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

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is not present. Clerk, will you please ring the bell.

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

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

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>
Clubs (Safety of Premises) (Exclusion) (Amendment: Club-Houses in Government Premises) Order 2008	91/2008
Securities and Futures (Financial Resources) (Amendment) Rules 2008	92/2008
Fugitive Offenders (Australia) (Amendment) Order 2007 (Commencement) Notice	93/2008
Merchant Shipping (Prevention of Air Pollution) Regulation (Commencement) Notice	94/2008
Merchant Shipping (Prevention and Control of Pollution) (Fees) (Amendment) Regulation 2007 (Commencement) Notice	95/2008

Other Papers

No. 90 — Audited Statement of Accounts together with the Director of Audit's Report of the Language Fund for the year ended 31 August 2007

No. 91 — Supplemental Report of the Public Accounts Committee on Report No. 49 of the Director of Audit on the Results of Value for Money Audits
(April 2008 - P.A.C. Report No. 49A)

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007

Report of the Bills Committee on Energy Efficiency (Labelling of Products) Bill

ADDRESSES

PRESIDENT (in Cantonese): Address. Dr Philip WONG, Chairman of the Public Accounts Committee, will address the Council on the Committee's Report No. 49A.

Supplemental Report of the Public Accounts Committee on Report No. 49 of the Director of Audit on the Results of Value for Money Audits (April 2008 - P.A.C. Report No. 49A)

DR PHILIP WONG (in Cantonese): Madam President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 49A today. This Report is supplemental to PAC Report No. 49, and contains our findings on the two chapters in the Director of Audit's Report (Audit Report) No. 49 concerning the Hong Kong Tourism Board (HKTB).

The PAC held 15 public hearings totalling 46 hours between 13 December 2007 and 26 February 2008, and subsequently a number of internal meetings to discuss the evidence gathered by the PAC and make our conclusions and recommendations accordingly.

In the course of the Committee's consideration of the Audit Report, Ms Clara CHONG, former Executive Director (ED) of the HKTB, and Mrs Grace LEE, former Deputy Executive Director (DED) of the HKTB, had raised concerns about the fairness of the PAC's proceedings in their responses to questions at the PAC's public hearings and in their solicitors' letters addressed to the PAC. The PAC's Report gives an account of the issues raised by them as well as the PAC's response.

I now succinctly report the conclusions and recommendations made by the PAC following an examination of the issues identified in the Audit Report and the related issues further revealed at the public hearings.

After our examination, the PAC finds that there was a lack of good corporate governance and good management in the HKTB. The PAC also finds that there were problems and deficiencies in the HKTB's planning, execution and evaluation of marketing activities. The PAC considers that the Board of the HKTB, the Administration, and the top management of the HKTB had all played a part in the multifarious problems and irregularities in the governance and management of the HKTB. The PAC considers that the problems and irregularities are negative examples for all who have the responsibility to use public funds and, in particular, publicly-funded statutory organizations similar to the HKTB.

On the whole, the PAC is of the view that the Board and the top management of the HKTB should be condemned for the lack of good corporate governance and good management in the HKTB. The PAC is also seriously concerned and finds it unacceptable that the Administration had failed to play its role effectively over the governance, in particular funding control, of the HKTB.

Madam President, I would like to stress that the objective of the whole exercise of the PAC's examination of the Audit Reports is that the lessons learned from past experience and the PAC's comments on the performance of the public officers or other personnel concerned will enable the Government to improve its control over the expenditure of public funds. As such, the PAC has examined in depth the responsibilities for the lack of good corporate governance in the HKTB, so that our conclusions and recommendations can serve as reference for those who are responsible for the use of public funds as well as the personnel in charge of publicly-funded statutory organizations.

Having conducted our examination, the PAC is of the view that the Board of the HKTB, as the governing body of the HKTB, should have the responsibility of monitoring the performance of the HKTB management and, in that context, to demand from the management a high standard of corporate governance. In this regard, the PAC is astonished and considers it unacceptable that the Board had failed to detect the problems and irregularities in the HKTB's governance and management, or to set a good example in upholding the principles of good corporate governance for the HKTB management to follow.

The PAC is also of the view that the Administration should be held responsible for the lack of good corporate governance in the HKTB due to its failure to put in place a mechanism to ensure that the controlling officer for the subvention to the HKTB effectively performed her roles and responsibilities.

In addition, the PAC considers that the top management of the HKTB should be held directly responsible for the deficiencies in corporate governance and the irregularities found in the management of the HKTB, as it had failed to ensure that the HKTB adopted high standards of corporate governance, effective operations, compliance and administration. It had also failed to put in place systems and mechanisms that facilitated the achievement of such standards.

In particular, the PAC condemns the former ED of the HKTB as she had failed in her duties as the HKTB's chief executive officer. The PAC is also gravely dismayed that her level of prudence and extent of knowledge in the management of a subvented organization in the public sector fell far short of the standard expected of an administrative head of a publicly-funded statutory organization.

With respect to the former DED of the HKTB, the PAC is of the view that being the deputy head of the HKTB and the Secretary to the Board, she should have a special responsibility over the problems and deficiencies in the corporate governance of the HKTB. The PAC also condemns the former DED as she had failed to perform her duties and roles.

Madam President, this is the PAC's third report concerning the corporate governance and management issues of a publicly-funded statutory organization in recent years. The first was the one on "Corporate governance and Headquarters administration of the English Schools Foundation (ESF)". The second was the one on "Administration of the Hong Kong Applied Science and

Technology Research Institute Company Limited (ASTRI)". In the ESF, ASTRI and HKTB, there are government officials sitting on their governing body, yet various problems and irregularities in their corporate governance and management had been identified. This reflects and the PAC is seriously concerned that the mere appointment of government officials to serve as members of the governing body of publicly-funded statutory organizations does not guarantee that there will be high standards of corporate governance and management in such organizations.

In view of this, the PAC has made a series of recommendations in our Report on how to ensure that the governing body, the government representatives serving as members of the governing body, and the chief executive officer of a publicly-funded statutory organization can effectively perform their roles and duties.

In relation to the provision of an executive medical plan for the former ED of the HKTB and her family, the PAC observes the irregularities that the executive medical plan concerned had not been approved by the Financial Secretary, although according to the HKTB Ordinance, the remuneration and other terms of appointment of the ED of the HKTB shall be subject to the approval of the Chief Executive, who has delegated the authority to the Financial Secretary. Furthermore, the benefits of the executive medical plan for the former ED were better than the benefits of the corporate medical plan specified in her employment contract. According to the contract, the ED was only entitled to the medical and dental benefits as set out in the employees' handbook of the HKTB.

Having examined the matter thoroughly, the PAC is of the view that the former Chairman, former ED, former DED of the HKTB and the Administration should all be held responsible for the provision of the executive medical plan. The details are set out in our Report.

The PAC strongly urges the HKTB to actively consider whether it can recover the difference in premium between the executive medical plan and the medical and dental insurance plans specified in the employees' handbook of the HKTB. In the light of the PAC's findings concerning the provision of that medical plan, the PAC also strongly urges the Administration to consider whether the matter should be referred to any law-enforcement agency for follow-up action.

Madam President, I would like to point out that, according to the PAC's confidentiality undertaking, members agree that, in relation to the consideration of the Audit Reports, they will not disclose any matter relating to the proceedings of the PAC that is classified as confidential, which shall include any information on discussions or deliberations at its meetings, other than at meetings held in public. Regrettably, before the PAC completed our work and made our Report, there had been newspaper reports which appeared to report on the results of the PAC's internal deliberations, leading to the suspicion or even belief that the contents of such reports came from persons who were involved in the PAC's work.

The PAC has conducted an internal investigation to ascertain if any of its members had breached the PAC's confidentiality undertaking, but the PAC has not come to any conclusion.

The PAC takes a serious view of members' undertaking to maintain confidentiality in the interest of its credibility. The PAC has earlier invited the Rules of Procedure (CRoP) to explore ways to prevent unauthorized disclosure of information relating to the internal deliberations and draft reports of committees of the Legislative Council. We hope that the CRoP will make recommendations in this regard as soon as possible.

Madam President, as always, the PAC has made its conclusions and recommendations in this Report with the aim of ensuring the achievement of value for money in the delivery of public services.

Lastly, I wish to register my appreciation of the contributions made by members of the PAC. Our gratitude also goes to the representatives of the HKTb and the Administration, as well as all the relevant persons who have attended before the PAC. In addition, the PAC is grateful for the assistance and constructive advice given by the Legal Adviser and the Clerk of the PAC. We are also grateful to other staff of the Legislative Council Secretariat, as well as the Director of Audit and his colleagues, for their unfailing support and hard work.

Thank you.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Elderly Persons in Residential Care Homes Being Defrauded of CSSA Payments

1. **MR KWONG CHI-KIN** (in Cantonese): *President, in the current financial year, the Government will provide additional one month's standard rate Comprehensive Social Security Assistance (CSSA) payments for CSSA recipients and a one-off grant of \$3,000 for each Old Age Allowance (OAA) recipient. However, the media discovered that some private residential care homes for the elderly (RCHEs) had free access to the bank deposits of some of their elderly residents because they paid the home fees with their CSSA payments. Some of these RCHEs had, without those elderly persons' authorization, deducted the additional month's CSSA payments, which were provided to them by the Government last year, for paying home fees. Such elderly persons were therefore unable to enjoy the Government's payouts. In this connection, will the Government inform this Council:*

- (a) *regarding the above incidents of unauthorized deduction of elderly persons' CSSA payments by RCHEs, whether the Social Welfare Department (SWD) has taken any action, such as penalizing the RCHEs concerned and demanding them to return the CSSA payments concerned to the elderly persons;*
- (b) *focusing on the above problem, whether the Government will consider amending the Code of Practice for Residential Care Homes (Elderly Persons) (the Code), such as stipulating that if the elderly persons pay the home fees with their CSSA payments, the RCHEs concerned can only collect one month's CSSA payments from them as home fees each month, in order to protect the elderly persons concerned; and*
- (c) *of the measures and ways the authorities have in place to ensure that the additional CSSA payments and OAA provided in the current year to the elderly persons concerned will not be wrongfully deducted by RCHEs?*

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

- (a) In 2007, the SWD received a total of 11 complaints and two enquiries relating to RCHEs using the additional one-month CSSA payments to subsidize home fees. Upon receipt of such enquiries and complaints, the Licensing Office of Residential Care Homes for the Elderly (LORCHE) of SWD had taken immediate follow-up actions, which included explaining the situation to the enquirers and investigating into the complaints. Of the 11 complaints received, four were found substantiated, one was settled through negotiation between the concerned RCHE and the complainant, and the remaining six were either due to misunderstanding or found unsubstantiated by LORCHE. For those substantiated cases, LORCHE had requested concerned RCHEs to return the over-charged home fees to the elderly and immediately improve the fee collection procedure and so forth. All enquiries and complaints were properly handled.
- (b) The SWD has provided clear guidelines on the fee charging arrangements of RCHEs in the Code. Chapter 8 of the Code stipulates that written consent and authorization should be sought from the resident and his/her guardian, guarantor, family members or relatives for possessions or property stored or held on behalf of every resident by the RCHE, including Hong Kong Identity Card, medical follow-up card, bank passbook, and so on. Such consent and authorization should be sought either at the time of admission or as it becomes necessary, and should be properly documented. Moreover, RCHEs should not use the money in or withdraw money from the bank account of a resident for any purpose, including payment of home fees and other charges, unless a written consent and authorization of the resident and his/her guardian, guarantor, family members or relatives is obtained. Besides, by virtue of section 16 of the Residential Care Homes (Elderly Persons) Regulation, RCHEs should establish and maintain a comprehensive system of updated records of possessions or property stored or held on behalf of every resident, and make them readily available for LORCHE's inspection.

To remind RCHE operators that they must strictly adhere to the requirements of the Code, LORCHE issued a Guideline on Handling of Elderly Residents' Possessions and Collection of Fees and Charges (the Guideline) to all private RCHEs in May 2006, setting out in detail the special arrangements required to be made by RCHEs in handling residents' personal financial matters such as payment of home fees. These arrangements include:

- (i) If the resident is capable of handling his/her personal financial matters, he/she can make an informed decision to authorize the RCHE concerned to withdraw money from his/her bank account on his/her behalf for the purpose of payment of home fees and other charges. The RCHE should document a record of the written consent and authorization concerned, as well as set up and strictly enforce a well-developed monitoring system, whereby the RCHE operator should regularly examine the accounts, bills and receipts for such payments. Such accounts should be made readily available to the resident, his/her family members, LORCHE inspectors, the caseworker and relevant officers of SWD for inspection.
- (ii) If, for whatever reasons, the guardian, guarantor, family members or relatives of a mentally capable resident cannot personally handle the payment of home fees for him/her, they can sign an authorization letter to entrust someone or the RCHE with the matters relating to the payment of home fees and other charges.
- (iii) If a resident is certified by a registered medical practitioner as mentally incapable and is unable to handle personal financial matters, the RCHE should arrange for an independent third party such as his/her guardian, guarantor, family members or relatives, or entrust a social worker of the Integrated Family Service Centres or a medical social worker to handle the payment of home fees for the resident.

In the light of the Government's announcement of providing an additional one-month standard rate CSSA payments in the 2007-2008 Budget, LORCHE issued letters to private RCHEs in May 2007, reminding them that the additional CSSA payments were not intended for subsidizing home fees.

LORCHE made further amendments to the Guideline in April 2008, clearly stipulating that RCHEs are strictly forbidden to adopt a pricing policy without specifying the actual amounts, such as charging the total CSSA payment as the home fee or charging a fee equivalent to the CSSA amount granted by the Government. RCHEs admitting CSSA recipients must ensure that the monthly home fees for the CSSA recipients are within their means. RCHEs are also forbidden to draw on the long-term supplement or any of the additional standard rate payments granted to CSSA recipients for subsidizing their home fees. The Guideline was issued to all RCHEs on 8 April this year.

- (c) Upon approval of the concerned funding by the Finance Committee of the Legislative Council, SWD will issue a letter to RCHE operators again, reminding them that the provision of additional CSSA payments is a one-off relief measure of the Government for CSSA recipients and that the additional payments cannot be used for subsidizing home fees. Also, LORCHE will step up its inspection efforts and issue advice or warning to the RCHE concerned if any non-compliance is found.

If the situation remains unchanged after the issuance of advice or warning, SWD may, by virtue of section 19(1) of the Residential Care Homes (Elderly Persons) Ordinance (the Ordinance), require the RCHE to comply with the directions within a specified period and rectify the situation to ensure that it is operated and managed satisfactorily or the welfare of its residents is promoted in a proper manner. If no improvement is made by the RCHE within the specified period, SWD may consider prosecution. Upon conviction, the person-in-charge of the RCHE is subject to a maximum fine of \$100,000 and imprisonment for two years. He/she may also be liable to a fine of \$10,000 for each day during which the offence continues. The Director of Social Welfare may

direct that the premises concerned shall cease to be used as a residential care home if he is convinced that the RCHE has not complied with the directions specified in the notice issued under section 19(1) of the Ordinance.

For suspected cases of financial abuse or fraudulent activities concerning elderly residents' possessions, which involve RCHE operators or staff members, SWD will refer them to the police for criminal investigation and follow-up.

In addition, SWD has been in touch with The Elderly Services Association of Hong Kong (ESAHK) on this issue. ESAHK issued a letter to its members on 31 March 2008 reminding the sector to handle this matter carefully and pointing out that without a clear basis, RCHEs should not use the additional CSSA payments of residents to subsidize home fees.

MR KWONG CHI-KIN (in Cantonese): *President, after listening to the Secretary's reply, I wonder whether the relevant prosecution policy is too lenient. If so, how can we be assured that similar incidents will not occur in the future? Although four cases were found substantiated, they were settled after the parties concerned returned the over-charged fees to the elderly persons and none of the parties concerned were punished and prosecuted. The current practice is that, letters are issued by the authorities telling RCHEs that they cannot do so and that the CSSA payments are not subsidies but a grant for the elderly. If RCHEs disregard the notice and act against the regulation and law, the Government would issue advice or warning to the RCHEs concerned. The Government would consider giving the direction only if no improvement is made, and if the situation remains unchanged within a specified period, the Government may consider prosecution. Is such lenient policy not tantamount to conniving at these reckless RCHEs?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, we are indeed very concerned about the issue. In fact, according to our experience last year, just as I said in the main reply, actually, only four cases were substantiated. In these four cases, the RCHEs concerned had returned the

over-charged one-month CSSA payments to the residents and the cases were satisfactorily settled after our advice and intervention. However, we have learnt from that experience and so, besides issuing the notice this year, we have, as Members can see, also made amendments to the Code, and stipulated in the Guideline that from now on, RCHEs should not use the CSSA payment as the basis of the home fees, and the actual amounts of the home fees should be specified in order to avoid confusion.

If there is still non-compliance after we have done all the work in this regard, we will proceed with vigorous enforcement actions. So, in view of the experience of the past year, we have conducted a lot of publicity, promotion and education work beforehand, and we will deal with non-compliant and law-breaching operators seriously.

MR KWONG CHI-KIN (in Cantonese): *May I ask the Secretary to clarify whether the reply given by the Secretary just now was different from the main reply? The Secretary said earlier that all non-compliant RCHEs would be prosecuted, but it was a different case in the main reply. According to the main reply, prosecution would only be initiated after repeated warnings and directions. Can the Secretary please clarify this?*

PRESIDENT (in Cantonese): You should not ask whether or not the Secretary can clarify this point. You should ask the Secretary to answer your question directly.

MR KWONG CHI-KIN (in Cantonese): *Yes, President, thank you.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I have explained in the main reply the general procedure. From last year's experience, we will look into the situation of each case before giving advice and warning; if all our efforts are in vain, we have to resort to enforcement actions. The existing legislation has empowered the Director of Social Welfare to initiate prosecution. We will pull no punches in dealing with suspected cases of financial abuse or fraudulent activities, and such cases will be referred to the police for follow-up. I believe the situation this year will definitely be improved, as there are also efforts made by Members. We have

put across this clear message through this Council. We have discussed this issue at meetings of the Panel on Manpower, and we have also put across this message in the question and answer session during the examination of the Budget. Besides, the ESAHK also values its reputation and integrity. After making all these efforts, I believe the situation this year should be under control and there will not be many complaints in this regard.

MS LI FUNG-YING (in Cantonese): *President, may I ask the Secretary whether he can express more clearly about the iron-fist approach that the Administration will adopt this year, that is, instead of giving people an impression that the authorities are acting sluggishly as the main reply indicates, enforcement actions will be taken against the RCHEs concerned whenever non-compliance is found?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, we will consider carefully the circumstances of each individual case and we will conduct investigation first. After we have investigated and learnt about the relevant situation, we will not let the RCHEs concerned get away with it easily if they are found to be dishonest, fraudulent, or committing ignorant human errors or engaging in other circumstances. We will definitely deal with such matters seriously.

MS LI FUNG-YING (in Cantonese): *President, the Secretary has not answered my supplementary question. Even though four cases were found substantiated in 2007, no penalty was imposed. The Government has considered taking remedial actions in 2008, but my question was, if complaints are found substantiated in 2008, will the Government take the iron-fist approach instantaneously?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I have made it very clear that the threshold of criminal prosecution is very high. This is criminal prosecution, and the offender would be liable to a maximum fine of \$100,000 and imprisonment for a term of two years. If such a threshold is met, prosecution will definitely be initiated. We are discussing the matter on its merits and targeting the facts. If there is sufficient evidence, we will definitely take actions according to the law.

DR YEUNG SUM (in Cantonese): *Madam President, I would like to ask about the four cases found substantiated in 2007. Will the Government make public the names of the offending or non-compliant RCHEs, or have their names uploaded on the websites concerned for public information?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, we do have these websites. Dr YEUNG was right about this, we would upload the information of those non-compliant RCHEs. Since the full implementation of the Ordinance in 1997, 50 RCHEs had been successfully prosecuted. We have already uploaded the information to the Internet, but we can only upload information on successfully prosecuted cases.

DR FERNANDO CHEUNG (in Cantonese): *President, just now the Secretary mentioned in his replies that the authorities would have to look into the matter first, then they would issue advice and warning, and they would initiate prosecution only if all efforts were in vain. President, what they did were unlawful acts to embezzle the elderly persons' assets. It has never occurred to me that our law enforcement agents will first look into the case when a person is found to have broken the law (of course this is reasonable), and then issue an advice to tell the person that taking others' money is not right, and then issue a warning saying that taking others' money is really not right; and under the circumstance that all efforts are in vain, someone will say that this and this will happen if you take other people's money, and prosecution will only be initiated under such circumstance.*

President, those elderly persons are most vulnerable and most in need of help. Some reporters have made 300-odd phone calls, and among 200-odd RCHEs, 70% have responded that they would do so, and it could be noticed that this practice is already far too widespread. President, I would like to ask the Government this: Just now some colleagues have asked whether we should take stringent enforcement actions, instead of issuing advices, warnings and taking enforcement actions only when all efforts are in vain?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, just now I have made it very clear that we would adopt a more serious approach to deal with the issue. As Members may know, we have discussed the

matter twice or three times on various occasions in this Council and we will accord a high degree of importance to the issue. If any similar incident occurs, we would be seriously concerned about it. If there is sufficient evidence, just as I have said earlier, we absolutely will not tolerate these operators and we will take actions according to the law.

DR FERNANDO CHEUNG (in Cantonese): *Will the Secretary please answer my supplementary question directly, as some of our colleagues have also asked this question. Will the Government take direct law enforcement actions?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, of course we have to look into the matter first before issuing a warning. If there is evidence, we will definitely take actions according to the law, and our procedure is just as simple as that. Before initiating prosecution, we have to look into the matter and see if the person involved is really unclear about the relevant legislation, or he has the intent to breach the law knowingly and willfully. The intent is an important factor; we can initiate prosecution successfully only if it is proved that the person concerned has the intent to breach the law. It is not that simple.

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

MR JAMES TO (in Cantonese): *May I ask the Secretary, from the experience of law enforcement, whether the low discovery or prosecution rate was attributed to the fact that these people are incapable of protecting themselves, or the content of the authorization is always vaguely written? In fact, under the current design of the system, these cases will never be unearthed; moreover, the authorities can initiate prosecution only when there is sufficient evidence, but these people have acted against the law knowingly and willfully. If a case cannot be clearly established that these people had embezzled other people's money, is it that the authorities cannot initiate any prosecution at all? May I ask the Secretary to give a clear reply on whether the legislation can stipulate that a vaguely written authorization shall be deemed null and void? By so doing, those people who are incapable of reporting such cases could be protected, as it is difficult for*

family members or guardians who only paid an occasional visit to the elderly persons to discover the problem. Will the Secretary provide a stronger legal basis in this respect and enforce the law vigorously? At this moment, it is very difficult to find out a case, and even if some cases are found, no prosecution will be initiated, so who would be afraid of that? These people will keep on embezzling the elderly's money "incidentally", and every case is more or less the same.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I wish to thank Mr TO for his supplementary question.

With the experience gained in the past year, the revelation of these cases through the media this year and the early warning system, we have completed all the preparation work. If similar incidents occur after we have provided the additional CSSA payments and the one-off payout of \$3,000 for the elderly persons, we will definitely pull no punches. First of all, we have issued notices to all RCHEs, and we have publicized through the media by stating clearly that the guideline has been amended in that the home fees cannot be entirely pitched at the CSSA payment. At present, many RCHEs adopt this approach in charging home fees, that is, elderly persons have to pay the home fees with their CSSA payments, and the amount of home fees is equivalent to the CSSA amount received by the elderly. However, they are now forbidden to do so. They have to specify the actual amounts of the home fees, say, \$5,000 or \$4,000. After all these support measures are put in place, if similar incidents occur this year and if the RCHEs concerned still say that they are not aware of the content of the guideline, I believe such an excuse will not work anymore. I believe that the situation will be improved after we have put across such a message this year.

PRESIDENT (in Cantonese): Second question.

Default Payment of MPF Contributions

2. **MR LAU CHIN-SHEK** (in Cantonese): *Will the Government inform this Council:*

- (a) *whether it knows the number of claims filed by the Mandatory Provident Fund Schemes Authority (MPFA) to the Small Claims Tribunal and various levels of courts in each of the past three years to recover from employers Mandatory Provident Fund (MPF) contributions in arrears, as well as the amounts involved;*
- (b) *whether it knows among the above cases, the number of those in which the claims were allowed but the employers concerned had failed to settle the arrears in accordance with the court judgments and the amounts involved, and the number of those in which the arrears had successfully been recovered eventually and the amounts involved, broken down by the various means of execution of judgments (including charging orders against premises, garnishee orders, writs of fieri facias and winding up and so on); and the administrative costs incurred by the MPFA in dealing with such cases each year, as well as the grades and number of staff involved; and*
- (c) *of the new measures the authorities have in place to further improve the situation of defaulted payment of MPF contributions?*

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

- (a) The number of claims filed by the MPFA to the Small Claims Tribunal and various levels of courts to recover from employers the MPF contributions in arrears in the past three years starting from 2005-2006 are 997, 1 127 and 1 227 respectively. The amounts involved are around \$36 million, \$62 million and \$71 million respectively.
- (b) The claims were allowed in all the above cases. Of these, the number of cases in which the employers concerned had failed to settle all or part of the arrears in accordance with the court judgments are 510, 553 and 260 respectively. The amounts involved are around \$11 million, \$16 million and \$5 million respectively.

On the cases where the employers have failed to settle the arrears in accordance with the court judgments, the actions taken by the MPFA to execute the court judgments include applying for seizure of employers' assets through bailiff actions, applying for garnishee orders to freeze the employers' bank accounts, applying for charging orders to obtain the money from the sale of employers' assets and applying for winding-up.

In the past three years, the number of cases where applications were made by MPFA for bailiff action to seize the employers' assets were 320, 301 and 400 respectively and the number of cases where amounts were successfully recovered were 102, 84 and 88 respectively. The number of cases where applications for garnishee orders were made in the past three years were 126, 165 and 169 respectively and the number of cases where amounts were successfully recovered were 33, 35 and 41 respectively. The MPFA started to use charging order to execute the judgment a year ago. The MPFA made five applications for charging orders in the past year, and funds were successfully recovered in one of those cases. Regarding applications for winding-up, the MPFA did not make any formal applications for winding-up of employers in the past three years, but it has issued "Statutory Demand" in three cases to indicate that it would formally file application for winding-up if the employer concerned cannot repay the debt by the date specified in the Statutory Demand. One of the employers repaid all the arrears after the Statutory Demand was issued. The employers in the other two cases were wound up by third parties at the same time, and the MPFA filed proof of debt in those cases to recover the arrears on behalf of the employees. The MPFA does not keep statistics of the total and respective amounts recovered through different means of executing the judgments.

The figures above are set out in the table at Annex for Members' reference.

The MPFA has a dedicated team of about 200 staff of different grades and ranks (including inspectors, officers and executive assistants) to assume responsibility for the recovery of arrears and

related work, including making applications for executing the court judgments against employers who did not pay the arrears in accordance with the judgments.

- (c) The MPFA is committed to taking vigorous enforcement actions against non-compliant employers and enhancing the intensity and effectiveness of the enforcement actions through different measures. In the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 passed in January this year, and the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 which is currently being scrutinized by the Legislative Council, we have proposed a number of legislative amendments to enhance the enforcement actions of the MPFA, in particular to increase penalties against breaches, and to expedite the handling of default contribution cases. These proposals include:
- (i) enhance MPFA's power to require production of information from employers and other persons for enforcement actions;
 - (ii) remove the settlement period to expedite recovery of outstanding contributions;
 - (iii) increase the maximum penalty against default contributions to a fine of \$350,000 and imprisonment for three years;
 - (iv) in cases where the employers failed to remit the deducted wages as mandatory contributions, to further increase the maximum penalty to a fine of \$450,000 and imprisonment for four years;
 - (v) impose liability on employers for payment of contributions in non-enrolment cases, with a maximum penalty of a fine of \$350,000 and imprisonment for three years for non-compliance;
 - (vi) increase the maximum penalty against non-enrolment to a fine of \$350,000 and imprisonment for three years;

- (vii) empower the MPFA to recover past outstanding contributions in non-enrolment cases;
- (viii) empower the Court to issue order to direct employers to rectify non-enrolment and/or non-payment of mandatory contributions and contribution surcharge;
- (ix) make it an offence if the employers failed to comply with the court order, who will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued;
- (x) extend the liability of officers concerned in the management of the company under section 44 of the Mandatory Provident Fund Schemes Ordinance to include cases where the company concerned commits the offence of non-compliance with court order. The officers concerned will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued; and
- (xi) make it an offence if employers provide false pay-records to employees, who will be subject to a maximum penalty of a fine of \$100,000 and imprisonment for one year on first conviction and to a fine of \$200,000 and imprisonment for two years on each subsequent conviction.

Moreover, the MPFA has increased resources and manpower to enhance efficiency in handling the arrears recovery cases. The MPFA will continue to review and improve different measures in the light of actual operational experience so as to enhance the effectiveness of the enforcement actions and better protect the employees' interests.

Annex

Year	The number of cases where claims for arrears were made through Courts at different levels	The amounts claimed	The cases in which the claims were allowed but the employers concerned had failed to settle all or part of the arrears in accordance with the court judgments		The percentage of amounts not settled
			Number of cases	Amounts not settled	
2005-2006	997	\$36,071,555	510	\$11,039,261	30.6%
2006-2007	1 127	\$62,625,508	553	\$16,408,019	26.2%
2007-2008	1 227	\$71,230,051	260	\$5,137,608	7.2%

Means of executing the court judgments	Number of cases in which applications were made to recover arrears		
	2005-2006	2006-2007	2007-2008
Application for bailiff actions to seize the employers' assets	320	301	400
Application for garnishee order	126	165	169
Application for charging order	-	-	5
Issuing statutory demand	-	1	2

MR LAU CHIN-SHEK (in Cantonese): According to part (b) of the Secretary's main reply, the measures adopted by the authorities seem to be not very effective, with only about one third or even less of the arrears being recovered. May I ask whether the authorities will adopt measures to file criminal charges against directors? May I ask whether the MPFA has made any application in the past two years to file criminal charges against the executive directors of companies? If it has, can the Secretary inform us of the number and the successful rate?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Under section 44 of the Mandatory Provident Fund Schemes Ordinance now, if it can be proved that the offence concerned has been committed with the connivance or consent of the officer of the company concerned or the person operating the company, the officer or the person concerned also commits the offence. In the past, the MPFA did institute

prosecutions against directors or persons in the management of the companies. In 2006-2007, of the 430 summons issued by the MPFA, 105 (about a quarter) were issued to company directors and persons in the management of the companies and 13 of them were convicted. We hold that with the existing mechanism and stringent enforcement of the measures I outlined just now, we can effectively take enforcement actions against directors in this regard.

MISS CHAN YUEN-HAN (in Cantonese): *I hope that our Secretary for Financial Services and the Treasury Prof K C CHAN can pay a visit to labour organizations to have a better understanding of the situation he mentioned just now. In his reply to Mr LAU Chin-shek just now he said there were 100-odd such cases but ultimately only 10-odd directors were convicted. This is a problem. Let me cite an example. Sing Pao Daily News is a typical case. The incident happened in 2006, but the Government ultimately could do nothing about it. The MPFA did not take action until recently, telling Sing Pao Daily News to settle the arrears within four months, or else it would apply for winding-up of the company. Has the Secretary enquired about this incident with the MPFA?*

Madam President, my supplementary question is about parts (b) and (c) of the Secretary's main reply. I think he has not made an effort to penalize or take actions against non-compliant employers, and many grey areas and loopholes were created as a result; and the Financial Services and the Treasury Bureau has not faced the problem squarely either. The Secretary should be aware that we are currently scrutinizing an amendment bill on MPF and the Legislative Council has introduced a Committee stage amendment to require the Government to invoke other ordinances to amend the definition of director. May I ask the Secretary whether or not he will support our amendment?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): If we look at the entire recovery of arrears and the overall experience of the MPFA, many arrears — for example 90% of the arrears — have been recovered after investigations and negotiation by the MPFA. We can see in many examples that even for the outstanding arrears, that is, the remaining 10% of the arrears, we have tried to recover them through various procedures. On the whole, Members can see from the table in the Annex that with our enforcement efforts, the effectiveness has been improving year after year.

Regarding the liability of the directors, as I said in my reply to Mr LAU Chin-shek's supplementary question just now, under the current Mandatory Provident Fund Schemes Ordinance, directors have to bear criminal liability if the offence is committed with their connivance; and we have instituted prosecutions in such cases. Regarding the Member's various concerns, such as how to impose more liabilities on the directors and how to make a definition of director, these involve many issues and I am afraid I cannot provide an answer in such a short time. However, I have to emphasize that when it comes to the definition of director, we in fact have a set of definitions, such as the definitions of overseas director and local director, which are prescribed under the Companies Ordinance. Moreover, as Hong Kong is a highly internationalized community, directors may thus be locals or non-locals. Regarding how to determine the liabilities of the directors, I believe the existing MPF-related ordinances are based on the criminal liabilities as referred to in the laws of Hong Kong. We should thus use the same basis to look at this issue. I think many of the proposals put forth in our amendments this year are the result of on going discussions with Members, employers and employees, and the labour sector has also given us many views. If these views can be incorporated in legislation earlier and the legislation can be enacted sooner, I believe it will become an effective tool to combat unscrupulous employers.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the problem of defaulted payment of MPF contributions has long existed. Although the Government says that it can institute prosecution, as in the case of Sing Pao Daily News where the company was ultimately intimidated into settling the arrears. However, I think the most important thing is how we can take preventive actions to enable the employees to be aware sooner that their employers have defaulted on payment, and institute prosecution as early as possible to reduce the amount of arrears, rather than providing remedies after the problem has emerged. In this connection, may I ask the Secretary whether he will review the operation of the entire MPF Scheme, and in particular, strengthen the communication between the trustees and the employees to render it possible for the latter to be aware of defaulted payment by their employers earlier and institute prosecution? In this connection, will the authorities conduct a thorough review to improve the situation?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Talking about the history of the MPF Scheme, we have found many problems about its operation and have reviewed it continuously. In this regard, I believe many Members are aware that we have been maintaining communication with Members, committees and the public, and have continuously adopted many measures. Many efforts have been made, such as introducing legislative amendments, imposing heavier penalties and making changes to the settlement period, and all of these measures are taken in this direction.

More specifically, regarding the Member's concern just now about how to enable employees to be aware earlier of the status of their account, let me cite an example. In September last year, after discussion with the trustees, an enquiry hotline named MPF Contribution Enquiry Line was set up. By simply calling this hotline, the employees can be connected directly to the hotline centre or voice response system of their trustee and they can easily check the contribution status of their MPF account for the past three months. This is one example. I wish to assure Members that we have conducted on going reviews as we implement the MPF Scheme, and Members can see that the performance in many regards has improved substantially.

MR LEE CHEUK-YAN (in Cantonese): *President, I think the Secretary has advanced to a higher level. He now knows how to brush aside the issue by simply saying that they have conducted on going review; and many Directors of Bureau have also said so. However, may I ask the Secretary whether he admits that the performance is poor? For example, the Secretary said in part (b) of the main reply that by means of bailiff actions, only a quarter of the cases were successful in recovering arrears; by means of garnishee orders, only a quarter of the cases were successful; and by means of winding-up, only three Statutory Demands were issued in those years, and the successful rates were all very low. I heard a figure just now and I am puzzled. Of the 430 summons issued, 105 were issued to directors and only 13 directors were convicted. The successful rate is distressingly low. Will the Secretary admit the fact that neither the civil nor criminal proceedings instituted have been effective and the successful rates of these two means are both very low? The Secretary said that reviews would be on going, but he could not show us the result. May I ask the Secretary whether he admits that the effectiveness of both civil and criminal prosecution is dissatisfactory? Should the Secretary take his so-called on going reviews more seriously?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I think we need to look at the issue as a whole. For example when I said in fact, the default cases which needed to be settled through the Court only accounted for a small number, and 90% of the cases have been settled by subsequent to negotiations between our enforcement team and the employers. The most difficult cases are those remaining ones. We find that the remaining cases, for instance, those involving the garnishee orders, are most difficult. If we look at it this way, I find the overall figures rather satisfactory, and the performance is improving each year. We need to conduct on going reviews and we have done so. For instance, the amendments that we introduced in the Legislative Council this year contain many proposals and we have incorporated into them views from many Members and other stakeholders (such as the labour sector). I believe that expediting legislation can give us more power to collect information and impose greater criminal liability on directors. I believe this will bear fruit. We hold that the amendments we have proposed this time around are the result of our on going reviews. I hope the Legislative Council can expedite the passage of these legislative amendments so that we can proceed with our work.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered why only 13 directors were convicted out of the 105 directors prosecuted? In other words, the Secretary has not answered the question in relation to the effectiveness of criminal prosecution.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Perhaps let me provide further information in a written reply. (Appendix I) However, in some cases, one director may have received several summons and so, the true picture may not be reflected that easily.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. We now proceed to the third question.

Increasing Flight Movements

3. **MR HOWARD YOUNG:** *Madam President, it has been reported that during the Easter holidays this year, the daily flight movements at the Hong Kong International Airport reached a record of 906 and 945 on 20 and 21 March respectively, which far exceeded the daily average of 810 movements. In this connection, will the Government inform this Council:*

- (a) *of the extra resources (including manpower) allocated by the authorities to handle the extra flight movements during the above long holidays;*
- (b) *whether the authorities will consider maintaining the above high record of daily flight movements on an ongoing basis, instead of following the plan announced in May 2007 to increase the runway capacity gradually to 58 movements per hour by 2009 and then to 68 movements per hour by 2015; if they will, of the details of their plan to maintain the record; if they will not, the relevant constraints; and*
- (c) *given that in the discussion paper for the meeting of the Council's Panel on Economic Development on 17 March 2008, the authorities have indicated that they are working out the additional manpower resources to implement the recommendations of the consultancy study on Hong Kong airspace and runway capacity on further enhancing the runway capacity, what considerations the authorities will take into account in working out the manpower requirements, and when a detailed proposal will be submitted to the relevant committees of the Council for consideration?*

SECRETARY FOR TRANSPORT AND HOUSING: Madam President,

- (a) The Air Traffic Management Division (ATMD) of the Civil Aviation Department (CAD) is responsible for providing air traffic control (ATC), flight information and other related services within the Hong Kong Flight Information Region on a 24-hour basis. On a normal day, between 7.45 am and 10 pm during which the great majority (about 80%) of total daily movements take place, 103 ATC staff members are required to work in two shifts to ensure the safe

and orderly flow of air traffic. On 20 and 21 March 2008, when the Easter traffic peaked, an average of about 6% extra manpower was provided each day between 7.45 am and 10 pm to cater for the increase in flight movements. The extra manpower was made available through various temporary measures, such as curtailment of leave for staff, ad hoc extension of duty time and reduction of training activities, all of which are not sustainable in the long term.

- (b) As I have just explained, the high movement records during the Easter holidays were achieved through temporary redeployment of extra manpower to reinforce the ATC operations. With the existing manpower resources in the ATMD, the CAD cannot maintain such high movement levels on an on going basis. However, it is worth noting that the additional flights during the Easter holidays mainly made use of unutilized runway slots during non-peak hours (for example, between 9 am and 10 am and between 8 pm and 12 midnight). When demand warrants, the CAD will continue to flexibly deploy its manpower resources to cater for the additional flights as far as possible.

The Financial Secretary announced in the 2008-2009 Budget speech the proposal to increase runway capacity to 58 movements per hour by 2009, and then gradually to 68 movements per hour by 2015. The Administration sees little room for expediting the plan taking into account the time required to introduce a wide range of improvement measures, such as the adoption of a more systematized and standardized approach in the ATC operations, re-sectorization of airspace, establishment of a new ATC position to enhance the existing local flow control arrangement, improvement in flight operational practices, and so on. Also, all concerned parties will need to be properly trained and get familiarized with the new procedures. The CAD will also need to conduct detailed assessments to confirm the safety aspects of these new measures. With the commissioning of the new ATC Centre by end of 2012, we anticipate that the enhanced functional features and improved system capacity of the new ATC system will allow room for further increasing the runway capacity.

- (c) The Administration reviews from time to time the manpower resources required to ensure safe, orderly and expeditious flow of air traffic in Hong Kong. To cater for the forecast growth in air traffic in the short to medium term, funding has been earmarked to create 32 Air Traffic Control Officer (ATCO) posts in the next five years. To achieve the target of 68 movements per hour by 2015, we envisage that the CAD would need additional air traffic management posts. We are working out the required manpower resources, taking into account the growth in air traffic, flight movement patterns, the required improvement measures, the infrastructure development plan at the Hong Kong International Airport, as well as the necessary manpower to implement the safety management procedures. In coming up with the number of posts, we will also need to take into account the five-year training required to turn a new recruit into a qualified ATCO, and the CAD's training capacity which is constrained by the number of on-the-job training positions and qualified instructors available. We will seek the required resources through the established procedures within this financial year.

MR HOWARD YOUNG (in Cantonese): *Madam President, as I have pointed out in the main question, there is a daily average of 810 flight movements. I have made the calculations and divided up the number of 945 flight movements by 24 hours and that comes to only some 30 movements per hour. The number does not strike one as large. The Secretary has said in part (b) of the main reply that the peak hours are from 9 am to 12 midnight (that is, lasting for 16 hours). If the 945 movements are divided by 16 hours, there is an average of 59 movements each hour. This has already exceeded the current standard, though I do not have the hourly breakdown at hand.*

I would like to ask the Secretary, since the CAD could do such a good job in Easter, that is, on 21 March with respect to flight movements and this has received wide acclaim from the aviation sector, does this prove that if flight movements are to increase, our hardware is sufficient to cope with it and it is only that the software, that is, manpower and if human resources are also sufficient, would this show that the original plan of the Secretary to reach the target of 58 movements an hour next year is too conservative?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I would think that this plan is balanced and one that attaches primary importance to safety.

Mr Howard YOUNG was right earlier because increasing manpower is really an important factor if the flight movements are to increase. However, manpower cannot be increased on the spur of the moment, why? As I have explained earlier in the main reply, when a trainee ATCO is to become a licensed "skilled worker", the person has to undergo training for five years and he or she has to obtain several licences by passing examinations. When they undergo training, initially some part of the training can be done through simulation. But most part of it is on-the-job training, which means that they are to receive their training while working in their positions. Now we can train 20 trainee ATCOs during a specific period of time and that is a constraint for us.

Besides, the Member has just mentioned hardware. With respect to hardware, we are constantly making improvements, one of which is the introduction of a brand new ATC system in 2012. Another important thing is airspace management. We have a tripartite group composing of relevant parties in Hong Kong, Macao and the Mainland whose task is to improve our airspace management. It is hoped that through these various channels, there can be improvements made.

As for the hourly average of 68 movements we are talking about, that does not take into account the improvements made in ATC which has further room for improvement.

MR LAU WONG-FAT (in Cantonese): *President, will the Government inform this Council whether or not the relevant authorities have made any assessment of the impact of the introduction of direct links across the Taiwan Straits on the number of flights and passenger volume at the Hong Kong International Airport during the normal days and the holidays?*

PRESIDENT (in Cantonese): This supplementary question is treading somewhat on uncertain grounds. However, I am sure many Hong Kong people would like to know the answer. Secretary, please give a reply if you can, and if you do not have the information at hand, you may also give a written reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I think I can give a reply to this question.

There is bound to be a certain impact of the policy of "Three Direct Links" across Taiwan Straits on aviation and logistics sectors in Hong Kong. Our initial estimates are that the main destinations of flights from Taiwan to the Mainland via the Hong Kong airport are: Beijing, Shanghai and Fujian. The impact on passengers going to these destinations is likely to be greater. As to the extent of the actual impact, it will have to depend on the actual arrangements made for direct flights to destinations on both sides of the Straits as well as the extent of actual increase in traffic and trade volumes after the improvements in cross-straits relationship. In other words, the greater the trade volume, the more benefits it will bring to us in the long term.

As for air freight, it is estimated that cross-straits direct flights will have a greater impact on cargo transhipped via Hong Kong, the reason being that transshipment of this sort of cargo will only take place at the Hong Kong International Airport and no other logistic procedures are involved. Having said that, passenger flights between Hong Kong and Taiwan are very busy and many options are open to our air cargo with a great degree of flexibility, as almost half of the air cargo now is carried by passenger aircraft and not just carried by cargo aircraft. So if we can keep up with the frequency of the flights, I am sure we still have a competitive edge in terms of air cargo transport.

In the long run, if cross-straits relations are marked by stability and concord, economic activities on both sides of the straits should be able to forge ahead and overall trade and cargo volume should go up. We are certain that with the rich experience in logistics and commerce, Hong Kong should be able to benefit if we can seize the opportunities available.

MR TOMMY CHEUNG (in Cantonese): *President, I wish to ask the Secretary, if the average flight movements of 54 per hour in 2007 is increased to 58 in 2009 and 68 in 2015 as has originally been proposed by the Government, have the authorities made any estimation about the additional resources needed, including the human resources, if one flight movement is increased for every hour?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, according to the information I have at hand, assuming we have got the resources to increase 32 ATCOs, that would allow us to increase movements to 58 per hour. We are still working on the resources required if the movements are increased to 68 per hour. This does not just mean human resources, as I have said, but also thanks to the Legislative Council for funding approval as well as the new ATC system to be introduced by 2012. These resources are also pivotal to whether the overall movements can be increased.

MR TOMMY CHEUNG (in Cantonese): *Madam President, can the Secretary give us a written reply later to supplement such information? After she has worked out all the figures, would she then give the relevant information to us?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I will do that, but I think I should need some time. (Appendix II) We will hold a meeting with the Legislative Council Panel on Economic Development later. The reason is that as extra resources are needed, there is certainly a need to hold a meeting with the Panel first.

MS MIRIAM LAU (in Cantonese): *President, in recent years there have been robust developments in the aviation industry and competition is very keen. Many airports around the world are constantly expanding, for example, those in Britain, Singapore and Beijing will complete their new passenger terminal one after another. Global demand for ATC personnel is very acute. In order to cope with the increase in flights, the Secretary has mentioned in the main reply that the CAD will need to recruit additional staff.*

I would like to ask the Government this: Are any difficulties encountered when these staff members are recruited? When more such staff members are to be recruited later on, has the Government made any preparation in advance? The Secretary in the main reply said that the Government will seek the required resources, but what I am asking in this supplementary question is not about money matters but whether or not there is enough manpower available.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, with respect to increasing manpower, what we do is to recruit some trainee ATC staff members locally and give them the training so that they can become licensed officers later. The training is very tough and five years are required. Fortunately, many people are interested and there are a large number of applicants. I would reckon that the current situation in recruitment is such that we can pick one successful candidate out of almost every 100 applicants.

The selection process in the CAD is very stringent, for the reason that not every person's ability or personality is suitable to be an ATCO. If Members have a chance to visit our ATC Centre, they will sense the great pressure of the ATC staff members. They have to talk with a number of pilots at the same time. They must stay calm because what they are handling are matters of great importance. This is also a process that requires a great deal of precision as well.

I have just said that training is one restraint. However, in terms of the existing procedures, we have increased the number of trainee ATCOs for training at one time to 20. We give them the best training and we can see they show a commitment to the job. Our attrition rate is about 5% to 10% on average and this is quite acceptable as compared to other ranks and grades.

MR JEFFREY LAM (in Cantonese): *The Secretary in her response has said that time is needed to train these ATC staff members, but if movements can only be increased by 14 after eight years, many people would think that the progress is too slow. When recruiting civil servants, is the Government hampered by the localization policy and so not many ATC staff from overseas are employed, hence resulting in such a slow increase in flight movements? Can the Government give a reply to that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, now we still have a certain number of overseas employees. Many of them have been employed since the commissioning of the new airport in Chek Lap Kok. But 70% of them have left Hong Kong since. As they are employed as contract staff, they will take many factors into consideration, such as the wage level and even the exchange rate of the Hong Kong dollar. All these will be

considered. On the attrition rate, among the group of local trainees hired and trained to be ATCOs, the attrition rate is lower. Therefore, the CAD will continue to recruit staff in this way.

As for the figures which Mr LAM has cited, what we are saying are the figures concerning the increase in movements per hour, that is, from 58 flights to 68 flights. So the increase is quite substantial for the whole year. As I have already said, with improvements in airspace management, together with the new ATC system, there will be room for further increasing flight movements.

MR ALBERT CHENG (in Cantonese): *Among major airports in the world with two runways, the Hong Kong International Airport ranks the lowest in the flight movements it handles. The Secretary has said that the target is to reach 58 movements. However, the Guangzhou airport is handling 101 movements. President, the Beijing airport is originally planned to handle 1 000 movements for one year and it also has two runways. Now as the Olympic Games are soon to be held there, they have increased movements to 1 100, but no movements are allowed at night at the Beijing airport. In contrast, our Chek Lap Kok airport operates round the clock but it can only handle 800 movements.*

The supplementary question raised by Mr Jeffrey LAM is a good one and it is about the reasons why we do not hire overseas employees. But the Secretary does not give any answer to that. If overseas employees are hired, the problem can be solved. Why is the Government dodging this solution? I would like to ask the Secretary to give a reply to this.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, perhaps let me first talk about flight movements at the Hong Kong International Airport. I do not think we can make a simple comparison with other airports which also have two runways, because the conditions under which our airport operates are quite different. For an airport which is not surrounded by any high mountains, their flight movements will certainly be higher. But our airport is flanked by high mountains and within the relatively small area, there are also other ATC areas and other airports. Hence, with respect to operations, the degree of complexity is not the same. We have not dodged the question of recruiting foreigners and we can certainly consider that when needed.

As I have said, foreigners coming to Hong Kong to work are to undergo training as well. When foreign ATC personnel come to Hong Kong, they cannot start working right away and they will also need to undergo a period of training. In the long run, they have a higher attrition rate after they have arrived here and completed the training. An example I have quoted is of the foreign ATCOs recruited in 1997, 70% of them have left since.

If recruitment and training can be done locally, in the long run, we can have a group of local staff with a low attrition rate and this seems to be more of an advantage to us. However, we have not ruled out the possibility of hiring overseas people should the need arise.

MR ALBERT CHENG (in Cantonese): *President, I would like to know under what circumstances there will be such a need. Our supplementary questions, including the one asked by Mr Jeffrey LAM, are: why are overseas personnel not employed? She said in reply that they will be hired should the need arise, but when actually will such a need arise?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, our target is 68 movements per hour by 2015 and if we think that there is a risk that this target cannot be reached, that is, it cannot be reached through local recruitment and training, then we will certainly consider overseas recruitment. However, with such a great number of applications, that is, the number of applications which I have just mentioned, plus the low attrition rate, it seems that there is no such need at present.

PRESIDENT (in Cantonese): We have used more than 19 minutes on this question. Now the Fourth question.

Provision of Parks Which Admit Dogs

4. **MR DANIEL LAM** (in Cantonese): *Madam President, it is noted that since its commissioning in April last year, the dog park at the Wan Chai waterfront has been very popular among dog owners within and outside the district. On the other hand, dog walking activities in other areas of Wan Chai*

have decreased, resulting in improved sanitation conditions and less nuisance caused to the public. In this connection, will the Government inform this Council:

- (a) whether the Government has drawn experience from the provision of this dog park; if it has, of the experience;*
- (b) whether, with its strong financial position at present, the Government will provide a dog park in each district throughout the territory; and*
- (c) given that keeping dogs has become a trend nowadays but dogs are not allowed in most of the parks under the Leisure and Cultural Services Department (LCSD), and some dog owners walk their dogs stealthily in those parks late at night, whether the Government will designate parts of larger parks as activity areas for dogs so as to provide convenience to dog owners on the one hand, and to reduce the sanitation problems arising from individual dog owners walking their dogs in parks unlawfully on the other hand?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the Wan Chai Waterfront Promenade (the Promenade) was planned and built by the Civil Engineering and Development Department (CEDD) while the cleansing, horticultural and security services for the Promenade are provided by the LCSD. The Promenade has been well patronized by dog owners since its opening in April last year. The utilization rate of the venue is very high.

Regarding the subject on the opening of more parks and leisure venues which will allow dogs to have activities there, the LCSD has on the one hand received from time to time requests from the public for the opening of more venues to allow the public to bring dogs while on the other hand, the Department has also received complaints from many venue users about the nuisance caused by dogs. The LCSD has adopted an open-minded approach towards these requests. After consulting the District Councils (DCs), Area Committees and members of the community and with their support, the LCSD will open more suitable venues which will allow members of the public to bring their dogs in. We will seek to strike a balance between the needs of animal lovers and those of other venue users. In considering the opening of leisure venues which allow

members of the public to bring their dogs in, the LCSD will consider factors including the support from members of the community and DCs, the nuisance which may be caused to other venue users and the surrounding environment, and the availability of adequate facilities and manpower to keep the venues in good sanitation conditions.

At present, there are seven parks under the management of the LCSD throughout the territory which allow members of the public to bring their dogs in. These venues include Victoria Peak Garden in Central and Western District, Kowloon Tsai Park in Kowloon City District, Yau Tsim Mong Pet Garden in Yau Tsim Mong District as well as Cheung Wan Street Rest Garden, Kwai Chung Castle Peak Road Sitting-out Area, Jockey Club Hing Shing Road Playground and Tsing Yu Street Garden in Kwai Tsing District. Moreover, the LCSD is planning to open parts of six open spaces under planning for admission of members of the public with their dogs. These six sites include the Local Open Space, Area 50, Sham Tseng in Tsuen Wan District, the Local Open Space in Area 28, Fan Ling/Sheung Shui in North District, the vacant site at the junction of Sai Sha Road and Hang Fai Street, Ma On Shan in Sha Tin District, the landscape area under the Drainage Services Department's Sheung Wan Stormwater Pumping Station project in Central and Western District, the District Open Space in Area 18, Tung Chung, Lantau in Islands District and the District Open Space at the junction of Hing Wah Street West, Lai Hong Street and Tung Chau Street in Sham Shui Po District. It is anticipated that the first three projects will be completed in 2008 while the last three projects will be completed one after another from 2009 onwards.

MR DANIEL LAM (in Cantonese): *I have to thank the Secretary for his very clear response. Since not all the parks in the territory are now open to dogs, will the Secretary inform this Council whether the Government will step up civil education at this stage to remind dog owners to be conscious about maintaining good sanitation condition?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will address this problem proactively. On the one hand, we will actively consider the possibility of opening more suitable sites for dogs, but we will also

consult the views of the local community. On the other hand, in other districts where parks allowing dogs in are not available, we hope that dog owners will have regard to public hygiene.

MRS ANSON CHAN (in Cantonese): *Many dog owners have complained to me that there is an acute shortage of venues suitable for dogs' activities. It is necessary for dogs to have activities and the lack of such venues will cause sanitation problems and nuisance to the public.*

May I ask the Secretary, will the LCSD take the initiative to conduct a review on all existing parks and open spaces proactively to identify suitable sites for dogs' activities? Moreover, if an increase in manpower and facilities is required, will the Secretary support it? Because resources should not be a cause of concern.

PRESIDENT (in Cantonese): Mrs Anson CHAN, you have raised two supplementary questions, but you can only ask one. Do you wish the Secretary to first reply your first supplementary question?

MRS ANSON CHAN (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Secretary, your reply please.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, first, on the question of whether more parks can be opened to allow dogs in, the prime concern is to balance the needs of different users. In consulting local residents or DCs of the districts concerned on the opening of parks for dogs, colleagues of the LCSD have received opposition views on a number of occasions, for they disagreed with the proposal. I have had some personal experience in this regard. I once attended the meeting of a DC, and a member of the DC proposed the construction of a dog park in a nearby district, but this was opposed by other Members of the DC immediately on the ground that the

proposal would cause nuisance to residents using the park. Therefore, from the point of view of the LCSD, it is most important that a consensus can be reached and the needs of different parties can be balanced.

MRS ANSON CHAN (in Cantonese): *The Secretary has not answered my supplementary question. I accept that some people may oppose it, and this should certainly be taken into consideration. However, my supplementary question asked whether the LCSD could conduct a review on all existing parks and open spaces. That is to say, it will initiate a proposal, but if anyone opposes it, their view should certainly be taken into consideration.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I think the practice adopted by the LCSD is to conduct reviews according to the needs of the local community and to consult their views.

MR FRED LI (in Cantonese): *President, according to the main reply of the Secretary, pets are allowed in seven existing parks and six new parks where pet facilities are planned to be provided, but none of these parks is located in Kowloon East.*

President, in four of the geographical constituencies of the Legislative Council, these parks are either available now or will be built later, but in Wong Tai Sin and Kwun Tong, there is no such park. Secretary, does it mean that residents in Kowloon East do not keep dogs? Or that dogs kept by residents of Kowloon East do not need to go to parks to exercise?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, some new facilities will be built at Choi Wan Road. If the consent of the local community is obtained, these facilities will be open to dogs.

MS AUDREY EU (in Cantonese): *President, will the Secretary explain to us which of the venues mentioned in the main reply are suitable for the public to bring their dogs in? Is the shortage of such suitable venues attributable to*

inadequate parks and recreational venues for the public in Hong Kong, let alone suitable venues that can allow the public to bring their dogs in? Is this why a balance cannot be struck between the needs of animal lovers and those of others?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, at present, the venues opened to dogs usually cover a larger area, where dog excreta collection facilities are provided at the entrances. Dog latrines or dog activity areas are provided in some of these venues. In reality, dog owners are eager to bring their dogs outdoor to have activities, while others, particularly the elderly or children, may consider it a nuisance if dogs are allowed in parks. Therefore, we have to adopt a balanced and accommodating policy that can take care of different needs.

MS AUDREY EU (in Cantonese): *President, the Secretary has not answered my supplementary question. I asked in my supplementary question just now whether the shortage of venues for dogs is, in the final analysis, attributable to the inadequate provision of parks and recreational venues, which has resulted in human beings and dogs competing for land? Should the authorities identify more sites for the construction of parks and recreational venues? President, this is the thrust of my supplementary question.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will keep on striving for every opportunity to build more parks and open spaces for both members of the public and dogs to have activities.

MR JAMES TIEN (in Cantonese): *President, I very much agree with the Secretary that a balance has to be struck on the problem of human beings and dogs competing for the use of parks.*

President, like Mr Fred LI, I would like to ask a question on behalf of my constituents in New Territories East. None of the seven existing parks and the six new parks is located in the Tseung Kwan O district. We all know that a lot of high-rises have been built in Tseung Kwan O and little space is available.

Also, I notice that there is not enough space for residents of Tseung Kwan O to carry out activities. If space is provided for dogs' activities, the shortage of space for the residents will become more acute.

May I ask the Government, according to the plan of the LCSD, whether there will be adequate space in the Tsueng Kwan O district for the construction of parks for local residents and dogs?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we are now reviewing the demand for space.

MRS SELINA CHOW (in Cantonese): *I know that the reply given by the Secretary only relates to all the venues of the LCSD, and the shortage in this respect is obvious. A motion debate has been put forth last time to discuss the issue.*

May I ask the Secretary whether suitable facilities, like dog latrines, are provided at venues not under your purview, such as country parks, so that dog lovers may bring their dogs there? This will increase the supply of space for dog lovers to bring their dogs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, may I answer this supplementary question after the meeting? (Appendix III)

PRESIDENT (in Cantonese): Secretary, you will give a reply in writing, will you not?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Yes.

MISS CHOY SO-YUK (in Cantonese): *President, I have studied the figures on dog parks. I notice that there is no dog park in the densely populated Island East, and dog parks are only provided in the Wan Chai district on the entire Hong Kong Island. However, we have proposed to the Bureau the provision of*

such a park at the waterfront of North Point, where a small park is already provided. This proposal receives no opposition from members of District Council (DC) of the district, which means that DC members of the North Point district do not oppose this. But I feel puzzled as to why this park is not included in the six parks you are planning to build.

PRESIDENT (in Cantonese): You are asking whether the Secretary will consider your proposal, are you not?

MISS CHOY SO-YUK (in Cantonese): *Yes, President.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will consider it.

DR KWOK KA-KI (in Cantonese): *President, the demand in this respect is so keen. I notice from the main reply of the Secretary that many people use these parks, such as the Kowloon Tsai Park located in the urban area, and I think it is quite suitable.*

My supplementary question is precisely this: Has the Secretary conducted consultation on all large parks, including major parks located in the urban area, like the Hong Kong Park and the Victoria Park, to gauge the views of all residents and the local community on the suitability of providing these facilities? If consultation has been conducted, how many parks are covered in the consultation? If no consultation has been conducted, which parks are not covered and why?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, so far, we will, in general, consider the usage of parks according to the aspirations and needs of the local community. Proposals of allowing dogs in existing parks currently used by the public will receive more objections. If consultations are conducted on newly built open spaces, parks or facilities, there is a greater chance that the local community will accept the opening of these venues to dogs.

DR KWOK KA-KI (in Cantonese): *I was specifically asking the Secretary on which major parks in the urban area has he conducted consultation. If the Secretary cannot give a reply, I hope he will provide additional information after the meeting on the parks covered and not covered by the consultation on opening parks to dogs, and the reason for not conducting such consultation.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I am sorry, I will provide a reply in writing. (Appendix IV)

MR LAU WONG-FAT (in Cantonese): *President, may I ask the Government, concerning the consultation on dog parks, whether all the 18 DCs in Hong Kong will be consulted, in order to make a final decision on the need to provide dog parks in each district for the convenience of dog lovers in the district?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we may do that.

PRESIDENT (in Cantonese): We have spent more than 15 minutes on this question. Last supplementary question now.

MR JEFFREY LAM (in Cantonese): *President, the Secretary mentioned that many people considered the presence of dogs in parks a nuisance to other park users. I know many dog owners who love animals very much and who take good care of their dogs to ensure that their dogs will not cause nuisance to people nearby.*

May I ask the Secretary about the criteria and conditions for providing these new parks? Will they refrain from developing these new parks if there is strong opposition? Or will these parks be built when a lot of people support it? What are the criteria and conditions adopted by the authorities in providing these dog parks?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, there are criteria adopted by us in considering the provision of dog parks, and the views of the local community, including those of the relevant DCs and the area committees, certainly carry weight, for they are the major partners of the SAR Government at the district level.

Moreover, venues which allow people to bring in pets (including dogs) must have enough space, so that it will not cause nuisance to other users or the environment in the vicinity. Furthermore, these venues must be manned by cleansing staff and provided with the necessary facilities, such as water tap, for daily cleansing, so that the venues can be kept in good sanitation conditions. We do have a set of criteria for consideration.

PRESIDENT (in Cantonese): Fifth question.

Construction of New Public Hospitals in Tin Shui Wai and North Lantau

5. **MR LEUNG YIU-CHUNG** (in Cantonese): *President, regarding the construction of public hospitals in Tin Shui Wai and North Lantau, will the Government inform this Council:*

- (a) *of the details of the study on the construction of a hospital in Tin Shui Wai and the construction timetable for the hospital;*
- (b) *whether it has reserved any land in Tin Shui Wai for the provision of a hospital; if it has, of the location; if not, the reasons for that; and*
- (c) *of the latest progress of the plan to construct a hospital in North Lantau and the construction timetable for the hospital; details of the facilities and services planned to be provided at the initial stage of the hospital's operation; and details of the public-private collaboration the authorities intend to adopt for the hospital?*

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

(a) and (b)

For the medium- and long-term planning to better address the demand for health care services in Tin Shui Wai, we are planning to build a hospital in Tin Shui Wai. We are carrying out the preliminary planning work on site selection and project planning in conjunction with other government departments and the Hospital Authority (HA). On site selection, we will select a suitable site for the proposed hospital development having regard to the relevant factors such as the planned use of land, geographical location, transportation support, development of surrounding areas, and so on. We will also explore the scope of the hospital and its specialties having regard to the local population projection and medical service demand as well as the overall provision of health care services in the New Territories West Cluster.

According to established procedures, following the internal vetting process by the Government, we would carry out the relevant technical assessments on the project and seek planning approval on the planned use of the site for hospital development as necessary. We would consult the Yuen Long District Council and the Legislative Council on the project and seek funding approval and conduct a tendering exercise afterwards. The Government and HA will expedite the planning and construction of Tin Shui Wai Hospital subject to compliance with the relevant statutory and administrative procedures.

(c) Regarding North Lantau, the Government has earmarked a site of about 4.9 hectares at Tung Chung in Tung Chung Areas 13 (Part), 22 and 25, North Lantau for construction of the North Lantau Hospital (NLH). The project will be implemented in two phases. We are actively conducting preparatory work for the implementation of phase one of the project. The phase one of NLH will be located in the west end of Tung Chung Area 25 (near Yat Tung Estate) with an area of about 1.9 hectares. We plan to submit an application to the Town Planning Board in July this year to re-zone Tung Chung Area 25 from "Residential (Group A)" to

"Government, Institution or Community" for construction of phase one of NLH. We will at the same time apply for the re-zoning of Tung Chung Area 22 so as to prepare for the future development of phase two of NLH. Depending on the views received from the public during the planning application process, we expect that the processing of the planning application for this project will be completed in the third quarter of 2009.

In parallel with the planning application, we will invite tenders for the construction works and prepare for seeking funding approval. We plan to complete the tendering exercise and seek funding approval from the Finance Committee of this Council for phase one of the project in the fourth quarter of 2009. The estimated cost for phase one of NLH is about \$2.2 billion. Taking account of the construction period of 36 months (including a slippage of six months that may be caused by various factors such as inclement weather), it is expected that phase one of NLH will be completed for commissioning of service by the end of 2012.

After the completion of phase one of NLH, the following facilities and services will be provided:

- (1) in-patient services including:
 - (i) 80 beds for Emergency Medicine: it is planned to provide in-patient services of Emergency Medicine with specialties of Medicine, Surgery, Orthopaedics and Traumatology, and so on; and
 - (ii) 80 beds for Extended Care: infirmary, rehabilitation and nursing care will be provided for recovering acute patients to complete the whole course of treatment;
- (2) ambulatory care services including:
 - (i) accident and emergency department;
 - (ii) specialist out-patient clinics;

- (iii) day rehabilitation centre; and
 - (iv) ambulatory surgery/day procedure centre with 20 day beds for surgeries and various procedures. The initial plan for the provision of ambulatory surgeries includes general surgeries, orthopaedic surgeries and ear, nose and throat surgeries. As for day procedures, they include endoscopy, haemodialysis, cardiac function monitoring, and so on.
- (3) community care services including:
- (i) geriatric service;
 - (ii) psychiatric outreaching service;
 - (iii) community health service;
 - (iv) patient resources centre;
 - (v) community health education; and
 - (vi) medical social service;
- (4) diagnostic and treatment services; and
- (5) support services (for example, pharmacy, mortuary and supplies) and administrative services.

The above facilities and services will be able to meet the demand for health care services of the projected population of about 123 100 of Lantau Island by 2015. At the same time, to cater for the longer-term development of Lantau Island and the demand for health care services arising from population growth in the long run, we will also plan for the implementation of phase two of NLH on the remaining parts (with an area of about 3 hectares) of the reserved site and

explore the feasibility of introducing public-private partnership (PPP) initiative for the development. Even if PPP arrangement is found impracticable, the Government would still develop phase two of the hospital project.

We consulted the Islands District Council (IDC) on phase one of NLH project on 14 April. The project and the relevant arrangements were supported by IDC. Subject to compliance with the relevant legal and administrative procedures, the Government and HA will expedite the planning and construction of phase one of NLH as far as practicable. We will consult IDC on phase two of the project in due course.

MR LEUNG YIU-CHUNG (in Cantonese): *President, last Sunday, 200 to 300 Tin Shui Wai residents held a procession requesting the construction of a hospital in Tin Shui Wai. Some residents asked me why in Tin Shui Wai inhabited by more than 300 000 residents who had lived there for more than a decade, the development of a hospital has only been heard of but its whereabouts has yet been seen, whereas Tung Chung has a population of around 100 000 at present and phase one of a hospital would be completed for commissioning of service four years later. They wondered if the Government had neglected the requests of the residents of Tin Shui Wai. Does the Secretary agree that Tin Shui Wai residents have an urgent need for a hospital? If so, can he make public shortly the land reserved and the construction timetable for the hospital? If not, why does he disagree that those residents have an urgent need for a hospital? Would the Secretary please explain the reasons in detail?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): The Government certainly agrees that Tin Shui Wai residents need a hospital, or else we will not undertake the project. We will make a detailed analysis in respect of the reservation of land and planning as soon as possible before making public the relevant information.

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, has your supplementary question not been answered?

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has not answered the part of my question on the site selection and when the hospital will be completed for commissioning of service if he agrees that residents have an urgent need. Given that the construction of a hospital in Tung Chung will take four years, when will there be a hospital in Tin Shui Wai? This is the biggest problem. Would the Secretary please give an account of the schedule for completion and site selection?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): We can only say that the site is within, not outside, Tin Shui Wai but as to which particular site will be chosen, we can only make public the details after we have made a decision in consultation with the Planning Department.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has not answered the part of my question about the timetable.*

PRESIDENT (in Cantonese): Secretary, when is it expected?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As I have just said, we will work on this as quickly as possible. When the site selection has been confirmed, as I have expounded clearly in part (a) of my main reply, we will commence all the procedures and make public the timetable.

DR JOSEPH LEE (in Cantonese): *I think the Secretary has not directly answered Mr LEUNG Yiu-chung's main question. The Secretary has said in response to the question on a hospital in Tung Chung that there is a population of about 120 000 in Tung Chung and there will be 180 beds upon completion of phase one of the hospital in the future. Using this logic, assuming that there is a zero population growth in Tin Shui Wai, I would expect the provision of at least 400 beds upon completion of a hospital in Tin Shui Wai in future. This is what I hope to see. However, I am mainly asking about the Tung Chung hospital. The Secretary has stated in paragraph (1) under part (c) of his main reply that NLH has 80 beds and various specialties. I noticed that the population of this place mainly comprises young people at present, and I would like to ask the Secretary why the hospital does not have specialties of paediatrics and obstetrics*

and gynaecology. Are these specialty services not needed? The patients concerned thus have to seek treatment in the Princess Margaret Hospital or other hospitals.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As far as specialties are concerned, we have made a decision after taking into account the local demand. Elderly people account for a lower proportion of the population in the two districts mentioned in this question. Elderly people currently account for 6% of the population of Tung Chung and Tin Shui Wai, which is lower than the average of 12% in the whole territory. However, we are not building a hospital for today and the elderly people will account for 8% of the population of the two districts in 10 years' time. We will also take into account the needs of the local community. We all know that the demand of the elderly for hospital services, especially in-patient services, is almost six times that of the middle-aged and the youth. Therefore, we will take this into account when considering the number of beds.

In respect of paediatrics and obstetrics and gynaecology, out-patient and ambulatory services can currently cover most paediatrics services. Also, patients in various specialties have greater demands for in-patient services, so we have to explore with the HA the relevant hospitalization services and other referral services. The situation of obstetrics and gynaecology is pretty much the same, and complementary facilities such as a neonatal intensive care unit are required for these specialties. If few expectant mothers choose to give birth in a hospital, the effectiveness of such services will not be very high. Thus, we have to conduct studies in various aspects before making a relevant decision.

MR LEE WING-TAT (in Cantonese): *Last year when I discussed with the Bureau the construction of a hospital in Tung Chung, the Government told us that the hospital will be commissioned by the end of 2011 when part of the hospital can commence operation? I can see from the main reply that the hospital will be commissioned only by the end of 2012.*

Would the Secretary please advise if there is a delay? Can the hospital be commissioned in phases such that the hospital can commence parts of its services by the end of 2011?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Since the construction of the entire phase one of the hospital is involved, I believe the commissioning of service before the completion of the hospital would be quite difficult. Our current projection is fairly conservative, as Members can see that the projected construction period is 36 months, including possible slippage. So, we have to leave some room in this respect and we will proceed as quickly as possible.

MR ALBERT CHAN (in Cantonese): *President, regarding these two hospitals, the NLH has a clearer timeframe but it seems that the hospital in Tin Shui Wai will not be completed in the foreseeable future. In fact, I asked the Secretary a week ago during the Budget debate what steps are taken to speed up the design, planning and construction work in order to shorten the construction period as far as practicable because general infrastructure projects should be completed within five to eight years. Could the Secretary give us confidence that at least the first phase of the Tin Shui Wai hospital will be completed within five to eight years?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Based on our records, the newly built hospitals, such as the North District Hospital and the Tseung Kwan O Hospital, have respectively taken 11 and 13 years from site selection to completion for commissioning of service. As Members are aware, I have all along been dissatisfied with this timeframe. We always wish to expedite the construction work and shorten the construction time, be it the hospital in Tung Chung or Tin Shui Wai; in particular, we would like to do all we must do within the timeframe under our control. But it will generally take a few years, and no fewer than two to three years will be required for the construction work in particular. So we hope that the preparatory and planning processes and certain necessary procedures will take a shorter time and be carried out simultaneously.

MR ALBERT CHAN (in Cantonese): *President, I was asking if the hospital can be completed in phases, for instance, whether phase one of the project can be completed as early as possible. If it is a smaller-scale project, it should be completed within five to eight years.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Depending on the site selected and the use of the site, we will make a decision as to how the project can be expedited and whether such works will be carried out in various phases.

DR FERNANDO CHEUNG (in Cantonese): *According to the Secretary, it will take 11 to 13 years from site selection to completion, but as a site has not yet been selected, the hospital may not have been completed even when we have universal suffrage. Given that the services provided by the Tuen Mun Hospital will be saturated in 10 years or so, the 300 000 Tin Shui Wai residents will have a pressing demand for health care services and as there are at least 200 vacant beds after the expansion of the Pok Oi Hospital, does the Secretary have a timetable for making available these 200 vacant beds of the Pok Oi Hospital?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As far as I know, the Pok Oi Hospital has steadily increased the number of beds this year and the 200 beds will gradually be commissioned. All new hospitals will effectively introduce services in the light of the increase in patient numbers and demands. We have noticed that Yuen Long residents increasingly welcome the services of the Pok Oi Hospital. So, we have allocated more HA resources to the Pok Oi Hospital and requested the relevant services to be commissioned as soon as possible. Of course, the length of time required and the choices made by patients in the end will hinge on the development of the district.

Our initial plan was for the Pok Oi Hospital to provide services to Tin Shui Wai residents but, as we have noticed, there has been a faster-than-expected increase in the total number of residents in Yuen Long and Tin Shui Wai. Therefore, we think that there must be a hospital in Tin Shui Wai. Referring to the trends over the past years, we find that it generally takes six to seven years for a new hospital to reach saturation, but I can see that the North District will have a much faster pace of increase. Hence, we hope that the comprehensive services of the Pok Oi Hospital will be increased in these few years.

DR FERNANDO CHEUNG (in Cantonese): *President, I hope the Secretary will answer explicitly when the 200 beds will be fully made available for services. The Secretary has not answered this part of my question.*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): On this point, we have to communicate with the HA to find out how it is going to develop such services.

PRESIDENT (in Cantonese): This Council has spent 17 minutes on this question. Last supplementary question.

MRS SELINA CHOW (in Cantonese): *The Secretary said on a public occasion at the end of last year that it would take 10 years to complete the construction of the hospital in Tin Shui Wai, which caused commotion among members of the community. I believe the Secretary may recall that. He just told us that construction would be implemented as soon as possible. He said that he was also dissatisfied with the long construction time of hospitals, hoping that the timetable could be shortened. What has the Secretary done to shorten the construction period of the hospital in Tin Shui Wai and when will he explain to this Council the issue of site selection? The Secretary has often given us the excuse that a decision has yet been reached on the site selection. But we know from reading the documents that site selection is not too difficult. Why does it take so long? When will the Secretary come to this Council to explain on the site selection?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): After we have made a decision with the relevant planning departments of the Government, we will provide the information on site selection, scale of hospital and other details as quickly as possible. The HA is undertaking planning work simultaneously and I do not wish to see that the planning work starts only after a site has been selected. I hope that what we are doing now will facilitate the early completion and commissioning of the hospital.

MRS SELINA CHOW (in Cantonese): *President, the Secretary has not answered my question concerning when he will give this Council an account of the site selection, which is the first step to be taken. When will he explain this to the Legislative Council? The Secretary has just replied that he will do so "as soon as possible", and we are dissatisfied with such a reply. The expression "as soon as possible" is not an answer. When will he come to this Council to tell us the details?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I could not answer the question on the exact time because various departments attach much importance to this project and we need to take into account various factors. My Bureau alone cannot make a decision.

MRS SELINA CHOW (in Cantonese): *President, since the Secretary cannot give us an oral reply, can he provide a written reply on when he will give this Council an account as quickly as possible?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I will try my best. Thank you, Madam President. *(Laughter)* (Appendix V)

PRESIDENT (in Cantonese): Last oral question.

Hawker Licence Fee Waiver

6. **MR VINCENT FANG** (in Cantonese): *Madam President, in the Budget for this financial year, the Financial Secretary proposed to waive the business registration fee for the current year to benefit all companies. However, some fixed-pitch hawkers and itinerant hawkers have relayed to me that as they must pay licence fee instead of business registration fee, they could not be benefited from this concessionary measure. In this connection, will the Government inform this Council:*

- (a) *of the types of registration fees currently payable to the Government by businesses engaging in various kinds of economic activities in Hong Kong, and the current number of businesses which have to pay business registration fee;*
- (b) *of the respective current numbers of traders required and those not required to pay business registration fee, the types of fees payable by them to the Government for their trading activities and the amount involved; and*

- (c) *given that fixed-pitch hawkers and itinerant hawkers are currently required to pay licence fee to the Government in order to continue running their business, and such an arrangement is similar in nature to business registration fee payment, whether the Government has any plan to waive the hawker licence fee for the current financial year, thereby achieving the aim of "returning wealth to the people"; if it has, whether the arrangement will be on par with that of the business registration fee waiver, that is, waiving hawker licence fee for the whole year; if it does not have such a plan, of the reasons for that?*

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

- (a) According to the information provided by the Financial Services and the Treasury Bureau, businesses engaging in various kinds of economic activities in Hong Kong, except for those exempted from registration, are required to register with the Government and pay business registration fee as well as the levy for the Protection of Wages on Insolvency Fund (the levy). However, under the Business Registration Ordinance, small businesses with average monthly total sales or receipts not exceeding the prescribed limit can apply for exemption from the payment of business registration fee and the levy. Besides, certain types of business are also required to pay various kinds of licence fees as they are subject to the Government's regulation. At present, about 820 000 businesses are required to pay business registration fee.
- (b) Under the Business Registration Regulations, hawkers requiring licences for the carrying on of business under the Hawker Regulation are not required to register, unless the business is carried on inside a building. As there is no differentiation of business nature under the business registration system, the Inland Revenue Department (IRD) does not maintain statistics on the number of hawkers required to pay business registration fee.

There are, in essence, two categories of hawker licences, namely fixed-pitch hawker licence and itinerant hawker licence. All hawkers are required to pay to the Government fees for the issue

and renewal of hawker licences. The annual licence fees for fixed-pitch hawkers in the urban area and the New Territories are \$1,980 and \$2,100 respectively, while the itinerant hawker licence fee ranges from \$980 to \$2,640 per year, and the mobile ice-cream van licence fee is about \$20,000 per year. Fixed-pitch hawkers are required to pay an additional fee for the allocation and use of fixed pitches. This fee ranges from \$490 to \$5,180 per year, depending on the category of licence, location and size of the pitch. The licence fee for a fixed pitch of cooked food or light refreshment is about \$26,000 per year.

- (c) The purpose of hawker licensing is to regulate hawking activities. The nature of a hawker licence is similar to that of a licence or permit for certain types of business, such as karaoke establishment permit, restaurant licence and amusement game centre licence. The main purposes of business registration are to provide the IRD with information on businesses for it to create tax files and to enable the public to obtain information on businesses for reference. It is applicable to all businesses and does not aim at regulating individual types of business. As such, the hawker licence fee should not be compared to the business registration fee.

There has been no adjustment to the hawker licence fee since 1998 and the Government is currently unable to achieve full-cost recovery for licensing. Further licence fee concessions, if any, will require more subsidy by the Government which is contrary to the "user pays" and cost-recovery principles. Therefore, the Government has no plan to waive hawker licence fee in the current financial year.

MR VINCENT FANG (in Cantonese): *Madam President, just now the Secretary explained in his main reply that the purpose of hawker licensing was different from that of business registration, but may I ask, what was the purpose of waiving the business registration fee as decided by the Financial Secretary this year? As far as I know, the purpose is to repay various sectors of the community for their contributions to Hong Kong's economy and to share wealth with the people.*

Part (c) of the main reply has referred to karaoke establishments and restaurants, all of which could benefit from the waiving of business registration fee. However, among various types of operators, only hawkers are unable to share the fruit of economic prosperity. These 7 000-odd hawkers, when compared with the 820 000 businesses as mentioned by the Secretary just now, only account for less than 1% of the total number. May I ask if this a fair decision?

PRESIDENT (in Cantonese): Which Secretaries will reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, perhaps let me answer this supplementary question. The purpose of this year's Budget to waive business registration fee for 2008-2009 as proposed by the Financial Secretary is, as the Member has said, to benefit all business operators. We adopt this measure in consideration of the fact that all businesses have to pay business registration fee except for those exempted from paying the fee under the Business Registration Ordinance. For that reason, the concessionary measure proposed this time around can benefit all businesses, in particular small and medium businesses. We consider that this is the easiest way to help small and medium enterprises (SMEs).

Nevertheless, as the Secretary said just now, the hawker licence fee is another thing; its purpose is to regulate the trade. For those exempted from the payment of the business registration fee, they certainly cannot benefit from the concessionary measure proposed this time around. However, various measures are introduced in the entire budget to help the general public, including rates and electricity tariffs concessions and all forms of subsidies. All of these measures are to alleviate the pressure of the SMEs and the general public in their daily operation and living.

MR HOWARD YOUNG (in Cantonese): *President, the Secretary explained the reasons for not waiving hawker licence fee in part (c) of the main reply, saying that it would not be able to recover the cost of licensing, and that the refund of licence fee, if any, would be contrary to the "user pays" principle. May I ask whether this is a precondition for the relief measures? Or should I conceive it*

the other way round, that is, the business registration waiver has gone far beyond the "user pays" principle and required no subsidy and so, it could be waived for one year?

PRESIDENT (in Cantonese): Which Secretaries will reply? Secretary Prof K C CHAN.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Perhaps I will try to answer this supplementary question. Besides cost recovery, the business registration fee also comprises a tax element. Just as Secretary Dr York CHOW said in his main reply, the purpose of business registration is to provide the IRD with information for follow-up and so, it also carries some significance to tax revenue.

Why do we consider that business registration fee is different from hawker licence fee? It is because the hawker licence fee is indeed determined by the Government under the "user pays" principle, just as the "user pays" principle adopted in charging fees in other regulated businesses. I think this is an important principle in the management of public finance. For that reason, I wish to point out that business registration fee is different from hawker licence fee. Although we have all along been adopting the "user pays" principle in the determination of the fee, we have frozen the hawker licence fee since 1998, because apart from giving consideration to the principle, we also take the affordability of the public into consideration. Therefore, we do allow flexibility in this regard.

Nevertheless, we should still adhere to the principle. If we offer concessions to the hawker licence fee this time around, it will be contrary to the "user pays" principle.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS**Non-civil Service Contract Staff's Paid Leave Entitlement**

7. **MR LEE CHEUK-YAN** (in Chinese): *President, will the Government inform this Council of the current number of non-civil service contract (NCSC) staff who, in accordance with their terms of appointment, are not entitled to paid general holidays which are not statutory holidays, with a breakdown by government department?*

SECRETARY FOR THE CIVIL SERVICE (in Chinese): President, the NCSC Staff Scheme, introduced in 1999, aims to provide Heads of Bureaux, Departments and Offices (hereafter shortened as HoDs) with a flexible means to employ staff on fixed term contracts outside the civil service establishment to meet service needs which are seasonal or time-limited or part-time, or subject to market fluctuations, or where the mode of delivery of the service is under review or likely to be changed (for example, through outsourcing). HoDs have the discretion to decide on the appropriate employment packages for their NCSC staff, subject to the two guiding principles that the terms and conditions for engaging NCSC staff should be no less favourable than those provided for under the Employment Ordinance (EO) and no more favourable than those applicable to civil servants in comparable civil service ranks or with comparable level of responsibilities.

NCSC staff are entitled to the rights provided for under the EO, including paid statutory holidays. HoDs also have the discretion to allow NCSC staff to be off-duty on general holidays which are not statutory holidays and grant pay for these days, having regard to their management needs and operational circumstances, such as when offices are closed.

Although the Civil Service Bureau is not involved in departments' employment of NCSC staff and does not centrally keep detailed information on the terms of appointment of NCSC staff in individual departments, we have specifically collected relevant information from the eight main user bureaux/departments (B/Ds) of the NCSC Staff Scheme (including the Buildings Department, Department of Health, Education Bureau, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Hongkong Post, Leisure and Cultural Services Department and

Social Welfare Department). These B/Ds altogether employed about 65% of all NCSC staff as at 31 December 2007. According to the information collected, about 70% of their NCSC staff were entitled to paid general public holidays in their terms of appointment while the remaining 30% (or about 3 300 staff) were not. For the latter, about half of them might in practice be given off-duty with pay on those holidays subject to the operational need. The details are at Annex.

Annex

Number of full-time¹ NCSC staff who were not entitled to paid general holidays other than statutory holidays in accordance with their terms of appointment in the eight main user B/Ds (as at 31 December 2007)

<i>B/Ds</i>	<i>No. of NCSC staff not entitled to paid general holidays other than statutory holidays in accordance with their terms of appointment</i>
Buildings Department	0
Department of Health	10
Education Bureau	4
Electrical and Mechanical Services Department	0
Food and Environmental Hygiene Department	864 (313)
Hongkong Post	2 467 (1 247)
Leisure and Cultural Services Department	0
Social Welfare Department	0
Total	3 345 (1 560)

() denotes the number of NCSC staff who might be allowed off-duty with pay on general public holidays other than statutory holidays subject to the operational need, despite the terms of appointment did not provide for such entitlement.

¹ "Full-time" means the employment is on a "continuous contract" under the definition of EO. According to the EO, an employee who works continuously for the same employer for four weeks or more, with at least 18 hours in each week, is regarded as working under a continuous contract.

Coroner's Court

8. **MR ALBERT HO** (in Chinese): *President, will the Government inform this Council whether it knows:*

(a) *the following information about the Coroner's Court:*

(i) *regarding reportable deaths*

<i>Cases of reportable deaths</i>	<i>Number of cases</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>
<i>Total</i>			
<i>The pathologist could not ascertain the cause of death</i>			
<i>The Coroner granted an autopsy order</i>			
<i>The Coroner granted a waiver of autopsy</i>			
<i>The family of the deceased applied for a waiver of autopsy</i>			
<i>The Coroner decided to investigate the cause of death</i>			
<i>An inquest was held into the cause of death</i>			
<i>A non-official applied for a death inquest</i>			
<i>The Secretary for Justice applied for a death inquest</i>			

(ii) *regarding non-reportable deaths*

<i>Cases of non-reportable deaths</i>	<i>Number of cases</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>
<i>The Coroner granted an autopsy order</i>			
<i>The family of the deceased applied for a waiver of autopsy</i>			
<i>An inquest was held into the cause of death</i>			

<i>Cases of non-reportable deaths</i>	<i>Number of cases</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>
<i>A non-official applied for a death inquest</i>			
<i>The Secretary for Justice applied for a death inquest</i>			

- (b) *the factors to be taken into consideration by the Coroner in deciding whether a death inquest should be held and an autopsy order should be granted?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, the question raised by the Honourable Member relates to the statistics of the cases handled by the Coroner's Court and the Court's operation. Having consulted the Judiciary, we now provide the following response:

- (a) The information about the Coroner's Court is as follows:
- (i) reportable deaths

<i>Cases of reportable deaths</i>	<i>Number of cases</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>
Total	9 506	9 025	9 422
The pathologist could not ascertain the cause of death (Note)	-	-	-
The Coroner granted an autopsy order	3 951	3 437	3 793
The Coroner granted a waiver of autopsy	5 555	5 588	5 629
The family of the deceased applied for a waiver of autopsy (Note)	-	-	-
The Coroner decided to investigate the cause of death	1 351	1 061	767
An inquest was held into the cause of death	189	210	185

<i>Cases of reportable deaths</i>	<i>Number of cases</i>		
	<i>2005</i>	<i>2006</i>	<i>2007</i>
A non-official applied for a death inquest (Note)	-	-	-
The Secretary for Justice applied for a death inquest (Note)	-	-	-

Note: The Judiciary does not have available statistics on the number of cases where "the pathologist could not ascertain the cause of death", "the family of the deceased applied for a waiver of autopsy", "a non-official applied for a death inquest" or "the Secretary for Justice applied for a death inquest".

(ii) non-reportable deaths

Generally speaking, the Coroner's Court will only handle reportable deaths under section 4 of the Coroners Ordinance (Cap. 504). Therefore, the Judiciary does not have available information on non-reportable deaths.

- (b) The decision by a coroner on whether to hold a death inquest or to grant an autopsy order is a judicial decision made under the provisions in section 14 and section 6 of the Coroners Ordinance, having due regard to all the relevant facts of the death concerned. Hence, the factors considered by a coroner in each of his decisions and the statutory provisions on which his decision is based are contingent on the circumstances of each individual case.

Under section 14 of the Coroners Ordinance, the circumstances in which a coroner may hold an inquest are: where a person dies suddenly, by accident or violence, or under suspicious circumstances, or the dead body of a person is found in or brought into Hong Kong. Section 15 of the Ordinance further stipulates that a coroner must hold an inquest into the death of a person in cases "where a person dies whilst in official custody". Therefore, the circumstances mentioned above are important factors to be taken into consideration by a coroner in deciding whether to hold an inquest.

An autopsy is ordered mainly to find out the cause of and the circumstances connected with the death. A coroner generally will take into consideration the expert opinions of pathologists, forensic pathologists and medical practitioners, medical history of the deceased, the course of events leading to the death, the initial findings of police investigation, the findings of external examination of the body, and so on, before deciding whether to order an autopsy to determine the cause of the death.

The abovementioned factors are those generally taken into consideration by a coroner. A coroner's decision is a judicial decision. The factors considered by a coroner may differ with each case in which he is required to make a judicial decision.

Traffic Noise in Kowloon

9. **MR MARTIN LEE** (in Chinese): *President, regarding the problem of road traffic noise in the Kowloon area, will the Government inform this Council:*

- (a) in the past three years, of the data obtained from traffic noise surveys conducted on the East Kowloon Corridor, West Kowloon Corridor, Prince Edward Road East, Prince Edward Road West and Lung Cheung Road, and whether traffic noise affecting these road sections has shown signs of deterioration;*
- (b) of the number of complaints received in each of the past three years about traffic noise affecting the above road sections; and*
- (c) whether at present, the above road sections have been installed with noise barriers; if so, of the details; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): *President,*

- (a) The Environmental Protection Department (EPD) has conducted traffic noise surveys at dwellings near the above road sections at different times. The findings are as follows:*

<i>Location</i>	<i>Noise Level — dB(A)</i>
East Kowloon Corridor (facing Chatham Road North and Kowloon City Road)	74 - 84
West Kowloon Corridor (near Tung Chau Street)	80
Prince Edward Road East (near Rhythm Garden)	80
Prince Edward Road West (near Kiu Yuen Mansion, Waterloo Road)	80
Lung Cheung Road (near Lower Wong Tai Sin Estate and Hsin Kuang Centre)	75 - 77

These road sections are busy trunk roads in the urban area. As there has not been any major change in the traffic flow over the past three years, there is no significant variation in the overall traffic noise levels of these road sections and the situation has not worsened.

- (b) The number of complaints received by the EPD in the past three years about traffic noise from the above road sections is as follows:

	<i>2005</i>	<i>2006</i>	<i>2007</i>
East Kowloon Corridor	0	4	4
West Kowloon Corridor	13	17	6
Prince Edward Road East	1	0	0
Prince Edward Road West	2	3	0
Lung Cheung Road	1	1	2

- (c) To improve the traffic noise situation of the affected neighbouring residential buildings, the Government erected noise barriers at West Kowloon Corridor (Ferry Street section and Cherry Street section) and Lung Cheung Road (near Chak On Estate, Beacon Heights and Beacon Hill) when road widening and improvement works were carried out in 1996 and 1998 respectively.

For the other existing roads affected by high traffic noise, the Government would explore the feasibility of retrofitting noise barriers, having regard to technical and resource considerations. The technical considerations include:

- (i) whether the noise barriers/enclosures will obstruct emergency access or fire fighting;
- (ii) whether the noise barriers/enclosures will undermine road safety or impede pedestrian and vehicular movements; and
- (iii) whether there will be adequate space and structural capability (applicable to flyovers) for supporting the noise barriers/enclosures.

Based on the findings of the above technical study, the Government concluded that it was not feasible to retrofit effective noise barriers on the above road sections.

To mitigate traffic noise, the Highways Department (HyD) has resurfaced suitable sections along the West Kowloon Corridor, the East Kowloon Corridor, Prince Edward Road East and Lung Cheung Road with low noise material. The HyD will continue to monitor the conditions of the roads and the joints on the flyovers, carry out maintenance works whenever necessary and keep the road joints as smooth as possible, so as to ensure the best noise reduction results from the use of the low noise material.

Measures to Boost Fertility Rate

10. **MR ABRAHAM SHEK** (in Chinese): *President, last year, the Government established a Steering Committee on Population Policy under the chairmanship of the Chief Secretary for Administration to study ways to encourage parenthood, upgrade and nurture manpower resources, and to develop strategies and possible measures in this respect. However, apart from promoting community-based child care services and increasing child allowance from 2007-2008 onwards, the authorities have no other specific measures to boost fertility rate. In this connection, will the Government inform this Council:*

- (a) *of the progress made by the Steering Committee on Population Policy in developing population strategies and when the relevant policies will be launched; and*

- (b) *whether the authorities will consider providing further financial incentives, such as, by drawing on the practice of the Singaporean and Italian authorities, awarding Baby Bonus to families with new born babies, or introducing parental leave with reference to the practice of the European countries such as Norway, Germany, Finland, and so on, so as to promote parenthood and thereby relieving the pressure of an ageing population?*

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, the purpose of establishing the Steering Committee on Population Policy is to facilitate the better planning and co-ordination of Government's efforts on population policy, with the relevant bureaux/departments continuing to be responsible for implementing the specific measures under their policy purview. The Steering Committee has been monitoring the implementation of population policy related measures to ensure that the services being planned would take into account the future changes in the Hong Kong population structure. These measures include initiatives falling under the four priority areas in the 2007 policy address to optimize our demographic structure (that is, raising the quality of our education, developing Hong Kong into a regional education hub, attracting talents and reforming our health care system).

In relation to encouraging parenthood, in addition to the tax measures introduced to encourage childbirth (whereby the child allowance under salaries tax for the first to the ninth child is \$50,000 per child, and an additional child allowance of \$50,000 in the year of assessment in which the child is born), a number of other initiatives (for example, various measures aimed at improving the quality of our education) have progressively been implemented with a view to optimizing our demographic structure.

To alleviate the burden of parents in supporting their children's education, starting from the 2007-2008 school year, the Government has provided direct fee subsidy for parents towards school fees for pre-primary education in eligible kindergartens. With effect from the 2008-2009 school year, the Government will provide free senior secondary education for all students in public sector schools. We will also provide full subvention for full-time courses offered by the Vocational Training Council for Secondary Three school leavers. Besides, the Government will work towards the provision of quality education, including the gradual implementation of small-class teaching in primary schools as from

the 2009-2010 school year, and launching of the New Academic Structure for Senior Secondary Education, and so on. These initiatives will help further enhance the quality of education, promote all-round development among students and provide them with more channels to pursue further studies both locally and overseas.

To assist parents who cannot take care of their children temporarily because of work or other reasons, the Government also subsidizes non-governmental organizations to provide a wide range of child day care services. We have also endeavoured to provide more flexible child care services to address the practical needs of parents. On top of our existing services, we will allocate additional funding of \$45 million over the three-year period between 2008-2009 to 2010-2011 to promote various types of child care services that offer greater flexibility, and to strengthen day foster care service.

The Steering Committee has examined whether it should adopt more proactive measures, including providing further financial incentives to encourage childbirth in Hong Kong. The Steering Committee considered that childbearing is very much a personal choice of individual couples. When a couple makes a decision on childbearing, they would consider various factors and economic factor is just one of their considerations. Other factors include whether the couple like children, lifestyle changes after having children, education for their children, and child care arrangements, and so on. Accordingly, it would not be appropriate for the Government to influence individual's childbearing decision through policy means. References to overseas experience indicate that a number of countries with low fertility rates have introduced measures to promote fertility (for example, by providing baby bonus or introducing child care leave), but the effect of these measures in increasing the fertility rate is uncertain. Nevertheless, the Steering Committee agreed that we should foster a pro-family environment and reinforce core family values among the public through the work of the Family Council and relevant bureaux and departments (for example, providing various child day care services and more flexible child care services).

Display of Notices Concerning Excessive Gambling in Off-course Betting Branches

11. **MISS CHOY SO-YUK** (in Chinese): *President, in July 2006, this Council passed the amendments to the Betting Duty Ordinance (Cap. 108), one of which was to add a provision stipulating that the Secretary for Home Affairs*

(the Secretary) must, in any licence issued for the conduct of horse race betting, require the holder of the licence (that is, the Hong Kong Jockey Club (HKJC)) to conspicuously display notices in every premises where it accepts bets (that is, off-course betting branch), and the notices shall "contain a warning of the seriousness of the problems caused by excessive gambling" and "provide information on the services and facilities available in Hong Kong to problem gamblers and pathological gamblers". In this connection, will the Government inform this Council:

- (a) whether the Secretary has specified the size of the letters/characters on such notices and the locations to display them; if he has, of the details; if not, the reasons for that;*
- (b) whether it can provide details of the numbers, sizes and locations of such notices displayed in various off-course betting branches; and*
- (c) of the respective numbers of complaints received, since the aforesaid provision came into operation, by the Government and HKJC in relation to the display of such notices, together with a breakdown by the subject matters of the complaints; as well as the details of the follow-up actions taken by the Government and HKJC on these complaints?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) and (b)

The HKJC has to comply with the requirement by the Government that it must conspicuously display signs of reasonable size and clarity in its premises where it accepts bets (that is, areas in the racecourses which accept bets and the off-course betting branches (OCBBs)) and on its website where it accepts bets, in a manner clearly visible by its patrons in the premises or its account holders who place bets through its website, and in a manner clearly visible by passers-by outside the premises as far as practicable, the message on the warning of the serious consequence arising from excessive gambling, and information on services available in Hong Kong for problem and pathological gamblers.

Notices printed by the Government and the HKJC alerting patrons of the dangers of excessive gambling, and providing guidelines for responsible gambling, are posted in all betting premises. Information leaflets are available at all customer service counters pointing out the signs and consequences of problem gambling. Similar notices and messages are also included on Club betting websites, betting tickets and all Club betting marketing materials. In addition, the notices about age restrictions are posted at the entrances to all betting premises and on all betting windows, betting terminals and betting ticket dispensers.

The number of notices displayed at various OCBBs amounts to around 10 per OCBB on average, and the size of notices by both the Government and the HKJC averages about 71 cm × 46 cm. Life-size, cut-out security guards are also mounted at the entrance of all the OCBBs to reinforce the message that entry of persons under 18 is strictly prohibited.

- (c) The Government and the HKJC have not received complaints related to the display of notices.

Rents for Private Residential Properties

12. **DR DAVID LI:** *President, according to the information on the website of the Ratings and Valuation Department, private residential property rents have risen at a double-digit year-on-year rate since June 2007. The year-on-year rise in February this year reached 23%. The housing component makes up 29% of the Composite Consumer Price Index basket, and the substantial increase in rental costs will thus have a significant impact on the overall inflation rate. In this connection, will the Government inform this Council:*

- (a) *given that in his reply to my question at the Council meeting on 9 January 2008, the Secretary for Financial Services and the Treasury indicated that the Administration did not know whether it was the landlord or the tenant of a property who benefited directly from the rates concessions granted for the 2007-2008 financial year, of any policy or measure the Government has adopted to reduce the financial burden on renters; and*

- (b) *whether the Government will review the operation of the Application List system with a view to increasing housing supply and hence lowering the rents for private residential properties?*

SECRETARY FOR TRANSPORT AND HOUSING: President, my reply to the two-part question is as follows:

- (a) This year's Budget contains a number of initiatives that can benefit people from different sectors (including those living in rented accommodation) and ease their burden. Apart from waiving the rates for 2008-2009, the Government has proposed to:
- (i) inject into each domestic electricity account a subsidy of \$1,800;
 - (ii) inject \$6,000 into the Mandatory Provident Fund account of each low income person;
 - (iii) offer a one-off rebate of 75% of salaries tax and tax under personal assessment, subject to a ceiling of \$25,000 per person;
 - (iv) widen the tax band, raise personal allowances and lower the standard tax rate;
 - (v) adjust the Comprehensive Social Security Assistance (CSSA) payment rates in accordance with the existing mechanism ahead of the normal schedule this year and provide one additional month of the standard rate CSSA payments and Disability Allowance; and
 - (vi) pay one month's rent for the lower income families living in the rental units of the Hong Kong Housing Authority (HA) and the Hong Kong Housing Society (HS), including the tenants living in Elderly Persons' Flats in the HS Group B estates.

Families which cannot afford private rental accommodation may apply for public rental housing (PRH) provided by the HA. The Government has pledged to maintain the average waiting time of general PRH applicants at around three years. The HA will adjust the PRH Waiting List income and asset limits every year to take into account the change in household expenditure (including private market rents), to ensure that those who cannot afford private rental housing will be provided with public housing assistance. In the past five years, nearly 110 000 individual and family Waiting List applicants were allocated public housing flats. PRH tenants facing temporary financial hardship may also apply for rent relief through the HA's Rent Allowance Scheme. Moreover, the Social Welfare Department operates the CSSA Scheme which provides a safety net for those who cannot support themselves financially to meet their basic needs.

- (b) The Government's policy objective is to ensure the healthy and stable development of the property market. The Development Bureau's policy is to provide adequate supply of land to meet the development needs of our society. In terms of residential land supply, there are 42 residential sites in the 2008-2009 Application List, more than any year since the Application List resumed in 2004. The Application List is not the sole source of supply of land for private housing. Apart from the Application List, developers can provide private housing by acquiring land from the private market, by way of lease modification/land exchange of existing land holding, and from railway property development projects and Urban Renewal Authority's development projects. We will closely monitor the land supply situation.

The market-led Application List system has been effective and is working well. The Government has introduced several measures to enhance the operation of the Application List system in the past to facilitate triggering of sites by developers. The Development Bureau has no intention to conduct any fundamental review of the Application List system or to resume scheduled auctions. The District Lands Office/Hong Kong West and South has set up a task force to speed up the processing of lease modification and land exchange applications. To expedite the processing of development

projects in general, the Development Bureau will examine if further improvements can be made to urban planning, land administration and approval procedures for building construction with a view to speeding up the supply of land for development and the processing of lease modifications and land exchanges.

Energy Efficiency of Newly-built Buildings

13. **MS EMILY LAU** (in Chinese): *President, spacious entrance lobbies are provided at the ground level in many newly-built government buildings (including cultural and recreational facilities) and the provision of air-conditioning for such space consumes much energy. When projects on new buildings were being examined at the meetings of the Panel on Home Affairs and Public Works Subcommittee of this Council recently, I urged the authorities to adopt as far as possible a natural ventilation design when designing the entrance lobbies of new buildings to dispense with the provision of air-conditioning and thereby save energy. In connection with energy efficiency enhancement of new buildings, will the executive authorities inform this Council whether:*

- (a) *there are currently publicly-funded buildings in which a natural ventilation design has been adopted for their entrance lobbies; whether the authorities will consider adopting as far as possible such a design in new publicly-funded buildings; if they will, of the details; if not, the reasons for that;*
- (b) *they will encourage real estate developers to adopt a natural ventilation design for entrance lobbies of commercial, industrial and residential buildings; if not, of the reasons for that; and*
- (c) *they will require that newly-built buildings be installed with specified energy saving installations and renewable energy facilities, such as motion and daylight sensors as well as sun pipes that bring in natural light to reduce the need for illumination, double-layer curtain walls with return air grills to reduce the energy consumption of air-conditioning systems, and solar photovoltaic panels to provide supplementary electricity; if not, of the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government has been attaching great importance to energy conservation and has, in recent years, actively explored the application of renewable energy. It is our policy to promote the use of energy saving installations and renewable energy facilities amongst government departments. To this end, departments concerned have drawn up technical guidelines to implement the policy. The Government has completed the public consultation exercise on the proposed mandatory implementation by means of legislation of the Building Energy Codes, which aims at promoting energy saving initiatives for buildings at different levels. The public and private sector of the construction industry are generally in support of the proposal. The Government will work out details of the implementation, taking into account the views collected.

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

- (a) Except for very favourable site conditions, entrance lobbies of government buildings other than schools cannot solely rely on natural ventilation to meet the expectation and demand of users the year round and in all weather conditions. Therefore, the focus of our effort to save energy in the majority of government buildings is on enhancing the energy efficiency of the air-conditioning systems.

In general, new schools would use natural ventilation for their ground floor lobbies. Other than that, only buildings with very favourable site conditions, such as the Siu Sai Wan Municipal Complex to be constructed shortly, can adopt natural ventilation in lieu of air-conditioning in the design.

As regards other public-funded buildings, the design considerations are similar to those for government buildings.

- (b) In view of the design considerations and constraints mentioned in part (a) above, the Government has not required real estate developers to adopt natural ventilation design for entrance lobbies of buildings. Nevertheless, to promote building energy efficiency, the Government issued in 1998 the Building Energy Codes for electrical and mechanical systems in buildings. In 2004, guidelines on Energy Efficiency and Conservation for Buildings were published to provide recommendations on energy saving measures

for electrical and mechanical installations, sustainable resources and related architectural designs. Moreover, the Electrical and Mechanical Services Department (EMSD) has introduced on its website information of sustainable resources for buildings, including the concept of natural ventilation for reference of the industry.

- (c) The technical guidelines issued by the Government require that new government buildings should, wherever practicable, adopt energy saving installations and renewable energy facilities, which include motion and daylight sensors as well as solar photovoltaic panels. We will regularly review the guidelines and consider introducing other installations and facilities that are effective and practicable.

As for private buildings, there are no statutory requirements for installing prescribed energy saving installations and renewable energy facilities. However, the Building Energy Codes issued by the EMSD has laid down basic requirements in regard to energy efficiency for reference of the industry.

Operation of Unsolicited Electronic Messages Ordinance

14. **MR SIN CHUNG-KAI** (in Chinese): *President, the Unsolicited Electronic Messages Ordinance (UEMO) (Cap. 593) came into full operation on 22 December last year. Members of the public who do not wish to receive unsolicited faxes, short messages or pre-recorded telephone messages can have their fax/telephone numbers registered on the relevant registers set up by the Office of the Telecommunications Authority (OFTA). In this regard, will the Government inform this Council of:*

- (a) *the respective up-to-date numbers of fax/telephone numbers registered on the three registers, and their respective percentages in the total number of such numbers;*
- (b) *the number of complaints received so far from users of numbers which have been registered on the relevant registers that they still received unwanted types of unsolicited electronic messages, and how OFTA has followed up such complaints;*

- (c) *the up-to-date number of senders of electronic messages who are subscribers of the data on the registers, and its percentage in the number of operators in the relevant sectors; and*
- (d) *the details of the operating costs of the registers concerned; whether the existing annual subscription charge of \$1,600 per register can recover the cost, and if it has assessed if the charge has room for downward adjustment?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, since the UEMO came into full operation in late December 2007, the OFTA has launched in phases the do-not-call registers for faxes, short messages and pre-recorded telephone messages. Members of the public may register their telephone or fax numbers onto the registers, and the registered numbers will be protected by the UEMO. Under the UEMO, senders of commercial electronic messages should not send such messages to any number listed on the do-not-call registers unless consent has been given by the registered user of the number. Senders of commercial electronic messages may apply for subscription accounts with the OFTA to download the relevant do-not-call registers and vet their sending lists based on the information of the registers to avoid contravening the UEMO.

My reply to the question is as follows:

- (a) As at April 2008, the respective numbers of fax/telephone numbers registered onto the do-not-call registers are as follows:

	<i>Operational date</i>	<i>Number of registered numbers</i>	<i>Percentage in the total number concerned</i>
Do-not-call register for faxes	8 January 2008	127 065	- ¹

¹ At present, there are approximately 350 000 fax lines in Hong Kong. However, since fax machines can also be connected to fixed telephone lines, OFTA does not have information on the total number of fax numbers currently in use in Hong Kong.

	<i>Operational date</i>	<i>Number of registered numbers</i>	<i>Percentage in the total number concerned</i>
Do-not-call register for short messages	25 January 2008	156 001	1.5% ²
Do-not-call register for pre-recorded telephone messages	26 March 2008	375 090	2.6% ³
Total		658 156	

- (b) If members of the public still receive commercial electronic messages after registering their numbers onto the do-not-call registers, they may lodge a complaint to the OFTA.

Upon receipt of the complaint, the OFTA will contact the complainant for further information as and when necessary. The OFTA will contact the sender as well to request for a response. After considering and analysing the information provided by the complainant and the sender, the OFTA will decide whether the sender has violated the UEMO and take appropriate action accordingly. If the sender is found to be a first offender and is willing to take immediate remedial measures (such as to immediately cease sending commercial electronic messages which contravene the UEMO, to vet its sending list by opening a subscription account of the do-not-call registers) after being reminded, the OFTA will consider issuing a warning letter to the sender, and keep a watch to see if there is any further breach of the UEMO by the sender. If the sender concerned is not co-operative and the OFTA is of the view that the contravention will likely continue or be repeated, the OFTA may issue an enforcement notice to require the sender concerned to take steps to remedy the contravention. Under the UEMO, a person who contravenes an enforcement notice commits an offence and is liable on first

² Since most of the existing fixed-line telephones do not support short message services, we believe that most of the numbers listed on the do-not-call register for short messages are mobile telephone numbers. As such, the calculation of the percentage of numbers listed on the do-not-call register in the total number concerned is based on the total number of mobile telephone users only. As at January 2008, the total number concerned was 10.58 million.

³ Since both fixed-line and mobile telephone users can register their numbers onto the do-not-call register for pre-recorded telephone messages, the calculation of the percentage of numbers listed on the do-not-call register in the total number concerned is based on the total number of fixed-line and mobile telephone users. As at January 2008, the total number concerned was 14.3 million.

conviction to a fine up to \$100,000; on second or subsequent conviction to a fine up to \$500,000; and in the case of a continuing offence to a further daily fine of \$1,000.

The OFTA has received a total of 2 158 complaint cases of spamming since the full commencement of the UEMO in late December 2007 to April 2008. Among some 750 concluded cases, about 140 cases (18.7%) have been found to be in contravention of the UEMO upon investigation⁴. Among those 140 cases, 120 cases (16%) involved commercial electronic messages sent to the numbers listed on the do-not-call registers by the senders. The OFTA has issued warning letters to the 21 companies/organizations involved. The OFTA will closely monitor the organizations concerned to see whether non-compliance of provisions under the UEMO will be repeated in future and will issue enforcement notices when necessary.

As for the complaints that are still being handled, information on the number of complaints involving the sending of commercial electronic messages to numbers listed on the do-not-call registers is not available at the moment. This is due to the fact that many complainants have not provided details of the suspected contraventions when making the reports, and the OFTA has to collect information from individual complainants and the senders concerned and then analyse the information upon receipt of such reports before it can ascertain the contraventions that may be involved.

- (c) As at April 2008, the respective numbers of subscription accounts for the do-not-call registers are as follows:

	<i>Number of subscription accounts opened</i>	<i>Number of applications being processed</i>	<i>Total</i>
Do-not-call register for faxes	134	27	161

⁴ Regarding the remaining cases, most of them cannot be further processed due to various reasons such as not relating to provisions under the UEMO, complainants' failure to provide sufficient information, complainants' refusal to authorize OFTA to disclose case information to the senders and withdrawal of complaints in the midway. It has been confirmed in some of the cases upon investigation that the senders have not breached the UEMO. Besides, about 110 complaint cases involved overseas junk emails and OFTA has referred them to the relevant overseas law enforcement agencies for follow-up actions.

	<i>Number of subscription accounts opened</i>	<i>Number of applications being processed</i>	<i>Total</i>
Do-not-call register for short messages	65	9	74
Do-not-call register for pre-recorded telephone messages	24	8	32
Total	223	44	267

Since senders of commercial electronic messages do not necessarily have to download the do-not-call registers direct for vetting their sending lists (a sender may, for instance, have already obtained the consent of the registered users of the numbers to which the commercial electronic messages are to be sent, or it may have commissioned an agent or operator to vet its sending list), it is not a must for them to open a subscription account with the OFTA. As such, we do not have the percentage of senders subscribing the do-not-call registers in the number of operators in the relevant sectors.

- (d) The average annual operating costs of the do-not-call registers are estimated to be about \$1.3 million, including equipment maintenance, Internet access and telephone facility charges, as well as staff cost. The subscription fees for the do-not-call registers are set based on cost recovery principles. Based on the prevailing charge level, a total of 800 subscription accounts will be needed in order to break even. Currently, there are only some 200 subscription accounts and the OFTA has not yet been able to recover the costs. The OFTA will continue to promote the service and review the subscription fee level from time to time.

Childhood Immunization Programme

15. **MR FREDERICK FUNG** (in Chinese): *President, regarding the Childhood Immunization Programme (CIP), will the Government inform this Council:*

- (a) *given that the authorities said earlier that it would study the possibility of inoculating all children under 12 with influenza vaccines, of the latest progress of the study, and whether the authorities will implement the recommendations of the study before the next influenza peak season arrives; and*
- (b) *given that it has been reported that a university's study, which was commissioned by the authorities, on the cost-effectiveness of incorporating new or combination vaccines (including pneumococcal vaccines) into CIP had been completed, of the outcome of the study, and whether the authorities will consider making reference to the outcome of the study and update CIP in the near future?*

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

- (a) The Government's annual Influenza Vaccination Programme is developed in accordance with recommendations of the Scientific Committee on Vaccine Preventable Diseases (SCVPD) established under the Centre for Health Protection. Each year, the SCVPD will recommend influenza vaccination for certain high risk groups, taking account of the latest scientific studies worldwide, recommendations of the World Health Organization (WHO) and the local situation. The SCVPD will make recommendations on influenza vaccination for the flu seasons in 2008-2009 shortly. The Government will define the target groups to be covered under the Influenza Vaccination Programme for the coming year by this summer, having regard to the SCVPD's recommendations.
- (b) The Department of Health (DH) has commissioned a local university to conduct a study on the cost-effectiveness of incorporating various new or combination vaccines (including the 7-valent pneumococcal polysaccharide-protein conjugate vaccine (PCV-7), hepatitis A vaccine, chickenpox vaccine and Haemophilus influenzae type B vaccine) into the CIP. The study is near completion and the report will be submitted soon. The SCVPD will then study the findings and make recommendations to the DH. In considering whether to include a new vaccine in the CIP, the DH

needs to take into account a number of factors including epidemiology, disease burden, the safety, efficacy, side effects, cost-effectiveness and supply of the vaccine, the acceptance of injection of the vaccine among the public, the availability of other preventive measures, the administrative arrangements for vaccination, and so on.

Assistance to Elderly People Residing on the Mainland and Those who Have Returned to Settle in Hong Kong

16. **MR LAU KONG-WAH** (in Chinese): *President, regarding the assistance to elderly people residing on the Mainland and those who have returned to settle in Hong Kong, will the Government inform this Council:*

- (a) *of the number of cases received in the past two years by the authorities in which elderly people residing on the Mainland sought assistance because they had got into straitened circumstances, as well as the causes of their hardship;*
- (b) *given that there has been continuous inflation on the Mainland in recent months, whether the Government will reconsider further relaxing the current period of absence from Hong Kong for recipients of Old Age Allowance (OAA), so as to lessen the burden of living for elderly people residing on the Mainland; and*
- (c) *whether it knows the number of elderly people who returned in the past two years from the Mainland to settle in Hong Kong for economic or health reasons; and the assistance provided by the authorities to them?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): *President,*

- (a) The Social Welfare Department (SWD) does not maintain statistics on the number of cases concerning elderly people residing on the Mainland and in straitened circumstances seeking assistance. Generally speaking, Hong Kong residents (including the elderly) who find themselves in need of assistance owing to emergencies on

the Mainland can contact the respective offices of the Government of the Hong Kong Special Administrative Region (HKSAR) on the Mainland for assistance. These offices will offer assistance having regard to the nature and circumstances of the cases. The residents concerned can also seek assistance from the District Elderly Community Centres or Integrated Family Service Centres/Integrated Services Centres in Hong Kong on return to the territory.

- (b) The OAA under the Social Security Allowance (SSA) Scheme is designed to provide cash allowance for senior Hong Kong residents to meet their special needs arising from old age, rather than helping them to resolve their financial difficulties. The SSA Scheme is a non-contributory social security scheme funded entirely by general revenue. As such, the recipients must have regarded Hong Kong as a place of residence, and they are subject to a permissible limit of absence from Hong Kong. Since 1 October 2005, the permissible limit of absence from Hong Kong under the SSA Scheme has been relaxed from 180 days to 240 days in a year. Recipients are eligible for the permissible limit of absence on condition that they have resided in Hong Kong for not less than 90 days in the year. This measure has taken into account the preference of some elderly people who would like to spend more time to travel or visit their relatives or take up short-term residence outside Hong Kong, while on the other hand ensures that public funds are spent on Hong Kong residents who consider Hong Kong as a place of permanent residence. We believe that the measure has struck a reasonable balance. As far as we understand, elderly people who wish to retire permanently on the Mainland have to consider a number of factors, such as their connections with relatives and friends in Hong Kong when residing on the Mainland and whether they can accustom themselves to the lifestyle and afford their medical expenses on the Mainland. The Labour and Welfare Bureau is carrying out a comprehensive and in-depth review on OAA and will examine the related permissible limit of absence as part of the exercise.
- (c) The SWD does not have any information on the number of elderly people who returned from the Mainland to settle in Hong Kong. If they are in straitened circumstances after returning to Hong Kong,

they may seek assistance from the SWD. Social workers will conduct comprehensive assessment on their welfare needs and, having regard to the actual circumstances of individual cases, provide them with appropriate services, such as counselling services and referrals for applying for Comprehensive Social Security Assistance, home care services and residential care services, and so on.

Differences in Charges for Cultural and Recreational Facilities in Different Districts

17. **MR LEUNG YIU-CHUNG** (in Chinese): *President, will the Government inform this Council:*

- (a) *of the reasons for the differences in the current charges for government cultural and recreational facilities in different districts and details of the differences; and*
- (b) *whether the authorities have tried to narrow or remove such differences; if not, of the reasons for that; and whether the authorities have considered changing the policy and narrowing such differences by lowering the charges?*

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

- (a) At present, the Leisure and Cultural Services Department (LCSD) adopts the fees and charges set by the two former municipal councils for its leisure facilities. Owing to the different pricing policies of the two former municipal councils, there are discrepancies in the fees and charges for certain facilities in the urban areas and the New Territories. Overall speaking, except for the fees and charges for tennis courts, badminton courts, natural turf pitches and swimming pools in the New Territories, which are higher than those in the urban areas during peak hours, the fees and charges for major recreational and sports facilities in the New Territories are generally lower than those in the urban areas. A list of the fees and charges for major LCSD leisure facilities in the urban areas and the New Territories is set out at the Annex.

The cultural facilities provided by the LCSD in various districts include 13 performance venues, two indoor stadia, 14 museums, two heritage centres, one film archive, one visual arts centre, 66 static libraries and 10 mobile libraries. These cultural facilities currently adopt a total of about 500 types of fees and charges primarily set by the two former municipal councils before their dissolution in 2000. The basic hire charges for LCSD performance venues are not standardized; they are determined mainly by factors like location, standard of facilities, area, seating capacity and types of services provided. Regarding the public libraries, as the service charges set by the two former municipal councils are adopted, there are discrepancies in the charges for certain services in the urban areas and the New Territories. These include the charges for microfilm photocopying, computer/CD-ROM database printouts, damaged audio cassette/CD plastic cases, loss of audio cassette/CD covers and hiring of extension activities rooms. In respect of museums, a standard admission fee of HK\$10 is charged at seven major museums, except the Hong Kong Science Museum, which charges HK\$25. The remaining seven small museums and the film archive are all admission free. The variation in museum charges is based on the scale of the museums rather than the districts in which they are located.

- (b) Since its establishment in 2000, the LCSD has reviewed the fees and charges for the facilities concerned. It has so far aligned the concessionary rates of various recreational and sports facilities in the urban areas and the New Territories, including those for the use of public swimming pools, tennis courts, turf pitches, squash courts, sports centres, holiday villages, and so on. Users or organizations of the same category, including children/infants, people with disabilities, students, schools and subvented organizations, can enjoy the same concessionary rates when using these facilities across the territory.

The Government will, in the light of current subsidies for the facilities and services concerned, examine the feasibility of and options for aligning the fees and charges.

Annex

Charges for Use of Leisure Facilities of
the Leisure and Cultural Services Department

Facility	Urban Areas	New Territories	
		Peak Hour	Non-peak Hour
Tennis court			
- with floodlighting	\$57 per hour	\$73 per hour	\$67 per hour
- without floodlighting	\$42 per hour	\$52 per hour	\$34 per hour
Squash court			
- with air-conditioning	\$27 per 1/2 hour	\$27 per 1/2 hour	\$18 per 1/2 hour
- without air-conditioning	\$17 per 1/2 hour	\$17 per 1/2 hour	\$13 per 1/2 hour
Basketball court			
- with air-conditioning	\$236 per hour	\$148 per hour	\$120 per hour
- without air-conditioning	\$148 per hour	\$82 per hour	\$57 per hour
Volleyball court			
- with air-conditioning	\$236 per hour	\$148 per hour	\$120 per hour
- without air-conditioning	\$148 per hour	\$82 per hour	\$57 per hour
Badminton court			
- with air-conditioning	\$59 per hour	\$66 per hour	\$51 per hour
- without air-conditioning	\$37 per hour	\$48 per hour	\$34 per hour
Table tennis table			
- with air-conditioning	\$21 per hour	\$14 per hour	\$13 per hour
- without air-conditioning	\$12 per hour	-	-
Activity room of 100 m ² or above			
- with air-conditioning	\$75 per hour	\$57 per hour	\$54 per hour
- without air-conditioning	\$54 per hour	\$39 per hour	\$37 per hour
Activity room less than 100 m ²			
- with air-conditioning	\$47 per hour	\$38 per hour	\$36 per hour
- without air-conditioning	\$27 per hour	\$20 per hour	\$19 per hour
Use of fitness equipment			
	\$17 per person per hour	\$14 per person per hour	\$13 per person per hour
Bowling greens (per rink)			
- with floodlighting	\$58 per hour	\$40 per hour	\$30 per hour
- without floodlighting	\$53 per hour		

Facility	Urban Areas	New Territories	
		Peak Hour	Non-peak Hour
Natural turf pitch (Association Soccer)			
- with floodlighting	\$336 per 90 mins	\$350 per 90 mins	\$290 per 90 mins
- without floodlighting	\$168 per 90 mins	\$230 per 90 mins	\$170 per 90 mins
Natural turf pitch (Miniature)			
- with floodlighting	\$168 per 90 mins	-	-
- without floodlighting	\$84 per 90 mins	-	-
Artificial turf pitch (Association Soccer)			
- with floodlighting	\$336 per 90 mins	\$280 per 90 mins	\$240 per 90 mins
- without floodlighting	\$168 per 90 mins	\$170 per 90 mins	\$130 per 90 mins
Artificial turf pitch (Miniature)			
- with floodlighting	\$168 per 90 mins	\$150 per 90 mins	\$130 per 90 mins
- without floodlighting	\$84 per 90 mins	\$90 per 90 mins	\$70 per 90 mins
Swimming Pool Admission Fee			
	\$19 per person	\$20 per person	\$17 per person

Remark 1: For leisure facilities in the New Territories
 Non-peak hour Monday to Friday From opening to 6 pm (excluding Public Holidays)
 Saturday From opening to 1 pm (excluding Public Holidays)
 Peak hour Monday to Friday 6 pm to 11 pm
 Saturday 1 pm to 11 pm (excluding Public Holidays)
 Whole Day on Sunday and Public Holidays

Remark 2: For natural turf pitches and artificial turf pitches in the New Territories
 Non-peak hour Monday to Friday From opening to 6 pm (excluding Public Holidays)
 Peak hour Monday to Friday 6 pm to 11 pm
 Whole Day on Saturday, Sunday and Public Holidays

Industry Safety for Working at Height

18. **MR ABRAHAM SHEK** (in Chinese): *President, it was reported that in a joint operation carried out at the end of last year by the Labour Department (LD) and the Buildings Department to perform surprise checks at repair and maintenance work sites, only one out of the 18 truss-out scaffolds inspected was found to be in full compliance with the safety standards. In this connection, will the Government inform this Council:*

- (a) *since the SME Sponsorship Scheme for Work-at-height Fall Arresting Equipment for Repair, Maintenance, Alterations and Additions Works was launched in October 2005, of the respective numbers of*

applications received and approved by the authorities for subsidy under the Scheme, the total amount of subsidy granted, as well as the reasons for some of the applications being rejected; and

- (b) *whether it will enhance the promotion of safety for working at height in the construction industry to further publicize the proper use of truss-out scaffolds (commonly known as "supporting brackets") and transportable temporary anchor devices; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, safety for working-at-height and safety in renovation, maintenance, alterations and additions (RMAA) works have always been the Government's major concern. In addition to a legislative approach to regulating the erection, dismantling and examination of truss-out scaffolds, the LD also seeks to enhance work safety in the use of scaffolds through education, publicity and promotion.

During routine inspections and special enforcement campaigns, Occupational Safety Officers of the LD also promote safety measures related to working-at-height to contractors and workers. These include the safe design of truss-out scaffolds, proper installation of supporting brackets of truss-out scaffolds and fall arresting equipment (including transportable temporary anchorage devices) that workers should use when erecting, working on and dismantling truss-out scaffolds.

The LD and the Occupational Safety and Health Council (OSHC) jointly launched in October 2005 the SME Sponsorship Scheme for Work-at-height Fall Arresting Equipment for RMAA Works (the Sponsorship Scheme) to encourage SME contractors to acquire and use fall arresting equipment, and to participate in the relevant safety training. The Sponsorship Scheme aims to motivate relevant stakeholders in the industry to adopt safe practices, enhance safety awareness of front-line workers employed by SME contractors, and ultimately nurture habits in the use of safety equipment.

As regards the two parts of the question, my answer is set out below:

- (a) Up to end-March 2008, 346 applications for subsidy under the Scheme have been received by the OSHC and 326 cases have been approved. The total amount of subsidy granted stood at about

\$1,020,000. Twenty applications were rejected mainly because of duplicate applications by the enterprises or the enterprises not belonging to the renovation and maintenance industry. The LD and OSHC will continue to promote the Sponsorship Scheme and encourage eligible SMEs to participate.

- (b) The LD will continue its efforts in promoting to the industry and the public, through different channels, safety for working-at-height in the construction industry, including the proper use of truss-out scaffolds and transportable temporary anchor devices. These include:
 - (i) further promoting the Sponsorship Scheme through the OSHC, worker unions, trade associations, professional bodies and government departments;
 - (ii) organizing safety award schemes and seminars;
 - (iii) staging roving exhibitions;
 - (iv) publicizing safety messages through the public transport system, such as broadcasting safety videos on "Roadshow" and posting safety posters at MTR stations and in train compartments of the Light Rail Transit; and
 - (v) broadcasting TV and radio Announcements in the Public Interest.

Recovery of Outstanding Student Loans

19. **MS EMILY LAU** (in Chinese): *President, it has been reported that as the problem of post-secondary students defaulting on loan repayments was serious (with the amount in default totalling \$117 million in the 2006-2007 school year), the Student Financial Assistance Agency (SFAA) is considering to provide to credit reference agencies the information of those loan borrowers who have failed to repay two or more consecutive quarterly instalments, so as to deter the borrowers from defaulting on repayments without reasons. In this connection, will the executive authorities inform this Council whether:*

- (a) *they have assessed if the above practice will affect the borrowers' chance of obtaining approvals from banks for loans, credit cards and mortgage loans in the future, and whether it will contravene the relevant provisions of the Code of Practice on Consumer Credit Data promulgated by the Office of the Privacy Commissioner for Personal Data, Hong Kong; if they have, of the assessment results; and*
- (b) *they will take the initiative to look into the reasons why the borrowers default on loan repayments and take follow-up actions, with a view to assisting such borrowers in repaying their loans as soon as possible?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) It is the Government's student finance policy to ensure that no student is deprived of education for lack of means. Students of post-secondary institutions may, depending on their circumstances, apply to the SFAA for financial assistance to pay for their tuition fees, academic expenses and/or living expenses. Upon completion or cessation of their studies, loan borrowers are required to repay their loans in quarterly instalments within five or 10 years, in accordance with the terms for the loans.

The SFAA appreciates that individual loan borrowers may encounter difficulties in repaying their loans and has therefore put in place an effective mechanism for handling such problems. If loan borrowers are unable to repay their loans owing to financial hardship, further studies or serious illness, they may apply to the SFAA for assistance with support of documentary proofs. To help the loan borrowers tide over their difficulties, the SFAA will, on the basis of individual merits, approve deferment of loan repayment, temporary adjustment of the quarterly repayment amount or extension of the repayment period. We encourage loan borrowers with difficulties in repayment to approach the SFAA for assistance.

Statistically, the SFAA classifies loan borrowers who have failed to repay two or more consecutive quarterly instalments as defaulters. This does not include those who have been allowed to defer

repayment. As at 31 January 2008, there are about 6 000 default cases under the Tertiary Student Finance Scheme — Publicly-funded Programmes, the Financial Assistance Scheme for Post-secondary Students, and relevant non-means-tested loan schemes, involving an overdue amount of about \$126 million.

We are concerned about the default problem, and will endeavour to ensure public money is not misused. The SFAA has reviewed the debt collection process, streamlined the workflow, and deployed additional staffing resources to expedite debt recovery through legal means. In addition, the SFAA has enhanced the publicity in relation to prudent financial management, and has been working closely with the post-secondary institutions to brief students on various loan schemes and the corresponding loan repayment arrangements. It has reminded the students to seriously consider their financial needs and repayment abilities before applying for loans, and stressed the importance of prudent financial management and making repayment on time.

The SFAA has sought the advice of the Joint Committee on Student Finance on measures to reduce the number of default cases. In order to deter loan borrowers from defaulting loan repayment without reasons, there was a suggestion that the SFAA should provide the information of the defaulters to relevant credit reference agencies. The SFAA is exploring the feasibility of the suggestion and will ensure compliance with the requirements under law or the relevant code before any new measures are implemented. We believe that the suggestion will help protect public money and will only affect loan borrowers who have breached their undertaking and evaded the responsibilities in loan repayment. It will not cause problem to loan borrowers who repay their loans on time, or who have genuine difficulties in loan repayment but have approached the SFAA for assistance.

- (b) Most of the defaulters have disregarded the notices of loan repayment and reminders issued by the SFAA. They have not approached the SFAA to resolve their outstanding loans, to disclose the reasons for default or to seek assistance. We are therefore unable to ascertain why they default on loan repayments. Since the

SFAA has already put in place a mechanism to assist loan borrowers with difficulties in repayment on financial, study or health grounds, we believe that the default is not due to these reasons.

Cycling Facilities and Promotion of Cycling

20. **MR FREDERICK FUNG** (in Chinese): *President, regarding cycling facilities and the promotion of cycling, will the Government inform this Council:*

- (a) *of a breakdown by district council district, of the locations of all public cycle tracks, bicycle parking spaces and cycle parks, the responsible government departments (including the design, planning, construction and management of these facilities), as well as the respective numbers of traffic accidents involving bicycles in various districts last year and the resultant casualties;*
- (b) *whether it has assessed if there is any overlap in the functions of the above government departments, and how these departments should be co-ordinated to make them accountable to the public for their work in ensuring the safety of cycling facilities and reducing traffic accidents involving bicycles, and whether it will consider formulating a central policy on cycling and setting up an inter-departmental committee to co-ordinate the management of cycling facilities and promotion of cycling; and*
- (c) *whether it will consider studying the effect of encouraging the public to cycle on air quality and health, and whether it will co-operate with local cycling organizations to offer cycling training courses to all primary school pupils for free or at low fees?*

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

- (a) and (b)

The total length of public cycle tracks, the number of bicycle parking spaces and leisure venues with cycling facilities in Hong Kong, with a breakdown by district council district, are set out at

Annex 1. The locations of cycle tracks are at Annex 2, and those of leisure venues with cycling facilities are at Annex 3. Since the number of bicycle parking spaces is very high and such spaces are widely distributed in each district, we have not set out all the information and the detailed locations. If Members would like to know the locations of the bicycle parking spaces in public places and within public housing estates of individual districts, we can provide the detailed information.

The number of traffic accidents and casualties involving bicycles in 2007, with a breakdown by district, is at Annex 4.

The functions of the various government departments in the design, planning, construction, management and maintenance of cycling facilities are set out at Annex 5.

We consider that while the functions of the various departments are finely delineated, there is no overlap in these functions. The departments have also been co-operating closely in the planning and design of cycling facilities. In addition, the Transport Department is responsible for co-ordinating the safety of cycling facilities. At this stage, we do not consider there is a need to set up an inter-departmental committee to co-ordinate the management of cycling facilities.

- (c) Hong Kong is densely populated. To strike a balance between the need to alleviate traffic congestion and air pollution, we have all along been actively pursuing the policy of having the public transport system as the main transport mode and encourage the public to make use of the mass public transport system and other public transport services. Railway is the backbone of our transport system, with franchised buses and public light buses providing feeder services to the railway network so as to reduce vehicles on road and their impact on air quality. As the road network and public transport system in Hong Kong are well developed, the general road traffic is heavy and road space is limited, under our transport policy and based on road safety and traffic considerations, we do not encourage the use of bicycles as a transport mode in the urban areas.

Cycling is a recreational activity which is good for both physical and mental health. The Leisure and Cultural Services Department (LCSD) provides subvention to the Hong Kong Cycling Association on a yearly basis under the School Sports Programme for organization of cycling training courses and activities for primary and secondary students in Hong Kong. The Programme includes the Demonstrations, the Easy Sport Programme and the Outreach Coaching Programme. Participating schools may conduct their training and demonstration in their school campuses or in LCSD venues where bicycles are provided. In 2007-2008, the LCSD organized a total of 59 training courses for about 3 200 participants and the subvention accounted for about 70% to 85% of the programme expenses.

The LCSD also provides subvention to the Hong Kong Cycling Association on a yearly basis for the organization of Cycling Proficiency Course for members of the public aged between six and 55 in all districts. The content includes basic cycling skills and knowledge on the structure of bicycles so as to enhance the participants' interest in cycling.

Annex 1

Total Length of Public Cycle Tracks,
Number of Bicycle Parking Space and
Leisure Venues with Cycling Facilities

<i>District</i>	<i>Total Length of Public Cycle Tracks (km)</i>	<i>Number of Bicycle Parking Spaces</i>	<i>Number of Leisure Venues with Cycling Facilities</i>
<i>New Territories</i>			
Sha Tin	40.8	10 617	2
Tai Po	33.9	3 475	0
North	21.2	3 185	1
Sai Kung	9.8	3 016	0
Kwai Tsing	0	0	0
Tsuen Wan	0	30	1
Tuen Mun	15.2	3 893	2
Yuen Long	32.3	11 554	0
Islands	3.9	5 047	0

<i>District</i>	<i>Total Length of Public Cycle Tracks (km)</i>	<i>Number of Bicycle Parking Spaces</i>	<i>Number of Leisure Venues with Cycling Facilities</i>
<i>Kowloon</i>			
Yau Tsim Mong	0.5	0	1
Sham Shui Po	0	60	1
Kowloon City	0	0	1
Wong Tai Sin	0	0	0
Kwun Tong	0	0	2
<i>Hong Kong Island</i>			
Eastern	0	8	3
Wan Chai	0	0	1
Central and Western	0	0	0
Southern	0.6	0	0
Total	158.2	40 885	15

Annex 2

Locations of Public Cycle Tracks

<i>District</i>	<i>Location of Public Cycle Tracks</i>
<i>New Territories</i>	
Sha Tin	Tolo Highway; Shing Mun River Channel; Shek Mun; A Kung Kok; Ma On Shan; Wu Kai Sha; Siu Lek Yuen; Yuen Chau Kok; Fo Tan; Wo Che; Tai Wai
Tai Po	Tai Wo Road; Ting Kok Road; Tolo Highway
North	Pak Wo Road; Wo Hop Shek; Shek Wu Hui; Luen Wo Hui; Sha Tau Kok Road — Lung Yeuk Tau
Sai Kung	Po Lam; Hang Hau; Tiu Keng Leng; Wan Po Road near Tseung Kwan O Industrial Area
Tuen Mun	Wu King Road; Lung Mun Road near Butterfly Beach Park; Tuen Mun River Channel near Wu Shan Riverside Park; Tuen Mun Station; Tin King; Lam Tei
Yuen Long	Hung Shui Kiu; Ping Shan; Wang Chau; Castle Peak Road — Yuen Long section; Kam Tin Road; Tin Shui Wai
Islands	Tung Chung Road; Yu Tung Road
<i>Kowloon</i>	
Yau Tsim Mong	West Kowloon Waterfront Promenade
<i>Hong Kong Island</i>	
Southern	Cyberport

Annex 3

Locations of Leisure Venues with Cycling Facilities

<i>District</i>	<i>Location of Leisure Venues with Cycling Facilities</i>
<i>New Territories</i>	
Sha Tin	- Siu Lek Yuen Road Playground - Sha Tin Road Safety Park
North	- Pak Wo Road Playground
Tsuen Wan	- Tsuen Wan Park (for Children)
Tuen Mun	- Tuen Mun Park - Wu Shan Recreation Playground
<i>Kowloon</i>	
Yau Tsim Mong	- West Kowloon Waterfront Promenade
Sham Shui Po	- Lai Chi Kok Park (Skateboard Ground)
Kowloon City	- Carpenter Road Park
Kwun Tong	- Kung Lok Road Playground - Kowloon Bay Park
<i>Hong Kong Island</i>	
Eastern	- Quarry Bay Park - Yee Shing Lane Temporary Sitting-out Area - Siu Sai Wan Road Garden
Wan Chai	- Morrison Hill Road Playground

Annex 4

Number of Traffic Accidents and Casualties Involving Bicycles in 2007

<i>District</i>	<i>Number of accidents involving bicycles</i>	<i>Number of Casualties</i>		
		<i>Death</i>	<i>Injury</i>	<i>Total</i>
<i>New Territories</i>				
Sha Tin	387	1	401	402
Tai Po	357	1	384	385

<i>District</i>	<i>Number of accidents involving bicycles</i>	<i>Number of Casualties</i>		
		<i>Death</i>	<i>Injury</i>	<i>Total</i>
North	128	2	127	129
Sai Kung	28	1	29	30
Kwai Tsing	26	0	26	26
Tsuen Wan	23	0	24	24
Tuen Mun	124	1	128	129
Yuen Long	242	4	246	250
Islands	71	0	74	74
<i>Kowloon</i>				
Yau Tsim Mong	58	1	58	59
Sham Shui Po	34	1	33	34
Kowloon City	14	0	15	15
Wong Tai Sin	9	1	8	9
Kwun Tong	18	0	19	19
<i>Hong Kong Island</i>				
Eastern	13	0	19	19
Wan Chai	26	0	29	29
Central and Western	12	0	13	13
Southern	2	0	2	2
Total	1 572	13	1 635	1 648

Annex 5

Functions of Various Government Departments
in Providing Cycling Facilities

<i>Public Cycling Facilities</i>		<i>Design, planning and construction</i>	<i>Management</i>	<i>Maintenance</i>
Cycle Tracks	New towns and individual new development projects	Civil Engineering and Development Department	Transport Department	Highways Department

<i>Public Cycling Facilities</i>		<i>Design, planning and construction</i>	<i>Management</i>	<i>Maintenance</i>
Bicycle parking spaces	Housing Authority public housing estates	Housing Department	Housing Department	Housing Department
	Leisure venues provided with cycling facilities	LCSD	LCSD	LCSD
	Others	Transport Department *	Transport Department	Highways Department
Leisure venues provided with cycling facilities		LCSD	LCSD	LCSD

* Some bicycle parking spaces are planned and constructed together with the cycle tracks by Civil Engineering and Development Department.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bills. We now resume the second reading debate on the Statute Law (Miscellaneous Provisions) Bill 2007.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

Resumption of debate on Second Reading which was moved on 25 April 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.

MS MARGARET NG: Madam President, in my capacity as the Chairman of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007 (the Bills Committee), I would like to report on the deliberations of the Bills Committee on the major proposals in the Bill.

The Bill is an omnibus bill which seeks to make miscellaneous amendments to various ordinances for the purpose of improving, clarifying and updating the law and rectifying textual errors and omissions of consequential amendments as a result of revision of various ordinances. The Bills Committee has held eight meetings, including seven with the Administration, and has considered the views of the two legal professional bodies and received public views on certain provisions of the Bill.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

Part 2 of the Bill proposes to amend section 30A(10)(b)(i) of the Bankruptcy Ordinance (BO) to exonerate a bankrupt from his obligation to notify the trustee of bankruptcy of his temporary departure from Hong Kong. Having noted the mechanism for a bankrupt to notify the trustee of his itinerary when leaving Hong Kong and the calculation of the relevant period for a bankrupt to be discharged from bankruptcy after the passage of the Bill, the Bills Committee has no objection to the proposed amendment.

However, as a bankrupt is obliged to notify the trustee of his return under section 30A(10)(b)(ii) of BO, members consider it to be an anomaly for the bankrupt to be required to do so if he is released from his obligation to notify the trustee of his temporary departure from Hong Kong. Having considered members' views, the Administration agrees that there is a need to review the provision. As the amendment consequential to the deletion of section 30A(10)(b)(i) would fall outside the scope of the Bill, and the Administration intends to review the "abscondee" regime as a whole (that is, bankrupts who leave Hong Kong and cannot be contacted) under BO and consider whether there is a need to amend any other provision(s) in BO, the Administration will move a Committee stage amendment (CSA) to delete Part 2 of the Bill. Any proposed legislative amendments to the "abscondee" regime would be taken forward in a separate exercise.

The Bills Committee supports the Administration's proposal to delete Part 2 of the Bill. Members are concerned about the timeframe for introducing the proposed legislative amendments to the "abscondee" regime and whether public consultation will be conducted. The Bills Committee agrees that the issue should be referred to the Panel on Financial Affairs for follow up.

Another proposal which has been considered by the Bills Committee in detail relates to the proposed amendments under Part 3 of the Bill to repeal the references to "*ordre public*" in the Societies Ordinance and the Public Order Ordinance (POO) to give effect to the judgment delivered by the Court of Final Appeal (CFA) in July 2005. In that case, CFA held that the discretion of the Commissioner of Police (the Commissioner) under POO to restrict the right of peaceful assembly for the statutory purpose of "public order (*ordre public*)" does not give an adequate indication of the scope of that discretion. CFA also held that the Commissioner's discretion in relation to the purpose of "public order (*ordre public*)" in sections 14(1), 14(5) and 15(2) of POO is unconstitutional, and that the appropriate remedy is the severance of "public order" in the law and order sense from "public order (*ordre public*)" in those provisions.

Most members consider that the proposed amendments are not merely technical amendments and involve changes in policy. They have also expressed concern whether the Administration's proposed repeal of references to "*ordre public*" in POO can bring the Ordinance into conformity with the CFA judgment, and whether the right to peaceful assembly and demonstration would be tightened after the passage of the Bill. Those members are of the view that the Administration should examine how the relevant provisions can be improved so that the police and members of the public will be aware of the scope of the police's power.

The Administration has reiterated to the Bills Committee that the purpose of the amendments seeks to bring the statute book in conformity with the law in force. It has also advised that since the handing down of the CFA's judgment, the Administration has issued "Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions", which have incorporated the explanation in the CFA judgment for reference by front-line police officers and members of the public. The Administration has stressed that with the proposal to delete the reference to "*ordre public*" from the English text in POO, the citizens' right to peaceful assembly is enhanced since the Commissioner's discretionary power is by law limited to public order in the law and order sense. The proposal does not have any substantive effect on police operations in practice, including the processing of notification of public meetings and processions under POO, and would in no way affect the right to assembly and demonstration currently enjoyed by the people of Hong Kong.

Most members are of the view that the proposed amendments do not sever the concept of "public order" (in the law and order sense) from "public order (*ordre public*)" in the light of the CFA judgment, and suggest that the Administration should conduct a comprehensive review of POO and examine how the provisions relating to public meetings and public processions can be improved. The Administration has advised that a comprehensive review of POO would be outside the scope of the Bill.

After a thorough consideration of the Administration's proposed amendments under Part 3 of the Bill and the effect of not passing them, the majority of members of the Bills Committee have reservations about the proposed amendments. The Bills Committee has decided that a CSA should be moved by the Bills Committee to delete the proposed amendments under Part 3 of the Bill. I shall explain the Bills Committee's CSA to delete Part 3 of the Bill when I later speak at the Committee stage.

Deputy President, I shall now turn to the proposed amendments to the Costs in Criminal Cases Ordinance under Part 7 of the Bill, which seek to enable the Court in criminal cases to order the legal or other representatives of a party to bear any costs incurred by another party to the same proceedings as a result of the improper or unreasonable act or omission, or undue delay or any other misconduct or default on their part.

The Bills Committee has expressed concern whether the proposed wasted costs provisions are in the best public interests in the administration of justice, given that the proposed wasted costs provisions may deter legal practitioners from fearlessly presenting the case in ways which they consider to be in the best interests of their clients.

The Administration has explained that section 18 of the Costs in Criminal Cases Ordinance is also proposed to be amended to provide that the Court or the Judge shall take into account the interest of fearless advocacy under the adversarial system of justice when determining whether to make such an order.

To address the legal practitioners' strong misgivings about the effect on fearless advocacy in criminal practice and to safeguard public interest of fearless advocacy in defending an accused in criminal proceedings, the Bills Committee

has requested the Administration to consider the proposal put forward by the Hong Kong Bar Association (the Bar) to limit the circumstances in which wasted costs orders apply with which proposal the Law Society had expressed agreement. Members also agree that it would move a CSA to delete Part 7 of the Bill if the Administration's position on the wasted costs provisions is unchanged. After considering members' concerns and comments, the Administration agreed to amend the definition of "wasted costs" in accordance with the Bar's proposal to make it clear that for the wasted costs jurisdiction to be invoked, it would be necessary for the act or omission of the legal representative to be "seriously improper" or for there to have been undue delay or any other misconduct on the part of the representative or employee of a representative. This means that the "undue delay" must be caused by a misconduct or itself amounts to misconduct. The proposed amendment would provide a tighter definition of wasted costs and maintain the purpose of deterring extremely deficient work.

At the suggestion of members, the Administration agrees further to modify "any other misconduct" to "any other serious misconduct", so as to be on a similar level of "seriously improper act or omission".

Taking all considerations together, members consider that the Administration's proposed CSAs strike the right balance and give effective protection to the public interest of fearless advocacy in defending an accused in a criminal charge. Members also agree to withdraw their previous decision to delete the proposed amendments under Part 7 of the Bill and support the Administration's proposed amendments.

The Administration will also introduce other minor and technical amendments which have the support of the Bills Committee.

With these remarks, and subject to the amendments to be moved by the Administration at the Committee stage, Deputy President, the Bills Committee supports the resumption of the Second Reading debate on the Bill.

It only leaves me to record a note of thanks for the hard work of members, Clerk of the Bills Committee and legal adviser because this is a very technical Bill. I also want to record my gratitude for the Administration in their co-operative attitude. Thank you.

DR YEUNG SUM (in Cantonese): Deputy President, I speak in support of the resumption of the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2007, and on behalf of the Democratic Party, I support Ms Margaret NG's amendments to be proposed at a later stage.

Deputy President, the Public Order Ordinance (POO) has in fact existed for a very long time dating from 1967. The Government used the POO to deal with the riots then. Its major purpose was indeed to contain the chaotic situation at that time. The POO deprived seriously of the public's freedom of expression, of assembly and of demonstration. I still remember that, insofar as three persons congregating at a public place, moving in the same direction or doing the same thing without the permission of the Commissioner of Police, then it would be deemed an offence. It could be seen that the law was very stringent and draconian.

It was not until 1995 when a lot of voices urging for changes were heard did the Government amend the law. After the revision, members of the public only needed to notify the police seven days in advance of their intention to hold a public meeting for so doing without any permission being granted. It was indeed some improvement. At the same time, the POO provided that, the police could only interfere with the right of assembly on the grounds of public safety or public order. A lot of importance was attached to this provision by the Democratic Party at the time. The provision restricting the police's power in interfering with the freedom of assembly was accepted by the Government at that time.

After 1997, the POO was further amended. According to the current provision, members of the public must notify the police seven days in advance of their intention to hold a public meeting and must obtain a notice of no-objection from the police. However, when making the amendment, Deputy President, a provision stipulating that for reasons of national security or national interests, the police can interfere with the holding of such a public assembly was also included in the POO. As Members may recall, when we were dealing with the legislation of Article 23 of the Basic Law, we had a lot of controversies about the definitions of national security and national interests. We are concerned that the amendment to be made in the provision would enable the police to interfere with the holding of a public assembly due to the political stance of the participants.

Deputy President, as the Secretary for Justice is fully aware, Hong Kong is a very mature civic community where people have a very strong sense in human rights. Members of the public attach a lot of importance to the aspiration and concern over our freedom of assembly and of expression. We very much hope that the Government and the Secretary can conduct as soon as possible a comprehensive review on the POO, so as to further protect the public's freedom of assembly and of expression. I so submit, thank you, Deputy President.

MR RONNY TONG (in Cantonese): Deputy President, when I first read about the amendment relating to *ordre public* in the course of scrutinizing the Bill, I was really alarmed. While the Government stated that it was only a technical amendment, why did it touch on a critical term which we considered very important in protecting human rights in Hong Kong? Deputy President, when the Bill was first submitted to this Council, the Administration — just as I discussed the amendment on the legislation about the Legislative Council election last week — regarded it as a technical amendment without much controversy. However, when we look into detail the amendment proposed by the Government, we find that it is absolutely not the case.

Deputy President, perhaps I would spend a little time to explain why I have such a strong view against the amendment. Deputy President, *ordre public* is a French term. As we all know, it has been quoted from Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and Article 16 of the Hong Kong Bill of Rights Ordinance (BORO) translated it from the original context. The French term has not been quoted in the Chinese text, but it was copied mechanically in the English text.

The term describes the circumstances under which the freedom of expression, such as the freedom of public procession, of demonstration or of speech, is restricted by the law. In other words, in the ICCPR, it is a term for restricting rights. However, we also have to understand that why, despite its restrictive nature, instead of using the English term public order, *ordre public* is used. It is in fact related to history. If we look up the underlying rationale and the well-known legal discussions of the ICCPR, we will know that the Chinese rendition of public order is 公共秩序, which only includes — as in its literal meaning, issues relating to public order and nothing else.

Nevertheless, when the IPCCR was discussed by the United Nations, representatives of all member countries were of the view that the term "public order" was inadequate in encompassing all the standards in relation to the restriction of human rights in an international context. As such, they adopted the French term *ordre public*. Apart from public order, the term *ordre public* also includes the core values of a democratic and civilized society. Most importantly, it includes certain fundamental political principles which respect human rights. These concepts could not be boiled down to a few sentences and it would involve too much work to express it in an explicit manner. For this reason, the United Nations adopted this French term. It has a special meaning. The purpose of using a French term instead of writing it in English is not for showing off, just like to mix some English or Japanese words in Chinese pop songs nowadays. Deputy President, the term *ordre public* bears a special meaning in relation to the restriction of human rights. The restriction that we mention has to tie in with the wider scope prescribed by the term *ordre public*.

Deputy President, if we just delete the term *ordre public* by replacing it with public order, what will be the consequence? Deputy President, in regard to the scope of restriction, the tightened definition of public order will be resulted in giving the authorities — the police in particular — a greater power in restricting Hong Kong, especially the freedom of expression and of thought of Hong Kong people, such as the freedom of public procession, demonstration or publication. If the police and the authorities, other than taking into account the scope of public order, has to take into account that of *ordre public*, will have to consider some fundamental core values of a civilized and democratic society as I just mentioned, including the respect for human rights. As such, if we just remove that term by substituting with another, it is in fact not replacing like with like. We have already made a far-reaching change in the law.

Deputy President, I am not going to go over the Siracusa Principles here as the Court of Final Appeal has stated it in detail in the case of LEUNG Kwok-hung, and part of its content has been included in the judgment. It is basically the same as the simple statement I made just now. As the French term represents the core social values most cherished by the people of Hong Kong, we can not just delete it all at once. Apart from that, we should not get the job done carelessly on the pretext of a technical amendment or in a backdoor manner. For this reason, when the Bill was submitted for scrutiny by the Bills Committee, I believed that the majority of our colleagues were astonished. Also, they openly asked the SAR Government to withdraw this amendment.

Nevertheless, as the Government always holds to its view and does not listen to dissentient voices, it has not made any change in its position. As a result, we have no choice but to ask Ms Margaret NG, our Chairman to propose this amendment on behalf of the Bills Committee.

Deputy President, more importantly, I must point out that the POO itself is very controversial and has been queried by the public. Basically, the POO is a piece of legislation that restricts human rights in Hong Kong. If we expand or widen the scope of restriction of the POO, that is, by replacing *ordre public*, a term representing a wider scope in core values, with public order, a term with narrower meaning, to confer the police greater power, it will in effect tighten the law on human rights in Hong Kong, and is thus in breach of the Basic Law. We all understand that, Article 39 of the Basic Law expressly makes reference to the entire provision of the ICCPR I just mentioned, including Article 19 of the ICCPR and Article 16 of the BORO. If we delete it in a backdoor manner, it will not only be in breach of the basic spirit of "one country, two systems" as stipulated by the Basic Law, but also the provisions of human rights conferred on the people of Hong Kong by our constitutional system.

Under this circumstance, even if the Bill is passed because, unfortunately, this Council is filled up with pro-government councillors, Deputy President, I believe that the provision is very likely to be challenged in the Court and the legislation would be repealed or regarded as unconstitutional.

Deputy President, the proposal of the Bills Committee today is only to shelf the relevant part, so that the people of Hong Kong can examine and discuss the matter thoroughly before coming up with a reasonable conclusion as to how to amend or improve the POO from our perspective. I think the proposal is perfectly reasonable and constitutional.

It is regrettable that the SAR Government has turned a blind eye and a deaf ear to our proposal. The Secretary for Justice sitting among us today is a prominent figure of the legal profession. In 2000, when I was the Chairman of the Hong Kong Bar Association (the Bar), he was also one of the members. He should understand very well my view on the POO when I was the Chairman of the Bar. It is regrettable that while he is sitting here today, he insists to delete the term *ordre public*.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, this matter here has something to do with me. As I was engaged in a civil disobedience for dissatisfying with being convicted of breaching the Public Order Ordinance (POO), I appealed all the way to the Court of Final Appeal (CFA). I sought to be acquitted on my conviction, but I lost the case. However, the judge of the CFA also agreed that the POO was in fact problematic. He asked me what I would like to get in return, and I said cost, perhaps. When he asked me how I would like to calculate the cost, I replied that if the Government had to spend a lot of time in calculating the cost of less than a hundred dollars worth, I might as well forego it. I can not imagine that what I have foregone on that day is not only several tens of dollars, but the sincerity on the part of the Government to conduct a comprehensive review on the basis of the judgment made by the CFA. Chief Justice Andrew LI smiled at my careless reply then. What I meant in my reply was, if it had to take so much trouble, I would rather forego it than to waste any public money.

It took me a long time to realize that the Secretary for Justice (S for J) could have plenty of time to do a lot of things to suppress me, such as to apply for an injunction from the Court, to prohibit an act judged by the Court as not unlawful but legally unconstitutional. The S for J could have a lot of time to do other things. However, while the judge of the CFA earnestly advised us to conduct a comprehensive review on the POO, it is surprising that the S for J is proposing this (let me look at its title) Statute Law (Miscellaneous Provisions) Bill 2007 today. I do not know what the meaning of miscellaneous provisions is, I only hear of a similar expression describing a special sort of policemen, which means policemen not charged with any special duties but doing ordinary work.

As a matter of fact, it is obvious that the POO is full of loopholes. When I put my case to the Court of Appeal of the High Court, I asked the three judges there if they knew the meaning of national security. I asked them to tell me if they had the knowledge. However, they were unable to give me an answer. Then I said, if they did not know, how they would expect the Commissioner of Police (the Commissioner) to know? The Commissioner is unable to distinguish uploading from downloading, how can he interpret legislation? If he is to interpret a concept that is not clear even to a judge — which is a concept unfamiliar to the Hong Kong people — and to suppress the people of Hong Kong with that concept, depriving them of the right protected by the International Covenant on Civil and Political Rights (ICCPR) which is a right also enshrined in Article 39 of the Basic Law, is it rather ridiculous?

On this issue, the present amendments to the miscellaneous provisions do not propose any change, and the problem is allowed to stay on. Why is that so? We are now, instead, using the so-called *ordre public* as a condition to restrict the right of assembly. I mentioned this point in the CFA then and repeated it several times. As I said, if a concept of such a wide scope is used to suppress the right of assembly, it will of course give you all the power you desire. For instance, the term *ordre public* certainly covers the issues on whether or not the Olympic Games should be held. To prohibit people from holding assembly with the sentiment, culture and Olympic spirit of the Chinese, it will definitely work, and it is exactly the case before us. However, if *ordre public* is used to restrain the Government from suppressing the rights of people, then it is justifiable, is that right? We cannot go against a value if it is regarded as a tradition of our people.

For example, when Mr Jens GALSCHIOT sought the Commissioner's permission for entering the territory, the question I would like to ask is: What is wrong with his painting the Pillar of Shame orange? Why is he barred from entering the territory? He is a reasonable man, and of course he will reason with the Government, but as usual, the Government refuses to do so by only saying that it knows nothing. To reason the matter out, it should be taken to the Court. If *ordre public* is used as the ground of restraining the Government from suppressing civil freedom, the Government will certainly lose. Not a single government around the whole world will prohibit an artist from painting anywhere or using any material. Is that right? Even in the darkest religious age, there were still artists painting on the ceiling of cathedrals to express their ideas. One of them kept on painting until he went blind. It is in fact a disguised replacement of concept on the part of the Government. In other countries, people generally expect that there must be a restriction on the Government's power and an imposition of widest restriction on its power to suppress others. In Hong Kong, it is the contrary. The Government restricts the rights of people with principles of a more extensive scope. Honestly speaking, it is an insult to us and an insult to the term *ordre public*.

I just read a book written by George ORWELL. Quoting from the Proverbs of Bible: Old Testament, he said, "Do not give to the foolish man a foolish answer, or you will be like him. Give a foolish man a foolish answer, or he will seem wise to himself." This is an apt commentary on the Government's present interpretation of the law. On this topic, if you maintain a

dialogue with it, you stand to lose, but you will have no choice if you do not. This is really a serious matter. The Bible is indeed full of wisdom.

Fine, I will then take it on. First of all, the authorities have yet to answer the question I have been asking from the Court of Appeal of the High Court all the way to the CFA. Secondly, as the Commissioner has so poor an understanding of the legislation, and he cannot interpret the law, in other words, he cannot have the power of replacing concepts with disguised ones to exercise the power to interpret the law. As he used his interpretation of the law to suppress my freedom of assembly, therefore, instead of adopting the existing appeal mechanism, I proposed to take the case to the Court.

What is the difference between the appeal mechanism and the Court? In a court, a trial is conducted openly, right? But at an appeal board, the case is different. It does not mean that I do not respect the members of an appeal board, but the nature of the two is different. Within a legal system, if a judge makes a bad judgment, he will become infamous; otherwise we would not have heard the story of QIN Hui. However, bro, the appeal board works differently. The meeting is conducted behind closed doors. Is this a right approach?

Have you answered the question of how great the power of the Commissioner is? Even if I accept the present licensing system, should the power of licensing be rested with the Commissioner? If the power is to be rested with the Commissioner, then the S for J could say nothing more. What can he say anymore? As the Commissioner has interrupted the S for J, then the S for J has nothing to say but to respond only when being inquired by the Commissioner. As a result, how is the S for J going to act as our gate-keeper? This approach is tantamount to winking at the Commissioner's abuse of power. If the Government is to wink at its subordinates for abusing their power, it will be no less than abusing power itself. The only difference is it alone knows who can abuse power, and such deed is done for what reason and in whose benefit.

The notification system in the POO is in fact the root of all evils. As we have to notify the Commissioner of all our actions, he is empowered to know the finest detail. As a result, he is capable of imposing some unreasonable conditions to prevent the action from taking place. Without this system, we can apply for a licence at the Court. If we have any problem, we can talk to the judge. What else is the Commissioner going to say? I need not talk to him anymore. I only have to talk to the judge.

Part of the content of the POO aims to tackle the Irish Republican Army, that is, people wearing uniforms, army men and so on. These people have to be subject to restraint, no matter on broadcasting songs or hanging out banners. At present, as the Commissioner is notified of details of an assembly in advance, he can prohibit applicants from hanging certain banners, saying certain things, playing certain music and erecting certain flags. What have all these to do with an assembly? This is in fact banning the assembly by means of imposing restrictions on its content, participants, scale and timing. The authorities are especially good at doing this, just like designating areas of demonstration where the guests of honour cannot be seen by protestors. It was exactly the case at the Olympic torch relay. In a designated demonstration area, the torch bearers and protestors would not be able to see one another, right? It was the case then.

This licensing system is strangling and choking cruelly our rights on one hand, while opening the Pandora's Box to let out demons on the other. The name of the king of demons is the Commissioner. He is capable of abusing his power. This is the spirit of the entire POO. May I ask, in a country which is not a Police State, for what reason can the Commissioner exercise such wide power on behalf of the Government, so that he can take away the freedom of demonstration and of speech which should be enjoyed by people all over the world, so that he can enforce the power of regulation whenever a speech is delivered in the course of an assembly? Do you think it is rather ridiculous?

Honourable Members, I know the Government has refused to discuss comprehensively on the POO. This Council has been relegated to servants for serving tea. If the Administration wants longsing tea, we have to serve it and serve it quickly too, and to praise it for its choice, no matter whether it is the case. We have no autonomy. Last time, the Administration said it would conduct a review on the POO, but it did not play fairly. It claimed victory just because a few students of the Hong Kong Federation of Students were arrested. It has been 10 years since then. Are you not ashamed of yourself? Would you not feel shameful for suppressing the civil rights of Hong Kong people and exercising outdated colonial law? Everyone, including Secretary TSANG Tak-sing, talks about implementing patriotic education. By implementing patriotic education, should we not talk about decolonizing? Or to talk about reviewing our sovereign state's rule on other colonies, including Ireland? These are shameful incidents in history, should we not repent of our shame and cleanse the dirt in history? Yet, the Administration has resorted to cover up the dirt with paint and let mould grow out of it. You may choose to become mouldy, but do not spread the mould on us.

Honourable Members, the POO is challenged not because of my personal action, but because of the Patriotic Democratic Movement in 1989. At that time, millions of people took to the street in Hong Kong. In Beijing, millions of people also took to the street to challenge the corrupt system and law. This made Hong Kong people realize that the law in the past was superfluous. Nineteen years have passed. The blood thus shed has dried. Of the rule of law you are talking about, are you really willing to implement a reform? As a matter of fact, you are eating buns dipping with human blood. Those who make changes to history are ordinary people. As such, I feel that I am obliged to reprimand the SAR Government for showing disrespect to the CFA and the Legislative Council, as well as to the value of human civilization.

MR JAMES TO (in Cantonese): Deputy President, several colleagues have spoken on the Public Order Ordinance (POO) and the amendments proposed today, I do not want to repeat their views. Let me focus on a few points briefly.

The first thing I want to point out is, could we come to the inevitable conclusion that by simply deleting the French term *ordre public* for public order, the power conferred by the law to the police would definitely be tightened? I have doubts in this regard. A possible interpretation is, if the term public order with a wider meaning is used, the scope of elucidation of the police or the Department of Justice (D of J) is very likely to be widened as a result.

As such, I think that the Government should conduct a comprehensive review on the POO and not just delete the French term as it does now. The Government (represented by the Secretary for Justice (S for J) perhaps) may deliver a speech to offer explanation on its stance later, but I think it may not be able to give us an explanation conclusive or authoritative enough to warrant the amended provision such an interpretation.

Secondly, indeed, in the present national security law, the meaning of "safeguarding of the territorial integrity and the independence of the People's Republic of China" is unclear. It was in fact to legislate in disguise for Article 23 of the Basic Law prior to the legislation of that provision. That provision is capable of broadly restraining and tightening our freedom of assembly and of procession.

Thirdly, I would like to quote some recent incidents as examples. Lately, there were quite a number of activities related to the Olympic Games. A lot of

people asked — it was also mentioned to the head of the Police Public Relations Branch of the Hong Kong Police Force yesterday — if someone held high some sensitive flags, such as the Tibetan Snow Lion Flag, would it constitute a breach of law? The Chief Superintendent said he did not know and it would depend on the situation. Why would he say something like that? I thought a lot about it. One of the possible explanations I can make out is, if someone holds a very sensitive flag, other people feeling resentful for various reasons may yell or even shout threatening words in response. How should the police handle such a situation?

In the past, the police might take away or suppress people on both sides, restraining one side from holding high the flag while prohibiting the other from shouting. However, in the context of freedom of speech, people holding high the flag do not violate any law. As such, the police should protect people who exercise their right of expression in a peaceful manner, and stop those people stirring up violence and shouting threatening words. Nevertheless, it is not the approach adopted by the police right now. In their opinion, as the situation may pose threat to public safety, even though people exercising their right of peaceful expression remain silent when taunted, they will all the same be restrained together with the people on the other side. According to the police, if the situation is allowed to go on, it may lead to chaos.

Just now, a Member has quoted the stipulation in the POO that any police officer of or above the rank of inspector may, in the interest of public safety, confiscate any flag at any time or inquire in advance the content of any speech. These actions are in one way or another suppressing in advance many peaceful and orderly assemblies and their proceeding.

Talking of a more recent incident, the so-called designated demonstration areas frequently heard for example, many of them are in fact not to be easily distinguished. As I have repeatedly pointed out, the existing designated demonstration areas are used to protect the feeling of certain people and not to safeguard public safety. In a past instance, after searching one or two persons appearing at a certain place with nothing found, the police all the same took down their flag intended to be held high. In regard to this situation, the Commission on Human Rights has made a judgment on an international case. In a case taken place in Finland for example, a visiting head of state was to deliver a speech in the Parliament House. As the Finnish Government thought that the flag held high by an individual might offend the head of state, to protect

the head of state's feeling, it pushed down the flag for a few seconds when the head of state was walking up the stairs so that the flag was not visible to the head of state.

We have in fact a lot of similar cases in Hong Kong. For instance, after two unarmed individuals carrying a banner were searched and nothing posing threats to public safety was found, they would still be expelled and confiscated of their belongings. In some circumstances, these people would be taken away within the crucial moment of a few minutes or an hour ahead. If these practices are not for protecting feelings, what are they for? This has nothing to do with safety. As such, it is apparent that the present POO does confer law enforcement officers with so much power that sufficiently enable them to suppress entirely our freedom of peacefully expressing dissenting views.

If the police's law enforcement actions in this regard do violate the law, I urge the S for J to provide them with an explicit guideline. However, unfortunately, according to the legal advice given by the D of J, under a lot of circumstances, in addition to the POO, they may also quote section 10 of the Police Force Ordinance (PFO) to extend their duty in protecting public safety, leading to an unlimited widening of that power. Hence, apart from the POO, a specific scope must also be laid down for section 10 of the PFO, to specify whether it is a duty or an unlimited power. The Government must conduct a comprehensive review in this regard.

Finally, I want to point out, in the course of deliberation of the Bills Committee, we have suggested putting wordings of the International Covenant on Civil and Political Rights (ICCPR) into the POO or other Ordinances, effectively providing the Court with a set of authoritative and high level principles for interpretation, so that the rights we enjoy under the Basic Law and protected by the ICCPR can be fully realized upon a delicate interpretation of the law.

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the resumption of the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2007. I am also a member of the Bills Committee. I very much agree with the views expressed by Ms Margaret NG, the Chairman of the Bills Committee, as well as those put forward by Mr TONG and Mr TO. Hence, I am not going to repeat their views here.

Deputy President, in the course of deliberation, we noted that some deputations had presented submissions, and they naturally included the two legal professional bodies. Besides, there were other organizations focusing on the judicial system and human rights. They had divergent views, Deputy President, because the two legal professional bodies thought that there was nothing wrong with the amendment proposed by the authorities — I mean the amendment relating to the Public Order Ordinance, Deputy President.

I also notice that Mr Ronny TONG mentioned that he had been the Chairman of the Hong Kong Bar Association (the Bar) in 2000 — he also reminded the Secretary for Justice (S for J) that they had been working together at the time — I only hope that the Bar would look at the matter very carefully. Very often, their views are respected by Members of this Council and many members of the public. As Mr James TO just said, it is very obvious that there is dispute on the issue at present.

Deputy President, will any effect be brought by deleting the term "*ordre public*"? Will it widen or tighten the rights of the police? To what extent will members of the public be protected? Although it may not do any harm, it is all the same controversial. Thus, Deputy President, other organizations alerted us that it was not merely a textual amendment, but involved changes in policy. They also reminded us that the legal framework of Hong Kong should define clearly the rights of peaceful assembly and demonstration, and should provide better protection, so that members of the public and the police are aware of the definite scope of the police's power. I believe the authorities' present proposal to simply delete the term cannot achieve this effect.

I very much hope that the authorities (perhaps the S for J may represent the Secretary for Security (S for S), he is in fact a representative of the authorities) would understand the aspiration of the community. The S for J may say that they will win in the voting later and the term is to be deleted. Even if a motion is again proposed thereon — as the motion proposed by Mrs Regina IP (the former Secretary) — it will stand to lose. As I always say, we may be the minority in this Council, but we are the majority outside this Council. This is a ridiculous feature of the constitutional system of Hong Kong.

Nevertheless, we are not making any unreasonable request but just to look at the matter, to see if it is just as Mr Ronny TONG said, we are going to delete a term without reasonable ground that is provided in the International Covenant on Civil and Political Rights. Is such a practice in breach of Article 39 of the Basic Law? These are issues we have to raise.

Our legal adviser has also informed us that, even if we support the amendment proposed by Ms Margaret NG, Chairman of the Bills Committee to vote down the authorities' proposal, not much problem will arise. The reason is, following the judgment made by the Court of Final Appeal (CFA), the term has actually lost its effect. Since the term would not bring about any problem, why do we not help by deleting the provision? Deputy President, if the authorities' amendment to delete the term is passed, it will convey a message, that is, the matter has been settled. Given that it is the CFA's judgment, and it has now been settled, we can say "goodbye" to the whole affair. However, if the term is not to be deleted, the authorities will naturally go on using the term.

I hope the S for J and the S for S would conduct in collaboration a review on this controversial provision. They could consult various parties to find out whether it would be the best practice to delete the term as they suggested, or there may be other alternatives to stipulate more clearly the law with the ultimate objective of protecting the rights of the public, and to enable the police to be clearly aware of the scope of power to which they are entitled.

For this reason, Deputy President, I fully support the amendment to be moved by Ms Margaret NG later, and hope that it will also be supported by other colleagues.

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

MR LI KWOK-YING (in Cantonese): Deputy President, the Statute Law (Miscellaneous Provisions) Bill 2007 (the Bill) seeks to improve and rectify the mode of drafting part of the existing provisions in the ordinances, in order to clarify the legislation. This kind of legislative work is common to the Legislative Council and generally speaking, it is not so controversial. However, Part 3 of the Bill has aroused more discussion in the course of deliberation, and Ms Margaret NG has also proposed a Committee stage

amendment to delete Part 3 of the Bill. On this issue in particular, I would like to talk about the opinions of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

Part 3 of the Bill seeks to repeal the references to the French words "*ordre public*" in the Public Order Ordinance (POO) and the Societies Ordinance (SO). Under the POO, the police can restrict the right of procession and assembly for the statutory purpose of public order (*ordre public*). In 2005, the Court of Final Appeal (CFA) ruled that as a statutory purpose, public order (*ordre public*) was not clear and precise enough to satisfy the constitutional requirement of "prescribed by law" and was thus unconstitutional. Nevertheless, the CFA did not announce annulment of the provisions concerned, but only pointed out that the "public order in the law and order sense" incorporated in the term public order (*ordre public*) was still constitutional and effective. Therefore, only if we interpret "public order" independently from the references to public order (*ordre public*), the provisions concerned can continue to exist.

In other words, in the restriction of processions and assemblies, if the purpose considered by the police is only "public order in the law and order sense", but not the factors covered by the vague constitutional term public order (*ordre public*), there will not be any problems constitutionally. Of course, some people may find it still unacceptable for the police to consider "public order in the law and order sense". But that is already another question, nor is it within the scope of this Bill.

Since the CFA has already given this clear judgment, we of course have to respect and observe. Therefore, it is logical to repeal the references to the French words *ordre public* in the ordinances concerned. The term public order (*ordre public*) appears repeatedly in the POO and the SO, as a purpose for consideration of the police when exercising its discretion. Its meaning is the same in the two ordinances. Thus, it is more than appropriate to deal with all the references to the French words *ordre public* in the two Ordinances.

After repealing the references to the French words *ordre public*, if there is any query about the term "public order" that remains, we can understand this term totally according to the interpretation of the CFA. Unless we query the CFA judgment, we cannot see why people should worry about whether the amendment of the Bill is clear and precise, or whether it is in line with constitutional requirements.

There is an opinion that even the references to "*ordre public*" in the POO, which are judged to be unconstitutional by the CFA, are retained, the validity of the court judgment will not be affected. However, it is obviously not ideal to retain the legal term judged to be unconstitutional by the Court in the ordinances. First of all, our ordinances should be clear and precise. Not only should they be understood by the professionals, but they should also be understood by the general public as far as possible. The public should know they have to comply with them, and should understand their own rights and liabilities. Secondly, the court judgment should gain our highest esteem. The CFA pointed out in paragraph 85 of the judgment concerned (and I quote): "It can be said with confidence that had the Legislature appreciated the unconstitutionality of the rest of 'public order (*ordre public*)' in the context of the Commissioner's discretion to restrict the right of peaceful assembly, it would nevertheless have enacted the statute only with public order." (End of quote)

Deputy President, if we insist to retain the references to "public order (*ordre public*)" today, I am afraid the public will be given an impression that the Legislative Council seems to disagree with the view of the CFA.

Of course, for those provisions in the POO and the SO not touched upon by the CFA judgment, they still have a chance to face legal challenge in the future. No matter whether the amendment of the Government is carried or not, this possibility still exists. However, if the amendment of the Government is carried today, the discretion of the police under the ordinances will only support the actual operation, as many Members mentioned, and be narrowed down. This is to narrow down the discretion of the police. Before they make any decision, they could only decide according to "public order in the law and order sense". Their power will not be widened. This will be incomprehensible if it is not the most acceptable approach.

Finally, I would like to point out that as reflected in the Bills Committee Report, two professional groups, the Hong Kong Bar Association and the Law Society of Hong Kong are of the view that the government amendment is in line with the CFA's judgment.

Therefore, due to these reasons, the DAB cannot support Ms Margaret NG's amendments.

With these remarks, Deputy President, I support the Bill.

MR HOWARD YOUNG (in Cantonese): Deputy President, following the judgment delivered by the Court of Final Appeal (CFA) in 2005, the Administration proposes to repeal the references to "*ordre public*" in the Societies Ordinance and the Public Order Ordinance (POO). The Liberal Party is in support of this. The reason is that if such references are not repealed but remain in the provisions concerned, when dealing with cases in which such provisions are involved in future, the Court will, in the light of the CFA's judgment, continue to rule that such provisions are unconstitutional. Given that the Commissioner of Police can no longer exercise the discretion in relation to "*ordre public*", it is not necessary to retain the references to "*ordre public*" in the ordinances concerned. The repeal of the references to "*ordre public*" in the provisions concerned will render the provisions clearer and more precise, and this is also in line with the CFA's judgment.

We understand that some colleagues hope that the POO can undergo a comprehensive review. However, we reckon that this is another issue. We should not shelve the proposal of repealing the references to "*ordre public*" simply because we have to review that ordinance or other related ordinances. Because in a comprehensive review of an ordinance, we need more time for a thorough consideration and for reaching a consensus. What we are facing now is that in the CFA's judgment, the references to "*ordre public*" are unconstitutional. The most appropriate, direct and speedy solution is to repeal the references to "*ordre public*" in the provisions concerned. Of course, we also hope that after the Bill is carried, the Administration will continue to review the provisions in the ordinances concerned from time to time so as to improve them.

Therefore, the Liberal Party supports the resumption of Second Reading and the Third Reading of the Bill. Nevertheless, we do not support Ms Margaret NG's amendment as to delete Part 3 of the Bill.

Deputy President, I so submit.

MS AUDREY EU (in Cantonese): Deputy President, I would like to respond to the speeches of Mr Howard YOUNG and Mr LI Kwok-ying, because I also had a part to play in that Court of Final Appeal (CFA) lawsuit at that time. It was the case in which NG Kung-siu was involved, which was actually related to national and regional flags.

In this case, we already had arguments over the term "*ordre public*". This is not the first case under the CFA to argue about this term. Before this case, this term has actually been discussed by at least three Courts in Hong Kong. That day at the CFA when I discussed and made my submission on the term "*ordre public*", I quoted the related discussions in many other Courts on international level. Finally, the CFA delivered a very well-known judgment, and that is the judgment on the case of regional and national flags related to NG Kung-siu. In the judgment, it mentioned why the French term *ordre public* would be used in our Hong Kong laws. As Mr Ronny TONG said, this is not for the sake of showing off one's knowledge, but because neither the Chinese term "公共秩序" nor the English term "public order" could fully express the meaning of the French term "*ordre public*". As Ms Margaret NG and Mr Ronny TONG also said earlier, the scope of meaning of this term was far wider than "public safety". It has particularly covered some principles of all human rights and public interests, and even covered certain rights of the public to peaceful demonstration. Hence, it is necessary to adopt this French term to express that meaning in the Hong Kong laws.

However, if we simply use this French term, people would indeed find it difficult to understand. As Mr LEUNG Kwok-hung just said, how could we make the Commissioner of Police (the Commissioner) understand this term? How could we make ordinary citizens understand this term? Therefore, subsequently in a case where LEUNG Kwok-hung was involved, the CFA pointed out that if we simply used this French term in our local legislation without further interpretation, this was not in line with the requirements under the Basic Law. Why? Because this will give the Commissioner too much discretion. Therefore, when we legislate locally, we cannot directly copy the terms from some international conventions. We should take consideration of the actual local situation and turn them into local legislative terms.

Therefore, in response to the remarks of Mr LI Kwok-ying, the assignment given by the CFA to the Legislative Council, to the Government and to the Secretary for Justice is to require them to write this term more clearly in the context of local legislation, with a view to restricting the Commissioner's discretion. However, Deputy President, both the Secretary for Justice and the Government fail to hand in their assignments today. In response to Mr LI Kwok-ying's analogy with this fact, this is similar to the situation when the teacher gave you an essay title, but you did not know how to answer. You did not bother to copy the title down into your handbook. You simply crossed it

out, pretending that no one has ever asked you to hand in the assignment and deemed that you have done your part. That is why Ms Margaret NG will move an amendment later. She feels that our Legislative Council should not accept the rash response from the Government or the Secretary for Justice to the very clear question from the CFA, the question which has been discussed many times in a series of judgments. It has not been mentioned once, but for many times. Therefore, this is not a new question but a long-standing question. The case concerning NG Kung-siu that I mentioned earlier happened during the reunification of Hong Kong, while the CFA's judgment was made in 1999. Nevertheless, since this issue was not dealt with, the case involving Mr LEUNG Kwok-hung thus arose later. Eventually, the CFA stated that this term did not comply with the constitutional requirements. Therefore, we find it regrettable that up to date, this question is still unsolved, and the Government only proposes to delete this term from our local legislation. The consequence will be that by deleting this term, which originally has a very wide scope of meaning, the public interests, rights to demonstration and human rights principles that should be covered by this term will be deleted together. Everything will be wiped off. This explains why Ms Margaret NG has to propose a Committee stage amendment in this respect.

Thank you, Deputy President.

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

DR FERNANDO CHEUNG (in Cantonese): Deputy President, I speak in support of the resumption of Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2007 and Ms Margaret NG's amendment.

In this Bill, the Government proposes to hastily delete the term "*ordre public*" from the Public Order Ordinance (POO) in the light of the judgment delivered by the Court of Final Appeal (CFA).

Our worry is that for the term "*ordre public*", as some colleagues mentioned earlier while Ms Audrey EU has also explained very clearly, it has been very much discussed either in Courts or in academia. In regard to this judgment, Siracusa Principles have been quoted in the CFA's discussion. It is pointed out that this term does not only refer to public order *per se*, but also

includes human rights respected in a civic society as part of social order. Therefore, if we delete this term, are we widening or narrowing down the power of the police to interfere in processions and assemblies? This is not clear and we should consider in detail.

(THE PRESIDENT resumed the Chair)

The POO was passed after the riot in 1967. Its aim is to control riots and not to safeguard the freedom of speech and the right to demonstration. Therefore, if anyone wants to hold a public assembly, he has to apply to the police for a licence in the first place, and can only hold the assembly after being approved. In 1995, this Ordinance was amended by the Government to the effect that a public assembly could be held if it has been notified to the police seven days beforehand, while the police's approval is not necessary. Besides, it has also restricted the police's power in intervening in the assemblies only under the conditions "in the interests of public safety or public order". The existing provisions are the product of the 1997 amendment. In this amendment, the Government requires that anyone who wants to hold an assembly shall notify the police seven days beforehand, while a notice of no objection from the police has to be obtained. Besides, the Government has also incorporated a problematic stipulation, that is, the police can intervene in public assemblies for the reason of "national interests" or "national security". According to this amendment, "national security" means "the safeguarding of the territorial integrity and the independence of the People's Republic of China". This amendment empowers the police to intervene in the assemblies for the reason of the political stance of the assembly organizers.

Since 1997, the Legislative Council has been asking the Government to review the POO as soon as possible. During the previous meetings of the Panel on Security, this issue was often discussed. During the Legislative Council Meeting on 21 December 2000, quite a number of Members spoke to require the Government to review the POO as soon as possible. This is also a common request from the Hong Kong Bar Association, the Law Society of Hong Kong and legal scholars. Therefore, on the Bills Committee meeting, representatives from a number of human rights and international organizations have also reiterated this request.

Hence, due to the abovementioned reasons, I support Ms Margaret NG's amendment. I would also call upon the Government to review the POO as soon as possible, in order to clarify the power of the police in restricting public assemblies as well as to safeguard the freedom of speech and the right to peaceful assembly of the public.

These are my remarks.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no Member wishes to speak, I will now call upon the Secretary for Justice to speak in reply.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, as I explained on 25 April 2007 when the Statute Law (Miscellaneous Provisions) Bill 2007 was introduced to the Legislative Council, the main object of the Bill is to seek to make amendments of a minor, technical and non-controversial nature to the laws of Hong Kong.

Provisions in the Bill touch on several issues from various areas in law. After the introduction of the Bill, the Bills Committee with Ms Margaret NG as the Chairman began a detailed examination of the provisions. I would like to thank the Chairman as well as members of the Bills Committee for the hard work they put in. They have put forward valuable advice and compiled a very detailed report on the Bill. As Ms NG has given a concise account of the contents of the report earlier, I will not make any repetitions here. We have proposed a number of amendments to the Bill and to which the Bills Committee has also agreed. Later on, I will move a number of Committee stage amendments. Let me now talk about the contents of these amendments briefly and on behalf of the Administration, I also wish to state our position with respect to a Committee stage amendment (CSA) on Part 3 which Ms Margaret NG seeks to move.

First of all, on the amendment to Part 2 relating to the Bankruptcy Ordinance (Cap. 6). Section 30A(10)(b)(i) of the Bankruptcy Ordinance provides that a bankrupt has the obligation to notify the trustee when leaving Hong Kong. On 20 July 2006, the Court of Final Appeal (CFA) ruled that the section was unconstitutional on grounds of being unreasonably restrictive of the right to travel guaranteed under Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bill of Rights. In view of this judgment, the Administration proposes to include the suggestion to repeal the section into the Bill. The effect of the CFA judgment is that section 30A(10)(b)(i) is considered void from the outset. Part 2 of the Bill proposes to repeal the section, in order to tidy up the statute book of Hong Kong.

However, owing to this judgment, members noticed that the same problem was found in section 30A(10)(b)(ii) which stipulates that a bankrupt has the obligation to return to Hong Kong within the period of time specified by the trustee. As the Administration intends to review the "abscondee" regime as a whole (that is, bankrupts who leave Hong Kong and cannot be contacted), we have taken members' view to suspend the repeal of section 30A(10)(b)(i) and considerations will be made in future on the repeal of the section when it is considered that there is a need to make other amendments to the Ordinance.

I shall therefore move a CSA to delete Part 2 of the Bill. If it is found that there is a need to amend the regulatory regime for "abscondees", the Administration will propose other legislative amendments to this end.

On Part 3, with respect to the CSAs proposed by members, Ms NG proposes a CSA to delete Part 3 from the Bill. The Administration opposes this CSA. Madam President, Ms NG has not spoken at length on this part. Despite the fact that earlier on, some Members have given some views to show their approval or disapproval, I wish to talk about our position in brief now, to be followed by a more detailed response later when dealing with the CSA. This would save us some time.

Madam President, Part 3 of the Bill proposes to repeal the references to the French term "*ordre public*" in the Societies Ordinance (SO) and the Public Order Ordinance (POO) to give effect to the judgment of the CFA in the case of *LEUNG Kwok-hung and others v HKSAR*. In that case, the CFA held that the discretion of the Commissioner of Police under sections 14(1), 14(5) and 15(2) of POO to restrict the right of peaceful assembly for the purpose of "public order

(*ordre public*)" is unconstitutional. Madam President, I wish to stress that the provisions addressed here are the provisions on the power of the Commissioner of Police to restrict peaceful assembly and the appropriate remedy — as proposed by the CFA — is the severance of "public order" in the law and order sense from the term "*ordre public*", that is, "public order (*ordre public*)" in those provisions. The word "severance" used in the CFA judgment means to separate or remove. The CFA also stressed at that time that after the severance and removal, the remaining prescription of "public order" found in the existing provisions satisfies the constitutional requirement.

The CFA judgment has become a precedent and when enforcing the POO and the SO, the police has actually taken into account the CFA judgment. The amendment in respect of Part 3 of the Bill is to align the terminology used in these two Ordinances with the CFA judgment. Madam President, as we know, the use of this form of a law on miscellaneous provisions is to handle this kind of legal amendments.

Madam President, some members of the Bills Committee think that the POO must be thoroughly reviewed first before considering the implementation of the proposed amendments to Part 3 of the Bill. This point has been stressed by certain Members earlier. The Administration disagrees with such a view. We consider that the amendment proposals to Part 3 of the Bill should be put into practice as early as possible for greater accuracy and clarity to our statute law and be more in line with the judgment handed down by the Court. In this regard, some Members have pointed out that the Hong Kong Bar Association (the Bar) and the Law Society of Hong Kong (Law Society) have presented their views on the Bill in response to invitation extended from the Bills Committee. They have examined the proposed amendments and they both think that the amendments proposed in Part 3 of the Bill are in line with the CFA judgment. The two legal professional bodies are of the view that the amendments are in order and they have no objections. They certainly give careful considerations to the worries of the Members and do not think that the amendments (unless in circumstances in line with the CFA judgment) will constitute any actual change in law or affect the powers in question. They do not hold such a view. They think that the amendments are in line with the CFA judgment. This understanding is a common view shared by the CFA, the Secretary for Justice, the Bar and the Law Society which consider that the amendments should be put into force.

The authorities are of course aware of the importance which the Members of this Council and the public attach to the freedoms of speech and assembly. In fact, when the Council discussed the implementation of the POO in the past, we pointed out on several occasions that the Government was committed to protecting the freedoms of speech and assembly as guaranteed under the Basic Law. At the same time, the police have the responsibility to safeguard Hong Kong's public safety and public order. The related provisions in the POO show that a suitable balance is struck between protecting the rights of speech and peaceful assembly as well as the broader interests of the public.

As circumstances permit, the police will strive to facilitate all peaceful public assemblies and marches. In 2007, more than 3 800 such activities were held in Hong Kong and the number is an all-time high. This proves that the police have been very successful in facilitating peaceful public activities. The police will handle notices of public assemblies and marches according to the law.

The above is my brief account of the position of the Government in this regard. I shall make a detailed response later. I implore Members to vote against the CSA to be moved by Ms Margaret NG.

Madam President, I now turn to elaborate on the Costs in Criminal Cases Ordinance (Cap. 492) in Part 7 of the Bill. First, on clause 21 of the Bill on the interpretation.

I am grateful to the Chairman and members of the Bills Committee for their detailed examination on the issue of wasted costs in the Costs in Criminal Cases Ordinance. In addition, special thanks must go to the Bar for the many useful and insightful views given. The amendments I am going to move are based on these views.

We notice in particular that the Bar in its submission points out that the duties of legal representatives in civil and criminal proceedings are different, therefore, different provisions on wasted costs for the two kinds of legal proceedings should be enacted to reflect the differences between the two. I will move amendments to Part 7. These amendments have taken into account the recommendations made by the Bar on amending the definition of wasted costs. First, subparagraph (a)(i) of the revised definition provides that the acts or omissions — sorry, the rendition may not be precise enough. It means "acts or omissions" — of a legal representative must be "seriously improper" for the Court to invoke the wasted costs jurisdiction.

In addition, we are also aware of members' concern about the scope of application of the revised definition in the proposed subparagraph (a)(ii). The provision is related to "any undue delay" and "any other misconduct". Members are of the view that the meaning of "any undue delay" and "any other misconduct" is too wide and uncertain. To address the concern of members and for the sake of consistency, we propose that the word "serious" should be inserted before "misconduct" in subparagraph (a)(ii) of the definition of wasted costs. The amendment would make it clear that the misconduct must be serious. After the amendment, if the related jurisdiction is to be invoked on grounds of undue delay, the undue delay itself must amount to serious misconduct or must be caused by serious misconduct.

Also, on clause 22 of the Bill, with respect to the new section 18(3) in the Costs in Criminal Cases Ordinance, we propose to change the Chinese wording for "adversarial" from "辯論式" to "對辯式", for the reason that the term "對辯式" is used on the Mainland, Taiwan and Hong Kong. Our proposed amendment has been accepted by the Bills Committee.

Clause 62 of the Bill is related to the Pneumoconiosis (Compensation) Ordinance. The Pneumoconiosis (Compensation) (Amendment) Bill 2008 was passed in this Council on 9 April 2008 and came into effect on 18 April 2008. The short title of the Pneumoconiosis (Compensation) Ordinance (Cap. 360) was amended to Pneumoconiosis and Mesothelioma (Compensation) Ordinance on that day. Clause 62 of the Bill contains references to the Pneumoconiosis (Compensation) Ordinance, therefore, it is necessary for us to propose a CSA on references to the new short title of Cap. 360.

Then clause 64 of the Bill. Section 50 is added to two Ordinances respectively for reason of the Pneumoconiosis (Compensation) Ordinance (Cap. 360). Deliberations on these two Bills are carried out in this Council at almost the same time. We propose that technical amendments be made to change the numbering of one of the provisions on the Pneumoconiosis (Compensation) Ordinance to section 51.

Lastly, clause 78 of the Bill. Section 44 of Schedule 2 to the Companies (Amendment) Ordinance 2004 amends section 341 of the Companies Ordinance (Cap. 32). Clause 78 of the Bill makes a minor amendment to section 44 of the

said Schedule 2. As the amended section 44 of Schedule 2 came into force on 14 December 2007, therefore, we should amend section 341 of the Companies Ordinance directly instead.

Madam President, these are my remarks. I hope Members would vote in favour of the Bill as amended by CSAs proposed by the Administration.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 2007 should 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 Members present, I declare the motion passed.

CLERK (in Cantonese): Statute Law (Miscellaneous Provisions) Bill 2007.

Council went into Committee.

Committee Stage

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Statute Law (Miscellaneous Provisions) Bill 2007.

CLERK (in Cantonese): Clauses 1, 2, 15 to 20, 23 to 61, 63, 65 to 77 and 79.

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): Part 2, clauses 21, 22, 62 and 64, cross-heading immediately before clause 78 and clause 78.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, I move the amendments to Part 2 and clauses of the Bill read out just now, including the cross-heading, as set out in the paper circularized to Members.

First of all, it is Part 2 of the Bill — amendments relating to the Bankruptcy Ordinance (BO).

Just now, I have explained the reason for proposing a Committee stage amendment to delete Part 2. We proposed and the Bills Committee has agreed that the repeal of section 30A(10)(b)(i) of the BO be suspended for consideration in the context of other necessary amendments which may have to be made after the review of the "abscondee" regime under the Ordinance.

Secondly, it is clause 21 of the relevant Bill — Interpretation.

Clause 21 of the Bill amends the definition of "wasted costs" under the Costs in Criminal Cases Ordinance. It amends subparagraph (a)(i) of the proposed definition to reflect the recommendation put forward by the Hong Kong Bar Association having regard to the difference in the duties of the legal representatives in civil and criminal proceedings. Regarding the amendment to subparagraph (b)(ii), it is to reflect the recommendation made by the Bills Committee to make it clear that for the wasted costs jurisdiction to be invoked on grounds of undue delay, it would be necessary for the undue delay to be or caused by a serious misconduct.

Thirdly, it is clause 22 of the Bill — new section 18(3) under the Costs in Criminal Cases Ordinance.

As I have just explained, the proposal to amend the Chinese text of clause 22 of the Bill has been taken on board by the Bills Committee.

Fourthly, it is clause 62 of the Bill — the Pneumoconiosis (Compensation) Ordinance.

We propose to amend clause 62 to make reference to the new short title, which has recently been amended and formerly known as the Pneumoconiosis (Compensation) Ordinance.

Fifthly, it is clause 64 of the Bill.

Clause 64 of the Bill effects a technical renumbering of one of the provisions in the Pneumoconiosis (Compensation) Ordinance as section 51.

Finally, it is clause 78 of the Bill.

Clause 78 of the Bill directly amends section 341 of the Companies Ordinance.

The above amendments have been discussed and endorsed by the Bills Committee. I urge Members to pass these amendments.

With these remarks, Madam Chairman, I propose the amendments.

Proposed amendments

Part 2 (see Annex I)

Clause 21 (see Annex I)

Clause 22 (see Annex I)

Clause 62 (see Annex I)

Clause 64 (see Annex I)

Cross-heading immediately before clause 78 (see Annex I)

Clause 78 (see Annex I)

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

MS MARGARET NG (in Cantonese): Chairman, later on, I will see whether the Secretary for Justice can explain to this Council concerning the part of wasted costs.

Chairman, from the Bills Committee Report, Members can perhaps see that we have spent a lot of time in the deliberation. For a period of time, this Bills Committee has actually suspended its operation. Why? Because of this part concerning wasted costs. In fact, in September last year, the Hong Kong Bar Association (the Bar) had already aired its view that it was against this provision. If, however, it could not object it, it would at least ask to amend the scope of extension. Therefore, the Administration asked the Bills Committee

not to deal with this part for the moment, so that it could reach a compromise with the Bar and the Law Society of Hong Kong (Law Society) — the Law Society was also of the same view at that time — or with the professionals before coming back to the Bills Committee to tackle this problem. The Bills Committee, of course, was very pleased with this arrangement.

However, after several months, it surprisingly told the Bills Committee that it totally did not accept the opposition from the Bar, nor did it accept the amendment proposed by the Bar. Therefore, the Bills Committee stated that since there was no compromise or a consensus of opinions, it had to discuss what viewpoint it should adopt. After scrutinizing this provision, we are very worried that if the amendment is to follow the original text of the Bill, it will seriously affect public interests. When someone is criminally prosecuted, given the width of the provision, it is highly possible that his legal representative would easily be penalized to pay for wasted costs. He would then be difficult to express fully, nor could he carry out some instructions obviously made by the client. Therefore, after weighing the pros and cons, we find that we could not support this extension. Hence, the Bills Committee passed a resolution to delete the existing clauses 21 and 22.

Subsequently, the Government told us that it accepted the Bar's proposal to amend the wordings. Thus, we find that since this proposal was put forward by the Bar, while it was also agreed by the Law Society at that time, and although the Law Society found it not too sound afterwards and has also raised some opposite views, it is after all a proposal from the professionals, the Bills Committee held that it should not cling obstinately to its course by deleting all the clauses concerned, but to accept the amendment proposed by the Bar. Nevertheless, we opine that this amendment is not circumspect enough. Chairman, as you heard just now, there are two parts. One part is serious misconduct. If it is written as serious misconduct or unreasonable acts or omissions, how can this be possible? Otherwise, can the person concerned also be penalized for wasted costs due to any undue delay or any other misconduct? Therefore, for the sake of maintaining the proportionality, we think that it is necessary to incorporate other serious misconduct in clause 21(a)(ii). Besides, we have already stated clearly that for the so-called undue delay, it is not any undue delay simply reckoned by the Court, but it must amount to misconduct or a matter of professional integrity before it is in line with the requirement of this provision. Hence, the amendment is to be further amended as such.

Therefore, I hope that the Secretary for Justice can make us fully understand why the Bar's views were not accepted earlier. Although its views had been listened for nearly five months, they were still not accepted. The Administration even submitted a paper with a number of pages, explaining in detail the clear grounds for not being able to accept the Bar's amendment. Why did it accept it so speedily afterwards? Can it remove our doubts? 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.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, regarding the present amendment to "wasted costs" in the legislation, Honourable Members may recall that when it was proposed, I have referred to the legal loopholes in some cases pointed out by the Court of Appeal, which have suggested that inadequate power is provided for under the legal framework of wasted costs. After examining the other aspects, we found that there are indeed pitfalls in this regard in Hong Kong. Of course, when introducing legislation in this respect, we have to understand that the point of balance involved has to be handled with great care. On the one hand, we have to safeguard the fearless advocacy by the two legal professions in protecting the rights of their clients in court. On the other hand, we have to ensure that members of the public who have suffered as a result of serious misconduct can take actions against them. I have to stress that we have to handle the point of balance and the considerations involved with great care. When the Bar Association initially put forward their proposal, they were against legislating in this respect in the first place. For various reasons, they had a lot of concerns. In the second place, if legislation was really to be introduced, other aspects had to be considered in detail. We have now taken a lot of recommendations in various aspects on board.

Madam Chairman, all I can say is that during this process, we have carefully examined the relevant legislation and some case law in overseas places, which have enabled us to understand, for example, whether it is correct to add the word "serious" regarding the balance in this respect. In this connection, we

have also approached the Judiciary. Looking back at this process, we are very glad to see that we have had discussions in such a manner and put forward positive proposals which are acceptable to all. This can not only plug the loophole but also balance the interests of various parties. Ms Margaret NG has also mentioned just now that in the process of dealing with the amendment, the spirit of co-operation has been manifested. Madam Chairman, I believe this is all I wish to say.

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): As the amendment to Part 2, which deals with deletion, has been passed, Part 2 is deleted from the Bill.

CLERK (in Cantonese): Clauses 21, 22, 62 and 64, cross-heading immediately before clause 78 and clause 78 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses and cross-heading 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): Part 3.

MS MARGARET NG: Madam Chairman, in my capacity as the Chairman of the Bills Committee, I move the deletion of Part 3 of the Bill. Part 3 of the Bill seeks to repeal the references to "*ordre public*" in the Societies Ordinance (SO) and the Public Order Ordinance (POO) to give effect to the judgement delivered by the Court of Final Appeal (CFA) in July 2005.

The majority of members consider that the proposal is not merely textual amendments, but involves changes in policy. It is doubtful whether the legislative proposal should be dealt with under an omnibus bill which is technical in nature. Most members have also expressed concern whether the Administration's proposed repeal of references to "*ordre public*" in the POO can bring the POO into conformity with the CFA judgement, and whether the right to peaceful assembly and demonstration would be tightened after the passage of the Bill. They are of the view that the Administration should conduct a comprehensive review of the POO and examine how the provisions in the POO relating to public meetings and public processions can be improved so that the police and members of the public will be aware of the scope of the police's power.

The Administration has advised that the proposed amendments would in no way affect the right to assembly and demonstration currently enjoyed by the people of Hong Kong at the constitutional and the operational levels. The Administration has also advised that it has kept the POO under review and does not consider that the POO requires any major amendments at the moment. Furthermore, a comprehensive review of the POO would be outside the scope of the Bill.

Most members remain concerned. The legal adviser to the Bills Committee has pointed out that as a matter of law, the term "*ordre public*" in sections 14(1), 14(5) and 15(2) of the POO is invalid and void after the handing down of the CFA's judgement. Thus, there would be no effect in law even if the term remains in the statute book in case Part 3 of the Bill is not passed. In respect of other provisions of the POO and the SO included in the proposed amendments in Part 3 of the Bill, the term would remain valid as it was not involved in the CFA case. Thus, the term "*ordre public*" in those provisions would still be valid under the existing law if Part 3 of the Bill is not passed in this exercise, although the term may be similarly held to be unconstitutional by a court if a case arises. Members also note that references to "*ordre public*" are found in other ordinances, and any amendments proposed to the term "*ordre public*" in the POO may give rise to the question of consistency of the term being used in the Laws of Hong Kong.

After a thorough and careful consideration of the Administration's proposed amendments under Part 3 of the Bill and the effect of not passing them, the majority of members of the Bills Committee have expressed reservations about the proposed amendments. Members consider that the policy and legal aspects of the proposed amendments should be studied in greater detail, and they have requested the Administration to make an undertaking to conduct a comprehensive review of the POO.

The Administration has reiterated to the Bills Committee that the proposed amendments under Part 3 of the Bill should be taken forward in the interests of clarity. With the proposed amendments to the POO, the relevant provisions of the statute book would fully conform to the CFA's ruling in respect of the term "public order (*ordre public*)". It does not consider that the conduct of a comprehensive review of the POO should become a pre-requisite for proceeding with the current legislative amendment exercise.

Taking all considerations together, the Bills Committee has decided that a CSA should be moved under my name on behalf of the Bills Committee to delete the proposed amendments under Part 3 of the Bill.

MS MARGARET NG (in Cantonese): Chairman, I would now speak in my own capacity. First, I call on members to be proactive in this part of the debate.

Earlier during the debate on the resumption of the Second Reading of the Bill, many members talked about the history of this provision. In fact, we now see that in the provisions of the POO and the other Ordinances, the provision concerned was added in 1997. Chairman, I would like to read out the provision which goes: "The Commissioner of Police may object to a public procession being held if he reasonably considers that the objection is necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others".

At that time, that is in 1997, the so-called draconian law was restored, and this provision evoked great contention then because after reading it, a man on the street would find it hard to understand what exactly the power was, since that was absolutely ambiguous. Therefore, the police can resort to this power to interfere with or prohibit a procession, and the public all consider that the law fails to protect their right. The Chinese version even points out that terms like public order have to be interpreted in accordance with the international human rights convention. How could we expect anyone to understand the international law at the same time when they come across this provision in order to know how it should be interpreted? Thus, the reverberation then was very great and we felt that it was unacceptable. However, why did the then SAR Government-designate have to come up with such an idea? The reason is this was copied from the international human rights convention. That being the case, the authorities considered that the public should not object. Nonetheless, from the angle of clarity and certainty, this is absolutely unacceptable.

Ms Audrey EU also said earlier that the term public order (*ordre public*) was thoroughly discussed in the national flag case involving NG Kung-siu and the LEUNG Kwok-hung case mentioned by Mr Ronny TONG. It has also been stated that the Siracusa Principles must be referred to in understanding this term (the Chinese translation for the Principles is quite tricky — excuse me, they are called 錫拉庫札原則). Under the Principles, it is obvious that social order includes the importance attached to human rights. So, in order to understand, the whole term has to be taken together, rather than truncating it.

The Secretary for Justice earlier said we Members of the Legislative Council were extremely disrespectful of the CFA because although the CFA asked us to effect that change, we failed to do accordingly. However, Chairman, having read over and again the judgment handed down by the CFA on the LEUNG Kwok-hung case, we find that the ruling is in fact very clear and

understandable, and is also in line with what we think — it is reasonable for us to think that there is ambiguity in this provision. Therefore, we ask the Government to write this provision out more clearly, so that the public's right can be safeguarded.

That said, why do we say we cannot simply delete it? If we digest the Court's ruling, that in fact is very simple. At that time, Mr LEUNG Kwok-hung was charged by the police under section 14 and was convicted. The CFA ruled that it was actually unconstitutional for the authorities to charge LEUNG Kwok-hung under this provision, thus, LEUNG Kwok-hung's conviction should be revoked. This is the decision of the CFA. As regards what the CFA said as to how the provision should be amended, that was beyond the power of the Court. Enacting legislation is the work of the legislature, not the Court.

Moreover, we must understand why we are saying today that it has to be studied thoroughly. This is because what you are changing From the CFA's point of view, it just has to consider one thing, that is, whether the law is clear and certain. If we say "public order (*ordre public*)" is not clear and certain and thus is not in line with its legal definition, deleting "*ordre public*" will make it clear and certain, with public order being the definition. However, Chairman, from the policy aspect, does this definition lead to the policy which we are looking for? This is not the scope which the CFA hopes to bring under its jurisdiction. This is something which we have to tackle ourselves. The Hong Kong Bar Association and The Law Society of Hong Kong advised us that with reference to the provision and the technicality, deleting the term was in line with the ruling of the CFA. This means that if these two French words are deleted, it would definitely be very clear and certain. Even the CFA said so. However, if it is like what Ronny TONG said, even if there is public order but no consideration is given to human rights or freedom, certain though this is, is that the policy we want? Therefore, it is based on this reason that we are asking today that this amendment not be passed.

We tell the Government it is its responsibility to formulate policies. The Government cannot leave it half-baked. We very much respect the Secretary for Justice, but he has to pay special attention to the protection of human rights, as this is the basis of the rule of law. He also has to consider what our policy should be, and how this originally unclear and uncertain provision should be rewritten. The policy has to be reviewed. Then, with reference to policy

need, the provision should be put down in clear legal wordings. So, Ms Audrey EU was not wrong in saying that the authorities have not handed in their assignment. The assignment is only half finished, and the finished part is meaningless.

Therefore, Chairman, today, I appeal to all members that there should be a comprehensive review. We should urge the Government to conduct a comprehensive review. It should not truncate the CFA's ruling, hastily wind up the matter and conduct the exercise perfunctorily as a mere matter of form. This is not what a government which has respect for the rule of law, the Court and human rights should do. Thank you, Chairman.

Proposed Amendment

Part 3 (see Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original provisions and the amendment jointly.

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

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, the speeches I have been listening remind me of a book which I read when I was a little boy. It is called *Thick Black Theory*, which has suggested two ways of rectifying one's fault, namely the arrow-cutting approach and the pan-tinkering approach, with the former being now adopted by the Secretary and the Government. The case is like when you went to a doctor for treatment after being shot by an arrow, you were told that treatment could be given on the spot and you could fully recover. However, the doctor just cut the exposed part of the arrow away before putting on medication, and that was it. Whether you live or die on the next day was nothing of his concern. Doctors as quack as this generally earn undeserved welcome by patients for the short treatment process, making the arrow disappear in a second.

This is the case now. When the Court of Final Appeal (CFA) said that the "texture" of the civil society of Hong Kong was damaged after being shot by an arrow, the Secretary then spoke on behalf of the Government, telling people

to rest assure as he could treat it at once by cutting away the arrow and putting on medication. In fact, there is no need for the CFA to instruct us what to do. If this legislature is returned by direct election, I can guarantee that a review would have been conducted long ago. The briefing given by Mrs Regina IP (the then Secretary for Security) on the national security bill in December 2000 on behalf of the Government was actually a laughing stock. Being a stakeholder and a user of the legislation herself, she told the legislature that it was inappropriate to deprive her of the power. And it was not the then Secretary Ms Elsie LEUNG to speak to us. Frankly, monsters will abound in a nation on the verge of destruction. As order and discipline had been lax at the time, Mrs Regina IP simply came here to perform a drama series to promote the legislation of Article 23 of the Basic Law. It was an unforgettable drama series for Hong Kong people called "大長今" (Jewel in the Palace) — "大" refers a big incident, "長" refers a long-standing eyesore and "今", a unison of "甘" meaning serious.

Let us look back at 2000, when the Government learnt that the royalists alone could not ensure the passing of that motion for the pan-democratic camp returned by geographical direct election would definitely vote it down, and it required that the two camps should add up to a relative majority according to its computation, it decided to abuse public opinion and propose the motion on its own. Should it be proposed by Members, the Government would probably say, "According to Article 74 of the Basic Law, this would result in a change in our policy. So, Mr LEUNG, we are very sorry". I was nonetheless not a Member then and could only demonstrate either outside or upstairs at that time.

It has been eight years since 2000. The then Secretary Mrs IP even suggested that it was a comprehensive discussion when she was doing her assignment or the so-called "exercise". Regardless of whether she was right or wrong, she had looked at the matter very comprehensively. Why is it narrowed down by the authorities today after the CFA's instruction and guidance? This is where the major problem lies. The CFA has to beat up the Government with a cane, like a kindergarten teacher, threatening to assign a detention to it for not doing its homework. This is what the CFA is doing. After beating the Government once, it threatened to assign a detention to it for not doing its homework. In order not to be detained, the Government had no choice but to finish doing the exercise and then immediately brought it here for our approval. In case the Government comes across CFA's Judge in the future, it can say that everything is all right with the rubber stamp of the Legislative Council — that is a small rabbit rather than a black pig — and detention is therefore not necessary.

I have said time and again that even the British (who are certainly cunning, right?) admitted it was riots that had given birth to the Public Order Ordinance. It implies that, without any riots, the Public Order Ordinance should have been amended accordingly, right? When we discussed the economy here, we often mentioned the need to keep abreast with the times, engaging in wild talk. Is this not necessary for legislation alike? It is even more important for legislation as it relates to how much right people can enjoy and the restraint imposed on government power. The more precise the legislation is written, the greater understanding of the legislation the general public and students observing this meeting, for instance, gain and they can thus be more aware of their own right. Otherwise, why need either the common law or the statute law?

Well, the fact is the legislation written by the Government is pretty ambiguous, which follows the law enacted by the British to suppress her colony — which I have said time and again — Ireland. Nonetheless, while the Republic of Ireland is now back on track following a cease-fire in the Northern Ireland, and British colonial rule in Hong Kong has also come to an end — Have we not just welcomed the arrival of the Olympic torch today? — some old laws are still in force.

What is the crucial point about the Public Order Ordinance? It is the total ban on the right of procession and assembly, which has in turn banned the rights of expression and artistic expression that one should enjoy under the Basic Law during assemblies or procession. The Commissioner of Police (the Commissioner) can act according to his likes and dislikes, just like the then Governors (the Chief Executive at present) who acted according to their own will, overriding all else. Secretary, he can really do so. And if this is the case, I can only lodge an appeal — not to appeal to you as this is not allowed. One can only lodge such an appeal after breaking the law.

You are really so cunning that an appeal mechanism has been established, which makes it impossible for me to appeal to the Court even if I wish. This appeal mechanism makes it impossible for me to bring the case to the Court by proceeding with the appeal process. Can this be deemed fair? My request is very simple. My request to the CFA is very simple, and that is, I can turn to the Court when I lose trust in the Government. The Judge asked me why I would lose trust in the Government. I replied how I could have trust in it. I will not have trust even in a democratically-elected government because a government tends to centralize power. This is how our present system is like.

The Commissioner is made to stand at the front to govern people like us, playing a dual role of a good and a bad guy. Our human right is therefore subject to his personal preference, his availability and his impression of a particular person.

Last year, I submitted an application for the organization of an assembly against coterie elections. The Commissioner sent his subordinate to tell me that in view of the low visibility at night when the activity would be held, the procession was therefore not approved. How outrageously ridiculous this is. So, I lodged an appeal, but was overruled. Subsequently, steel-fixing workers' request for procession was also not acceded to. Fortunately, with heaven's grace, even the appellate judge concerned despised the judgment. Otherwise, they would not be able to march on. Not only their wages would not have been increased by now, their working hours might be even longer. If they dare to violate the law like me, they may be prosecuted. And in view of the large number of workers involved, this may end up exploding the CFA with people. Are these woes still not glaring enough?

Well, this is also the case for the activities concerning the welcoming of the Olympic torch, and I am going to take part in a demonstration later on. Perhaps he may say, "Sorry, Mr LEUNG, you have not made any application (for public meetings consisting of more than 50 people)". Even if the number of participants is less than 50 people, it can still impose restrictions under the offence of unlawful public assembly in accordance with the law, which is another draconian one. Under common law, the inclusion of the offence concerning "public assembly" has rendered the conviction of all punishable offences more serious and easier. While the conviction is like an original sin, the Public Order Ordinance illuminates all things like beams of sun rays. After all, it is sorry your right will be restrained whenever a public assembly or procession has to be organized. The Commissioner will ask right at the beginning the number of participants, then he starts to impose restraints on you. Next he will ask: who will you invite to speak? What banners will be shown? What music will be played? What outfits will be worn? What will be the slogan printed on the outfits? He has the right to do so. And it makes no difference whatever answer you give because he holds the power of life and death, and can cut us up like fish or meat as he wishes as if he is holding a knife. He can even mix the fish and the meat up to make meat balls if he wishes.

Secretary, is that okay? You have studied abroad and are an educated man. Just imagine what good this may do to our people if their rights are restrained. What good does this do to developing Hong Kong into a more open and diversified society and enriching the knowledge of the youngsters so that

they can give more views? The Government will not answer political questions. Rather, it will act like the parrot living above my apartment and simply says "good morning" in the morning, like Mr TUNG, or "good night" at night. It is merely talking like a parrot. Even officials of the colonial government dared not expressly rationalize the Public Order Ordinance. Therefore, they debated no more as they knew that this was inappropriate. After reunification, however, we now have the Basic Law and a legislature which is neither fish nor fowl. Hence, we can ask them openly to take a plea. Or, when the Court as an independent body stated that what you did was wrong, you would be asked to take a plea.

So, we should argue no more about *ordre public* and public order. Assuming that what you did was right, what you did was absolutely right, but after 21 December 2000 — so many years have passed and during which advice has been given to you by the CFA — are you obliged to provide a platform for a review by this Council? Did you do that? I guess not, and that game is over. How can the Government act like this? We shall simply merge the Government with the Court, right? Mr Donald TSANG would then be asked to listen to Mr Andrew LI's advice every day, and ring him up on a daily basis to ask, "What should we do if you rule us unconstitutional?" That is all he needs to do.

The case is the same for the legislation on surveillance and the Broadcasting Ordinance, for the Court is requested by the Government to expressly state, in all circumstances, that an act is unconstitutional or it is not allowed. This explains why you are so hair-splitting today. The Government may even query why "Long Hair" bothered to create so much trouble as merely moving amendments according to others' proposal would be enough. One should have conscience, right? Secretary, will you handle your personal matter in this way? Imagine that a doctor says, "You will not die though a large shade was found in your lung, and you need not undergo further x-ray checks." Will you just sit there doing nothing? Certainly, you will immediately go and have an x-ray check, and perhaps a number of times, to find out if it is lung cancer or lung diseases. Today, the CFA conducted an x-ray check for us and discovered a very large shade in our lung. Our "doctor" said, "You need not rustle as this is just a shade. How do you know that this is not caused by the intake of some strange air? Forget it." Honourable Members, who will be paying the price? They are the ordinary citizens who work very hard for the interests of Hong Kong, and treasure the freedom of assembly and demonstration to express their humble requests. The interests of those who exercise their humble rights will be undermined. So, there is no need to rustle.

Honourable Members, you may think that I speak too loudly, but it is impossible for me to keep my voice down. I put up civil disobedience in the CFA, which said that the matter had been escalated. However, the authorities instead said that this was only a minor issue that could be settled by making "miscellaneous" amendments. Honourable Members, not only does the Government play bad loser, it will not even feel sorry until its doomsday. And yet, we are the ones who will have to pay the price after all. Should we refrain from breaking the law, putting up civil disobedience and making challenges, there is no way we can access the CFA. We do not have enough money to take legal action. It is possible that the Legal Aid Department, which is currently under the Home Affairs Department, may refuse granting aid for our course. Therefore, I could just sit there for I am so humble.

Secretary, you treated me to a meal when I first met you, and I can still remember what I said to you. Firstly, you should work for the poor because you were born poor, and secondly, you should maintain Hong Kong's rule of law. I then left. Seeing you again today reminds me of these words. Perhaps you think that I am impolite today, but words from the heart are as important as water in the desert. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, this debate today The lesson we learn from this story is: "Fear not born to a bad fate but be given a bad name". In case of some key principles, if some unknown names are adopted, it is really very easy for the concept to be replaced in disguise. What are the Siracusa Principles? It is difficult even to repeat the name once. What is *ordre public*? This is not English but French.

Chairman, the name of such Principles may be hard to pronounce, but so long as we respect human rights and have the awareness to understand law, it is actually not difficult to understand the meaning behind. Let me employ the most basic explanation, that is, public order plus respect for human rights points to *ordre public*. Chairman, if *ordre public* is deleted, leaving behind only public order, that is shoddy.

Let us take a look at section 6(2) of the Public Order Ordinance (POO). It reads: "The Commissioner of Police may, if he reasonably considers it to be necessary to prevent an imminent threat to the interests of national security or

public safety, public order or the protection of the rights and freedoms of others, in such manner as he may think fit, control the extent or any other may be amplified, broadcast, relayed, or otherwise". This provision is about expression of opinion by means of broadcast during a procession and reference is made to public order in English (*ordre public*). This is to say when the Commissioner of Police exercises this right, consideration has been given to the meaning represented by this French term, and has also included the simplest and the most basic interpretation I brought up earlier, which is when the Commissioner of Police exercises the right to restrict the enjoyment of basic human rights by Hong Kong people, he should take public order and the respect for human rights into consideration.

If *ordre public* is deleted, using only public order, it means in restricting the basic human rights of Hong Kong people, the Commissioner of Police needs not take the other point into consideration. Chairman, a simple algebraic expression would help us understand, that is, if $A+B=C$, once you take away C and B, A would not be equal to C.

Chairman, Ms Margaret NG earlier also mentioned briefly another very important issue: What exactly is the constitutional function of our Legislative Council? I know many people would not like to touch on what tripartite division of power is, but in any civilized nation, the constitutional function of the legislative council, the legislative yuan or the legislature is definitely different from the function of the Court, otherwise, there is no need for us to set up two different organizations. Chairman, we are not in Beijing now, nor are we the National People's Congress (NPC) or members of the Standing Committee of the NPC, we are the Legislative Council. We pay utmost respect at all times to the opinions of the Court of Final Appeal (CFA), but its function is only to interpret law or give legal opinion, rather than changing or enacting law. Only the Legislative Council has this function.

Therefore, if we consider that there are ambiguities in law or changes must be made, the Legislative Council has the responsibility to exercise this function. The Legislative Council does not necessarily have to follow the legal opinion put forward by the others, Chairman, not to mention the CFA is not saying that when restricting the enjoyment of basic human rights by Hong Kong people, there is no need to take freedom of human rights into account, no need to take everything encompassed by *ordre public* into account; this is not the meaning of the Siracusa

Principles mentioned earlier. The CFA is simply saying that not many people understand the French which is placed here. I fully concur with this. Otherwise, there is no need for us to have this debate today.

Although some of our other colleagues are lawyers, they also may not be able to grasp the subtlety. However, we should not follow blindly the opinion of the CFA. We should comprehend what the CFA wanted to convey behind when passing down its judgment. The CFA pointed out that the wording or the term should be delineated, but did not ask us to be shoddy. Chairman, we are not asked to take away one catty and replace it with eight taels. If the Government really follows or respects the opinion of the CFA and also respects the most basic international core value of the international human rights convention, but wants to delete the term *ordre public*, it has to add in a provision, so that the so-called — excuse me, I have to look at it again because I have really forgotten — Siracusa Principles can be written down. Coupled with public order, the original intent of this provision would not be changed, and would be loyal to what the CFA meant. Nevertheless, if we are shoddy, taking away one catty and giving back eight taels, deleting only *ordre public* and replacing it with public order, then, Chairman, this is actually changing the law.

Of course, I said earlier that the Legislative Council has the power to change the law but apart from changing the law, we also in the meantime have the responsibility to take into account whether that change conforms with the core value of Hong Kong people, and whether this change is for the better or the worse. This is our basic responsibility. Thus, Chairman, I hereby again respond to the appeal of Ms Margaret NG, and call on colleagues of the Legislative Council, be they watching the television outside — I hope that they are not placing bets on horse racing — or taking a rest or eating outside, to come back and participate in this very important debate, to support Ms Margaret NG's amendment.

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

MR MARTIN LEE (in Cantonese): Madam Chairman, I was the one who represented the two other appellants when the appeal of LEUNG Kwok-hung was brought before the Court of Final Appeal (CFA). I believe the Secretary for Justice must be very surprised when I tell him the outcome of the appeal. It is because the CFA has ruled that the appeal be rejected, that is, the appeal be dismissed, which means that the appellants remain convicted. However, for the

legal costs, I have prepared a very long submission, requesting the Court to rule that no costs be demanded from the appellants.

In fact, having been a practising barrister for so many years, I have never requested the Court to demand the other party to bear the costs incurred by the appellants whose appeal has been rejected. Although the Department of Justice has won the lawsuit, instead of demanding our party to bear all the costs, it has demanded that both parties should bear their respective legal costs. Nevertheless, I have objected to this. Why? It is because the CFA has not given any clear answer to the question raised by the Appeal Committee. The question is: Is the system in which members of the public are required to apply to the police for a licence before taking part in any procession under the Public Order Ordinance (POO) unconstitutional?

However, the CFA has avoided this question and has not provided any answer. It has only advised that it is unconstitutional for the Commissioner of Police to restrain or even prohibit members of the public from marching on grounds of public order (*ordre public*). Therefore, it will be constitutional if the French term "*ordre public*" is deleted and only the English term "public order" is used. In other words, it is unconstitutional if this French term is not deleted. However, it has not provided any answer and has avoided the question, which was raised by the Committee itself, of whether this system is unconstitutional.

My rationale is very simple. If there is anything unconstitutional in the system, it follows that the entire system will be unconstitutional; only when each and every provision and measure in the entire system is constitutional will the entire system be constitutional, and if any part of it is unconstitutional, the system itself will also be unconstitutional. The CFA has not provided any answer to this question, and I can see that most of the judgments — that is, the judgments of the four judges — have ruled that the appellants' appeal be rejected, while only one judge, Mr Justice BOKHARY, has indicated in his judgment that the appeal is successful. Most of the judgments have avoided the question and have not dared to answer the question raised by themselves. If they had provided an answer, I am very sure that they would say that it was unconstitutional, that is, the entire system was unconstitutional.

As such, although the appellants have failed, their failure is only technical in nature. It is because since they have not applied to the police, their case does not fall into the scope of this system. By this logic, they have made a mistake. However, regarding the CFA, I cannot say that they have made any mistake, and I can only ask why they have avoided the question they should really respond to. If they were really willing to answer the question raised by themselves, they would have definitely ruled that this system was unconstitutional. In such case, not only will our appeal be successful, we will also be awarded the costs. Since they have not answered my question, I still request that they take a good look at it. If they agree with my view, that is, they should have ruled that the system be unconstitutional, we should have been awarded the costs.

The prosecution has provided a very detailed reply, and I have in turn provided a reply of more than 20 pages. Finally, the CFA ruled that the appellants be awarded the costs. That is to say, they think that this appeal should be successful, and this system is unconstitutional. Therefore, I very much hope that the Secretary for Justice can take a good look at this point. This point is not present in the original judgment, but if he takes a look at the documents for our application for the award of costs after the delivery of the judgment by the CFA, he will come to understand. Besides, he has to take a look at my submission and the one lodged by the Department of Justice, as well as my response to it. It is because the decision of the CFA is just very simple, only having a few words about the award of the costs. However, for those who do not understand the story behind, they will not understand that with such a judgment, the CFA has tactfully ruled that the appellants are in fact successful at the constitutional level, although their appeal is not so.

Therefore, it is in fact very risky to make such a simplistic amendment when there is still another part in this Ordinance — that is, when exercising human rights in this respect (that is, of assembly, procession), the interests of the others should not be affected. In this connection, although the CFA has not given both parties the chance to fully express their views, it still thinks that this part seems to be problematic. If future litigation involves the query about this part of the Ordinance for the time being, judges of the CFA also consider this problematic. In such case, why do we not take this opportunity to amend it in this context? If not, problems are bound to arise.

Therefore, I support the amendment proposed by Ms Margaret NG.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Justice to speak.

SECRETARY FOR JUSTICE (in Cantonese): Madam Chairman, the authorities oppose the amendment proposed by Ms Margaret NG to delete Part 3 of the Bill.

Madam Chairman, as I have just pointed out in my speech to move the resumption of Second Reading Debate on the Bill, an important issue is that Part 3 of the Bill seeks to repeal the references to "*ordre public*" in the Societies Ordinance (SO) and the Public Order Ordinance (POO) to achieve consistency of the terms being used in the two Ordinances and the judgment of the Court of Final Appeal (CFA). I would like to stress that this is very common among similar ordinances. As I have stressed just now, both the Hong Kong Bar Association (HKBA) and the Law Society of Hong Kong (Law Society) have agreed that the proposed amendment under Part 3 of the Bill is in line with the judgment of the CFA and they have no objection to it.

We think that in order to enhance the clarity of the Statute Law, the proposed amendment should be implemented as soon as possible. Madam Chairman, just now a number of Members have asked whether this amendment will bring about substantial legal changes and go beyond the intended purpose of the judgment made by the CFA. Please allow me to respond further to this point.

Madam Chairman, the judgment of the CFA has explained that the English term "public order" without the French term "*ordre public*" refers to "public order in the law and order sense, that is, the maintenance of public order and prevention of public disorder". This is "public order". Of course, the concept of "public order (*ordre public*)" includes, but is not limited to, the public order in the law and order sense. The CFA considers that the latter is an imprecise and

elusive concept and its meaning cannot be expressly defined. This is the basis for regarding this part as unconstitutional. However, the CFA considers that "public order" (without "*ordre public*") covers the meaning of "the maintenance of public order and prevention of public disorder", and this term is precise enough to satisfy the constitutional requirement of "prescribed by law" and is therefore very clear. Hence, the CFA rules that the discretion of the Commissioner of Police to object to or restrain public activities for the purpose of "public order" (that is, the principle of public order (*ordre public*) with the French term) is unconstitutional. The appropriate remedy — Madam Chairman, I would like to emphasize that the Court can see that there is a problem, and after having advised that this part is unconstitutional, it has then mentioned the remedy — that is, to sever "public order" in the law and order sense from the "public order, with the French sense of (*ordre public*)" in such provisions. As I have just said, the Court has used "severance", that is, with the sense of severing or deleting, to deal with the situation. Madam Chairman, this is exactly the purpose Part 3 of the Bill intends to achieve. The judgment of the CFA has specifically pointed out that — this must be emphasized — after severance, the discretion of the Commissioner of Police in relation to public order satisfies the constitutional requirements of "prescribed by law" and necessity and is then constitutional. That is to say, after severance, what remains is constitutional. This is the advice given by the Court.

Madam Chairman, please allow me to be a bit elaborated and read out the judgment of the Court. In paragraph 95 — I will read the English version first because I do not have the Chinese version at hand — the Court has drawn a conclusion and pointed out in subparagraph (3) that "The appropriate remedy is the severance of 'public order' (in the law and order sense, that is, the maintenance of public order and prevention of public disorder) from 'public order (*ordre public*)' in such provisions". That is to say, first of all, an appropriate arrangement has to be made, as I have said just now, to effect a severance. Subparagraph (3) states that "After severance, the Commissioner's discretion in relation to public order satisfies the constitutional requirements of 'prescribed by law' and necessity and is constitutional". It has pointed out very clearly that after severance, there will only be "public order" without "*ordre public*", and with such a basis, the exercise of the discretion by the Commissioner of Police will satisfy the constitutional requirements. Madam Chairman, I think this has to be pointed out very clearly.

Here I would like to respond to the situation of "ripping off" mentioned by Mr Ronny TONG. He has suggested that with the deletion of "*ordre public*", the restrictions imposed by the law as a whole on the freedom of peaceful assembly will be strengthened and this right is undermined, resulting in the situation of "ripping off". Madam Chairman, I cannot see why such a situation will emerge. It is because the legal theory adopted in court in relation to all these basic human rights is very clear. When all freedoms and rights are viewed from a very broad perspective, if restrictions are to be imposed, a very narrow interpretation has to be adopted. This is clear to us all. Just now, Mr TONG has said that "*ordre public*" includes the concept of respect for human rights. In fact, the concept of respect for human rights is already very clear in the basic human rights and the right of peaceful assembly. The Court is now dealing with restraining the power. By deleting the imprecise concept of "*ordre public*", it is further narrowing the scope of the provision to restrict the discretion to be exercised by the Commissioner of Police. Restrictions cannot be imposed on the others with an imprecise concept. This is not to limit the content of the rights but to limit the power to impose restrictions so as to protect the rights. I think this is very clear, and it is also the Court's intention. I think when the Court wants to achieve a severance, that is, to deal with the issue by means of severance, it must have considered the effects of the severance and the deletion. If the Court considers that the deletion will result in a further weakening of the rights, it would not have considered this a proper power. And the HKBA and the Law Society would not have agreed with the relevant amendment. It is because if it would result in the weakening and the "ripping off" of the rights, as suggested by Mr TONG, I do not think that all the professionals responsible for examining this issue would have neglected this problem.

In fact, Madam Chairman, the explanation given in the judgment of the CFA has already become part of the case law, and the interpretation of "public order" in the judgment of the Court has been adopted in the relevant provisions in the applicable legislation — that is the POO and the SO — after the judgment has been made by the CFA. In fact, it is not different from the practice upheld by the police before the judgment was made. The deletion of the references to "*ordre public*" does not have any substantive effect on the operation of the police in practice, including the processing of notification of public assemblies and processions under the POO. Neither does it involve any policy change. This

is a fact. However, at the statutory level, the Court has already provided a further protection. As the power to impose restrictions has been confined, *ordre public* cannot be used as a basis for regulation.

Just now, Mr Martin LEE has said that the Court has avoided the question of the legality of this notification system. I would like to take a look at the judgment of the Court. Regarding paragraph 65 of the judgment, Madam Chairman, as this is related to what has been said just now, please allow me to read it out in English first. Paragraph 65 reads: "It was not seriously argued that the mere statutory requirement for notification is unconstitutional. Plainly, such an argument would be untenable. Apart from anything else, notification is required to enable the Police to fulfil the positive duty resting on Government to take reasonable and appropriate measures to enable lawful demonstrations to take place peacefully. The statutory requirement for notification is constitutional. A legal requirement for notification is in fact widespread in jurisdictions around the world." Here the Court has pointed out that this notification mechanism is in fact constitutional, and the same practice is adopted in jurisdictions around the world. Just now, we have said that it is problematic to use such an imprecise basis of "*ordre public*" as a ground for regulation. However, the Court considers that when it is taken out and deleted, and with "public order" and the content of the other provisions to support such a mechanism, the constitutional requirements are satisfied.

In fact, Madam Chairman, I have already mentioned that at present, a proper balance has already been achieved in the Ordinance between this right and the maintenance of public order. The court document just referred to has mentioned that the Court has confirmed that the implementation of this notification mechanism will enable the police to perform its constitutional duties. This arrangement is in fact necessary. The power of the Commissioner of Police to object to and restrict the relevant activities is not unfettered. For example, the Commissioner of Police has to notify the organizers of the procession of his decision within a statutory period of time. Further protection includes: It is required that the Commissioner of Police may only prohibit a public assembly or object to a public procession where he reasonably considers it necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others to prohibit the holding of such a public assembly or object to holding of such a public procession. The persons concerned may appeal to the Appeal Board on Public Meetings and Processions

against the decision made by the Commissioner of Police. Besides, the Board is an independent statutory body chaired by a retired judge, and its members are not public officers. Under this arrangement, a very objective mechanism is in place to control the exercise of power. Madam Chairman, on the level of enforcement, the Hong Kong Police Force has issued a guideline to its officers on the approach to the POO in relation to public assemblies and public processions. The guideline has specifically pointed out that, and I quote: "The right of peaceful assembly involves a positive duty on the part of Government to take reasonable and appropriate measures to enable lawful assemblies." This duty has been very clearly expressed here. The police has incorporated the relevant explanations provided in the judgment of the CFA and the meanings of a number of important terms in the POO in this guideline, which is available for public inspection.

Therefore, Madam Chairman, we consider that the existing arrangement under the POO is both necessary and proportional. It is also able to strike a balance between protecting the individual's right of peaceful assembly and demonstration and the broader interests of the community at large. Of course, the authorities will continue to protect the fundamental rights of the people in Hong Kong as guaranteed by the Basic Law and the Hong Kong Bill of Rights. In this connection, the authorities will conduct regular reviews to see if there is any room for improvement. However, we have to make this amendment at this stage to achieve consistency of the Statute Law and the judgment made by the Court. We consider it inappropriate at this stage to press for a comprehensive examination, review and alteration of the entire POO before making this amendment. This is not acceptable to us.

Madam Chairman, this is all I wish to say in response. Thank you.

MS MARGARET NG (in Cantonese): Chairman, first of all, I have just mentioned that when Members scrutinize a bill, not only do they have to examine its literal meanings, but they also have to understand the actual situation after the relevant amendments have been passed. However, the function of the Court is different. It will only consider the constitutionality of the legal provisions submitted before providing a reply and making a ruling on its constitutionality or otherwise. In fact, for the Bill in question today, it is very easy to provide examples in this respect.

Chairman, just now we have passed the Committee stage amendment proposed by the Secretary for Justice to delete Part 2. Part 2 is on the Bankruptcy Ordinance and the original provision of section 30A(10)(b)(i) requires a bankrupt to notify the trustee when he leaves Hong Kong. The Court of Final Appeal (CFA) considers this unconstitutional and therefore has requested that this be deleted. But why do we opine that the amendment should not be passed? It is because there is also section 30A(10)(b)(ii), which states that the bankrupt has to notify the trustee of his return. When no notification is required for leaving Hong Kong, why is notification required for returning to Hong Kong?

For this reason, we have requested that the Government considers the issue in a comprehensive manner instead of hastily passing this amendment — deleting one part and ignoring the other parts. The Government agrees with this. We are scrutinizing the Public Order Ordinance (POO) for the same purpose. The CFA considers "*ordre public*" unconstitutional because it is not clear and the public is unable to understand it. However, instead of simply deleting this part out of context, we have to consider whether it is in line with the policy required after this part has been deleted.

Chairman, I feel really uncomfortable to remind the Secretary for Justice that in making reference to case law, thorough examination is required. Just now, the Secretary for Justice has read out paragraph 95, which we have also read many times. He highlighted item (iii) and said that "After severance, the Commissioner's discretion in relation to public order satisfies the constitutional requirements of 'prescribed by law' and necessity and is constitutional". Why is it not unconstitutional? The focus lies in "prescribed by law", that is, it is in line with the constitutional requirement under the law. After reading the entire judgment, one will understand that the most important requirement for "prescribed by law" is clarity and precision, as I have mentioned just now in my speech. With the term "*ordre public*", it will not be clear and precise. Therefore, if you ask me whether it satisfies the requirement of "prescribed by law", I would rule that it does not satisfy the requirement of "prescribed by law". From this perspective, it is not unconstitutional to take away this term. However, this has not perfected the provision as a whole.

Besides, according to item (ii) of the paragraph, the CFA points out that the appropriate remedy is severance. But it has not ordered the legislature to delete this definition. If the deletion of this definition is simply in relation to

public order, there will be no question of not meeting the requirement for clarity and precision under "prescribed by law". The Court only focuses on this point. Chairman, when we refer to court cases, we should never try to expand their scope.

I have to thank Mr Martin LEE for reminding me that, most of the judgments of the CFA have ruled that LEUNG Kwok-hung remains convicted, as far as I can remember, this is the case. However, when I went back to the judgment just now, I found that my memory has failed me. As a matter of fact, I have made a mistake about the judgment of Mr Justice BOKHARY. Therefore, whatever action we are required to take by the Court, we have to make it very clear and consider the impact of such a deletion on the policy. Do we have to look at it in a more comprehensive manner? Regarding clause 2 of this Bill, if we agree with the views expressed by the Bills Committee and consider that the change may sometimes result in inconsistency, we should consider the issue in a larger context. Since we are adopting the same principle, why do we not agree with this paragraph? As Mr LEUNG Kwok-hung has said just now, should the legislature accept this practice?

Chairman, just now the Secretary for Justice has said that it will not make any difference even if the French term is deleted. Should it make no difference, why was the term included in the provision in the first place? There must be some significance. If Honourable Members do not care about how the provision was passed in the past, the result is bound to be unsatisfactory. The Legal Advisor has advised that there is no need to hurry because from now on, for any case involving this term brought before the Court, the term "*ordre public*" will have no significance at all, neither will the Court take it into consideration. Therefore, there is no urgency in dealing with this issue, while there is urgency in conducting a review.

Chairman, the Secretary for Justice has just mentioned in his speech that a review can be conducted in future, and we can pass this amendment first and then conduct a review later. However, according to the Report I have just presented on behalf of the Bills Committee, the authorities consider it unnecessary to conduct a further review. It regards the existence of this French term as the only problem with the POO. Therefore, if the Secretary for Justice also accepts the result of our discussion today that a review should be conducted, would he please put forward this recommendation to the SAR Government?

Chairman, this judgment is not easy to understand at all. It has made reference to many parts which the Court has pointed out to be the strengths and weaknesses of the existing system. The Secretary for Justice has just pointed out that the requirement for notification is not illegal. Why is the requirement for notification not illegal? It is because the Court has advised that the requirement for notification itself is not unconstitutional, and this requirement has been established in many places. However, this notification is only one of the procedures. The holding of processions and assemblies without notification is punishable by imprisonment of five years. Is this system still constitutional? The Court has not made any consideration in this respect.

On the contrary, the Court has advised that these powers must be exercised in compliance with a proportionality tests, that is, the power must be proportional. For example, the Commissioner of Police has to set certain conditions and see to that the satisfying of these conditions is proportional to allowing such activities. Such conditions are not stipulated in the existing legal provisions, which are therefore not clearly specified. Therefore, we consider that regarding this ruling made by the Court, we should first understand the intention of the Court and then conduct a review to clarify the uncertainties one by one, including stipulating the power of proportionality. Otherwise, we will all fall into the trap.

Chairman, I find the reply provided by the Secretary for Justice today hardly acceptable and reasonable. It will lead to infinitely dire consequences if a review is not conducted in the future. Chairman, the result of the scrutiny reached by the Bills Committee will neither create adverse effect on the law nor render disrespect to the CFA. Instead, it will send a clear message to the public that we cannot take any action out of context. Ordinances such as the POO and the Societies Ordinance should be reviewed and their degree of clarity should be enhanced. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is

(Mr Martin LEE raised his hand to indicate his wish to speak)

MR MARTIN LEE (in Cantonese): Chairman, it seems that a quorum is not present.

CHAIRMAN (in Cantonese): Clerk, please ring the bell.

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Ms Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG 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 Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr Alan LEONG and Mr Ronny TONG voted for the amendment.

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

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, seven were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 22 were present, 14 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Part 3 stands part of the Bill. Will those in favour please raise their hands.

(Members raised their hands)

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

(Members raised their hands)

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.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

SECRETARY FOR JUSTICE (in Cantonese): Madam President, the

Statute Law (Miscellaneous Provisions) 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 Statute Law (Miscellaneous Provisions) 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.

(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): Statute Law (Miscellaneous Provisions) Bill 2007.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Energy Efficiency (Labelling of Products) Bill.

ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL

Resumption of debate on Second Reading which was moved on 18 April 2007

PRESIDENT (in Cantonese): Ms Audrey EU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS AUDREY EU (in Cantonese): In my capacity as the Chairman of the Bills Committee on Energy Efficiency (Labelling of Products) Bill (the Bills Committee), I report on the deliberations of the Bills Committee.

Since 1995, the Government has been operating a voluntary Energy Efficiency Labelling Scheme (EELS) for household and office appliances as well as vehicles. However, as significant improvement in market penetration rates cannot be achieved under the voluntary scheme, the Administration proposes to introduce a mandatory EELS, though only three types of products will be covered. President, if we examine the Energy Efficiency (Labelling of Products) Bill (the Bill), we will find that the three types of products are defined as air conditioners, refrigerating appliances, also known as refrigerators, and compact fluorescent lamps (CFLs). It is required that specified information be provided to the Administration and energy labels be displayed on relevant

products to inform consumers of their energy efficiency performance and help achieve energy saving. The Bills Committee generally supported the policy intent of the Bill.

However, while 18 types of products are originally covered under the voluntary scheme, the Bill is applicable to three types of products only. Therefore, the majority of Members of the Bills Committee hoped that the Administration could expeditiously consult the relevant trades and the public on the priority of and timeframe within which the remaining 15 products should be included in the second or third phase of the mandatory EELs. The Administration has already agreed to act accordingly.

Furthermore, it has come to our attention that, insofar as energy saving is concerned, the relevant scheme involves domestic energy consumption only. However, it should be commercial buildings and offices which have a much higher energy consumption level. It is therefore hoped that the Administration can make vigorous efforts in promoting energy saving in the commercial sector.

In addition, it has come to our attention that the Government has launched the Energy Efficiency Registration Scheme for Buildings since 1998. However, the participation rate has remained low over the past decade. Therefore, during the scrutiny of the Bill, the Bills Committee urged the Government to consider introducing a mandatory energy efficiency scheme for buildings. In response to Members' concerns, a three-month consultation was launched starting December last year on a proposal to introduce mandatory compliance with Building Energy Codes (BECs) for new and existing buildings.

Now, I wish to return to this Bill which seeks mainly to regulate manufacturers, importers and suppliers. Upon the implementation of a mandatory EELS, manufacturers and importers are prohibited from supplying these three types of prescribed products, namely air conditioners, refrigerators, and CFLs, as spelt out by me earlier, unless they have submitted to the Director of Electrical and Mechanical Services (DEMS) the specified information and specified documents in respect of these products, including reports of tests conducted by recognized institutions for the prescribed products, that is, the so-called energy efficiency tests, as well as submitting applications for a reference number and affixing the products with an energy label. As for suppliers other than manufacturers and importers, they are prohibited from supplying the product unless it is a product of a listed model with a reference number and bearing an energy label.

However, as the definition of "supply" includes, among other things, making a gift of such a product for commercial purposes, including buildings, Members were concerned that developers providing CFLs in first-hand properties might be considered as not complying with the relevant ordinance as the CFLs are without packaging and labels. Hence, in the light of Members' concerns, the Administration will move a Committee stage amendment (CSA) to exclude CFLs supplied under such circumstances from the relevant requirement.

In addition, it was noted by the Bills Committee that the Bill was applicable to employees, especially junior sales staff. They are required to "ensure" that a particular product is a listed model with a reference number and bears an energy label. Members were concerned that this would put burden on employees, though a defence is provided in the Bill. Under the Bill, it is a defence for an employee to show that he is acting in accordance with the instructions given to him by his employer and he has no reasonable ground to believe that the prescribed product is not a product of a listed model and does not bear an energy label. However, the Bills Committee was concerned that there might be conflicts between this requirement and the requirement that employees are obliged to "ensure" that energy labels are affixed to these products as well as areas of ambiguity. Hence, having regard to the Bills Committee's concern, the Administration will move a CSA to exclude junior sales staff from the Bill such that only employees who exercise managerial functions are required to meet the "ensure" requirement. However, an employee who knowingly commits the relevant offence will still be held liable under the Bill.

If the DEMS considers that a person is contravening a requirement under the Bill, he may serve an improvement notice specifying the remedial measures to be taken within a specified period. However, the Bills Committee was concerned that the Bill does not set a maximum length of the remedy period, nor does it allow the extension by the DEMS of the period. Hence, the Administration will move a CSA to empower the DEMS to extend the remedy period if there are reasonable grounds to do so.

The Bill provides that if the DEMS has reasonable grounds to suspect that a prescribed product does not conform to the test results submitted to him by a specified person, the DEMS may require the person to cause the product to be tested again by a specified means. Members were concerned about the extensive scope of "reasonable grounds" and the financial implications on the trades if they are required to bear the cost of further testing. It is explained that

the Electrical and Mechanical Services Department (EMSD) will conduct routine tests on samples taken from the market to ensure compliance by relevant products, and the cost of such tests will be borne by the authorities concerned. However, after the test, the DEMS may require re-testing based on information which enables him to suspect that a prescribed product does not conform to the test result submitted to him. If the term "non-compliance" or "contravention" is used instead of "reasonable grounds", the DEMS would have no choice but to either serve an improvement/prohibition notice or remove the relevant reference number as required under the Bill. The trades were concerned that this would produce even more far-reaching implications on them. They have therefore agreed to the possession of such power by the DEMS such that they could have a second chance to prove that the relevant products comply with the requirements or the energy efficiency submitted by them. Hence, they have accepted certain arrangements made under the Bill. However, to enhance the clarity of the arrangements, the Administration has taken on board the Bills Committee Members' suggestion to include in the codes of practice arrangements on compliance monitoring testing, including arrangements on sharing of the cost of testing.

As the codes of practice are intended to provide practical guidance in respect of the application of the provisions of the Bill and may have far-reaching implications, Members considered it necessary to include in the Bill the requirement for consultation with stakeholders in the preparation of the codes of practice. In this connection, a CSA will be moved to require the DEMS to consult stakeholders in the preparation of the codes of practice. The Administration will also include in the speech to be delivered later by the Secretary for the Environment at the resumption of the Second Reading debate on the Bill an undertaking to brief the relevant Legislative Council Panel on the outcome of consultation.

Members noted that the penalties for some of the offences under the Bill are inconsistent and cannot reflect the gravity of offences. In light of Members' concern, the Administration has conducted a review of the levels of penalties under the Bill. As a result, a penalty of six months' imprisonment will be included for the offence of unauthorized use of energy labels with intent to deceive or mislead to bring it in line with the penalty level for furnishing false information and document. The fine level for failing to give notice to other suppliers by a specified person about the removal of a reference number will also be increased from level 1 to level 6 to reflect the importance of prohibiting the continuous sale of the concerned product.

Members noted that prosecution for some of the offences under the Bill can only be initiated until the completion of certain tests which may take a year or more, such as the test of some long life CFLs may take over 6 000 hours. Given the concern that the usual time limit for prosecution of summary offences is six months, Members queried if an extension was necessary. Having regard to this point, the Government will move a CSA to make it clear that the six-month time limit counts from the commission of the offence or from the offence being discovered or coming to the notice of the DEMS.

Under the Bill, the DEMS may, by notice published in the Gazette, exempt any model type of prescribed products. Considering the scope too wide, the Bills Committee was concerned about when and the circumstances under which certain products may be granted exemptions. In this connection, the Administration has undertaken to include in the speech to be delivered by the Secretary for the Environment at the resumption of the Second Reading debate on the Bill elaboration on these circumstances. It will also move a CSA to require the DEMS to state the reason for exemption in the notice.

The Bill empowers the Secretary for the Environment to make regulations and amend Schedules. The regulations and amendments to the Schedules to be made are subsidiary legislation subject to negative vetting by the Legislative Council. Given that other products, as mentioned by me earlier, might be added to Part 1 of Schedule 1 during the second and third phases, Members considered that there might be far-reaching implications on stakeholders. Therefore, amendments should be made by an amendment bill or subsidiary legislation subject to positive vetting in order to allow sufficient time for the Legislative Council to scrutinize the amendments concerned.

Amendments which are more technical in nature could be subject to negative vetting. The Administration has taken on board the Bills Committee's suggestions and will move a CSA to this effect.

In view of the never-ending changes and improvements in technology, products classified as grade 1 today may soon become outdated. Therefore, it was agreed during Members' discussion that the DEMS should be empowered under the Bill to revise from time to time the codes of practice, including the

grading for energy efficiency and performance characteristics to reflect the latest advancement of new energy efficiency and performance characteristics of products in the prevailing market. However, what can be done about air-conditioners, refrigerators and CFLs that have been manufactured in or imported into Hong Kong before the relevant new calculation method takes effect? Should they be allowed to be sold indefinitely, confusion might arise as the performances of different products are different, and yet they are all classified as grade 1 products. What can be done? In the light of the concern about confusion caused to consumers, it was decided after discussion that the year in which the reference numbers are assigned would be included in the energy label so that consumers will be able to tell the year when they see the label. In the event of new developments in future, they can also differentiate between the new label and the old one, though the products are still classified as grade 1 products. In this connection, the Administration has taken on board the Bills Committee's suggestions and will move a CSA. Promotional efforts will be stepped up after passage of the Bill to assist consumers in understanding the information shown on the energy labels.

During the extended discussion by the Bills Committee on CFLs containing mercury, concern was raised by Members about the possibility of hazards and environmental impacts during the disposal of used CFLs. Following a number of meetings held by the Bills Committee, the Administration eventually discussed with the trades and formed a working group with CFLs suppliers in October 2007. It was also decided that a voluntary Fluorescent Lamp Recycling Programme would be set up by the trades.

President, the Bills Committee noted that the Administration had consulted the trades on CSAs affecting certain trades and gained their support. Therefore, the Bills Committee will support the CSAs to be moved by the Administration later.

Next, President, on behalf of the Civic Party and myself, I would like to express our views on the Bill.

The spirit of the Bill is to enhance the consumers' right to know. It is also hoped that the trades can be encouraged to, apart from providing adequate information, compete in terms of energy efficiency to provide consumers with

more choices of energy saving products to achieve the purpose of improving the environment and reducing thermal power and air pollutants, especially emissions of carbon dioxide.

President, a voluntary EELS covering 18 types of products was launched by the EMSD 13 years ago in 1995. Today, after a delay of more than a decade, a bill is finally tabled to the Legislative Council for passage into law and, what is more, only three types of products are covered.

President, I would like to share with Members the progress made in other countries. President, in 1978, or 30 years ago, a mandatory energy efficiency labelling scheme was already launched in Canada to cover eight types of products, including clothes dryers, clothes washers, dishwashers, electric ovens, air conditioners, integrated washer-dryers, refrigerators, and freezers.

President, a scheme with specific targets was launched in Japan in 1979, requiring the provision of information on energy efficiency for about 20 types of products, including passenger and cargo vehicles, air conditioners, televisions, vending machines, and so on. President, a labelling scheme was implemented in the United States in 1980, covering nine types of products, including air conditioners, refrigerators, lamps and boilers. In Australia, a labelling scheme was implemented in 1986 to cover six types of products, including air conditioners, clothes dryers, clothes washers, dishwashers, refrigerators and freezers. In European Union countries, a labelling scheme was implemented in 1992 to cover nine types of products, including air conditioners, clothes washers, clothes dryers, integrated washer-dryers, dishwashers, electric ovens, lamps, refrigerators and freezers. South Korea implemented its labelling scheme in 1992 to cover 17 types of products, including passenger and cargo vehicles, kim-chi fridges — President, I suppose you are aware that there are many kim-chi fridges in South Korea — and fluorescent lamps. President, a labelling scheme was implemented on the Mainland in 2005 to cover refrigerators, air conditioners and clothes washers. In mid-2007, a mandatory EELS was launched in Singapore to cover air conditioners and refrigerators.

At present, mandatory labelling schemes are being implemented on a variety of electric appliances in over 40 countries around the world. Therefore, President, you should understand that it was actually not the case when certain Members were reported to have filibustered the meeting or acted in an environmentally-unfriendly manner during the scrutiny of green legislation by

bills committees. Actually, bills committees were very concerned most of the time for fear that the Government had responded too slowly. We have always wanted to urge the Government to make more efforts whenever green legislation was tabled to this Council for deliberation. The EELS, for instance, launched in Hong Kong as a voluntary scheme 13 years ago, has so far covered only three types of products. Compared with many other places, we are already lagging far behind.

President, let us take another look at coverage. While the three types of products covered by the current EELS account for 70% of the electricity consumption in the residential sector, this sector merely accounts for 25% of the overall electricity consumption, whereas the commercial sector represents 61% of the overall electricity consumption. It is therefore imperative for the Government to make more efforts in expediting energy saving in the commercial sector by, for instance, expediting mandatory compliance with the BECs. Otherwise, though a lot of effort has apparently been made, the effectiveness actually achieved has often been little.

In this discussion, only three types of electric appliances are covered. In the future, only new products or buildings will be covered, regardless of whether compliance with BECs would be made mandatory. Actually, very often, most of the things used by the public are old. It will take a very long time before the old things are replaced. This is especially true for buildings. Existing buildings are not required to comply with newly passed laws unless they undergo redevelopment or modification. Therefore, generally speaking, despite the tremendous efforts made by us in passing a number of ordinances in this Council, if we look at the whole city and the overall impact on Hong Kong from a holistic angle, the impact is relatively small.

President, I would also like to say a few words on the disposal of CFLs containing mercury. Here I would like to extend my special thanks to Prof Ron HUI of the City University of Hong Kong. He has provided us in the Bills Committee with a lot of professional input and made us understand some of the concerns about mercury pollution caused by the disposal of electronic CFLs, thus enabling us to urge the Government to launch a recycling programme for CFLs. We have also noted from the recycling of CFLs that the Chemical Waste Treatment Centre (CWTC) in Tsing Yi would charge a fee of \$1,130 per tonne for the disposal of CFLs. In other words, a fee of \$0.2 would be charged for disposing every CFL. However, no fee would be charged if CFLs are disposed direct in landfills. A fee of \$1,130 per tonne would be charged if the

Government is required to recycle CFLs. Under such circumstances, there is concern about how to encourage the public to participate in the voluntary recycling scheme because, on the one hand, they will not receive any money in doing so and, on the other, they are required to pay instead. We have made a number of proposals, such as implementing a deposit system whereby people are required to pay a deposit when purchasing CFLs, and the deposit would be refunded upon the return of CFLs. Other proposals include the offer of discount vouchers so that discounts are offered during the purchase of new CFLs, the offer of subsidy by the Government to the CWTC in Tsing Yi for exemption of disposal fees. However, each and every proposal made by us has been rejected by the Government. In the end, as stated by me earlier in the meeting, the Government resorted to negotiating with the trades. The trades have now agreed to launch a voluntary programme for recycling CFLs. While we certainly wish them every success, we still have to raise our concern.

According to the Waste Disposal (Chemical Waste) (General) Regulation, the waste producer is required to make suitable arrangements for the delivery of chemical waste to the CWTC if large quantities of chemical waste, such as 500 CFLs, are disposed of. The Government has indicated that a voluntary collection programme for CFLs will be launched in government buildings, public institutions, schools, large commercial arcades, hotels, and so on. I hope the Government can also step up publicity among the trades and the public. In particular, restaurants and large food premises must not be neglected because many restaurants and large food premises have already started to use CFLs. Moreover, disposal of large quantities of CFLs will often be found as a result of the frequent occurrence of assignment, relocation and renovation of restaurants. We hope the Government will keep this in view.

To sum up, President, while more practical efforts will be made by the EMSD in this area through the codes of practice, we still hope that more efforts can be made in energy efficiency and energy saving. While we hope this piece of legislation represents only a small fraction of the efforts, we also hope the Government can come up with more green legislation to be tabled to this Council for scrutiny and passage expeditiously. Here I would like to thank the government officials concerned, legal advisors, the Legislative Council Secretariat and relevant colleagues. They have provided us with a lot of opinions on this piece of legislation and enabled our deliberation process to be conducted smoothly.

Thank you, President.

MR SIN CHUNG-KAI (in Cantonese): Madam President, on behalf of the Democratic Party, I would like to state our position on the enactment of legislation for mandatory implementation of energy efficiency labelling and our expectations for the forthcoming second phase of legislation.

According to our understanding, the territory is lagging behind a majority of developed regions and cities in terms of energy saving. As pointed out by Ms Audrey EU earlier in the meeting, mandatory energy efficiency labelling is being implemented in more than 40 overseas countries or regions. It was introduced in such countries as Japan, the first country to implement energy efficiency labelling, the United States and Australia in 1979, 1980 and 1986 respectively. In Hong Kong, the Electrical and Mechanical Services Department has been running a voluntary Energy Efficiency Labelling Scheme (EELS) since 1995 to cover more than a dozen types of products such as household appliances, vehicles, and so on. However, the participation rates of various types of products are greatly varied. With respect to certain electric appliances, such as air conditioners and refrigerators, which are included in the scope of control under this Bill, the market participation rates of products under the voluntary EELS reach 82% and 65%. However, the participation rates of other products, such as television sets, are less than 20%, with some of the products, such as electric clothes dryers, having a participation rate of less than 5%. This reflects that the existing rates of participation in the EELs cannot satisfy the needs of consumers in acquiring information on energy consumption of different products. As such, the Democratic Party has all along held the position of supporting legislating for mandatory implementation of energy efficiency labelling.

Of the three types of products covered under the Bill, I would like to say a few words on compact fluorescent lamps (CFLs), commonly known as "energy saving light bulbs", including ways of promoting the use, disposal and recycling of CFLs. The Government's basic aim of mandating energy efficiency labelling is to encourage the public to purchase products with high energy efficiency. However, insofar as light bulbs are concerned, according to the information provided by the Government to the Bills Committee, around 3.5 million units of CFLs were sold in 2006, while 34.5 million units of tungsten light bulbs were imported during the same year. The public might have the same query as we do as to why this Bill seeks only to regulate CFLs, while tungsten light bulbs with lower energy efficiency are being neglected. Is it the Government's intention to encourage the public to replace tungsten light bulbs with CFLs through promoting energy efficiency labelling? From the angle of

consumers, despite their shorter lifespan and lower energy efficiency, tungsten light bulbs are inexpensive. Therefore, if the Government relies on consumers to alter their mode of consumption, I believe it will take a considerably long period of time before the objective of replacing tungsten light bulbs with CFLs can be achieved.

If the Government is sincere in banning tungsten light bulbs, we propose that the practice of certain countries should be followed by adopting a more proactive and environmentally-friendly approach of legislating to phase out tungsten light bulbs first. Frankly speaking, despite their high energy consumption, tungsten light bulbs generate more heat than light. According to our understanding, a number of countries have already implemented programmes for the phasing out of tungsten light bulbs. For instance, Australia has legislated for a complete ban of the sale of tungsten light bulbs in 2010. Canada will ban the sale of tungsten light bulbs starting from 2012. Some European Union countries will table relevant legislation in the next two years for the submission of plans and timetables for the phasing out of tungsten light bulbs. We have also learned that the majority of bulb manufacturers, having regard to these circumstances, have progressively adjusted their production lines and planned to cease all production of tungsten light bulbs in 2017 and 2020. We think that it is time for the Government to consider whether the territory should follow the plans stated above. Of course, should the Government intend to legislate on this matter, it should conduct consultation expeditiously — now the public must be consulted on every issue — and discuss the relevant arrangements and transitional plans with local electric appliance retailers and relevant trades. Otherwise, some operators might complain of having hoarded large quantities of tungsten light bulbs, and a very long transitional period will thus be required. Only in doing so can the impact of legislating on the existing tungsten light bulb retailers in Hong Kong be minimized.

Another concern of mine is the disposal and recycling of CFLs and fluorescent tubes. I remember numerous discussions were held during the meetings of the Bills Committee on ways to dispose of CFLs and fluorescent tubes. If CFLs are directly disposed of in landfills, substances containing mercury found in CFLs might pollute landfills and sources of underground water. However, if CFLs are transported to chemical waste treatment centres for treatment, a treatment fee of \$1,130 per tonne will be charged. It all depends on whether consumers are willing to bear the treatment fees or whether manufacturers should shoulder the responsibility of paying the fees. Of course,

if the Product Eco-responsibility Bill discussed earlier covers fluorescent tubes, tungsten light bulbs and CFLs, the relevant issues can be dealt with jointly as recycling requirements can then be laid down. This proposal can definitely be considered.

Actually, implementing labelling is merely the first step. It is necessary for the issue of recycling responsibility to be addressed too. As far as I understand, the Government has discussed with some suppliers about the implementation of a voluntary recycling programme for fluorescent tubes, and the sharing of the cost of collecting and treating used fluorescent tubes by participating companies. However, now the issue we have is there is a lack of incentives for public participation. Even if discount vouchers are offered by some suppliers to encourage the public to participate in the voluntary recycling programme, I believe the result achieved will still not be sustainable. In the long run, the Government might need to legislate to implement a responsibility system, as mentioned by me earlier, to improve the recycling of CFLs and other electronic products. It is noteworthy that the bill on producer responsibility, which is laid before us, does not require manufacturers to recycle a definite quantity of disposed products.

We have two more concerns about legislating for energy efficiency labelling in the second phase. First of all, it is hoped that minimum energy efficiency standards can be included in energy efficiency labels. Although products without energy efficiency labels are not allowed to be sold in Hong Kong under the Bill, there is nothing the Government can do should certain manufacturers choose to honestly indicate the extremely low energy efficiency of their products and import them into Hong Kong for sale. The Government can do nothing if consumers do not examine the energy efficiency labels and decide to make their purchase simply on the basis of prices. This is why we think that the Government should not only legislate to promote labelling, but also set minimum energy efficiency standards. For instance, even if the performance of certain air conditioners with low cooling capacity and high energy consumption compare less favourably than that of other models, they might still be given the most basic grade 5 energy efficiency label (with grade 1 being the highest). Minimum energy efficiency standards are not an innovative idea. This concept has already been adopted by many overseas places where energy efficiency labelling is implemented, such as the United States, Britain, the Europe Union, and so on. The merit of setting minimum energy efficiency standards is that energy efficiency standards will rise with technological advancement. As a

result, products failing to meet the standards will be phased out gradually. The phasing out of tungsten light bulbs is essentially based on this concept of minimum energy efficiency standards.

Another concern we would like to raise is that we hope private vehicles can be included in the scope of legislation for the second phase of energy efficiency labelling. At present, the number of private vehicles participating in the voluntary EELS is less than 5%. Here I would like to share with Members the experience of Australia as an example. Several years ago, a scheme called Green Vehicle Guide was launched in Australia. Under the scheme, a central database on vehicle energy efficiency was set up jointly by the Australian Government and manufacturers to provide information on fuel consumption of vehicles, levels of air pollution, greenhouse gas emissions, and so on, to encourage the public to purchase private vehicles with high energy efficiency. It is hoped that the Government can make reference to the practice of Australia by introducing energy efficiency labelling for private vehicles and setting up a similar database. I do not know if the Government will make reference to energy or environmental indicators when purchasing government vehicles. However, I think it is necessary for the Secretary to discuss with the Government Logistics Department, as certain screening criteria on emissions or energy efficiency should be set.

The Government may also consider a more proactive approach by levying vehicle licence fees on the basis of different levels of energy efficiency and emissions. Secretary, I would like to point out in particular that motor vehicle first registration tax and licence fees are at present levied according to the sizes of fuel tanks, such as 3 000 cc. The Democratic Party considers that in future, vehicle licence fees should not be considered on the basis of the volumes of fuel tanks alone. While this can still be accepted as one of the considerations during the first registration, the size of fuel tanks should not be taken as the only factor for consideration when the vehicle is replaced six years later. The level of emissions or energy consumption of the vehicle should also be considered when setting the licence fees. Simply put, a higher licence fee should be charged for vehicles with low energy efficiency and high emissions. Such an arrangement will alert the public to the cost to be borne when replacing their vehicles, thereby changing their spending habits and encouraging them to purchase cleaner vehicles with higher energy efficiency.

Madam President, I have observed from the scrutiny of this Bill in relation to energy efficiency labelling that the principle of whether or not the Government should legislate to alter certain living habits of the people would often need to be considered when green legislation is involved. The purpose of the Government's implementation of energy efficiency labelling, for instance, is to encourage the public to switch to more environmentally-friendly products. Other legislation, such as the Product Eco-responsibility Bill, also needs to deal with the same problem. The problem currently faced by the Government is how to persuade the public to accept the "user pays" principle as well as the principle of paying for the environment because, from the angle of economics, there will always be people who are unwilling to pay for public good because of their hope of becoming the so-called free rider.

I would like to call on the Government, if it considers the proposals raised by us earlier to phase out tungsten light bulbs and introduce minimum energy efficiency standards to be acceptable, to carry out lobbying expeditiously to avoid being trapped in a dilemma, as it did before in passing the Product Eco-responsibility Bill. Of course, the dilemma was already resolved by the Secretary yesterday. I believe that Bill has already made a turn to a straight road.

We support this Bill today. However, as what I did with all the other green legislation, I must condemn the authorities despite my support. Hence, I will spend the remaining three minutes on condemning the authorities. We hope the Government can act quickly because, as already pointed out by the Director of the Hong Kong Observatory, there will be no winter in Hong Kong a decade from now. In the face of this climate change or global warming problem, we as members of the human race on earth should make some contributions. Although Hong Kong is a small city with probably little impact on planet Earth, I still feel that our city is, relatively speaking, affluent and advanced. It is the pleasure and hope of the Democratic Party to see the Government surpass Britain and catch up with the United States in this regard. I understand that a price has to be paid for environmental protection. With these remarks, I support the resumption of the Second Reading of the Bill.

MR VINCENT FANG (in Cantonese): Madam President, I support the Energy Efficiency (Labelling of Products) Bill in principle. But first of all, I would like to thank Dr Sarah LIAO, the former Secretary for the Environment, Transport

and Works as well as the presenter of the Bill, and Mr Keith KWOK, the former Director of the Environmental Protection Department (EPD), because they have at least listened to the suggestions of the trades and made their best effort to avoid increasing the price to be paid by the public for supporting environmental protection as a result of legislation. Before the tabling of the Bill to this Council in April last year, the original provision of proposing a levy of \$2,000 for each type of registered products was already taken out in a bid to ease the burden on applicants.

This move has ultimately relieved the financial pressure on users/consumers or the public. It has also proved that the Government does not necessarily have to recover cost whenever it is dealing with matters pertaining to the well-being of the public at large. It is indeed worthwhile for the EPD to make reference to this approach in levying a fee on the treatment of disposed compact fluorescent lamps (CFLs). I think it is worthwhile for the Government to offer subsidy in recurrent expenditure if it is beneficial to the public in doing so.

Although the Bill seeks to promote the popularization of CFLs, it was only until the Bill had reached its Committee stage that the fact of CFLs containing mercury was revealed. Owing to a lack of understanding among the public in this regard and the lack of government effort in promoting recycling, the public usually dispose of spent CFLs in the way they do with ordinary wastes. However, when mercury penetrates into the soil, it will pose a hazard to the environment, and even underground water. Therefore, during the course of deliberation, a number of Members and I have suggested that as the support of the popularization of CFLs in the Bill may lead to an increasing number of disposed CFLs, the Government should take the lead to promote the recycling of CFLs and waive the fees charged by the Chemical Waste Treatment Centre in Tsing Yi for the treatment of CFLs, so as to prevent the massive disposal of CFLs in landfills in the future.

However, even after repeated calls from the Bills Committee, the Bureau still insists that the treatment fee will not be waived. Madam President, do you know how much will be charged? As stated by Ms Audrey EU earlier, a fee of \$1,130 per tonne will be charged. The amount of fees received by the Centre for treating CFLs over a year is less than \$600,000. In other words, it will cost the Government only \$600,000 to reduce the chances of CFLs being dumped in landfills and mercury leakage. But yet, the Government has refused to do so simply because of the spirit of the "user pays" principle.

On the contrary, the importance of assisting in promoting environmental protection is recognized by suppliers. After repeated discussions, they launched a series of programmes in March for the recycling of CFLs, including carrying out publicity, setting up collection networks, and offering financial incentives such as discount vouchers with a view to encouraging the public to deliver spent CFLs to recycling stations. However, it is stated in paragraph 50 of the Bills Committee Report delivered to Honourable colleagues that "a financial incentive could at best have a short-term effect in encouraging public participation and is unlikely to be sustainable".

It can be seen from this example that if the Government is unwilling to assume the major responsibility of promoting environmental protection, coupled with the absence of a comprehensive waste reduction chain, the only result will be attending to one matter and neglecting the other, and it will be impossible for the goodwill of the legislative intent to be achieved. With the Bill relating to energy efficiency labelling to be read for the Third time today, I certainly do not want to be accused of procrastinating the enactment of legislation. Therefore, I will not be stubborn about this point. However, other green bills will be introduced by the Government successively. Therefore, I hope the Secretary can undertake to show more commitment to environmental protection, including financial support, and stop passing the buck to the relevant trades and the public on every occasion.

Basically, I support the entire Bill on energy efficiency labelling. However, I have always been opposing the Government's mandatory approach of compelling the public to participate in environmental protection. Actually, when the public realize that electricity expenses can be saved by using products with higher energy efficiency and they can thus be benefited, they will automatically switch to these products without the need for the Government to legislate to mandate the use of these products.

Why is it possible for the market penetration rates of air conditioners and refrigerators, both covered by this Bill, to reach 82% and 65%, and yet the market penetration rates of other electric appliances remain relatively low? I think there are only a few reasons. Either there is little difference in the energy efficiency of different products, or the price differences are so large that some products are beyond the affordability of ordinary consumers, or the publicity for energy efficiency is not vigorous enough and there is a general lack of

understanding among the public, resulting in the small demand for products with high energy efficiency, and businessmen will naturally not order these products without careful consideration.

It was reported in the news weeks ago that no more low-priced air conditioners would be imported because of the imminent implementation of energy efficiency labelling. As a result, the market price of air conditioners immediately jumped 30%. Consequently, the public are compelled to purchase expensive air conditioners, thereby further pushing up inflation, and low income families cannot afford to buy these air conditioners.

From a rational angle, though we ought to require all energy-consuming products to be affixed with energy labels and phase out products with high energy consumption, we will produce large quantities of electric appliance waste during the process.

Madam President, the interests of all parties must be balanced and a progressive approach must be adopted in promoting environmental protection, and even political reform. I am more inclined to approve a progressive approach which can integrate gradually with social development. Hence, although this mandatory Bill is likely to be passed today, I hope that it will not provide a framework to allow constant addition of other electric appliances in the future. It is hoped that the Government can enhance publicity of the merits of electric appliances with energy efficiency labelling before collaborating with the trade to progressively expand the voluntary Energy Efficiency Labelling Scheme to provide guidance for consumers in choosing energy-saving products. In doing so, products with high energy consumption will naturally be phased out.

It was only until I joined the Bills Committee that I realized the extremely high energy saving capacity of CFLs. Although the price of CFLs is higher than that of tungsten light bulbs, CFLs have the merit of being durable and saving more energy. Therefore, after some calculations, CFLs are of greater value. However, why do CFLs remain unpopular? It is because of poor publicity. For this reason, I sincerely call on the Government to adopt a softer publicity approach in raising public awareness of protecting the environment rather than accomplishing every task by mandatory means. By adopting the former approach, the Government can foster a harmonious society; by adopting

the latter one, all trades and industries as well as the public will be confronted with the fear of being punished all day long. If this is the case, how will society be harmonious? I so submit. Thank you, Madam President.

MR WONG TING-KWONG (in Cantonese): Madam President, energy is an indispensable part of human lives and something we constantly use. Let us imagine what our world would be like without energy. Although quite a few scientists have said that the earth has an abundance of energy, it is exhaustible. At present, the pace of human consumption of energy far exceeds that of energy production on earth.

Therefore, besides developing new energy, energy saving is essential in order to lighten the burden of the earth. The Energy Efficiency (Labelling of Products) Bill aims at promoting energy saving by informing consumers of the energy performance level of the products. Of the 18 types of energy-using products under the voluntary Energy Efficiency Labelling Scheme (EELS), room air conditioners, refrigerating appliances and compact fluorescent lamps (CFLs) are included in the initial phase of the mandatory EELS. According to the Administration, with the implementation of the mandatory EELS for the three prescribed products, it is expected that an annual electricity saving of 150 GWh can be achieved. This is equivalent to the annual electricity consumption of 105 000 units of room air conditioners or a monetary saving of \$135 million in electricity bill per year. An annual reduction of carbon dioxide emission of more than 100 000 tonnes can also be achieved.

The Bills Committee notes in the course of discussions over the issues related to compact fluorescent lamps (CFLs) that energy saving could be achieved by CFLs. However, as CFLs contain mercury, there is concern on the environmental impacts associated with the improper disposal of used CFLs. Under the prevailing relevant ordinance, the person who disposes of large quantity of waste containing mercury has to arrange for the delivery of such waste to the Chemical Waste Treatment Centre (CWTC) in Tsing Yi for special treatment. Query is raised on the effectiveness of the collection scheme as the figures provided by the authorities show that only 435 000 units of CFLs were treated at CWTC in 2006 as opposed to the sale of 3.5 million units of CFLs in the territory over the same period. After the commencement of the mandatory EELS, the authorities expect that a considerable number of incandescent lamps will be replaced by CFLs. As more people will switch to use CFLs, environmental pollution caused by the toxic mercury content has raised much

concern. The working group formed by the Environmental Protection Department (EPD) with CFLs suppliers considered in the course of discussions about the provision of financial incentives to encourage the collection of CFLs that it could at best have a short-term effect and is unlikely to be sustainable. Public education on the benefits of using CFLs and their proper disposal has been proposed as the better means. The working group has therefore agreed to set up a voluntary Fluorescent Lamp Recycling Programme, and a combination of collection modes such as setting up collection points will be adopted to facilitate the public's making use of the service of the recycling programme. The costs of collection and disposal will be shared by the participating companies. In fact, since the launch of the voluntary recycling programme by the EPD in March 2008, more than 480 housing estates have participated and 53 public collection points have been set up. With effect from 29 March, mobile collection vehicles will collect CFLs and fluorescent tubes on weekends and Sundays.

I have repeated at meetings of the Bills Committee that the authorities should consider providing actual financial incentives to encourage participation by the public and voluntary collectors in the collection programme, such as implementing a "deposit system" for CFLs, which is similar to the "soda bottle deposit method", requiring a consumer to pay a deposit upon purchase of a CFL for the first time. Upon a second purchase, the deposit will be refunded by exchanging old and new CFLs or sending used CFLs for recycling to designated places. The actual recycling effects will be amplified this way. I believe the system is commercially feasible.

The DAB welcomes the Administration's introducing legislation on energy efficiency labelling to enable the public to find the contents of energy labels on more electrical appliances, such as electricity consumption, energy efficiency grading and important information on the electrical appliances, so as to help them select more energy-saving products. Persistent efforts in respect of education, publicity and promotion may not be made. We only see the effects of campaigns such as the "Clean Hong Kong" campaign after continuing and in-depth promotions to all people. I look forward to the passage of the Energy Efficiency (Labelling of Products) Bill to alleviate our pollution problems and make Hong Kong a more livable city, as depicted in the lyrics of the following song:

Breathing morning fresh air
Enjoying the warm sun and admiring the boundless beauty
Viewing sparkling waters and sunset from afar
Welcoming a dust-free and graceful breeze
Appreciating the beauty of nature around the clock
We have an equal share of the treasure

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

MR FRED LI (in Cantonese): Madam President, I am going to make some supplementary comments to the concerns just raised by Mr SIN Chung-kai from the Democratic Party about the Energy Efficiency (Labelling of Products) Bill (the Bill) but Mr SIN Chung-kai is still the major speaker. We both hope the Secretary will finalize the implementation timetable for the phase two legislative exercise upon resumption of Second Reading debate on the Bill.

With mutual recognition of some of the energy efficiency standards by Hong Kong and foreign countries, the Government can hold discussions with the trades over the introduction in advance from foreign countries recognized products that will be within the scope of phase two regulation, so as to reduce resistance to be encountered when the regulation is implemented.

The Democratic Party has also mentioned at the meetings of the Bills Committee that many new products have not participated in the voluntary Energy Efficiency Labelling Scheme (EELS) though it is getting wetter and there will soon be an upsurge in the sales of dehumidifiers in spring and summer. In my opinion, energy efficiency labelling should also cover this type of increasingly popular product in recent years. If the Government has such a plan, it should discuss with the stakeholders as quickly as possible. I also hope the Government will conduct regular reviews on the scope of regulated products a year or two after the implementation of the EELS.

Quite a few Members have suggested at the meetings of the Bills Committee that the Government should step up regulation of electricity consumption in the commercial sector. For instance, in view of the low participation rate in the Hong Kong Energy Efficiency Registration Scheme for Buildings, I believe the majority view of this Council holds that there is a need for the present voluntary participation scheme to be replaced with a mandatory

scheme. I know that the Administration launched a three-month public consultation in December 2007 on a proposal to introduce mandatory implementation of Building Energy Codes (BECs) for specified types of new and existing buildings. The Democratic Party hopes the legislative process will commence soon.

Regarding the contents of the Bill, the text of the Bill introduced by the Government specifies that an employee (especially a front-line employee) shall "ensure" that a particular product is a product of a listed model with a reference number and bearing an energy efficiency label. We are concerned that this provision may put burden and pressure on front-line employees, but the management rather than front-line employees should take responsibility for ensuring the provision of energy efficiency labels. Although the defence for employees is specified in the Bill, owing to the restricted scope of the defence, proceedings may still be brought against employees under certain circumstances.

Nevertheless, we welcome the Government's accepting the proposal of the Bills Committee and proposing an amendment to remove junior sales staff from the Bill, who are front-line employees as I have just referred to. And it is specified that only employees exercising managerial functions are required to meet the relevant "ensure" requirement.

Another concern of ours is that the Bill empowers the Director of Electrical and Mechanical Services (DEMS) to suspend enforcing the notice prohibiting the sale of a product, in the event that the energy efficiency labelling requirement has been contravened. The concern of the Democratic Party is that the Government should account for the circumstances under which the DEMS will exercise the right to suspend enforcing the notice. The Government has the responsibility of ensuring that retailers will not — I stress, will not — sell contravening products or stocks during the time the DEMS has suspended enforcing the notice prohibiting the sale of the product. We have worries about that.

The Democratic Party supports the Bill and all the amendments, and we hope the Government will launch the phase two legislative exercise shortly. Madam President, I so submit.

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

MS EMILY LAU (in Cantonese): President, I speak in support of the resumption of Second Reading debate on the Energy Efficiency (Labelling of Products) Bill.

President, Secretary Edward YAU is full of vigour; he has introduced three bills to this Council in this Legislative Session. First, the Bill under debate; second, the bill related to air pollution; and third, the bill related to the more controversial issue of product responsibility schemes. However, President, some Secretaries have not introduced any bills at all. Even so, how they work is their own business after all.

We support the authorities' stepping up efforts to protect the environment but the Secretary has sometimes aroused discontent among us. Although he has introduced three bills to this Council, he has apparently failed to put sufficient strength in many areas. It has been an arduous task for the Bills Committee Chairman Ms Audrey EU and we could never have imagined that the deliberations would have taken an entire year. The Bill in itself is not highly controversial but it has taken a total of 16 meetings to wind up the scrutiny. I wonder if Ms Audrey EU recalls that we were discussing some serious concerns at the last meeting, worrying whether they could be done. However, as 16 meetings were held, how could we "break it up"?

Therefore, we hope the Secretary would make a real effort as I think he may be aware that most Members of this Council very much support the authorities' sparing no efforts. It is because public expectations have changed and they now have high expectations of protecting the environment and improving the quality of life. President, there has been voluntary compliance with the provisions of this Bill for 13 years since 1995 but they are only made into law now. Mr Vincent FANG must be jolted by Members' touching upon the "second wave". I noticed from the Report that Mr Vincent FANG held the view that the "second wave" should not be introduced. If voluntary compliance goes on for another 13 years, the Secretary may have already become the Chief Executive then. This will not work. As Mr Fred LI said earlier, I believe a lot of Members care very much about this. Although the authorities have said that 70% of the "first wave" has been implemented, as stated in the Appendix of the Report and mentioned by Mr Fred LI just now, many types of products such as dehumidifiers, photocopiers, washing machines and printers have not been covered. Therefore, I am not in favour of another 13 years of delay.

I hope the Secretary will give us some indications later, even though he may not be able to provide a timetable at once, he should give the trades an advance notice indicating that the authorities are going to implement the provisions. The expectations of the public would be met this way and this Council excluding some Members earnestly hopes the authorities will implement the provisions. I hope it will not be long before the "second wave" is launched.

Some Members have also touched upon issues related to basic-level staff and we very much support the views they expressed. I hope that future laws made by the authorities will not push responsibility onto basic-level staff for they are just employed to work. For sure, they are wrong if they knowingly violate the provisions. Otherwise, the management should make sure if there are proper labels. We support the amendments to be proposed by the Secretary later, President.

Moreover, President, I am going to discuss the issue on compact fluorescent lamps (CFLs) but I would touch upon exemption first. The Bill confers on the Director of Electrical and Mechanical Services (DEMS) the power of exemption. But under which circumstances is the DEMS given such power? The Secretary has indicated that he will expound the matter clearly during the resumption of Second Reading debate. We need to know very clearly about this point. Why will exemption be granted without reason? I am looking forward to a clear explanation made by the Secretary later.

President, concerning CFLs, why have we held 16 meetings? Many of these meetings have actually focused on this issue. President, first of all, I really do not understand. President, you should know that Hong Kong people are very smart. If something can protect the environment while it is cheaper and energy saving, what is the reason for them not to use it? Let us take a look at the penetration rate. President, it is 14%. Members have asked why it is the case. Do people have no idea? Are they unwilling to use it? What exactly is going wrong?

It goes without saying that I hope the authorities would try harder. But if everybody switches to using CFLs, we have worries about the treatment of the mercury waste. It seems to me that the authorities currently take no action but to encourage people to recycle CFLs by themselves. President, it will be disastrous if the widespread use of CFLs in future may lead to mercury pollution due to improper disposal.

Hence, we have to tell the Secretary explicitly that the issue of recycling also draws grave concern. We wonder if it will be successful just by encouraging the trade to do so. Problems would also emerge if people carelessly dispose of CFLs in their rubbish bins at home; this demands concern too.

President, I support the authorities' making its best endeavour in respect of environmental protection and I hope they will understand our concerns in various areas. Even the Bill is to be passed, there will be an 18-month transition period. President, I look forward to the smooth operation of the Bill upon its enforcement.

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

(No other Member indicated a wish to speak)

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam President and Honourable Members, I move that the Energy Efficiency (Labelling of Products) Bill (the Bill) be read the Second time to provide a legal basis for the implementation of a mandatory Energy Efficiency Labelling Scheme (EELS).

I am grateful to Ms Audrey EU, Chairman of the Bills Committee on Energy Efficiency (Labelling of Products) Bill (the Bills Committee), and Members of the Bills Committee for convening as many as 16 meetings to discuss the Bill in the past year. Members from different political parties and groupings have already spoken, and I can hear how they urge or even press the Government to make environmental efforts. It looks like they are all "angry at not being able to turn iron straight into steel". The Government can totally appreciate their feelings because it also wants to put forward more bills for various environmental initiatives. However, when we listened to Members' views, while we heard all sorts of hopes for strong governance on our part, for more legislation, for more bills and for the imposition of rigid requirements, we

could also hear calls for a soft approach, for more publicity and education efforts, and for voluntary participation instead of mandatory enforcement. However, I believe that the implementation of the Bill will be based on a two-pronged approach. This means that while the labelling of products is made mandatory under the Bill, we will at the same time make education and publicity efforts. In a moment, I will be giving a brief account of such efforts. I hope Members can allow sufficient flexibility for the Government and render their support for its cause. I believe that despite all the controversies surrounding this type of bills, it will still be possible to enact and implement such bills as early as possible.

In the past one year, the Bills Committee put forward plenty of advice on the Bill during the scrutiny process. We have formulated appropriate amendments in response to the advice and concerns expressed by the Bills Committee. I shall explain the amendments to be moved by the Government in greater detail during the Committee stage later on. Throughout the process of formulating the mandatory EELS, the Government has been holding frequent negotiations with the trades concerned. I would like to take this opportunity to express my gratitude to their support for the mandatory EELS.

Climate change is now a common concern of the international community. And it is also a serious concern of Hong Kong. As a member of the Asia-Pacific Economic Co-operation (APEC), Hong Kong will strive to contribute to improving the environment in the region, and it also undertakes to achieve the target set by the APEC Leaders' Summit last year, that is, the reduction of the energy intensity level in 2005 by at least 25% before 2030. Since Hong Kong is a city with an economic structure marked by few industries and an emphasis on commercial services, we can envisage that if we are to enhance energy efficiency and to reduce the greenhouse effect or greenhouse gas emissions, we must seek to enhance energy efficiency in different ways.

As mentioned by some Members just now, the Electrical and Mechanical Services Department (EMSD) launched the voluntary EELS in 1995, which up to this day covers 19 types of energy-using products. We believe that under present circumstances, a sole reliance on promotion and publicity is no longer able to substantially increase the market penetration rates of the products covered by the existing voluntary EELS. Besides, the voluntary EELS has also been operating for quite some time. The Government is therefore of the view that legislation must be enacted to implement the mandatory EELS on requiring

energy efficiency labelling for specified products. In this way, consumers will be provided with clear energy efficiency information to help them make green choices and purchase products with greater energy efficiency. As I have mentioned, three types of products will be included in the initial phase of the mandatory EELS, namely, room air conditioners (that is, room coolers), refrigerating appliances (that is, refrigerators) and compact fluorescent lamps (CFLs) (that is, energy-saving bulbs). The reason for including these three types of products in the initial phase is that they account for 70% of the residential electricity consumption in Hong Kong.

Following the implementation of the mandatory EELS, manufacturers or importers of these three types of products are required under the codes of practice to conduct tests in institutions approved by the Director of Electrical and Mechanical Services (DEMS). In order to apply for a reference number for a product, they must submit to the DEMS the specified information and specified documents in respect of the product model. At the time of supply, the product must bear an energy label in the prescribed format. Persons other than manufacturers and importers, such as retailers and wholesalers, are prohibited from supplying a prescribed product unless it is a product of a listed model with a reference number and bears an energy label. Since buyers of first-hand properties are also consumers of the prescribed products, we are of the view that after the commencement of the mandatory EELS, property developers will need to exercise due diligence in ensuring that the prescribed products being supplied within their new properties are listed models with reference numbers and bear energy labels. In other words, even property developers of first-hand properties must also render their assistance in the regard.

Provisions relating to the "labelling of prescribed products" and the "prohibition notice" in the Bill will commence 18 months after the day on which the legislation, if carried, is published in the Gazette. The mandatory EELS does not apply to procurement contracts of prescribed products supplied within first-hand properties, or to room air conditioners or refrigerating appliances which have been manufactured in or imported into Hong Kong before the legislation comes into effect. The transitional period of 18 months proposed by the Government can actually strike a balance between the need of the trades to take time to adapt to the new mandatory EELS and the early implementation of the scheme to promote the use of energy-efficient products.

The Bill empowers the DEMS to approve and issue codes of practice relating to any requirement under the Bill, with a view to providing practical guidance in respect of the application and operation of the provisions of the Bill. In view of the implications of the codes of practice on the trades, throughout the process of preparing the drafting codes of practice on the three types of products in the initial phase, we have been discussing and co-operating closely with the trades. Trade representatives of the relevant task force have also been consulted. We agree to the proposal of the Bills Committee, and we will move an amendment to include the requirement for the DEMS to consult stakeholders in the course of preparing the codes of practice. We also undertake that in the event that any existing codes of practice are to be amended or any new codes of practice are to be issued in the future, the relevant Legislative Council Panel will be briefed on the consultation outcome. Since the codes of practice are of such importance, we will certainly hold discussions with the trades and the relevant Panel in the future.

The Bill provides that the DEMS may, in any particular case, by notice published in the Gazette, exempt any model type of prescribed products from the regulation of the provisions of the Bill. When deciding whether to grant any exemption to a particular case, the DEMS will examine and consider a number of factors, such as the quantities and use of the product, the effects on energy saving and whether the development of new technological products will be thwarted. For instance, if a particular model of a prescribed product is supplied in the market on a pilot basis or in small quantities as a test product on a new energy-saving technology, and there is no suitable international testing standard, the DEMS may take account of the individual circumstances of the case and grant exemption to this model of the prescribed product, so as to encourage the development of this new technology. We will also move an amendment to specify that when granting any exemption, the DEMS shall state the aforesaid reasons in the relevant Gazette notice.

Madam President, during the scrutiny of the Bill, the Bills Committee also expressed the concern that while encouraging the public to switch from tungsten light bulbs to the more energy-efficient CFLs, the authorities should make sure that the public could properly dispose of used CFLs. We understand the Bills Committee's concern. As a matter of fact, as more and more energy-efficient light bulbs are put on the market, the use of tungsten light bulbs has been on steady decline in recent years. In 2005-2006, for example, the import of tungsten light bulbs dropped by 30%. Speaking of the Bills Committee's concern, that is, the problem of disposal, I wish to point out that in March this year, a territory-wide Fluorescent Lamp Recycling Programme, funded and

organized by 15 major suppliers of the lighting trade with the support of the Environmental Protection Department (EPD) was already launched to provide the public with arrangements for the recycling of CFLs. Totally 52 public collection points are provided under the recycling programme, and regular collection service is available at more than 520 public, subsidized and private housing estates. We hope that with this recycling programme, used CFLs can be collected over time, and we will continue to encourage the public to make good use of the programme for properly disposing of CFLs with small contents of mercury. Besides, Members have also mentioned the Product Eco-responsibility Bill, which has already been put before the Legislative Council for scrutiny. We also hope that under this Bill, a satisfactory recycling programme for products such as CFLs can be formulated to reduce the generation of waste.

The Bills Committee is also of the view that we must step up public education to publicize the advantages of energy efficient products and encourage the public to make good use of the information carried on energy labels. As a matter of fact, the EMSD has been conducting different types of education and publicity activities to promote the importance of energy efficiency among the public and the trades. It is our intention to step up publicity and education efforts after the passage of the Bill, with a view to enhancing and enriching the public understanding of energy efficiency and energy labels. Such efforts include APIs on television and the radio, the distribution of circulars to the relevant trades, the updating of the EMSD webpage and the printing of posters and leaflets. It is hoped that the public can thus get to know the contents of the mandatory EELS and the trades can also grasp the requirements of the legislation as early as possible. That way, the new legislation can be implemented more smoothly.

Madam President, the Bill is just the first step towards our implementation of the mandatory EELS. We will shortly commence follow-up work on the scope of coverage of the second phase. We have heard Members' view that apart from the three types of products included in the Bill, studies should be conducted as soon as possible to also include the types of products under the existing voluntary EELS. In this regard, we are holding discussions with the trades, and we also plan to include more new types of products by way of legislative amendments. Washing-machines, dehumidifiers and storage type water heaters may be included.

The mandatory EELS aside, Members have also pointed out the importance of building energy efficiency in the context of Hong Kong and its usefulness in reducing energy consumption. In this connection, we have recently completed the public consultation exercise on the mandatory implementation of Building Energy Codes. The views collected in the three-month public consultation exercise are relatively consistent in showing support of mandatory implementation. And, in the consultation exercise, we also put forward some proposals on the mandatory Building Energy Codes. One of our proposals is that while new buildings should be covered, we should also consider whether existing buildings (such as their public areas) should also be required to use facilities in compliance with energy efficiency standards when conducting any large-scale renovation. We hope that after collating the views collected during the consultation exercise, we can submit a new bill to the Legislative Council as early as possible. We also hope that the promotion of this new bill can go hand in hand with that on product labelling. This will answer the Bills Committee's view that besides focusing on residential households, we should also promote energy saving in other sectors, such as the commercial sector, and make corresponding efforts.

Madam President, once again, I would like to thank the Bills Committee and the relevant trades for their support for the Bill. After the Bills Committee has expressed support for the resumption of Second Reading of the Bill, I urge Members to vote for its passage.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Energy Efficiency (Labelling of Products) 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): Energy Efficiency (Labelling of Products) Bill.

Council went into Committee.

Committee Stage

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

ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Energy Efficiency (Labelling of Products) Bill.

CLERK (in Cantonese): Clauses 1, 7, 8, 11, 17, 19, 20, 22, 23, 25, 26, 27, 29, 31 to 36, 39, 42, 45, 47, 48, 50 and 53.

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 to 6, 9, 10, 12 to 16, 18, 21, 24, 28, 30, 37, 38, 40, 41, 43, 44, 46, 49, 51, 52 and 54.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman and Members, I move the deletion of clause 44 and amendments to the other clauses read out just now as set out in the paper circularized to Members. I shall now give a brief account of the various amendments.

The Bills Committee is concerned about the unnecessary burden or pressure which clause 5 of the Bill may put on employees, particularly those junior sales staff mentioned earlier, if they are required to ensure that a particular product is a listed model with a reference number and bears a label. To address the Bills Committee's concern, we propose to move an amendment to clause 5 of the Bill to exclude junior sales staff such that only employees who exercise managerial functions are required to meet the "ensure" requirement. However, an employee who knowingly commits an offence will still be held liable under the Bill. Consequent upon the amendment regarding employees' legal responsibility, we propose the deletion of clause 44 from the Bill.

Another major amendment to clause 5 of the Bill is that after considering the actual operation of the trades concerned, we have decided to exempt property developers from affixing energy labels to the packaging of compact fluorescent lamps (CFLs) supplied at first-hand properties. To address the Bills Committee's concern, we propose to amend clause 10(2)(c) and clause 10(6) of the Bill, so as to clearly reflect the Government's policy intent. Any specified person who has notified the Director of Electrical and Mechanical Services (DEMS) that a particular listed model is no longer supplied in Hong Kong shall not be required to submit any new product information of that model at intervals not exceeding five years.

The amendment to clause 12 of the Bill aims to revise the penalties for unauthorized use of energy labels. We propose to impose a six-month prison term in addition to the fine at level 6, so as to increase the deterrent effect.

The Bills Committee note that the Bill does not set a maximum length of the "remedy period" specified in an "improvement notice", nor does it allow extension of the period. In response to this concern, we propose to amend clause 14 of the Bill to empower the DEMS to extend the "remedy period" specified in an "improvement notice" if there are reasonable grounds to do so. When making any such decisions on the "remedy period", the DEMS shall consider the unique nature of each case, the impacts of contravention on the public and the time reasonably required for making remedy.

The amendment to clause 18 of the Bill concerns the penalty for failing to give notice to other suppliers about the removal of the reference number assigned to a product. It is proposed to increase the fine from the original level 1 to level 6. We are of the view that the requirement under clause 18 of the Bill is of vital importance to preventing the continued sale on the market of those products which can no longer meet the requirements of the ordinance. The proposed level of fine is in line with the penalty imposed on violating the requirement of publishing a statement under clause 30 of the Bill.

In response to the Bills Committee's view that it is necessary to specify the minimum rank of an authorized officer, we propose to amend clause 21 of the Bill, specifying that the minimum rank of an authorized officer shall be Assistant Electrical Inspector.

Besides, we also propose to amend clause 24 of the Bill in response to the advice of the Bills Committee. We propose to specify that an authorized officer shall produce the warrant in respect of the premises concerned if requested to do so when seeking entry.

The amendment to clause 30 of the Bill aims to clearly reflect our policy intent that the DEMS may require the supplier, at his own expense or by his own arrangement to publish, in the specified manner, a statement, or to publish, in the form and manner as the DEMS considers appropriate, a statement, or both.

In regard to appeal cases, since they may involve sensitive commercial information about the prescribed products, such as product manufactory and technical design, we are of the view that under certain circumstances, meetings of the Appeal Board may have to be conducted behind closed doors. We propose to amend clause 37 of the Bill, specifying that while the proceedings of

the Appeal Board are generally open to the public, the Appeal Board may, however, take account of the needs of certain cases and determine to conduct meetings behind closed doors.

The Bills Committee is concerned as to whether the appellant may recover the costs awarded or imposed by the Appeal Board as civil debt. We propose to amend clause 38(6) of the Bill, specifying that the costs awarded or imposed under the Bill may be recoverable as civil debt.

The amendment to clause 40 of the Bill aims mainly to specify that the DEMS shall consult the stakeholders when drafting amendments to the codes of practice or considering the withdrawal of any of them.

The amendment to clause 43 of the Bill aims to specify that the employer shall be liable for the act or omission of his employee and provide the employer with a defence. Under the amended clause 43, it is a defence for the employer to show that the act was done or the omission was made without his knowledge or consent, and that he exercised all due diligence to prevent his employee from doing the act or making the omission in the course of his employment.

The amendment to clause 46 aims to provide clearly that a notice or other document required to be served or sent under the Bill shall be addressed to the DEMS or the relevant persons or the relevant organizations.

The amendment to clause 49 aims to specify that in case the DEMS grants exemption to any prescribed products, he is to state in the relevant notice the reasons for granting the exemption.

The amendment to clause 51 of the Bill aims to provide that other than providing any specified forms at the office of the Electrical and Mechanical Services Department, such forms should also be provided through other means as the DEMS considers appropriate, such as downloading from the Internet.

The Bills Committee is concerned that the further implementation of the mandatory EELS in the future may affect the interests of stakeholders. We propose to amend clause 52 of the Bill, specifying that all amendments regarding the addition of new prescribed products to Part 1, Schedule 1 of the Bill shall undergo the positive vetting procedure, so as to give the Legislative Council sufficient time for scrutinizing the amendments concerned.

We also propose to make minor and technical amendments to clauses 2, 3, 4, 6, 9, 13, 15, 16, 28, 38, 41 and 54 of the Bill. All these amendments have the support of the Bills Committee. I urge Members to support the passage of these amendments.

Thank you, Madam Chairman.

Proposed Amendments

Clause 2 (see Annex II)

Clause 3 (see Annex II)

Clause 4 (see Annex II)

Clause 5 (see Annex II)

Clause 6 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (see Annex II)

Clause 12 (see Annex II)

Clause 13 (see Annex II)

Clause 14 (see Annex II)

Clause 15 (see Annex II)

Clause 16 (see Annex II)

Clause 18 (see Annex II)

Clause 21 (see Annex II)

Clause 24 (see Annex II)

Clause 28 (see Annex II)

Clause 30 (see Annex II)

Clause 37 (see Annex II)

Clause 38 (see Annex II)

Clause 40 (see Annex II)

Clause 41 (see Annex II)

Clause 43 (see Annex II)

Clause 44 (see Annex II)

Clause 46 (see Annex II)

Clause 49 (see Annex II)

Clause 51 (see Annex II)

Clause 52 (see Annex II)

Clause 54 (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 to the question to you and that is: That the amendments moved by the Secretary for the Environment 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): As the amendment to clause 44, which deals with deletion, has been passed, clause 44 is deleted from the Bill.

CLERK (in Cantonese): Clauses 2 to 6, 9, 10, 12 to 16, 18, 21, 24, 28, 30, 37, 38, 40, 41, 43, 46, 49, 51, 52 and 54 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): 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 11A	Specified person to update energy efficiency grading on initiative of Director
New clause 38A	Privileges and immunities of members of appeal board and witnesses
New clause 47A	Time limit for prosecution of offences.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman and Members, I move that the new clauses read out just now be read the Second time. The details of the relevant clauses are set out in the documents circularized to Members.

New clause 11A specifies that in updating the energy efficiency grading, a specified person shall update the energy label of a prescribed product it supplied in accordance with the updating notice served by the Director of Electrical and Mechanical Services (DEMS). We also propose adding under clause 2 of the Bill the definitions for new clause 11A.

The object of new clause 38A is to provide for the privileges and immunities of the chairman and members of appeal board and witnesses. If the chairman and members of appeal board are sincerely perform their functions, they do not have to fulfil legal obligations for their acts. The new clause reflected our policy intentions.

The Bills Committee has raised concern about whether the usual time limit of six months for prosecution of summary offences should be extended in light of the nature of prosecution for some of the offences under the Bill. We agree that prosecution of certain offences under the Bill can only be initiated until the completion of certain tests which may take a year or more. In response to such views of the Bills Committee, we suggest the addition of new clause 47A to make it clear that the six-month time limit counts from the commission of the offence or from the offence being discovered or coming to the notice of the DEMS.

The new clauses above have the support of the Bills Committee and I ask Members to support these new clauses.

Thank you, Madam Chairman.

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

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 clauses 11A, 38A and 47A.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman, I move that new clauses 11A, 38A and 47A be added to the Bill.

Thank you, Madam Chairman.

Proposed Additions

New Clause 11A (see Annex II)

New Clause 38A (see Annex II)

New Clause 47A (see Annex II)

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

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam Chairman and Members, I move the amendments to schedules 1 and 2 read out just now. The relevant amendments are set out in the documents circularized to Members.

Madam Chairman, having considered the views of the Bills Committee, we propose amendments to certain terms and ways of expression in schedules 1 and 2 so as to make the clauses clearer. These amendments are technical in nature without significant impacts on the operation of the Bill.

The amendments to schedule 2 are made in light of the concern raised by the Bills Committee that the same product model manufactured may have different energy efficiency grading after updating the energy efficiency grading. We propose amending the design of the energy labels to include in the energy labels information on the year in which the reference number is assigned or the year in which the new calculation method of energy efficiency grading takes effect to assist consumers in distinguishing new and old energy labels.

The new clauses above have the support of the Bills Committee. I ask Members to support and adopt these amendments.

Proposed Amendments

Schedule 1 (see Annex II)

Schedule 2 (see Annex II)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for the Environment 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): I now propose the question to you and that is: That new schedule 3 be read the Second time.

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 schedule 3.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Chairman, I move that new schedule 3 be added to the Bill.

Proposed Addition

New Schedule 3 (see Annex II)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new schedule 3 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 will now resume.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Madam President, Honourable Members, the

Energy Efficiency (Labelling of Products) 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 Energy Efficiency (Labelling of Products) 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): Energy Efficiency (Labelling of Products) Bill.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to repeal the Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008.

I now call upon Mr Albert HO to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR ALBERT HO (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed. The Government seeks to include "Under Secretary" in the Interpretation and General Clauses Ordinance through a

negative vetting procedure by virtue of this Order. I propose this resolution today with the purpose of repealing this Order made by the Government.

Dr YEUNG Sum of the Democratic Party moved a motion in relation to the Budget last week to delete the expenditure incurred by the posts of Deputy Directors of Bureau and Political Assistants. Through his speech we explained why, on the principle of democracy, the Democratic Party cannot accept the political system proposed by the Government which will be made up of Directors of Bureau, Deputy Directors of Bureau and Political Assistants. To put it simply, the Democratic Party is of the view that only a Chief Executive returned by universal suffrage has the political legitimacy to expand a true Accountability System for Principal Officials. A true accountability system will lead to the formation of a political team which is generally returned by democratic elections and accountable to the public. Now, the Chief Executive is only creating according to his own will one layer or even one and a half layers in the political structure as a political reward for pro-government parties or groups or people, and even members of the business sector who, in the view of the Chief Executive, are on good terms with the Chief Executive himself, to enter the government structure to share some of the powers of the Government. This is what the Democratic Party cannot accept, and I believe many colleagues in the democratic camp in this Chamber today also share the same view.

I propose this resolution today in the hope that we can express the views of the Democratic Party in another way. Let me stress in particular that once the Government's proposal is endorsed, the Chief Executive can empower the Deputy Directors of Bureau to discharge some of the duties, and in the list of public officers in Schedule 6, "Under Secretary" appears after the Secretaries but before "Permanent Secretary". In the Subcommittee, the representatives of the Government told Members that this arrangement did not imply any order of precedence or line of command. I think they were misleading the Legislative Council, because if there is no such implication, why, in the list of public officers, all the officials that appear after the Chief Secretary for Administration are listed according to the line of command? If they are not listed according to their ranks, the new position of Under Secretary or Political Assistant can be put at the end of the list or even on the top of the list before the Chief Secretary for Administration. But is that possible? So, I think the order that the officials appear on the list has implicitly — not implicitly, but explicitly — shown the line of command or order of precedence. If the Government still evades from the

possible implication of the order of this list, I think it is entirely trying to evade from the controversies over the possibility that Deputy Directors of Bureau may precede Permanent Secretaries in the line of command.

Why will there be controversies? The reason is that the creation of this one and a half layers of political appointees by the Government is obviously unreasonable. Insofar as the government structure is concerned, the ranking of "Under Secretary" in the list of public officers precedes that of "Permanent Secretary", and let me say this once again: If there is no implication of the line of command, this arrangement is basically unnecessary and we stress that institutionally, this is improper and in no way justifiable. The Government explained that there was no line of command between Deputy Directors of Bureau and Permanent Secretaries. If that is the case, I would be very interested to know how the working relationship between Deputy Directors of Bureau and Permanent Secretaries will be when they have to work with each other in future. Can the Deputy Director of Bureau instruct the Permanent Secretary to provide support or service to him or the Director of Bureau? If instructions must all be made by the Director of Bureau, what will be the status of the Deputy Director of Bureau in the accountability system? Will it be an isolated position being suspended in mid-air? In a Policy Bureau, the Deputy Director of Bureau seems to be under the command of just one person but not above the civil servants. Therefore, it appears that in a bureau, the Deputy Director of Bureau can give instructions only to the Political Assistant who joined the political team at the same time as he did.

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

Deputy President, the Deputy Directors of Bureau are normally not in charge of these duties and they do not have a role to play at all. But when the Director of Bureau cannot discharge his duties in Hong Kong or attend meetings of the Legislative Council due to overseas visit or other reasons, the Deputy Director of Bureau will be his stand-in. Such being the case, the Deputy Director of Bureau who seems to have no subordinate in ordinary times will suddenly become a commander empowered to give instructions to the Permanent Secretary and his subordinate civil servants. Is this not an extremely weird relationship when such takeover would suddenly become justifiable?

The Democratic Party, therefore, considers that our system cannot be reformed in such a fragmentary manner by adding this political layer. At present, the Chief Executive is returned by an undemocratic small-circle election. The rigid creation of this political layer will not be conducive to the development of democracy, and it will also deal an unnecessary blow to the independent Civil Service system. We, therefore, propose to delete the position of Under Secretary in the list of public officers.

The Government also considers that the creation of the position of Under Secretary can enable the political team to more effectively cope with various political responsibilities, but it seems that this may not be the case. Rather, I think Deputy Directors of Bureau will often have to run the gauntlet in the front line as stand-ins for Directors of Bureau, so that under the accountability system, the Directors of Bureau can get away at the most critical moment by sending Deputy Directors of Bureau to attend meetings of the Legislative Council to face intense questioning or even harsh questions asked by the public and Members representing the public.

As we foresee that the Government will degenerate to a state where the Deputy Directors of Bureau who are sometimes powerless will be sent to the front line anytime to explain policies for the Directors of Bureau, I cannot see how this arrangement can further improve the relationship between the executive and the legislature. Such being the case, the Democratic Party clearly puts forward this proposal today and urges Members again to support our amendment to repeal the arrangement of Under Secretary.

Deputy President, I so submit.

Mr Albert HO moved the following motion:

"RESOLVED that the Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008, published in the Gazette as Legal Notice No. 49 of 2008 and laid on the table of the Legislative Council on 12 March 2008, be repealed."

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, the authorities oppose the motion proposed by Mr Albert HO to repeal the Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008.

In the Report on Further Development of the Political Appointment System published in October last year, the Government proposed to create two additional layers of political appointment positions, namely Under Secretary and Political Assistant to Director of Bureau. This package of proposals has subsequently been scrutinized by the Panel on Constitutional Affairs of the Legislative Council. In December, we have successfully lobbied the Finance Committee of the Legislative Council (FC) to approve the creation of the relevant establishment and the relevant positions, including 11 Under Secretaries and 13 PAs, with effect from 1 April 2008.

Consequential to the creation of the positions of Under Secretary, there is a need to make consequential legislative amendments by means of subsidiary legislation to include the Under Secretaries in various bureaux in the list of public officers specified in Schedule 6 to the Interpretation and General Clauses Ordinance, with a view to allowing the Under Secretaries to exercise the power conferred by section 62 of the Ordinance to signify the exercise of the power conferred to or the performance of the duty imposed upon the Chief Executive by any Ordinance. Examples of the so-called "signification" include the signing of certain gazettes and notices by public officers listed in Schedule 6 on behalf of the Chief Executive. Therefore, this amendment is purely technical and procedural in nature.

After the relevant amendment has been tabled in the Legislative Council for scrutiny on 12 March 2008, the House Committee formed a Subcommittee on subsidiary legislation to scrutinize the amendment we have proposed to Schedule 6. Here, I would like to thank the Chairman of the Subcommittee, Dr Philip WONG, and other Honourable Members who have participated in the work of the Subcommittee. Thanks for their views and concern.

Although the amendment to Schedule 6 this time is only a simple technical amendment, Mr Albert HO has proposed to move a motion to repeal the relevant amendment during the Subcommittee's discussion. The Subcommittee has already negated Mr HO's proposal at that time.

However, Mr HO still moved the motion on repealing the relevant amendment at this meeting of the Legislative Council. The Government considers that since the proposal for creating the positions of Under Secretary has already been approved by the FC, and the Legislative Council has negated the amendment proposed by Dr YEUNG Sum during the discussion of the Budget last week, the amendment to Schedule 6 should be passed today as scheduled.

Regarding the point highlighted by Mr Albert HO that the Democratic Party considers this package of proposal contrary to the concept of democracy, I do not agree with this. The proposal of creating two additional layers of political appointment positions of Under Secretary and Political Assistant was put forward as a complementary measure for moving towards universal suffrage in Hong Kong. It is also to pave the way for electing the Chief Executive by universal suffrage in 10 years' time. We need to provide more room for political participation in Hong Kong by creating additional political appointment positions, in order that people who wish to serve the public can not only pursue a career in politics and stand for the Legislative Council and District Council elections but also have the chance to participate in the administrative work of the Government, so that they may have a broader political path and acquire more substantial experience. I will give a further response later after I have listened to the views expressed by Honourable Members. However, we consider that it is reasonable and in line with the overall interest of Hong Kong to pass the amendment to Schedule 6 today. Thank you, Deputy President.

DR PHILIP WONG (in Cantonese): Deputy President, in my capacity as the Chairman of the Subcommittee on Interpretation and General Clauses Ordinance (Amendment of Schedule 6) Order 2008 (the Order), I now report on the deliberations of the Subcommittee.

The Report on Further Development of the Political Appointment System proposes to create two additional layers of political appointment positions, namely Under Secretary and Political Assistant to Director of Bureau (Political Assistant). The proposal to create 11 positions of Under Secretary and 13 positions of Political Assistant was approved by the Finance Committee in December 2007.

Section 62(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides, among other things, that where any Ordinance confers a power or imposes a duty upon the Chief Executive, the exercise of such power or the performance of such duty may be signified under the hand of any public officer specified in Schedule 6 to Cap. 1. The Administration proposes to include Under Secretary in the list of public officers specified in Schedule 6 to Cap. 1.

At the meetings of the Subcommittee, Members expressed different views on the further development of the political appointment system. Some Members were of the view that the expansion of the political appointment system should only be contemplated after universal suffrage had been implemented. Otherwise, the system would result in the centralization of power by the Chief Executive and open the door to transfer of benefits and backroom deals. Some Members opposed the creation of additional political positions as they were not convinced that it could pave the way for further democratic development and grooming of political talents. Moreover, some Members pointed out that as the Chief Executive had different affinities with different political parties, only candidates who shared the Chief Executive's governing philosophy would be appointed as political officials. They did not consider it appropriate to use public funds to groom particular political parties.

Other Members nevertheless pointed out that the existing political appointment system with only one layer of political appointees was unsatisfactory. With the creation of the position of Deputy Director of Bureau, a Director of Bureau's deputy could deputize for him during his temporary absence. In addition, the further development of the political appointment system would broaden the avenues for political participation and complement constitutional development in moving towards the ultimate aim of universal suffrage.

The Administration gave a detailed response to the concerns raised by Members on the further development of the political appointment system in respect of:

- the remuneration packages for political appointees;
- delineation of responsibilities between Directors of Bureau and Deputy Directors of Bureau, and also between the political tier and the Civil Service;

- the line of command between political appointees and senior civil servants, in particular, Permanent Secretaries;
- the source and background of candidates, the criteria for appointment and whether the procedure of appointment is consistent with the Basic Law;
- the "revolving door" arrangement; and
- the code of conduct and post-office employment control of the new political appointees.

Members noted that "Under Secretary" appears before "Permanent Secretary" in the proposed Schedule 6. Some Members questioned the appropriateness for according Under Secretaries a higher ranking on the list, given that the remuneration of Permanent Secretaries is higher than that of Under Secretaries, and the former does not report to the latter as far as the line of command is concerned. They reiterated their concern about a clear delineation of responsibilities and line of command between Under Secretaries and Permanent Secretaries.

The Administration explained that the list of public officers specified in Schedule 6 to Cap. 1 can be divided into two parts: political appointees and civil servants. The arrangement to place "Under Secretary" immediately after the Secretaries will enable all political appointees to be grouped together on the list. The list is not a precedence list.

Mr Albert HO moved a motion at a meeting urging the Subcommittee to repeal the Order, as he opposed the further development of the political appointment system. The Administration reiterated that the proposal to create the 24 positions under the political appointment system was approved by the Finance Committee, and that the Order was a consequential legislative amendment following the creation of the new positions. After taking a vote, the majority of Members of the Subcommittee did not support Mr HO's motion.

Deputy President, these are the details of the discussion of the Subcommittee. I will now express my personal views, and I will make three points.

First, the idea of expanding the political appointment system has a positive meaning to the overall interest of Hong Kong. The support to be provided by

Deputy Directors of Bureau and Political Assistants can at least ease the burden on Directors of Bureau. Under the accountability system of principal officials in the past, Directors of Bureau have to formulate and promote policies; they have to answer questions from the Legislative Council and pay visits to the districts to keep tabs on public sentiments. If the Directors of Bureau are put under too heavy a burden, their efficiency in implementing policies will inevitably be jeopardized. When more political appointments have been made, the Directors of Bureau will have more time to foster communication with the general public and improve the relationship with the legislature. This is obviously desirable.

Second, some people alleged that the Government may have different affinities with different people. I think this concern is unwarranted. The creation of additional political positions can attract talents from various sectors of the community to join the Government and hence provide a reserve of local political talents to pave the road for constitutional development in the future. In fact, a responsible government in any country or region will select from candidates recommended by political parties, think tanks and organizations talents who have competence and insight and who share the Government's governing philosophy. This is only reasonable and gives no cause for criticism, and there is simply no question of having different affinities with different people. The Government has endeavoured to groom political talents through various channels and broaden the avenues for political participation, so as to improve its capacity in governance, with a view to serving the public in a better way. This proposal does merit support from the public and all sectors of the community.

Once again, I hope that in the process of political appointment, the Government can enhance the accountability of the political appointment system, increase the transparency of the recruitment process and clearly define the powers and responsibilities between political appointees and civil servants, so as to command further support from various sectors of the community. I hope that the future Deputy Directors of Bureau and Political Assistants can uphold the people-oriented principle, faithfully perform their own functions and go by the spirit of "professionalism, pragmatism and commitment". I also hope that members from various sectors of the community can show more understanding and be less nitpicking, so that the new measure can be implemented expeditiously and improvements gradually made in the course of implementation to make it more effective.

Thank you, Deputy President.

MR RONNY TONG (in Cantonese): Deputy President, we in the Civic Party support the Democratic Party and in particular, the motion proposed by Mr Albert HO. Deputy President, this so-called system of Under Secretary was actually discussed by us last week, but we did not hear any convincing arguments from the Secretary then. Deputy President, I would like to make four points to briefly respond to what the Secretary and Dr Philip WONG said earlier.

Deputy President, the first point is that the Government has said categorically that they hope to groom political talents. But in fact, what is most needed in grooming political talents is a proper culture of democracy, rather than a culture of appointment or one which allows people with competence to take shortcut. Deputy President, the further entrenchment of a culture of appointment in Hong Kong will indeed create an obstacle to the progress in taking forward democracy in Hong Kong. We should ask ourselves honestly: Do we wish to see Hong Kong moving towards universal suffrage or being held back by a culture of appointment? So, in this respect, the first point that we wish to make is that we consider this proposal unacceptable in principle.

The second point concerns a practical consideration. Deputy President, I did make this point last week but the Secretary did not give any response. Imagine: If someone can take a shortcut by making use of his personal ties to become a Deputy Director of Bureau and is offered a monthly salary of close to \$200,000, will he easily give up this appointment and run in direct elections? Deputy President, it is no easy task to run in direct elections, and in all elections there are always winners and losers. In particular, under the system in Hong Kong, as Members who have taken part in direct elections will know, they must pay for at least 50% of the election expenses by themselves, and this was already discussed by us last week. This is also a major obstacle in the existing system that deters talents from participating in politics. Imagine: If you are appointed a Deputy Director of Bureau by taking a shortcut, will you easily give up this very nice job with a monthly remuneration of over \$200,000 and take the risks of contesting an election, forgoing hundreds of thousand dollars to become a Member of the Legislative Council who is remunerated with \$50,000 only? Deputy President, I think in Hong Kong there is absolutely no one who will do

this. So, in saying that people with competence are recruited to be Deputy Directors of Bureau in order to groom political talents, the Secretary is indeed deceiving himself as well as other people.

Deputy President, the third point is that the existing system does not set out any requirement to ensure that these people must be truly competent, that they must truly join the Government and that this would really mean having cultivated a political talent who will be required to go into politics. What we have seen is that almost all competent government officials have joined the business sector after they left the Government, because they are offered far higher remuneration than that given to them in the Government or as civil servants. I think the Secretary himself will not go into politics when he ceases to be a Director of Bureau in future. I do not see that Secretary Stephen LAM is a person aspiring to pursue a career in politics, and he is likely to join the business sector. Given that under this hollow, flimsy system which sets out no requirement or criteria, there is no guarantee that these people will participate in politics and devote themselves to the community of Hong Kong after being nurtured by administrative exposure, so to speak, and having gained the necessary experience. I would, therefore, consider this investment very risky.

The fourth point, which is also a more important point, Deputy President, no mechanism has so far been put in place to show us based on what criteria and under what circumstances these people are screened and selected to join the Government. I entirely do not see an open or a slightly transparent mechanism in this respect. The list of the Olympics torchbearers announced yesterday is actually not very much different from our predictions, for it is entirely a black-box operation. We have no idea at all why some people are selected and why some people are not. Dr WONG said earlier that there was no question of different affinities on the part of the Government. But I think Dr WONG is wrong, because the Chief Executive did admit this in this Chamber, and the Secretary has also stated explicitly on various occasions that the Deputy Directors of Bureau must support the political convictions of the Chief Executive and also the administration of the Government, and that this is the pre-requisite for them to be appointed as Deputy Directors of Bureau.

In other words, any person who holds different views on or criticizes the administration of the Government neither stands a chance of nor meets the requirement for taking up the office of Deputy Director of Bureau. Therefore,

it is beyond doubt that the Government has different affinities with different people. I hope that the Secretary will not keep on deceiving himself as well as other people in this Chamber by telling Hong Kong people that these appointees who are recruited with a huge amount of public money will eventually join this Council and go into politics to serve the community of Hong Kong. To put it plainly, the Government is only using public money to hire its political supporters or "political henchmen" to act as a shield for the Chief Executive and the Government in this Chamber. Deputy President, it is absolutely unacceptable to us that public coffers should be utilized in such a way. So, let me firmly state that we in the Civic Party support the motion of the Democratic Party.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, I heard some Members say that it is necessary to expand the political appointment system. Certainly, as our living in society becomes more and more sophisticated and as modern political civilization has brought about hopes and people hope to have sufficient representation of their opinions, a political appointment system has become a need.

A political appointment system is a supplementary system. That is, when some people capable of taking up some duties cannot be returned by elections, they will have to be appointed. Am I right? However, when the Government or its "apologists" talked about this, they seemed to be trying to build the first storey but not knowing where the ground is. This is building a castle in the air.

First, I can see that for modern civilization or political civilization, all starts by expanding a system which confers power by universal suffrage. It is only under such a system that we can guarantee political appointments are kept to a minimum, and it is only under such a system that we can guarantee that the appointer is empowered by voters in society to select the appointees, but mind you, not everybody will be happy about this but this is still a safety valve, right? If I speak at great length here to explain how important it is to expand the political appointment system without talking about expanding a universal suffrage-based system for conferring powers, it is like building substandard flats, which is not right, and this is the last thing that anyone would wish to see. Members, when we asked in this Chamber when universal suffrage would be implemented, all that we could hear was, "Wait, I told you in 2005 that if you did not support the 'bird cage' proposal, then you had to remain stagnant and would continue to remain stagnant in future."

This Government refuses to provide a timetable and roadmap for expanding the universal suffrage system. It refuses to expeditiously abolish the system which confers powers by small-circle elections. The situation is exactly one as described in the Chinese idiom, "With the skin gone, what can the hair adhere to?". Since the skin is burnt up, what purpose does it serve to implant hair on it? It would be a sheer waste of money, right?

Members, a political appointment system (since you have started discussion on this topic, I have no reason not to join you) should actually premise on the power-conferring system of universal suffrage. This is the first pre-requisite. Second, it should be an open, fair and transparent system which allows self-nomination. These two pre-requisites are inseparable.

Regarding the present "six-six principle" for appointments to advisory bodies, will it be completely smashed? Some people work like hell, but some people do not know how to get appointed. Even within the circle of the bigwigs, there are actually people who see many cases of injustice. Just that in this system of small-circle election, there is a characteristic that one who complains openly is doomed, and whoever makes open criticisms will have his future ruined. From this we can see that such a system does not only deprive the majority of people of their interest. There is also problem even in the change of minority rule. Differentiation in the closeness of relationship certainly exists. But have Members heard of the results of inbreeding? Inbreeding will result in a particularly high number of births of mentally-retarded children, which is a known fact. In contemporary European history there were many examples of affinal marriage in the royal family. This is why in the royal family there were a particularly large number of members who were mentally and physically handicapped. The case of politics is just the same. The result of inbreeding is the lack of regeneration, just as biology says that bad cells will grow and the good ones will die.

Members, in this Chamber, Dr Philip WONG has just hurled criticisms at the Hong Kong Tourism Board. I also saw him speaking sternly and vociferously out of a sense of justice on television. Does he realize that what he was accusing at that time is resulted from the system that he supports? Can he be said as a quack doctor? At least he can be said as a doctor who is not quite up to standard by examining only the symptoms but not the cause when consulted by a patient. When we see just the tip of an iceberg and speak volubly to hurl abuses at the bigwigs, accusing them as despicable and avaricious, do our

Honourable Members realize that they are actually the ones who help the tyrant do evil? Does this doctor or whoever realize that he is indecisive and lacks confidence in making a diagnosis? He has gone so far as to sell fake medicine in order to maintain his qualifications as a doctor. I think this should strike a chord in Secretary Stephen LAM.

Members, in foreign countries they have open, impartial and fair systems, and the entire community understands how the appointees are selected. Do we have such a system? Why do we not copy theirs? Ms Margaret NG has also made this suggestion for many times, has she not? I gave in by agreeing to copy their system first, and I said I would not argue with them anymore, but they refused to copy it and such being the case, it only follows that they will engage in black-box operation. Black-box operation means that there is no sunlight, and is it not that death will follow when there is no sunlight? They are just trying to settle everything by themselves behind closed door.

The further expansion of the political appointment system that we are talking about now is meant to serve only three purposes. I did explain this last time. The first is for the future election of the Chief Executive, and there should be it in 2017! Now that they have enough votes, and after approval has been sought, a sham universal suffrage could then be held. So, they must prepare something tailor-made for the candidates of the Chief Executive by paving road for them to become Directors of Bureau, Political Assistants to Director of Bureau and Deputy Directors of Bureau as a first step, so that they can accumulate the so-called administrative experience and then these candidates will come forth and with the support of the Communist Party or whatever party, they will be made Members of the Legislative Council and they will be said to have administrative ability and be baptized by public opinions.

This is obviously an instance of having different affinities with different people, and it is precisely because of this theory of different affinities that "affinal relationship" will be the deciding factor, so as to ensure that the future Chief Executive will be obedient and that he is the crown prince handpicked by the emperor, and one who does not meet these requirements is unlikely to be given this favour. As I have said, at present, Regina IP may be the person who can meet these requirements. She has both good luck and bad luck, right? She stepped down as a result of the incident of legislation for Article 23 of the Basic Law and now, she has jumped into the pool of universal suffrage to get baptized and then emerged to be someone with experience in politics. But she may not

be the only candidate and so, requirements have been set out. People who have been members of parliamentary assemblies cannot apply for the post of Administrative Officer as if they are newcomers, right? This is why people who have been members of parliamentary assemblies must subsequently take up administrative work. It is like regaining youthful vigour for an elderly person, is it not? So, this is a way to take part in the game of political reward.

Second, the secret police system in Ming Dynasty. As we all know, ZHU Yuanzhang was a person with low integrity and Prince ZHU Di of Yan was even worse. After he had killed his brothers and feared that people would revolt against him, he established the Eastern Depot comprising of Palace Guards, sending a large fleet of secret police to keep a close watch on the people. When a system is forced to respond to public sentiments in Hong Kong by undergoing democratization or liberalization, the authorities react by deploying Political Assistants to Director of Bureau and Deputy Directors of Bureau to the more important departments, and they are precisely the secret police, or the Palace Guards of the Eastern Depot. They would secretly make reports on everything, which could lead to significant changes and shake-up; or this may be called a system of political commissar, similar to that in the Mainland. In the past, the Deputy Governor of a province is actually a Political Commissar and a member of the provincial Party committee, and the Governor of the province is in effect under the command of the Deputy Governor. It is there for all to see. How much weight will be given to them in future? I am not prophesying about the future, but judging from the current system, what will happen cannot be clearer. Members, this is all but a monarch or a game of the Emperor's Clothes created for the purpose of small-circle elections or sham elections. This is also a game which excludes normal people not born of inbreeding because simply enough, Members, what will happen in the future is either civil servants running in elections to get baptized, or pro-government Members taking up the office of Political Assistant to Director of Bureau or Deputy Director of Bureau, which actually means a continuation of inbreeding.

Members, I do not know if what I have said is correct but this is a reality. This reality is not about how much we have paid to do a certain thing. Hong Kong has a lot of money. A monthly remuneration of \$200,000 is insignificant. The reality is that we can foresee the future, a pre-arranged future. We can see that this is not the way to decentralize political powers. I know that some people have put on red clothes today and become the Red Army — The Red Army feared no difficulties in the Long March. In Taipei, there are also

"copycats", as we can see how Taipei is overwhelmed in awe by the Red Army. The Red Army in Taipei obviously has the backing of Kuomintang, or else there cannot possibly be so many of them. But the Red Army there is at least against corruption; they are calling on the President to step down, and they are making political parties to oust the unscrupulous elements from the constitutional system or hoping to make use of the people's power to directly force the corrupt government to step down in disgrace. Our Red Army has been very brave and courageous in celebrating the arrival of the Olympics torch. But when it comes to fighting against corruption for Hong Kong people or opposing the small-circle election which is the base of corruption, what has our Red Army done?

Members, this Council is going to make decisions on the timetable and roadmap for implementing universal suffrage. The Central Authorities, or the Chinese Communist Government, have never said that universal suffrage will definitely be implemented for the two elections in 2017. All they have said is that if we agree to what they propose, then there will be dual universal suffrage in 2017. In the entire decision made by the Standing Committee of the National People's Congress, it is only said that there will not be dual universal suffrage in 2012. Members, please look at it clearly. The important thing is: Is there anyone who can suggest a way to achieve this? The pan-democrats have the answer and the way to achieve it is to abolish the functional constituencies in the Legislative Council and their seats be filled by Members directly elected in geographical constituencies. This is similar to the system currently implemented in Germany. As for the election of the Chief Executive by universal suffrage, it means the election of the Chief Executive truly by "one person, one vote", rather than selecting from a group of people who claim to be close allies of the Government and who are all handpicked candidates for the post. This is really the thrust of our discussion today, rather than the expansion of the political appointment system under discussion now.

Members, whenever I see Secretary Stephen LAM attending meetings in this Council, he always seems to be strained and stressed, like an old cow pulling a broken cart. Why? Because the cart that he is pulling is going against the times. Members, I think the expansion of a system which confers powers by universal suffrage is the pre-requisite for the expansion of any political appointment system. The order absolutely cannot be reversed. Second, I am willing to stop arguing with them, but please come up with a highly transparent mechanism for appointment which allows self-nomination as well as nominations by other people, rather than allowing Donald TSANG to hold a raffle behind

closed door and whoever wins in the draw will be appointed. For these reasons, I cannot support this system of the Government. I also hope that friends in the pan-democratic camp will not support this system.

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

DR KWOK KA-KI (in Cantonese): Deputy President, I spoke in support of Mr Albert HO.

Some time ago when we endorsed the Budget, we also discussed this new practice concerning the political appointment of Deputy Directors of Bureau and Political Assistants to Directors of Bureau. Some colleagues said earlier that Secretary Stephen LAM had to work very hard. I think that may not be necessary, for this Secretary is tasked not really to promote constitutional development in Hong Kong, but to do his utmost to find excuses, ways and tricks to confine constitutional development to the "bird cage" and this is actually not too difficult. Certainly, it will take some time to think about a lot of tricks in order to do certain things within the limits of the "bird cage", and this may perhaps result in one or two strands of grey hair.

But we may not really mind some people concocting various pretexts to rally people who are close to them — these people may not necessarily come from political parties, because rumour has it that pro-government political parties and groupings are surprisingly not given any share in this loot-sharing and some political parties are not very happy with it. But this is just hearsay and rumour, and the outcome may eventually make everyone happy as the loot may be shared out evenly.

When it comes to the Government's practices of having different affinities with different people, or when one has to support a government which lacks a popular mandate to do something, finding a reason and excuse would seem to be very important. Some colleagues said that there was no question of different affinities and so, discussion would be unnecessary. It actually does not matter. The Government can appoint whoever it favours, and we can do nothing about it. Basically, other than the Deputy Directors of Bureau, even the Directors of Bureau or all the other principal officials do not have the people's mandate

either. Their appointment is not based on the will of the people; nor can they be removed according to the wish of people. We do not have in place a very clear system now.

Deputy President, it is most important and infuriating that some people said that such development would be conducive to the political development or democratization in Hong Kong. This is a lie. See how the constitutional system has been dealt with? When we talk about universal suffrage now, we are talking about the election of the Chief Executive by universal suffrage in 2016, or after 2016 — the authorities actually did not tell us when exactly it would happen because they only said that all seats in the Legislative Council could be returned by direct elections after 2016. However, the outcome may not turn out to be what we have expected, because we have never been told what kind of a system it will be. I have heard more than one person say that universal suffrage should include functional constituencies, and some people said that the future composition of the Legislative Council would depend on the Gross Domestic Product (GDP) behind those people. These remarks are indeed a laughing stock and incredibly astonishing.

Despite such poor quality of the so-called reform and such empty, slipshod promises, so to speak, some Hong Kong people nevertheless consider these a magnanimous favour. They think that there will be good news for universal suffrage and that everything seems to be happening soon; they feel very happy and generally delighted. But in 2016, the situation may turn out to be "crying up wine but selling vinegar", and only time can tell whether this will be the case. Anyway, it still does not matter because in 2016 the principal officials in this Government, including Secretary Stephen LAM, would have been retired, and all these would have become timeworn. The principal officials and the Chief Executive then would say that this has nothing to do with them, that this is the problem of their predecessors and that their predecessors might have talked nonsense but they have nothing to do with it, because they have not said such a thing. This is where the sophistry lies. If, in this Council today, we have to identify with this system and agree that this practice is in keeping with the democratic progress and constitutional development in Hong Kong, this would actually reflect problems with our intelligence, and there are basically problems with our cognition too.

Anyone who considers this the way for democracy to develop or a quantum leap in the constitutional development of Hong Kong is not looking at the fact clearly, if not lying in his teeth, and the fact is that many things that we wish to achieve have remained distant and beyond our reach. Why do I say so? Because on the question of a true election, a truly democratic election, an election conducted by "one person, one vote", why can the Government evade even from telling us the rules of the game?

If we are really going to develop in this direction, is there any difference whether it be 2008, 2012 or 2016? Why must it be put off to that time? But if the main purpose is to delay it and then further delay it again and again, this would be very important because in doing so, they could buy time; they could have room for manoeuvre; they could tell lies or make one empty promise after another. The promises made today may have become empty words by then. The same is going to happen in the Mainland because all the officials in the Central Government definitely would have been replaced. So is the case of the SAR Government, as all the officials would have been replaced and so, nobody would have anything to do with this.

Basically, insofar as our discussion today is concerned, we hope that the opportunity can be taken to put for debate the lies that we consider unacceptable as well as those offensive remarks and to point out that we cannot accept them. Success in truly taking forward the development of democracy in Hong Kong hinges on several things, and I believe the Government or the Secretary is well aware of them. They are: To expeditiously implement universal suffrage of "one person, one vote" in Hong Kong; to conduct an election under the principle of fairness and impartiality with no unnecessary threshold attached; to implement a system without political screening; to adopt an open nomination scheme, implement "one person, one vote" in a real sense, and remove all relics from past history such as functional constituencies, so as to show a way to people aspiring for participation in politics, who may include supporters of the Government as well.

We can see the picture by just looking at how the authorities treat Members of the Legislative Council and how they treat those appointees selected through a process of favouritism who have no popular mandate. How do the authorities treat Members of the Legislative Council? Some colleagues have said that many people consider it a full-time job to be a Member of this Council, while it can also be a career for some people. But the authorities do not respect Members. They do not respect Members even on the issue of remuneration that

Members deserve. On the contrary, they are generous to these appointees handpicked by them, who have indeed close affinity with them, as they are more than happy to offer these appointees a monthly remuneration of close to \$200,000 or even more.

The authorities have stated a myriad of reasons, saying that the appointees come from the business sector and that they are elites in society. Are Members in this Council not the same? Many colleagues in this Council have their own profession, and they have given up many work opportunities and money-earning prospect to sit in this Chamber. Should they not deserve respect from other people? We asked for improvement to our conditions not for our own sake and honestly, we did so in the hope that a better system can be put in place, so that people aspiring for going into politics will have a clear picture and know how they should chart a course for their future. But now, is there a path for them to take? We are completely clueless as to how party politics can be developed or whether or not Hong Kong needs a ruling party.

Under such circumstances, if we pretend that we do not know anything and then agree to the various practices of the Government, we would not only be deceiving ourselves as well as other people, we would be doing a disservice to Hong Kong people. But there was already too much discussion on this issue on a number of recent occasions and I think as we put forth our views and comments to the principal officials (including the Secretary) here, we may only be "casting pearls before swine". That said, I think on some issues, I must still speak my mind and get it off my chest.

I so submit. Thank you, Deputy President.

MR FREDERICK FUNG (in Cantonese): Deputy President, I have actually said once in the previous debate and I do not want to talk about it again. However, as Members have said so much just now, I think I will have to say it again. This is because I am for this original motion from the Government.

I wish to declare that I do not get any benefit from it personally, it means that irrespective of me or any member from the ADPL, we have never been mentioned, discussed or invited by the Government to be a Deputy Director of Bureau or a Political Assistant. It would be much better if I cannot be an

Olympic torch bearer this time around, for it shows that there is no political deal involved. Will I be made a torch bearer if I support the Government? This is really what we think and it does not begin only today. As seen in past history, when the ADPL met TUNG Chee-hwa the then Chief Executive in 2000, we had proposed to him that the ministerial system should be adopted.

Why did we propose that the ministerial system should be implemented? I hope Honourable colleagues, including those from the pan-democratic camp, would just think a bit. If there is no change to any system, what kind of a system is our current system of government? It is a system whereby the Administrative Officers (AOs) rule Hong Kong. And for this system of AOs ruling Hong Kong which I would call it, Members can just look back at the times before 1997. At that time, our civil servants, including the AOs, were responsible for the brewing of ideas behind the policies, the consultation work and gathering public views on the policies, and then making the decision on the policies and even to the extent of carrying them out. When problems cropped up after policy implementation, the policies were then revised. All these were done by civil servants and AOs. Is such a practice good? Will there be no conflict of interest? Is it all correct and can everything be done in a "through-train" manner? Are we to continue with this kind of AO ruling Hong Kong system after 1997? This is the first issue.

The second issue is on democracy. I would think that the democratic system we have which comprises of the parliamentary assembly and the Chief Executive is one system, whereas the AO system of the Government is another. All AOs join the Civil Service by passing examinations and they are promoted on the merit of their performance. They are not returned by an election. I cannot see when AOs assume the post of a Director of Bureau or a Secretary of Department, how they can demonstrate that they are a Director of Bureau or a Secretary of Department returned by elections. Seen from the electoral system, they are not held accountable and I think Members are well aware of the fact that if an AO commits any blunder, it is only under two situations that they will be affected, one is that they have broken the law and the other is that they have breached the Civil Service Code.

Before 1997, in many policies especially in the housing area which I am most concerned about, in the short-piling incident and in the substandard public rental housing blocks and so on, there was never any AO or even a head of department who lost his or her job due to any policy blunder. By that I do not

mean that they were transferred but dismissed. By comparison, ever since the introduction of the accountability system for principal officials in 2003, I can see that there were a number of them, irrespective of whether they were actually right or wrong, who were replaced. These people were in the ranks of Director of Bureau or Secretary of Department. They included Antony LEUNG the Financial Secretary, Regina IP the Secretary for Security, the Chairman of the Housing Authority Rosanna WONG, and even our former Chief Executive who also stepped down after a leg pain complaint. Is it because of the launch of this system that there are such drastic changes during these few years and which explains why so many people have left? I do not dare to say that this explains everything but I would say that it is somewhat related. Then why did these things not happen a few decades ago or even a century ago? In my opinion, all these are related to that system in one way or the other. So under these circumstances, I would think that it will not do if no change is made.

Second, apart from the existing system which I have mentioned in the first place, that is, AOs ruling Hong Kong, not the existing system itself, the system whereby AOs rule Hong Kong is in itself not, or rather the civil service system which governs Hong Kong, is in itself not a democratic system and it is also a system under which no political responsibility needs to be borne.

Third, conflict-laden responsibilities. A good example is Michael SUEN. Before 1997, he was a subordinate of Governor PATTEN. PATTEN wanted to abolish the appointment system and permit all members of the District Councils to be returned by universal suffrage. After 1997, Chief Executive TUNG wanted to revive the appointment system and it was also Michael SUEN who went about soliciting our support for the appointment system. So he is such a political chameleon. I am not saying that there is anything wrong with him as a person, all these happened because the bosses he served had changed. As his bosses held different political views, so these two political views of great disparity came out of his mouth. This is the conflict which I am referring to.

Another problem is that after 1997, about the Chief Executive, irrespective of whether he is elected from a small circle or from universal suffrage in future — I would certainly hope that the Chief Executive can be returned by universal suffrage in 2017. And speaking from the two Chief Executives we have had, if the system of government does not change and if AOs still rule Hong Kong and if instead it is a civil servant who becomes the Chief Executive, and if civil servants are the ones who hand out election leaflets on the

streets and meet the public in the departments, the entire system is filled up by civil servants so organized like a political party. I really do not want to see Hong Kong to be governed by such a party of civil servants.

Suppose the Chief Executive is not a civil servant, as in the case of Mr TUNG, the fact that he is a one-man band can also be another big problem. His culture is at odds with the civil service culture and his political beliefs are at variance with those held by civil servants, the Directors of Bureau and the Secretaries of Department. The two sides are really at loggerheads. Just imagine how he is to govern Hong Kong? I am not talking about the question of whether this is democracy or not, I am talking about this impossible task in administration to deal with the civil service system formed by some one hundred thousand civil servants.

Conversely, I would certainly think that there are problems to every political system and there is bound to be collusion between officials and business. Other forms of collusion exist too. No democratic country is immune. However, even if there is no such an appointment system, top officials will form their own exclusive clubs, will they not? The heads of the Trade Development Council, the Kowloon-Canton Railway Corporation, the Urban Renewal Authority and so on, are all retired civil servants and they have built up things that may bring them advantages. Therefore, I think that such matters about interests cannot be solved by the system alone but by the forming of a clean culture and a system which is open and transparent. This will enable criticisms and critiques to be made and so certain people are either afraid of or do not dare or willing to do such things.

Another thing which I wish to say is that we have to make good use of the time. I do not know if the transition is to last 10 or 20 years. If it is 2017, the transition from now will be 20 years; and if it is 2020 when the Legislative Council can be returned by universal suffrage, then the time will be even longer. I think we should establish a system of civil officials, that is, a civil service system of civil officials. The kind of system I have in mind is that it is a civil service system of civil officials in which civil servants stay away from politics and from the first day they are recruited, they are merely doing a job. They may be promoted because of good performance but that is only a job. I cannot see how a civil servant in Britain or the United States will one day become They may become a bureau chief or a minister, but they will have to withdraw from the civil service first. When working as a civil servant, they must remain

neutral and cannot take any political stance. They may give advice but the final decision is to be made by political officials and not in their capacity as civil servants. Therefore, their role is to assist those in power to govern the country.

I would think this is a more satisfactory kind of civil service system. Our future Chief Executive may be A, B or C. I even hope that the Chief Executive is someone with some political party affiliation. People with a different political background may have different political beliefs and the civil service system is to serve this person or his or her political party. If civil servants have their own values and if they think that certain policies are right or otherwise, when they are to implement these policies and should the Chief Executive be changed, this may cause conflicts between the Chief Executive and the decision-making officials which are civil servants. Hence I think that as long as the Chief Executive is returned by an election, civil servants should not play a direct role in deciding government policies.

When can this problem be tackled? I have often said that the problem should not be tackled now. As a matter of fact, there should have been considerations of this problem since 1997 when the Chinese and British Governments were in collaboration and changes should be made. In 1997, the Government should be one of the civil official system. I wish to stress again, it should be a civil official government. The system should get started with universal suffrage and the two should go hand in hand and together they should cross the finishing line. Just think, if there were no political appointments now, I would assume — even if that is not an assumption but a hope that I want it to come true — that by 2017, universal suffrage could be achieved. I know that even the DAB agrees that the Chief Executive should be elected by universal suffrage in 2017. If there is really universal suffrage in 2017 to elect the Chief Executive, and we do not have those political appointments as we have now, and if the AOs are still the ones who assume the post of a Director of Bureau or a Secretary of Department, the Chief Executive elected by universal suffrage in 2017 will have to be forced to choose out of the AOs and civil servants to fill up at least half of such posts to render him assistance.

I would think that this system cannot hope to attain perfection in one day and it is bound to have its course of development. But how can this course of development be paved and made better? I hope the Secretary or the Government can hear the following: First, the entire course of development must be made public so that the people of Hong Kong can know what is going on, how

the process is evolving and what can be made better. The Government must listen carefully to all these views. Second, the civil servants or the Chief Executive's coterie of top officials must learn to engage in self-reflection, that is to say, they should always ponder over the shortcomings of the system, identify the problems and listen to other people's opinion and look at the matter objectively. Third, they should know how to undertake a review and when they identify where the problems lie, they should find out how things can be improved and then really take action and make bold attempts to tackle the big problems. In this way, the people of Hong Kong will know that there is a direct relationship between the system we practise in Hong Kong and this civil official system that we have built up.

Deputy President, an appointment system is bound to have its problems. Even for a president elected by the people, the appointments he or she makes are likely to have problems as well. Problems will crop up where there are humans, but these we have to face. I would accept that during the process of making appointments, the person in charge will certainly appoint people from his or her coterie, people with the same convictions and even people who breathe from his or her mouth. This is of course, not the same as making a political deal, giving political kickback or forging a political buyout. It is true that some people may make use of that and do those undesirable things I have just listed. There is certainly such a possibility. But I am definitely against what the Secretary has said that this is a training process and in such a process, people will get to know what politics is. I would not think that this is a process by which people will learn to govern Hong Kong. These posts are too important, the decision-making powers that the holders can exercise are too great, and the money involved is too much. When they have assumed such posts, they are to exercise the powers vested in such posts and bear the responsibilities. They must hold themselves accountable when problems arise and when they have made the wrong decision, they may even have to step down.

Deputy President, I am convinced that if we are to develop a good system, we must know how to build and destroy or *vice versa*. If we are to maintain this practice of having AOs ruling Hong Kong, I have to tell Members that before 1997, both the ADPL and I were against colonial politics. We are so since our student days. We opposed colonial politics and all along we tried to shatter this system of having AOs ruling Hong Kong. As to what kind of system we can build in its stead, I think that is open to discussions. If we do not shatter this colonial system, for me, I am absolutely opposed to the suggestion that the system of AOs ruling Hong Kong is not to be destroyed, but is the system now

being proposed by the Government the best? Are we going to propose a system better than this one? I wish to tell Members that eight years ago in 2000, the ADPL had already suggested to Mr TUNG to adopt the ministerial system — and we did not put forward the proposal at that time for the sake of this debate. The ministerial system is a system used by many countries in the world and it has been proved to be effective. Should it be used here in Hong Kong?

I would also like to tell Members that Mr TUNG said on that day that it would not work. It was not that he did not approve of it but he would reckon that Beijing would not. It was his conjecture. One of the reasons is that the ministerial system is conducive to the development of party politics. It is because the group of people involved would include the Chief Executive and his coterie. There would be some 10 to 20 people who would become ministers and deputy ministers. And it is likely that they want to pass on their positions to their next generation. In this way this group of people would gradually evolve into a political clique and even a political interest group or even what we would call a political party.

Would this practice make some people, in particular those who have been made the first-generation officials under the appointment system, become the most powerful political party in Hong Kong — even more powerful than the DAB, the Liberal Party or the Democratic Party here? This could well be a possibility. But for how long can it remain powerful? Seen from the mighty tides of history that sweep across the political arena, if only the time span concerned can be stretched further to another 10, 20 or 100 years, it is certain that a second or a third political party will emerge, unless the governance of that political party is forever blameless. And there is not a single king or political party in history which can do a good job forever. There are on the contrary, frequent changes. However, it is also important to pass on a system which has been built up for use by the coming generations. So I hope Honourable colleagues would pause and think, if the appointment system is to be abolished, does it imply that the AOs ruling Hong Kong system will be revived? If not, then what system is to be adopted?

Both the ADPL and I will oppose this to the utmost and we cannot tolerate AOs ruling Hong Kong again. The new system may not be the so-called appointment system which the Government is presently proposing as a substitute for the AOs, but discussions on that can be made. Having said all these, after

we from the ADPL have undertaken such a prolonged study on the issue, we would still think that the ministerial system or the present system in the likelihood of the ministerial system, is one that we can accept.

Thank you, Deputy President.

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

MS MARGARET NG (in Cantonese): Deputy President, when we come to the topic on Deputy Directors of Bureau (Deputy Directors) and the Accountability System for Principal Officials (the accountability system) today, a lot of issues related to democracy and of grave concern to us will be brought up. However, in my speech today, I would like to look at the issue from a practical and day-to-day practice angle. I will talk about the practical problems in public administration and governance.

Why should Deputy Directors be added to the existing accountability system? On the surface, one of the objectives of this arrangement, which we have heard repeatedly, is to enhance the communication between the authorities and Members, for there is insufficient communication at present. The other objectives are to enhance the communication between politically appointed Directors of Bureau and civil servants and to enlist more support among Members. It is also said that the political structure of the political appointment system is too weak and support from more people is thus required. The need to maintain the neutrality of civil servants has also been mentioned. As the existing tier of politically appointed officials is too weak, civil servants cannot be spared fully of the political work. So, the arrangement has to be made to maintain the neutrality of civil servants. All these are the objectives of the arrangement on the surface.

Is this actually the case? First, we have to find out what the real problem is. Actually, many of us have already pointed out that the crux of the problem is political chips and affinity differentiation. But I will not dwell on these issues. Political chips, I do not care about it, I may just regard it as petty for the time being. But will this solve the problems mentioned earlier? We are indeed facing a dysfunctional government. This dysfunctional government

..... The Government raised the issue of a lack of communication earlier, let me just assume it is a sincere remark. However, concerning this dysfunctional government, what makes it dysfunctional? This should be attributable to the mutual distrust embedded between the different tiers.

First, starting from the era of Mr TUNG, he distrusted civil servants. This is rather problematic, why? As in the past, the Civil Service is a local structure, a standing structure. As the Governor of Hong Kong was an external appointee, he had to secure the support of the Civil Service headed by the then Chief Secretary, while his loyalty was indisputable. It is under this circumstance that this outsider can perform his function. Just imagine, if the Governor of Hong Kong did not trust the Civil Service under the Hong Kong-British system at the time, how could he perform his function? By the same token, when Mr TUNG took office as the Chief Executive and considered that he could not trust the Civil Service, he was facing a big problem. For the dozen of Directors of Bureau under the accountability system cannot replace the Civil Service to work for him. Will it be possible if the number of Directors of Bureau is to be increased to 20, 30 or 40? The answer is also in the negative, for the Civil Service is a system.

However, he did not only mistrust civil servants, he also considered the arrangement totally unjustified. He even believed that civil servants, who used to work for the Hong Kong-British Government, would naturally lend continued support to the Hong Kong-British Government at heart. I think this perception is ludicrous. He did not trust civil servants, nor did he trust Members. He thought that the Legislative Council was against him and Members were in the opposition camp to challenge his power, so he did not trust Members.

He did not only mistrust Members, he mistrusted every one who criticized him. He did not believe the people. When he did not believe the people, he would perceive every one as his enemy. If so, how could there be communication? Without communication, how could he perform his function? When oppositions were mounted in every place, what could he do?

I am not saying that we must now follow the practice adopted in the past. However, according the practice in the past, when there were oppositions, the authorities would try to incorporate these voices of opposition. I remember that before Mr Frederick FUNG become a Member, he worked at a council on squatter issues, which was a significant voice of the people, expressing strong

opinions on the public housing policy of the Government. He then occupied positions as a Member, a Member of the former Urban Council and so on. His dissenting voice and opinions were incorporated into the establishment, producing positive effect. This was the situation at the time. However, the present system is not designed for the incorporation of dissenting voices, which will let their influence come into play. It aims only to incorporate like-minded supporters. I really puzzle how mistrust sowed can be overcome under this circumstance.

Will Deputy Directors and Directors of Bureau help enhancing communication? Actually, in the face of a dysfunctional government First, a government that functions effectively does not need these people. But if the Government is dysfunctional, these Deputy Directors will be unhelpful in solving the communication problem. When there is no communication between Directors of Bureau and Members, will the sending of Deputy Directors here enhance mutual communication? If you do not trust civil servants, will the situation be improved by appointing some Deputy Directors to communicate with them? Definitely not. Deputy President, if there is no communication between you and me, the best solution will be for you and I to come together to express ourselves frankly and clearly. But if you and I each appoint another person, or each sends our deputy, to communicate with each other, it will not work. Communication cannot be enhanced this way.

With regard to enhancing communication with civil servants, it is more ridiculous. We hear clearly that civil servants have strong opinions about the appointment of Deputy Directors. They take this as a kind of mistrust and an obstacle affecting their prospect. Therefore, this objective will not be achieved. As for the objective of gaining more public support, it will not be achieved too. If it is about winning greater and wider support, it all depends on the number of persons involved. When some of them are pros, that is experts, and some of them are "red", that is politically appointed, it is indeed creating conflicts.

Will the arrangement enhance the neutrality of civil servants? I think this arrangement will not be conducive to the neutrality of civil servants in the end, but will only distance civil servants.

Therefore, I think in this dysfunctional Government, Deputy Directors will not be able to help, and will in the opposite aggravate the problem. First, the arrangement will increase the instability and separation tendency of civil

servants, making it hard for them to remain loyal to the authorities. When the authorities put on a conspicuous display of mistrust of civil servants, how can there be communication? Moreover, this will only widen the gap between the Government and its dissidents, for Deputy Directors will again adopt the practice of incorporating supporters and boycotting dissidents when they take office. If so, how can the gap between the Government and its dissidents not be widened? The arrangement will only further one-sided politics.

When politics become increasingly one-sided and "one-voice", what will happen? Deputy President, the people of Hong Kong have no time for political debates. They can even be described as politically apathetic in general, and they dislike endless discussion on political topics. They may be interested in titbits, like whether Ms Audrey EU is smartly dressed today. However, they may not be quite interested in what Ms Audrey EU said earlier in the debate. Nevertheless, the people of Hong Kong have a special trait, that is, when the Government goes overboard, they will come forward. Therefore, if the authorities keep going in this direction in creating the position of Deputy Director, it will depart farther and farther from the right track, and the people of Hong Kong will eventually come forward. In other words, this will give rise to social instability.

Therefore, Deputy President, I do not think that the present arrangement Deputy President, our opposition is to no avail. Frankly, if the authorities like to dig their own graves, we can do nothing to stop them. What we should say, we have already said. We have no way to force the authorities to heed our views if they refuse to do so. So, I am not furious today, for I just want to illustrate to Members how ridiculous the situation is.

Mr Frederick FUNG said earlier that the Hong Kong Association for Democracy and People's Livelihood (ADPL) had all along supported the accountability system and the creation of Directors of Bureau, and that the ADPL is now in support of the creation of Deputy Directors. Excuse me, I think his remarks were wholly illogical. What is his point of argument? He said that he could not support the practice of Administrative Officers (AOs) governing Hong Kong forever, and he had to support the arrangement of political appointees governing Hong Kong when the road to universal suffrage reached an impasse. Why has the road to universal suffrage reached an impasse? Actually, under a universal suffrage system, politically appointed officials returned by universal suffrage will link inextricably with a good civil service

system. Why? Take Members and the Secretariat of the Legislative Council as an example. Members who are here today may not be here the next term. Incumbent Members may be of good quality, but Members of the next term may not be necessary so. Or, Members of this term are not so good, while Members of the next term may be better. No matter how, the Secretariat is a standing institution which will inform Members of the traditions of this Council, so that the basic secretarial work, basic system and basic procedures will be carried on. These are the cornerstone for social stability

Hence, a good civil official system or a good civil service system will go perfectly well with the wish and aspiration for universal suffrage. However, when a system is swelled with an increasing number of appointees, when it grows one-sided and incorporates only voice of support, it deviates more and more from a democratic universal suffrage. If he supports the political appointment system out of his dislike of AOs governing Hong Kong, does it mean that the mode of governance under the political appointment system will never fail? By then, all the resources will be controlled by one person and all the posts will be assigned by the same person. Do you mean you like to see this mode of governance be adopted in Hong Kong? Mr Frederick FUNG has presented this argument a number of times and I have listened to it many times. I do not respond to him every time I hear this, but I think this time, as an English idiom goes, enough is enough. He has already said it many times, and it should be enough. I think it will be improper if I remain silent.

I think if the ministerial system now under discussion is developed on the ground of a system of democratic election and universal suffrage, it will be an advanced system. But if the expansion of the appointment system is launched to suppress democracy, such a system will deviate further from universal suffrage and democracy. I wonder if the ADPL or Mr Frederick FUNG considers that it will do any good to Hong Kong.

Deputy President, my attempt to convince the Government will be in vain, but I think I have to spell out unequivocally that we do not oppose purely for the sake of opposing. I have been in this legislature for such a long time that I have witnessed how the Government gradually loses its ability to lead, how it gradually becomes dysfunctional and falls into a stage of decline and slackness.

From today onwards, the authorities will appoint Deputy Directors, and we will see what kind of a freak it will develop into. No matter these remarks of mine are useful or not, I have already spoken for 13 minutes and should thus stop. Thank you.

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

MR TAM YIU-CHUNG (in Cantonese): Deputy President, concerning the creation of the one-and-a-half tier of political accountability system, we have discussed it time and again in this Council. Last Wednesday, we held another discussion again. Today, Mr Albert HO has moved the resolution under the Interpretation and General Clauses Ordinance to reiterate the Democratic Party's opposition in order to indicate their spirit of opposing the issue from the beginning to the end. Of course, I have heard of his views just now, feeling that there is not much difference compared with those previously expressed. In addition, as tonight's meeting will surely be very long because we have to deal with two other Members' motions, I am not going to repeat the DAB's views.

However, I have just heard of the views of two Members of the Civic Party. When Mr Ronny TONG mentioned the grooming of political talents, he queried whether those who had held the position of Deputy Director of Bureau, with a monthly salary of nearly \$200,000, would be so stupid to run in direct elections, which is no easy task. As the monthly salary of a Legislative Council Member is only \$50,000-odd, they will not take such a move. Of course, all these are just hypothetical situations. What is the decision of these people by that time? I wonder whether his argument is made on the basis of a suspicious attitude without proper justifications. Besides, in my opinion, the work of the Legislative Council is in fact very attractive, as reflected by the number of candidates running in the Legislative Council election this year. Even retirees are willing to give up their leisure life, not to mention that some businessmen are willing to give up their businesses in the hope that they can join the Council and serve the community. So, we do not have to worry too much about this point.

Besides, a representative of the Civic Party ran in the Chief Executive election last year. I think, if their representative had been elected as the Chief Executive, their views would have been quite different. Just now, there is an

argument that the expansion of the accountability system is equivalent to an increase in the number of political henchmen. I think such an argument has pushed the situation to the extreme.

Ms Margaret NG has raised some of her concerns in her speech just now. She asked whether the addition of that tier of officials would lead to conflicts with civil servants, thus causing greater difficulty for the operation of the Government. She even criticized that the current operation of the Government was very poor. However, it is believed, as reflected by opinion polls, the credibility of the Government in recent days has been at a relatively high level. Despite this, the Secretary should not be complacent.

However, the Government should take Members' concerns into account. It should consider whether such problems will occur and whether this will lead to problems and conflicts between civil servants and principal officials within the Government, thus complicating the situation. According to our recent observation, however, it seems that no open conflicts or problems have been seen. As Members have repeatedly raised these concerns to the Government, I think these are well-meaning advice. Although they may not be tender prompts, they can be regarded as advice out of good intention.

We have no idea who will be appointed to the future expanded team of the accountability system by the Chief Executive eventually. I believe these newly appointed Directors of Bureau, Deputy Directors of Bureau or Political Assistants may not all run in the Legislative Council elections in the future. However, at any rate, I think if there are more political talents in the structure of the Government to help with the improvement in governance so that the people are benefited, it is worthwhile to spend more resources in this aspect.

(THE PRESIDENT resumed the Chair)

After the Schedule has been passed today, all the procedures to be dealt with by the Legislative Council for this arrangement has come to a close. I hope the expanded accountability system will be a success and bring us benefits, thus proving that this policy direction of the Government can tie in with public interest. Thank you, President.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Constitutional and Mainland Affairs.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I must first express my gratitude to Members for taking the opportunity presented by this debate to reflect their views to the Government yet again. I would like to offer my response.

In the debate just now, some Members continued to query the Government's move to create the two new tiers of politically appointed posts. I should perhaps restate our basic philosophy here.

First, the purpose of creating the two new tiers of politically appointed posts, namely the posts of Deputy Director of Bureau and Political Assistant, is to perfect the entire political team. The new politically appointed officials can render more assistance to Directors of Bureaux and Secretaries of Departments, in turn upgrading the SAR Government's overall governing capability.

Second, the Government hopes to expand the room for political participation. It is hoped that apart from turning to political parties, we can also look to the commercial sector, the professions, the academic sector and even former civil servants for people who aspire to a political career. The aim is to provide another channel of political participation and serving Hong Kong on top of the Legislative Council and District Council elections.

Third, we hope that with the two new tiers of politically appointments, politically appointed officials and civil servants can concentrate on their respective duties and serve the community in a complementary partnership. Politically appointed officials will mainly be responsible for the political aspects of policies while civil servants under the civil official system will focus on policy analysis, recommendation and execution.

A satisfactory system of political appointments will better enable us to protect our professional, permanent and politically neutral Civil Service. There will also be a thicker "fire wall" in the future, with the result that all pressure and accountability arising from political incidents can be borne by politically appointed officials.

The SAR Government's present proposal is marked by a very long-term and grand objective — paving the way for electing the Chief Executive by universal suffrage.

In December last year, the Standing Committee of the National People's Congress already set the timeframe for implementing universal suffrage in Hong Kong. Under this timeframe, it may be possible to elect the Chief Executive by universal suffrage in 2017, and in the case of the Legislative Council, the year is 2020. Therefore, we hope that in the coming 10 years, more channels can be created to expand the room for political participation and nurture a greater number of political talents.

We can sense that the coming Chief Executive elections will all be marked by competition, not just competition but also mounting competition. In 2007, we could see how Mr Alan LEONG and Mr Donald TSANG vied against each other in order to become the Chief Executive of the third term. They must explain their governing philosophies in the coming five years to the public on television. I believe that the election in 2012 will continue to be marked by competition. In the election of the Chief Executive by universal suffrage in 2017, it will be necessary for all candidates to have the support of an integrated team which can help him draft the election platform, canvass the support of and nomination by various sectors and conduct door-to-door campaigning. The 3 million or so electors can then select their ideal candidates by "one person, one vote". With this new system, the candidate successfully elected as the Chief Executive will have enough room for picking able and virtuous persons from his election team to form a cabinet, a political team and a political alliance with various political parties and groupings.

Today, Members have asked a wide variety of questions. For example, referring to the fact that the Chief Executive is not yet elected by universal suffrage, some of them wonder whether this is the right time to expand the system of political appointments. Some question whether this system is

intended to pass political advantages secretly and foster favouritism. Third, some are concerned about the order of precedence and lines of responsibility regarding Permanent Secretaries and Deputy Directors of Bureaux.

To begin with, I wish to respond to Mr Albert HO's and other Members' view that since the Chief Executive of Hong Kong is not yet elected by universal suffrage, it is not the right time to expand the political appointment system into a three-tier structure. I wish to point out that despite the absence of universal suffrage, the Chief Executive is still duly selected under the present constitutional framework. He is therefore the head of the Government. What is more, he and other principal officials are required under the Basic Law to hold themselves answerable to the Legislative Council. For this reason, we in the Government are unable to do anything in case the bills and budgets we put forward cannot receive the support of the Legislative Council.

Principal officials of the SAR Government must always hold themselves accountable to the public through the mass media, and the SAR Government must frequently face the challenges of judicial reviews in court. Consequently, despite the absence of universal suffrage in the meantime, our constitutional system is already marked by co-ordination and checks and balances. Our Government is able to meet the current constitutional requirements, and it is responsible and answerable to the public. That being the case, we are of the view that Hong Kong is already well-equipped to further develop the political appointment system and pave the way for implementing universal suffrage within 10 years.

Many Members have also questioned whether the system of political appointments can really be implemented well without any favouritism towards certain political parties or groupings. Actually, in the rest of the world, heads of governments returned by elections will all invite people who have similar political convictions with them to support their platforms and join their cabinets. I am sure that if Mr Alan LEONG had been successfully elected as the Chief Executive of the third term last year, he would also have invited people sharing his political convictions and supporting his platform to serve as principal officials, instead of asking any people with vastly different political convictions to join his cabinet. This explains why Chief Executive Donald TSANG's proposal of expanding the system of political appointments during the third term of the SAR Government is in fact based on some conditions — all Deputy Directors of Bureaux and Political Assistants first joining the Government must accept and support the policy agenda put forward by the Chief Executive in the

election campaign last year, and they must be prepared to work for the implementation of universal suffrage in accordance with the Basic Law and hold themselves accountable to the public. All these conditions are our fundamental considerations when selecting prospective appointees.

Last week and earlier today, Mr Frederick FUNG mentioned several times that we should no longer adhere to the system of Administrative Officers governing Hong Kong. The SAR Government is of the view that the Administrative Grade and civil servants of other professional grades are all important segments of Hong Kong's governing framework. We must count on the 160 000 or more civil servants in the several dozen government departments to deliver services to the public every day. The Civil Service of Hong Kong is noted for a fine tradition — it is professional, permanent and politically neutral, long marked by a positive attitude towards serving the public. However, with all the developments before and after the reunification in 1997, Hong Kong's political system is now vastly different from what it was in the 1970s and 1980s. There are elections in Hong Kong now. And, in a society with a culture of elections, the public naturally expect the Government to be more willing to heed public opinions and answer the aspirations of society. As a result, a sole reliance on Administrative Officers or civil servants for policy analyses and formulation is no longer adequate — this is necessary, but not adequate. For this reason, we must invite some people with political backgrounds and beliefs to join the Government. That way, during the process of policy formulation, while we can benefit from the policy analyses by civil servants, that is, while Permanent Secretaries and the Administrative Grade can provide Directors of Bureaux with policy briefings and analyses directly, colleagues from another stream in the Government, that is, Deputy Directors of Bureaux and Political Assistants, can conduct assessments of society's political views and responses. Following this, accountability officials, that is, Directors of Bureaux, can collate policy analyses and political assessments and then submit policy recommendations of the Bureaux and Directors of Bureaux to the Executive Council.

I also want to say a few words on Mr Frederick FUNG's belief. Actually, one who is engaged in public administration in Hong Kong must recognize the existence of pluralistic political beliefs. One must not think that there is any unitary belief. Policy analyses and political convictions are therefore both very important. I must emphasize that the creation of the posts of Deputy Director of Bureau and Political Assistant to Director of Bureau must not be regarded as political training classes. The new appointees must be

prepared to "go to the battlefield" immediately after assuming office. They must be prepared to serve the public right away and must not regard their appointment as simply a chance to enrich their personal experience.

Several Members appear rather concerned about my situation. Mr LEUNG Kwok-hung — he is not present now — has commented that my task is rather difficult, as I must bear the political responsibility arising from constitutional development and the system of political appointments. I am of the view that the policy concerned is indeed very important, but it is fortunate that the whole governing team of the SAR Government and even many political parties and groupings and Members in this Council are also very concerned about the issue. That is why over the past few years, we have managed to conduct several exchanges of views and several rounds of public consultation. There are now two outcomes, both of which emerged in December last year. In mid-December last year, the Finance Committee approved the creation of these two new tiers of politically appointed posts. And, in late December last year, the Standing Committee of the National People's Congress set down the long-term direction of Hong Kong's constitutional development and the timeframe for its implementation of universal suffrage. With these two outcomes, Hong Kong's further constitutional development can be brought to the right track.

Next, I wish to respond to Dr KWOK Ka-ki's view by saying that if this conviction of ours can take shape now, there will be very positive effects on our future constitutional development. There is no doubt that the Chief Executive is returned by an indirect election now, but it is still necessary, and worth the while, to gradually pave the way for electing the Chief Executive by universal suffrage in 2017.

Ms Margaret NG has also expressed her view, saying that the Government is currently dysfunctional. But this is entirely not the case in reality. If Members are at all observant, they will realize that most of the bills put forward by the different terms of Government since the reunification in 1997 have been passed, and so have all the budgets put before this Council. Since Mr Donald TSANG became the Chief Executive about three years ago, both during the second term and after his successful election to the third term, the popularity ratings of Chief Executive TSANG and the Government have been quite high, all the time standing at 60% or so. Naturally, we will not allow ourselves to become complacent. But still, I must point out that on the basis of all these facts, one simply cannot describe the SAR Government as dysfunctional. However, Madam President, we do realize that our work can be meaningful and

fruitful only if we can obtain the understanding and support of different political parties, groupings and Members in this Council and get the same from the general public.

Ms Margaret NG and other Members still have one doubt. Since there will be a total of three tiers of politically appointed officials after the creation of these two new tiers of political appointments, they wonder about the line of command of the politically appointed officials in relation to Permanent Secretaries and civil servants. In foreign countries, for example, the United Kingdom, there is also a system of politically appointed ministers consisting of several tiers, namely, the tiers of Secretary of State, Minister and Permanent Secretary. In foreign countries, political matters are handled by the political team, and permanent policy matters are handled by Permanent Secretaries and civil servants. This is a feasible approach. Hong Kong must of course continue to explore in this respect. But I can say that after six years, the grinding-in of politically appointed principal officials and Permanent Secretaries and civil servants has already long completed, and the division of labour between them has become increasingly clear.

Next, I wish to respond to Mr Albert HO's opinion. I wonder whether Mr HO is in fact "over-critical". After going through the ordering in Schedule 6, he has made many conclusions based on speculations. But the logic of such ordering is very simple. Officials from the position of Chief Secretary for Administration down to Under Secretary are all politically appointed. Officials from the position of Permanent Secretary to other Directorate officials are civil servants. Therefore, the logic of ordering is very simple. It is a division into two categories. As I have already explained to Members in this Council, Permanent Secretaries are directly responsible to Directors of Bureaux, and so are Deputy Directors of Bureaux and Political Assistants. These two streams of officials must therefore work with one heart for their respective Bureaux and the general public.

In conclusion, I wish to point out that our proposal to further develop the political appointment system aims to pave the way for the implementation of universal suffrage. Our hope is to establish the hardware of an electoral system in line with the software of political talents, so that the overall constitutional development of Hong Kong can keep abreast of the times and progress in accordance with the timeframe for implementing universal suffrage.

Our amendment to Schedule 6 to the Interpretation and General Clauses Ordinance today is purely technical. But since Members have put forward so many policy and political issues, Madam President, I must respond to their views one by one. I hope Members can support the implementation of the system and vote against Mr Albert HO's motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr Albert HO

(Mr Frederick FUNG stood up)

MR FREDERICK FUNG (in Cantonese): President, I have a point of order. There is some misunderstanding regarding the words I said earlier which the Secretary cited. May I clarify that part of my speech?

PRESIDENT (in Cantonese): Please clarify that part of your speech only.

MR FREDERICK FUNG (in Cantonese): Thank you, President. President, the Secretary said earlier that when I referred to the Administrative Officers (AOs) governing Hong Kong, I meant the 160 000 civil servants. For he thought that the governance of Hong Kong was all along delivered with the assistance of the 160 000 civil servants, and the present appointment system only allowed more people to join in.

But this is not what I meant to say at the time. I meant that we should establish a civil official system via this system. I said in the past that Hong Kong was governed by AOs, for the tasks of developing policies, conducting consultation on policies, and making decisions on and implementing policies were all concentrated on AOs. If these tasks are to be carried out by appointed Directors and Deputy Directors of Bureau, civil servants will no longer undertake this part of work, they will then be purely responsible for information collection and the offering of views and possibilities, and the power of decision will fall on the Directors of Bureau. A civil official system will then be established. I absolutely have no intention to belittle the civil servants.

Thank you, President.

PRESIDENT (in Cantonese): I now call upon Mr Albert HO to reply.

MR ALBERT HO (in Cantonese): Madam President, the Secretary has emphasized from the beginning to the end that this is a technical amendment, saying that I have introduced lots of discussions on policies by means of such a technical amendment.

However, I think the Secretary is well aware that from the beginning to the end, the Accountability System for Principal Officials (accountability system) as a whole, from the moment of its first introduction to its further development as of today, does not have any legal basis at all. For such a major constitutional reform, it is not based on any legislation and papers submitted to the Legislative Council are all technical in nature, if not requests for funding, as amendments on apparently minor issues were proposed for the implementation of the so-called accountability system in the past. So, we have no alternative but to voice our objection on occasion like this. In fact, from this, we can see that our constitutional system as a whole lacks a sound legal basis. I think this warrants our attention.

However, the Government will certainly say that there is no problem as all these are part of the government structure. But should we put this into practice in such a manner? Moreover, no comprehensive review has been taken place during the past few years — in which a Chief Executive has resigned, a by-election has been held and a new Chief Executive has been returned — after the implementation of the accountability system. However, a further development of this system is demanded today. Is this proper to do so? Should an amendment be made through a technical Order to seek our support to the Government once again for introducing such policies, such a fundamental revamp to the constitution?

Secondly, according to the Government's argument as a whole, such an arrangement is complementary to our move towards universal suffrage, which means the election of the Chief Executive by universal suffrage in 2017. The Secretary has certainly fixed his eyes on the interpretation of the National People's Congress (NPC), wordings of which are crystal clear. The Secretary will certainly bear in mind the remark of the Standing Committee of NPC that the election of the Chief Executive by universal suffrage can be implemented in 2017. But does this mean that it will be realized? The Secretary has also told

us clearly that a lot of mechanisms in Hong Kong need to be passed. Who can guarantee that the election of the Chief Executive by universal suffrage in 2017 can be endorsed by these mechanisms smoothly?

In 2000, all parties and groupings expressed support. But in 2004, two major parties changed their minds. Who can guarantee that these major parties will not change their minds by 2015 or 2016? Who can guarantee that the incumbent Chief Executive will not change his mind? Even if the Chief Executive will be returned by 3 million people in a "one person, one vote" election in 2017 according to their wordings, who can guarantee that there will not be any unfair pre-selections, thus depriving the people of a real choice? This is the first point. So, the basis of the Secretary's argument has been shaken.

Besides, even though this is taken as the target, there will be a complete freeze over the decade from 2007 or 2008 to 2017 as the two opportunities of further development of democratic policies and the further increase in the seats of direct election have been snuffed out. So, on the one hand, the democratic development has been stifled and on the other hand, the power of a Chief Executive who is returned by a clique which is appointed or semi-appointed and undemocratic has been strengthened. This is precisely the reason why we oppose it. Any political powers must be proportionate to its democratic accountability. If he is returned by only a small group of people, I am sorry to say that no one can put his mind at ease on the further strengthening of his power and no one can put his mind at ease on the unlimited expansion of his power so that he can increase his political officials layer by layer. So, it is difficult for the first basis of the Secretary's argument to hold water.

Secondly, the Secretary has put the emphasis on the expansion of the room for political participation this time. This time, he has not mentioned the nurturing of political talents any more. I remember that he mentioned the nurturing of political talents at the beginning. But later, he found that this was not quite right because these Deputy Directors of Bureaux have to go to the front themselves to answer our questions. It turns out that these "apprentices" have to take up the tasks of their bosses when under training and face all the media in the territory and the questions of the Legislative Council. However, they are still under training. How can his argument be justified? So, the point just raised by Frederick FUNG is quite right. In fact, Frederick FUNG should have

voiced objection on this ground alone. But I do not know why he, after numerous turns, has eventually served as the convoy of the Secretary. How can this be possible?

Well, the Secretary does not mention the nurturing of political talents today but the expansion of room for political participation. Ronny TONG, our colleague, has made a very good point on this. First of all, who are these people? Are the identified potential appointees really interested in taking part in politics? How many of them will take part in politics in the future? These are out of the question. However, TAM Yiu-chung maintained that some of them would do so. Frankly speaking, as Hong Kong has gone through a lot of difficulties in the past two decades, many people who have aspired to take part in politics have already shown their commitment. Will it be necessary for the Government to attract them by offering high-pay and high-ranking positions? Do these identified potential appointees really have political commitment?

On the other hand, will those who are selected in an appointment culture really embrace the core value of democracy? I do not believe it. I agree to Ronny TONG's remarks that many of them will turn to the business sector after leaving the Government which has only created a revolving door for them. I really cannot see how many of those who are identified as political talents will, under the Government's training, nurture a set of political ideals which will tie in with the values such as democracy and human rights which have been pursued by Hong Kong people.

Madam President, I must also mention another drawback, that is, the retrogression of democracy due to this appointment culture. Just now, I mentioned the problem of disproportion, inadequate accountability and the impossibility of imposing checks and balances through democratic elections. Nevertheless, the authorities still seek for the strengthening of power. Madam President, I must tell you the Government has indicated that candidates who have been defeated in elections, including the District Council (DC) elections, will not be appointed, but in this term I know that in Kowloon East alone, a number of DC members who have been defeated in an election have been appointed. If you do not believe it, you can ask TAM Yiu-chung who is not in the Chamber now. Many of them have been appointed after a screening process based on their affinity with the Government. Who will challenge it? Even though they have been defeated in elections, they will be appointed soon afterwards. The

Government has been nurturing political talents in this way. After being appointed, will they run in the election again? I have no idea. But our democratic culture will be worn down and even develop in a retrogressive way in such an appointment culture.

A number of colleagues have also pointed out just now that the system as a whole wants a clear and proper screening mechanism. A colleague has put it vividly that this is a division of spoils like the selection of torch bearers. The outcome has been found we probably have heard people's response today. It is an uproar. Many of the appointees are not proportionate to the posts and should not have taken up such posts. But the Government has appointed them.

Last week, Mrs Anson CHAN put it very right. With 30-odd years of administrative experience in the Government, she can see clearly that the system will breed corruption. In fact, as I said before, the emergence of the accountability system as a whole is due to the fact that the authorities do not have trust in the civil servants and therefore tries to usurp their powers. I fully agree with Ms Margaret NG on this point. After the usurpation of powers, the authorities have to further consolidate the powers of this clique centred by the Chief Executive. Of course, there may be an invisible hand behind the Chief Executive, giving them orders and instructions. Today, I will set this aside for the time being. Later, we may come to another issue concerning who is the boss behind the Chief Executive.

However, the screening process at this level of the system as a whole is conducted in black-box operation, resulting in the transfer of benefits and practice of favouritism. Frederick FUNG said that it did not matter even though there might be collusion between the Government and the business sector because, in short, he disliked colonial officials. I really do not understand why he can say such things. So, I really feel that such a system will further devastate the current political system, which is already quite unhealthy.

The Secretary has just now said that although it is not a fully democratic system, there are two channels for accountability. One of these channels is the public. As there are millions of people watching television and reading newspapers and the appointees have to answer questions from journalists, they must be able to attain a certain level of quality. Regarding this point, Mr Ronny TONG asked a very good question last time: Why did the authorities seek help from so many media? They are all spin doctors. Now the authorities have made a lot of window-dressing efforts to serve their very short-term political

targets in order to cover up the inadequacies of the Government and garner public support, which will only last for a very short time in my opinion. However, can these stand the test of time? Let us wait and see whether such a system can stand firmly.

Besides, the Secretary also mentioned the judicial system. This is all the more laughable. After reunification, many government officials — of course, they told me in private — and even judges in the judiciary also said that there had never been so many judicial reviews before in Hong Kong and such judicial reviews imposed a lot of political pressure on the judges. I also understand that our judges are loyal to their duties and will follow as far as possible our excellent judicial tradition and the spirit of rule of law when deciding the cases. However, both their workload and political pressure are heavy. What are the reasons for that? Because no satisfactory solution can be arrived at even though these problems have reached the Council. Even though many issues have been raised with persuasive grounds, they have fallen on the deaf ears of the Government which will invariably give us the same response like playing the same tape. Thus, this has made us feel a sense of helplessness and many people outside the Council rage.

Madam President, I appreciate that our people are willing to apply for judicial reviews or challenge the judicial system in a peaceful and rational manner. Sometimes, they have to stage a demonstration. Does the Government want to see that thousands of people or even half a million of people take to the street and stage a demonstration? Does the Government want to see such a phenomenon before it has realized that there are checks and balances? Then our Chief Executive and government officials will have to again put up an excuse that they have suffered a pain in the foot or chest. Does the Government want to see such a situation? So, Madam President, I think the problem is that the Government is too obstinate, still in a blind alley. I am extremely dissatisfied with this.

We really do not want to rebut Mr Frederick FUNG. But to be frank, after hearing his arguments twice, I cannot but rebut him. Frankly speaking, I have heard a lot of the speeches of the Hong Kong Association for Democracy and People's Livelihood (ADPL) which comprises only one Member now *vis-a-vis* four in the past. But this time, the quality is the lowest. It does not matter if they want to serve as the convoy of the Government. But please give us a better justification. Mr FUNG only said that he did not like colonial relics and apart from that, everything was good and acceptable, including collusion

between the Government and the business sector. His argument is more or less like this. Of course, he did not say it in an explicit way. He has questioned if there is any place in the world where the Government-business collusion does not exist. To our surprise, he has uttered such words. I really have to take a good look at him to see whether he is Frederick FUNG. Just now, I took one more glance at him to see whether he was the Frederick FUNG having meetings with us in the pan-democratic camp. This is really unacceptable. So, Mr TAM Yiu-chung closely embraced him last week, commenting that he was rational. Of course, he was scared to hell, thinking that

(Mr TAM Yiu-chung stood up)

MR TAM YIU-CHUNG (in Cantonese): President, a point of order. I would like to make clarification.

PRESIDENT (in Cantonese): Has he misunderstood your speech?

MR TAM YIU-CHUNG (in Cantonese): Yes. Just now he said that I embraced Mr Frederick FUNG. But I did not. *(Laughter)* So, I want to clarify.

PRESIDENT (in Cantonese): You can make clarification after he has finished his speech. Mr Albert HO, please continue.

MR ALBERT HO (in Cantonese): Madam President, very simple, I refer to an embrace in mind and in spirit. *(Laughter)*

Mr Frederick FUNG feels extremely uneasy today. It does not matter that some colleagues have commended him. Sometimes, if I am commended by colleagues of the DAB because I have spoken with the force of justice, I will not

resist it. For instance, an "Orange Action" is launched today. They are all wearing orange outfits and I am also delighted. Although we have different dreams, I very much welcome that they are all in orange today.

(Mr TAM Yiu-chung stood up)

MR TAM YIU-CHUNG (in Cantonese): President, my clothes are not orange in colour.

PRESIDENT (in Cantonese): Mr TAM, you can ask him question and he can decide whether to answer it or not. Please sit down first.

MR ALBERT HO (in Cantonese): So, Madam President, I think the most serious mistake in logic made by Frederick FUNG is that he thinks it is undesirable to have colonial officials ruling Hong Kong and therefore, almost all other systems are acceptable, even an oligarchy which is returned by an undemocratic appointment system behind closed doors. He further asserted that government-business collusion occurred everywhere and so, it did not matter. This is what he meant. But I really find it hard to accept it. If colleagues of the ADPL still uphold the ideal of democracy, I hope they will do some soul-searching.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, please clarify the part of your speech which has been misunderstood.

MR TAM YIU-CHUNG (in Cantonese): President, Mr Albert HO might have misunderstood two points. Firstly, he said that Frederick FUNG and I embraced with each other. Just now, he added that it was an embrace in our hearts. But I do not have the word "embrace" in my heart at all. So, I have to clarify. *(Laughter)*

Secondly, he said that I was wearing an orange outfit. But I would like to point out that the colour of my outfit is approved and designed by the designated supplier of the Olympiad and this colour belongs to scarlet in the Olympiad series.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, I know

MR TAM YIU-CHUNG (in Cantonese): Because he just now said that it was orange, I have to clarify that it is scarlet.

PRESIDENT (in Cantonese): I am also obliged to point out that the point regarding the colour of your outfit is not part of your speech just now. But Mr Albert HO did mention it. So, I allow you to make clarification. Otherwise, it seems that we have colour blindness when one says that it is red while another says that it is orange. No one here would like to see this. However, your clarification should end here.

I now put the question to you and that is: That the motion moved by Mr Albert HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki and Dr Fernando CHEUNG vote for the motion.

Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, 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 against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, 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 motion.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG and Mr CHEUNG Hok-ming voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion and 20 against; while among the Members returned by geographical constituencies through direct elections, 24 were present, 15 were in favour of the motion and eight

against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Two motions without legislative effect.

PRESIDENT (in Cantonese): First motion: Ceasing the imposition of the levy on employers of foreign domestic helpers.

I now call upon Mr Tommy CHEUNG to speak and move his motion.

CEASING THE IMPOSITION OF THE LEVY ON EMPLOYERS OF FOREIGN DOMESTIC HELPERS

MR TOMMY CHEUNG (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed.

Madam President, in 2003, the former Financial Secretary Mr Antony LEUNG, when presenting the Budget for the year 2003-2004, started by citing a famous line by Charles DICKENS, which reads "It was the best of times; it was the worst of times." The matter under discussion today, the "foreign domestic helpers (FDH) tax" (the Employees Retraining Levy), is precisely a product of "the worst of times" that year. However, the past financial year closed with the Government sitting on a surplus exceeding \$120 billion. I think this is "the best of times" to abolish that levy.

The period from late 2002 to early 2003 was indeed "the worst of times" in Hong Kong. Because of the impact from the outside, our economy was already in the bitter winter of negative growth. Adding to that was the rampage of SARS. That was tantamount to adding ice to frost. Because of economic recession, government revenues dropped sharply. The Operating Account was "in the red" for five successive financial years.

For instance, the year 2001-2002 and the year 2002-2003 each ended up with consolidated deficits amounting to more than \$60 billion. For the year 2003-2004, the estimate was that there would be further consolidated deficits of

more than \$67.9 billion. At that time, the fiscal reserves available could only keep the Government going for nine to 11 months, which was below the minimum fiscal reserves then set by Financial Secretary LEUNG, namely, an amount able to keep the Government going for at least 12 months. There was unprecedentedly heavy pressure calling for new sources of revenue and elimination of deficits.

It was at this point that the Government introduced the "FDH tax". Although some other justifications were used to embellish it, those with sharp eyes could instantly see that it was for the purpose of replenishing the empty Treasury. At that time, employers of FDHs (basically members of the middle class) reluctantly accepted it for the sake of public good.

However, the time has changed; so has the situation. Our economy has had a "V-shaped" rebound from the rock bottom since mid-2003. In the following year, the consolidated deficit that had been around for some years even disappeared. In the last financial year, the Government even notched a record-breaking fiscal surplus of more than \$115.6 billion. The figure to be ultimately verified is expected to be even higher as the consolidated surplus for the first 11 months of last year alone has already been revised upward to \$123.5 billion. The whole year's fiscal surplus can easily be in the region of \$130 billion. So, it is only reasonable for the "FDH tax", a product of a time of fiscal deficit, to be removed immediately now when the Government is "replete" with fiscal surplus.

Although the Liberal Party holds that employers of FDHs are vested with "reasonable expectation" allowing them to ask the Government to "give some kick-back on making gains", it has come to my notice that last Wednesday Secretary Mr Matthew CHEUNG, when giving his reply to the comments made on the Budget, stated that: "In order to ensure the stable and sustainable development of the training and retraining services, the Government at present deems it necessary to maintain the arrangement of collecting the levy from employers of FDHs." It appears that the Government is determined to "pocket" the levy, something squeezed out of the middle class and amounting to more than \$1 billion a year, without the slightest idea of "spitting it out".

However, in my opinion, such an approach of the Government is — to say it brusquely — somewhat "shameless". What is more, if we look back to the justifications used by the Government in the past in introducing the levy, it even gives people the feeling of the behaviour of "Big Bully".

On 12 March 2003, Mr Stephen IP, the then Secretary for Economic Development and Labour, presented the following reasons at a special meeting of this Council's Panel on Manpower to usher in the "FDH tax". According to him, as there was a levy for bringing in foreign workers, so it was necessary to bring the admission of FDHs on par with other schemes admitting foreign workers. Also, given the fact that the economy was then in recession and the unemployment rate was high, those employing FDHs should make some contributions to the training of local workers by all means.

I would like to point out that on 28 June 1995, the late Honourable Samuel WONG of this Council put to the Government the question whether or not there would be levy on those employing FDHs. According to the categorical reply given on behalf of the Government by the Secretary for Education and Manpower, Mr Michael LEUNG, "Foreign domestic helpers come under a separate scheme which is different from the labour importation scheme." So, there was no levy. Eight years later, in 2003, the year with acute fiscal deficit, the Government changed its words, saying that it was necessary to be fair. So, the question as to when to impose the levy and when not to impose the levy is basically at the discretion of "government officials capable of double talk". "Senior officials" can do "quadruple-talk". "HKSAR senior officials" even can do "septuple-talk". This explains everything. All was up to him then.

Furthermore, if it is said that during a time of economic recession and high unemployment rate, it is reasonable for those employing FDHs to share the cost of training local workers as they, more or less, do get the service of foreign workers. However, the two factors, namely, economic recession and high unemployment rate, are now non-existent. Even if huge concession is to be given to claim that those employing FDHs should share the cost of training local workers, the question is how much ought to be levied in order to be fair.

Next, perhaps we should take a look at the information given about the Employees Retraining Board (ERB) first. During the six years between 2002-2003 and 2007-2008, the annual spending of ERB, on the average, stood at

about \$380 million. Why is it necessary to collect \$1.1 billion from the "FDH tax" every year? \$1.1 billion is almost equivalent to 300% of ERB's annual spending. Basically, it has been very unreasonable right from the start.

Perhaps the Government itself also finds the justifications used in the past shaky, and, therefore, has lately simply adopted an approach of "beyond reasoning", resorting to holding up ERB as its "shield". Last Wednesday, the Secretary just stated, without a hitch, that the "FDH tax" was to provide ERB with "stable" and "sustainable" funding. However, today, at a time of fiscal affluence, something originally created to eliminate fiscal deficit has become, let me repeat, a mean to provide "stable" and "sustainable" funding to ERB, which is set for expansion in function.

Madam President, at this point of time it is already very late. It comes to my mind a famous Shanghai dish, the eight-treasure duck. The Government originally wanted to use the "FDH tax" to prepare a spicy-sauce duck, asking the middle class to foot the bill. However, after further consideration, as the sum collected was so large and a top-notch big rice duck was so hard to come by, it was believed that it would have been a waste to prepare just a spicy-sauce duck by stuffing it with only one ingredient called "retraining". It also would not look good on the table. There was the fear that there might be criticism of "cheating on the scale", and demand for "refund". Then a brilliant idea hit on. It was to throw in all seven ingredients, namely, vocational training, apprenticeship scheme, Youth Pre-employment Training Programme, Youth Work Experience and Training Scheme, Skills Upgrading Scheme, skills training programmes, and retraining for the middle-aged, regardless of the presence or absence of justification, no matter you like it or not. Anyway, an eight-treasure duck is prepared for you. Money is collected and "refund" is out of the question.

I would like to reiterate on behalf of the Liberal Party that the Liberal Party endorses the work of ERB, and agrees that it is necessary to maintain economic vitality and competitiveness by nurturing a quality manpower and workforce. However, the Liberal Party definitely is against the Government using ERB as a "cop-out" and treating the employers as "dupes" by using the chance arising from the ERB's reform to convert Employees Retraining Scheme into a Manpower Development Scheme so as to take advantage of the opportunity to give retraining unlimited expansion and make whimsical interpretation. Also, training work and the relevant expenditure now under the

Labour and Welfare Bureau and the Labour Department are being stealthily transferred, *in toto*, to ERB. That is actually getting others to foot the bill of their training work.

In the opinion of the Liberal Party, it is the Government's due responsibility to upgrade the overall quality of the workforce. That being a responsibility to the community, the cost should, as in the cases like education, security and social welfare, be covered by general revenue instead of "raising the knife upon" 250 000 employers of FDHs in Hong Kong. Members of the middle class have been supporting the Government's training work by paying tax. Now they are required to additionally pay the "FDH tax". This is in fact double taxation, which is utterly unacceptable to the Liberal Party.

What is more, the accumulative total of the "FDH tax" collected now stands at about \$4.5 billion. With the investment returns alone yielding \$300 million - \$400 million a year, there is definitely enough money to cover ERB's expenditure. Hence, so long as the levy already collected is put to good uses, the operation can run very well. There is no justification to sponge off the middle class indefinitely by "raising the knife upon" them, continuously "holding them down for looting".

Madam President, although in the Budget presented by the Financial Secretary in February there are quite a few measures returning wealth to the people, I wonder how much salaries tax reduction there is for the middle class if one-off measures of "dishing out candies" are not taken into account.

In the Budget, Financial Secretary Mr TSANG brought in several concessions for salaries tax. These include a raise in personal allowance, the widening of tax bands, and the lowering of the standard rate. However, for most of the typical middle-class families, that is, each family earning \$480,000 a year, having a child or two and required to support parents, or, in other words, having the greatest need to employ FDHs, there can be an annual saving of only \$4,220 after the tax cut. It is not even enough to cover the annual "FDH tax" of \$4,800. Is this fair? Apparently, the burden on the middle class is not light at all.

Furthermore, the minimum monthly pay of FDHs has been going up for three successive years since 2005, rising from \$3,270, the level in the year 2003, to the current level of \$3,480. The accumulative rate of increase is 6.4%,

which is higher than the same period's accumulative inflation rate of 4.6%. According to recent press report, Marianito D ROQUE, the Secretary for Labour and Employment of the Philippines, personally came here early this month to meet Mr Matthew CHEUNG, the Secretary for Labour and Welfare, in a bid to persuade the Hong Kong Government to grant approval for the pay of the 125 000 Filipino maids in Hong Kong to go up by 7.8% to reach \$3,750. Given the fact that the prices of all commodities are going up sharply today, it is probably inevitable for the pay of FDHs to rise. That is to say, it will definitely add to the employers' heavy burden.

Members of the middle class have always been those having a lot of obligations but only very few perks. All "chores" go to them whenever "it is the worst of times". Tax hikes are being meekly accepted, even double taxation. Now the Government is having "the best of times" financially. Yet there is still no regard for their heavy burden. No notice is being given to the pressure on them, the collection of the "FDH tax" being still in progress. That is really going too far. So, in moving this motion today, the Liberal Party is making a bid to redress the wrong being done to employers of FDHs and members of the middle class.

Madam President, I so submit and move the motion.

Mr Tommy CHEUNG moved the following motion: (Translation)

"That this Council urges the Government to immediately cease the imposition of the levy on employers of foreign domestic helpers."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Tommy CHEUNG be passed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan is going to move an amendment to this motion and Mr Andrew LEUNG is going to move an amendment to that amendment. The motion and amendments will now be debated together in a joint debate.

I will call upon Mr LEE Cheuk-yan to speak first to move his amendment to the motion, and Mr Andrew LEUNG to speak next to move an amendment to Mr LEE Cheuk-yan's amendment.

MR LEE CHEUK-YAN (in Cantonese): President, I move that Mr Tommy CHEUNG's motion be amended.

According to what Mr Tommy CHEUNG just said, the wrong done to the middle class has to be redressed. I am of the view that in addition to redressing the wrong done to the middle class, it is also necessary to retrieve some resources for the Employees Retraining Board (ERB). As far as the position adopted is concerned, ours is in fact no different from what it is with regard to part of the motion moved by Mr Tommy CHEUNG. We are in favour of abolishing the "foreign domestic helpers (FDH) tax" (the Employees Retraining Levy). On the other hand, however, we are of the view that ours being a duty-conscious legislature, it is necessary to make sure that the stability of the resources going to ERB will not be jeopardized by this. So, it is hoped that there can also be guarantee that there will be stable funding for ERB. President, I move my amendment for this reason.

It can be noticed clearly from my amendment that I am in favour of Mr Tommy CHEUNG's proposal to abolish the "FDH tax". However, our suggestion is to set up, at the same time, a fund — it is not setting up a fund as ERB at present already has a fund. It is to make an injection of \$20 billion into the ERB Fund so that it can maintain stable funding in the long run.

In the first place, I have to explain why the Confederation of Trade Unions (CTU) is in favour of abolishing the "FDH tax". At the time when "FDH tax" was first imposed, the Government already was not square and fair enough when it bypassed the Legislative Council by "playing dirty". Some people say, if this Council passes this motion today, then why did the Legislative Council endorse such a levy by the Government at that time? I want to make it clear now. At that time never did the Legislative Council endorse the imposition of "FDH tax" by the Government. The reason is that the Government did not submit any bill to the Legislative Council, but just reinterpreted the ordinance applicable to ERB to the effect that employers as defined in the said ordinance also include employers of FDHs. Getting that before the recovery of sovereignty In

fact, Mr Tommy CHEUNG earlier on said that the Education and Manpower Bureau of that time explained that the two were totally different matters, that the levy was imposed on employers importing foreign workers but not on those employing FDHs, and that the two were different matters. However, in 2003, the Government suddenly took a new position, saying that it would be imposed on employers of FDHs. I am of the view that when the Government introduced "FDH tax" that year, it intentionally bypassed the Legislative Council. That was not at all square and fair. It should have been submitted to the Legislative Council for voting, and if endorsed, for enactment in a square and fair manner. However, the Government was too sneaky. First, I have to say a few words about the history involved so as to bring to the knowledge of listeners of today's debate the point that at that time the Government in fact had not submitted the proposal to the Legislative Council for approval.

In the second place, it is for two reasons that we are opposed to the imposition of "FDH tax". First, we think that this is unfair to middle-income families as they already are tax-payers. Furthermore, by hiring FDHs, they make it possible for the Government to cut down its spending on facilities for child care and elderly care. The reason is that in many cases, it is for the purpose of child care or care for the elderly that they hire FDHs. Given the fact that they already are tax-payers and there can be less spending by the Government because of them, I wonder why the Government still gives them "one more hack", and subjects them to double taxation. As a matter of fact, according to what I heard from many employers of FDHs, it would be better to have the Government providing them with good facilities for child care and care for the elderly. In that case, there will be no need for them to hire FDHs. However, as we all know, Hong Kong is acutely short of such facilities. Nor are there really such facilities for middle-income families. We, therefore, think that this is very unfair to middle-income families.

What is more, the practice is also unfair to FDHs. At the time when the "FDH tax" was brought in, the Government did another thing, namely, cutting the minimum pay of FDHs by \$400. With \$400 added to one side and \$400 cut from the other side, the impression on the people was that the Government transferred the "FDH tax" of \$400 to FDHs. People in the street might wonder why the amount so coincidentally happened to be \$400. Surely, the Government explained to us in "the manner of a stubborn mule", saying that the coincidence was due to the mechanism adopted then at the time of calculation,

and that the decision to cut \$400 was made after consideration had been given to a number of factors, such as the pays of cleaning workers, the wages of middle-income families and the economic situation.

Those with a sharp eye could see at one glance that it was just for political convenience, which was to give them the convenience in explanation to employers. With the minimum pay lowered by \$400, the imposition of the levy of \$400 would cause them no loss. This is in fact very unfair. To a certain extent, it had the pressure of taxation transferred to FDHs. Though Mr Tommy CHEUNG just said that there had been pay increases to FDHs, members of the public must bear in mind that the minimum pay was reduced by \$400 that year. After that, they only got back \$180. Hence, compared with the minimum pay of the past, that is, that of the year 2003, it is still \$220 short.

At present, prices of commodities in Hong Kong are rising sharply. FDHs are also members of our community. In order to combat the current inflation, it is also necessary for them to have salary revision. In order to be fair to FDHs, the Government should refer to factors like the scale of middle-income families' pay hikes, the scale of cleaning workers' pay hikes, inflation rate and economic situation, and revise their pay on the basis of the existing mechanism. In my opinion, only such an approach is fair to all parties, especially FDHs. We ought to be grateful to them. They in fact make contributions to Hong Kong by making it possible for many mothers to work outside their families, thus setting free women's labour force. There is no justification for them to shoulder the full brunt of the pressure arising from inflation or the bitter consequence brought about by rising prices. So, in our opinion, to revise FDHs' pay is a more equitable approach.

President, here comes the second main issue. The difference between us and Tommy CHEUNG is that we ask the question what to do after the abolition of the levy. Our proposal is that there has got to be a fund following the abolition of the levy. How do we arrive at the amount of \$20 billion for the injection? To be honest, we are copying a "ploy" of the Government. The Government has set up a research fund of \$18 billion. Every year, a sum of \$900 million can be withdrawn to do researches. \$20 billion is close to the funding required by ERB, that is to say, about \$1.1 billion a year.

President, Mr Andrew LEUNG puts forward an amendment calling for effective utilization of the existing Employees Retraining Fund. I find such an amendment very strange. Obviously it is questioning their Liberal Party member Michael TIEN for being a "big spender". Likewise, many people describe James TIEN, the Chairman of the Liberal Party who is in charge of Hong Kong Tourism Board (HKTB), or Selina CHOW, the former Chairman of HKTB, as "big spenders". Again, are we going to "accuse" ERB as a "big spender"? Michael TIEN has already joined the Liberal Party. I think Andrew LEUNG should explain why it is necessary to query Michael TIEN, the ERB Chairman, for his protracted failure to exercise proper supervision. I do not agree with Andrew LEUNG's query in this respect. On the contrary, I have to "back up" Michael TIEN. I "back up" a member of the Liberal Party. I think Andrew LEUNG ought to be fairer with the work of Michael TIEN or that of the entire ERB. Also, ERB itself has some individuals According to what Tommy CHEUNG just said, \$300 million - \$400 million already can do. At present, the need to take a new direction is being discussed by ERB in order to comprehensively upgrade Hong Kong in the areas of manpower, human capital and skills. It is not only to deal with the issues of unemployment or semi-unemployment. Instead, it is to make it really possible for workers to fully upgrade their skills so as to be able to cope with the worldwide economic restructuring in the coming days.

So, if everybody does acknowledge this, then the funding for ERB should not be reduced from the annual sum of \$1.1 billion to the previous figure of \$300 million - \$400 million. If we all acknowledge the direction for the future — on the Panel on Manpower of this Council, Mr Andrew LEUNG also expressed view acknowledging the need to conduct further retraining in the coming days and affirming the advisability to support ERB. However, his amendment of today causes us considerable concern, the reason being that we can see that there comes a full stop after his words about effective utilization. There is no reference to the future. \$4 billion can soon be exhausted. It will be gone in three years. Does the Liberal Party have any suggestion for the sustainable development of retraining when resources dry up? There is "zero" suggestion. There is only undermining. Hence, I am very disappointed. It is hoped that Andrew LEUNG can explain where to get the resources to be required by retraining in the days to come. Is he not going to deal with it any more?

We somehow have a very concrete proposal, namely, setting up a fund with \$20 billion. There can be an annual yield of \$1.1 billion from investments. In this way, there can be sustainable development for the retraining work. The "FDH tax" can also be brought to an end whilst retraining work can go on. Thank you, President.

Mr LEE Cheuk-yan moved the following amendment: (Translation)

"To delete "immediately" after "the Government to"; and to add "and, before doing so, make a one-off injection of not less than \$20 billion into the Employees Retraining Fund so that the investment returns of the Fund can make up for the loss in revenue which will be suffered by the Employees Retraining Board as a result of the cessation of the imposition of the levy" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr LEE Cheuk-yan to Mr Tommy CHEUNG's motion be passed.

PRESIDENT (in Cantonese): I now call upon Mr Andrew LEUNG to speak and move amendment to Mr LEE Cheuk-yan's amendment.

MR ANDREW LEUNG (in Cantonese): President, I move to amend Mr LEE Cheuk-yan's amendment.

President, the discussion today is about ceasing the imposition of "foreign domestic helpers (FDH) tax". As there will be reference to using the levy to develop local human capital, please let me make formal declaration before my actual delivery of speech. I am Chairman of the Vocational Training Council (VTC). VTC is one of the major local bodies responsible for professional education, training and development. It is also one of the training bodies of the Employees Retraining Board (ERB). Besides, I am also Chairman of the Hong Kong Productivity Council (HKPC). HKPC is also one of the training bodies of ERB. The implication is that we are the beneficiary bodies.

However, President, today I am moving a further amendment on behalf of the Liberal Party. I am also speaking on behalf of the Liberal Party.

In the first quarter of this year, the Government conducted a consultation on the development direction to be taken by ERB for the development of human capital in the future, stating that there has got to be a repositioning so as to be in line with the restructuring of our economy. There is also the proposal to rename the Employees Retraining Scheme as Manpower Development Scheme so as to achieve the target of developing the human capital needed in Hong Kong by actually gearing with the needs of the manpower market. This consultative paper was presented to this Council's Panel on Manpower for discussion in February. At that time — Mr LEE Cheuk-yan also reminded me so — I already indicated my support for the Government to re-define the work of ERB, and to use the accumulative balance of "FDH tax", which now amounts to more than \$4.5 billion, to expand and strengthen training service as an item of long-term social investment.

President, since it was set up in 1993, ERB has notched a total of more than 1.02 million retraining places by the year 2006-2007. Given the fact that at present we have a workforce of about 3 million people, the total number of people getting retraining service is indeed very big. Now it is a good opportunity for the Government and the community to re-examine afresh the effectiveness of ERB and review its forthcoming course of development.

I believe that, President, you still remember that in the year 2004-2005, we once examined an Accreditation of Academic and Vocational Qualifications Bill. It was passed on 2 May 2007 after the Third Reading. When examining the Bill, Members on the Bills Committee all agreed that both training and retraining could be objective yardstick for the accreditation of qualifications, and that workers (especially in-service workers) could thus, by way of training, advance step by step through the Qualifications Framework (QF) from Level 1 to Level 2 and even up to Level 3 or Level 4, so on and so forth. At that time, every person also agreed that ERB and other training bodies should gear to the needs of the manpower market so as to give "wage-earners" a hand.

The Liberal Party and I think that in future it is necessary for ERB to operate under the market-led principle; be in line with the objective QF yardstick; give more weight to the concerns of employers and business sector when approving programmes; firmly grasp the trend of the manpower market;

raise the quality, not quantity, of the re-training services provided by ERB; screen programmes now being run by all training bodies to see if they are outdated, effective, or instrumental in helping "wage-earners" find stable good employment; and scrap programmes that are obsolete, or having demand in excess of supply, or offering little career prospect.

In order to provide the labour force with training, it is definitely necessary to spend money. Yet exactly how much money to be put into ERB in one go would be considered enough? In the opinion of the Liberal Party, so long as the Government continues to make an annual allocation of about \$400 million to ERB, it can keep ERB running for a long time as there are, in addition, an accumulative balance of "FDH tax" amounting to \$4.5 billion, and also investment returns from the Fund.

In the opinion of the Liberal Party, should ERB one day run out of resources, then the Government may, after careful consideration, make up the shortfall by making appropriation from the annual budget under "General Expenditure" so as to make it possible for ERB to go on with its work with stable funding and adequate resources.

With regard to the proposal just now made by Mr LEE Cheuk-yan for a one-off injection of \$20 billion, I wonder if it is to get ERB to ask, at one go, all training bodies to launch programmes in huge numbers in the next few years, or if it is to let ERB have \$20 billion as "pocket money" so that it can spend it complacently "bit by bit". With this sum of \$20 billion and the \$4.5 billion from "FDH tax" put together, I wonder if it would result in a wasteful situation as a lot of community resources will be held up. With regard to making investment with the Fund, I wonder if ERB can outdo and outshine the Government, and earn greater returns. We do support the work of ERB, and find it necessary to appropriate a suitable amount of funds for its use. However, we have reservation about setting aside as fund a sum as huge as \$20 billion.

President, these are my remarks.

Mr Andrew LEUNG moved the following amendment to Mr LEE Cheuk-yan's amendment: (Translation)

"To delete "before" after "domestic helpers and," and substitute with "after"; to delete "make a one-off injection of not less than \$20 billion into the" after "doing so," and substitute with "effectively utilize the existing"; and to delete "so that the investment returns of the Fund can make up for the loss in revenue which will be suffered by the Employees Retraining Board as a result of the cessation of the imposition of the levy" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr Andrew LEUNG to Mr LEE Cheuk-yan's amendment be passed.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, first of all, I would like to thank Mr Tommy CHEUNG for proposing this motion on the collection of Employees Retraining Levy from employers of foreign domestic helpers (FDHs) tonight. I also thank Mr LEE Cheuk-yan and Mr Andrew LEUNG for proposing amendments. I will first brief Members on the policy background of the imposition of this levy, and explain the use of the levy and the need for maintaining such an arrangement.

It is the established policy of the Hong Kong Special Administrative Region Government that employers hiring low-skilled imported labour should contribute towards the training and retraining of the local workforce. In line with this policy, all employers of imported labour under labour importation schemes designated under the Employees Retraining Ordinance (the Ordinance) have since the commencement of the Ordinance in 1992 been required to pay the levy. The levy goes to the Employees Retraining Fund (ERF), which is administered by the Employees Retraining Board (ERB), for providing training and retraining to local workers.

In February 2003, in the light of the recommendations of the report of the Task Force on Population Policy, the Chief Executive in Council decided that, same as employers of low-skilled imported labour under other importation

schemes, employers of FDHs should also be required to pay a monthly levy of \$400 with effect from 1 October of that year.

One of the primary objectives of the Government in enacting the Ordinance at that time is to set up the ERF to support the daily operating expenses of the ERB. In the past, the Government has provided either capital injections or subventions to the ERB to cope with its necessary expenses and to support its operation under special circumstances. However, I must stress that such injections and subventions are only special financial arrangements, and do not represent any change to the Government's policy intent that ERB's operating expenses should be primarily met by the levy income.

I believe Members would agree that to maintain Hong Kong's economic vibrancy and competitiveness, we 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. Moreover, the need for training and skills enhancement is no longer confined to low-skilled middle-aged workers with low education attainment. The Government therefore needs to ensure that the local workforce would receive suitable training and retraining so as to enhance their employability, and equip them to meet the challenges arising from a knowledge-based economy. Since training has been regarded as a long-term social investment, our training policy must change accordingly.

Just as the Chief Executive has stated in the 2007-2008 policy address, the ERB would make use of the levy collected from employers of FDHs to expand the Employees Retraining Scheme (ERS). Members may be aware that we have relaxed the eligibility criteria of the ERS with effect from 1 December 2007. In the past, placement-oriented training, as well as retraining programmes and services were mainly provided to people aged 30 or above with junior secondary education or below, but it has been relaxed to cover young people aged between 15 and 29 and those with education level at sub-degree or below. Furthermore, the ERB has started to draw down the levy collected from employers of FDHs to support its operation and services.

The relaxation of the ERS that came into effect in December last year marks the first step of the Government's drive to enhance the training and retraining services. The ERB has earlier completed a strategic review on its future role and functions, and released a consultative document in January this

year suggesting a series of proposals with a view to offering more comprehensive and diversified training and retraining services for the local workforce. The ERB is expected to take on new strategic roles and responsibilities, and its service targets and training areas will also increase significantly. To achieve its various work objectives, the ERB needs a stable source of funding to cover its recurrent expenditure.

In the consultation paper, the ERB stated that it would strive to achieve more effective asset management such that the investment return of the ERF together with the levy collected every year would generate sufficient fund to meet the operating expenses of the ERB for the provision of training services and to build up a sufficient reserve for future expansion.

Given the above, the Government considers it necessary to maintain the arrangement of collecting levy from employers of FDHs at this stage so as to provide stable recurrent funding for the sustainable development of training and retraining services.

Madam President, I so submit. I will give a further response after listening to Members' views on this motion. Thank you, Madam President.

MR RONNY TONG (in Cantonese): President, this year is an election year. So, anything can happen. President, if my memory is correct, even if it was not the Liberal Party that put forward the proposal at that time, at least it was they who strongly supported this so-called "foreign domestic helpers (FDH) tax".

President, this "FDH tax" is probably the most dishonourable chapter in Hong Kong history. The reason is that the imposition of such a tax, but not said to be a tax, not only involved many issues concerning the violation of basic human rights, but also went against constitutional order.

President, let me first speak on the violation of human rights. This levy is absolutely discriminatory and racist against imported workers. Why? We all remember that at the time when the measure was introduced, on the face of it, the employers were asked to pay the levy. However, imported workers' pay was reduced by \$400 at the same time. In other words, at the time when the levy of \$400 was imposed, the minimum pay was lowered by \$400 simultaneously. Obviously, the imposition of such a tax exclusively targeted imported workers, absolutely imbued with racial discrimination. It is common

knowledge that racial discrimination is not allowed by the Basic Law. It is also being internationally considered to be a conduct violating basic human rights. However, the Government ventured to impose the tax with such conduct. Although the Hong Kong Government was then very poor, I still do not consider it to be honourable conduct to get more revenue by resorting to such a tactic.

President, secondly, this arrangement is very questionable constitutionally. Just now, Ms Margaret NG looked up for me information on fundamental interests and legal foundation. We think that this does not have any legal foundation. Why? The reason is that the so-called levy is merely based on Section 14 of the Employees' Retraining Ordinance. Under that section, which is about quota for imported workers, the Chief Executive in Council may impose a levy just by way of administrative order. The imposition of the levy has never been discussed in the Legislative Council, not to mention having any relevant legislation passed by the Legislative Council.

President, in my opinion, such action is definitely an act "going through the back door", which is also very dishonourable. Why? President, this is common knowledge. Every person in the street says so. This is the "FDH tax", however, on paper, it does not appear to be the "FDH tax". It is called "FDH levy". Could the Government tell us the difference between "FDH tax" and "FDH levy"? If the question is put to those required to make the payment, they will say that this is absolutely a tax. As it is a tax, I wonder why it was able to bypass the Legislative Council. President, we have to bear in mind that according to Article 64 of the Basic Law, it is necessary to obtain approval from the Legislative Council for any taxation. Article 108 stipulates that Hong Kong should pursue a low tax policy. However, under this system of taxation, it is necessary to pay such a levy on top of the payment of ordinary taxes. From the perspective of employers, it makes no difference. In my opinion, this is a tax which is imposed not as a tax by "going through the back door" in the most dishonourable manner.

President, here comes my third point, namely, that there is no such need. At that time, we said that the sum of money was to be allocated to the Employees Retraining Fund for the training of local workers. President, this, however, has always been the responsibility of the Government. As it is the Government's own responsibility, I wonder why the responsibility is passed onto employers of FDHs. Or, why is it indirectly passed onto FDHs? Why does not the Government discharge its own responsibility instead of imposing such a

dishonourable tax? President, we know that the Employees Retraining Fund still has a balance of more than \$4 billion, and that the annual expenditure is only in the region of several hundred million dollars. Furthermore, demand is now dropping gradually. President, it so happened that I was reminded by reporters outside today. It is said that the Government has again miscalculated. In reality, we still have \$8 billion. President, it is \$8 billion. What else can the money be spent on? On the one hand, the Government exploits imported workers and those employing imported workers and does not discharge its own responsibility. On the other hand, sums of \$8 billion and \$50 billion are being hoarded up under the bed. What do the authorities intend the sums for? President, I consider that to be a most dishonourable act.

Here is my fourth point, President, even if all the issues just mentioned are to be cast aside, by saying nothing about human rights, nothing about "going through the back door" constitutionally, and nothing about shirking responsibility, this is unfair simply from the perspective of those shouldering the fee. President, just now I stated that this was to place the financial burden on FDHs indirectly. Surely, the Government will say that they are not making the payments, and that it is the employers who pay. However, to be honest, employers pay the levy by lowering the wages of the imported workers. So, it is in fact being shouldered by FDHs. To do this is to "raise the knife upon" a disadvantaged group. What sort of government will do so? Such a levy should not have been proposed at all. We are now being called upon to give support. We are being asked to continue our support for such a levy. How could the Secretary stand up to say so? (He was not smiling.) In all seriousness, the Secretary told us that the authorities very much needed the money for retraining purposes. How much money does our Government still require, President? There is today an underestimate of \$8 billion. The possibility of collecting a few billion dollars more tomorrow cannot be ruled out. For the current year alone, we have been able to save more than \$50 billion, President. Under such circumstances, the Government still wants to "raise the knife upon" a disadvantaged group. Where is the Government's conscience? Even without today's motion, Chief Executive Mr TSANG should have taken the initiative to abolish the levy.

Thank you, President.

MR LAU CHIN-SHEK (in Cantonese): President, I have to declare interests. I am a member of the Employees Retraining Board (ERB).

President, with effect from the current year, the Government has stopped making recurrent subvention to ERB. The foreign domestic helpers (FDH) levy is ERB's most important (can even be said to be the sole) source of income. With the amount standing at \$1.1 billion, the FDH levy almost makes up 95% of ERB's annual income. Hence, when talking about ceasing the imposition of the FDH levy, we must, at the same time, give consideration to ERB's sources of income so that there can be stable and adequate resources to serve more than 1 million low-skilled workers in Hong Kong.

President, ERB was set up in 1992, at first mainly providing short courses teaching skills to middle-aged workers out of employment as a result of relocation of manufacturing industries to the Mainland so as to help them find employment as soon as possible. ERB played a political role at the time of steady rise in the unemployment rate, offering allowances to individual trainees through training courses, and thus easing the social pressure arising from unemployment. However, these "fastfood-like" training courses can no longer dovetail with the needs of the time. I remember that some 10 years ago, the member office of mine once hired a retrainee to do Chinese typewriting. However, other members of the office quickly managed to master Chinese typewriting in two or three years. So, that worker had to be reassigned to other duties.

Surely, this sort of "fastfood-like" training can help unemployed workers get employment again in a short time. Nowadays, however, one mastering just one bread-winning skill can still be easily rendered redundant by the market. To avoid the cycle of "unemployment-retraining-further unemployment-further retraining", ERB has got to change strategy by additionally putting in the elements of sustainability and development to give trainees the ability to engage in self-study and life-long learning so that they can get on with their employment and progress in a highly volatile market environment.

President, to accomplish such a vision, ERB has got to have stable and adequate sources of income. Training bodies also play a very important role. However, for some time in the past, the issue of inadequate resources and uncertain prospect frequently loomed over training bodies. Basically, it was not

possible to have long-term planning. Even instructors could only be hired on contractual terms. As a result, there was a constant drain on instructors, which had direct impact on the quality of training work.

For years, I had been making the request that the FDH levy be unfrozen. Late last year, the FDH levy was at last unfrozen. ERB can have a stable annual income of \$1.1 billion. The patience of training bodies ultimately paid off. They now can give consideration to long-term development. However, on learning that several major parties in the Legislative Council are in favour of abolishing the FDH levy, members of the training bodies all sink into a state of great anxiety. Is there going to be other source of income for ERB following the abolition of the FDH levy? If the answer is in the negative, are admission requirements already relaxed to be tightened again? Can long-term courses already planned and designed to comprehensively enhance trainees' basic skills still proceed? Is it that training bodies will have to turn back and only organize some "fastfood-like" short-term courses?

President, if we just support the abolition of the FDH levy in total disregard of the question as to whether or not ERB has stable and adequate sources of income, then more than 1 million low-skilled workers in Hong Kong will be deprived of the opportunity to gain in self-study and life-long learning, and lose the chance to remain in employment and progress in this highly volatile market environment.

At the beginning of the year, ERB produced a consultative document to have discussion about ERB's future development direction and training strategy. The consultative document contains the following sentence: "Opportunities are for the prepared" — I repeat — "Opportunities are for the prepared". It is hoped that all Members will, when making their decisions on how to vote, consider the question as to whether or not we will provide more than 1 million low-skilled workers in Hong Kong with the chance to get prepared.

Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, ever since 2003, the Government has been collecting the Employee Retraining Levy, which is commonly known as the "FDH tax". Nominally, that is a levy imposed on employers. However, the minimum pay of foreign domestic helpers (FDHs)

was reduced at the same time. Up to the present moment, the amount accumulated stands at \$4.4 billion. However, basically, The Hong Kong Association for Democracy and People's Livelihood (ADPL) thinks that the imposition of the said levy should not be ceased. The money collected is used to help local workers get employment. With regard to the motion of this occasion, ADPL is against Tommy CHEUNG's original motion and Andrew LEUNG's amendment to the amendment, but supports LEE Cheuk-yan's amendment.

With the election season now around the corner, all the parties and groupings actively vie for the support of the middle class. Even Michael TIEN, the Chairman of the Employees Retraining Board (ERB), is also in favour of doing away with the "FDH tax". The request of the Liberal Party appears to be very simple, just asking the Government to cease immediately the imposition of "FDH tax". The amendment to the amendment is basically no different from the original motion in meaning. The motion, however, leaves behind a big question mark, namely, whether or not to restore FDHs' minimum pay level after ending the "FDH tax". I am talking about the original pay level.

As a matter of fact, the "FDH tax" has all along been shouldered by FDHs. In 2003, when the Government introduced the "FDH tax", the minimum pay of FDHs was, at the same time, lowered from \$3,670 to \$3,270. Consequently, there was not much strong reaction from the public. Though the Government later raised FDHs' minimum pay to \$3,480, FDHs' pay has yet to be brought back to the pre-2003 level. Such an approach just cannot encourage employers of FDHs to hire local domestic helpers instead. To recklessly abolish the "FDH tax" in total disregard of the exploitation of FDHs by such an arrangement is irresponsible and unreasonable.

In fact, it is apparent that the \$400 of "FDH tax" deducted is precisely equal to the \$400 cut from their minimum pay. So, according to my reckoning, under the original motion, the proposal to abolish the "FDH tax" seems to enable the employers to save \$400 but actually the employees are to get \$400 less. Also, ERB is to have \$400 less in revenue. Given the fact that the original motion does not tell us whether or not FDHs' pay will be allowed to go back to the level of 2003 mentioned by me just now after the removal of "FDH tax", and whether or not the Government will have to keep on injecting more money into ERB — if these consequences are not to be dealt with — I think the original

motion is a motion proposed purely for the sake of certain interests or for the sake of the interests of certain class. I find that unsatisfactory or even irresponsible.

Regarding LEE Cheuk-yan's amendment, though his main theme is still on ceasing the imposition of "FDH tax", it is at the same time asking the Government to put in more efforts to help local workers with employment. In my opinion, if the Government, while considering putting an end to the "FDH tax", also puts in more resources to help local workers with employment, then this, as far as I can see, is a feasible plan.

In fact, the policy on FDHs has been in effect for 30 years. There has never been any review. However, our economy and modes of production have undergone great changes over these 30 years. Earlier on, this Council's Subcommittee to Study the Subject of Combating Poverty presented a report on Women in Poverty. As stated therein, before the 1980s, when the manufacturing industries were booming, many women with low educational attainment were still able to use their skills to earn their own living. Following the relocation of factories to the Mainland, and the restructuring of the economy, some female workers instantly gave up their jobs for the sake of their families while some of them switched over to some low-skilled work instead. This is one of the reasons that account for Hong Kong's women in poverty as well as for the working poor.

So, I am of the view that the Government should make good use of the accumulated "FDH tax". Whilst both training places and courses have got to be increased, more resources should also be put in to help local domestic helpers get employment. Given below are things that the Government ought to do for the short term. First, the network linking up different social welfare organizations should be strengthened to upgrade one-stop matching service for local domestic helpers. Second, the payment of special allowance to domestic helpers should immediately be prolonged and stepped up to help them work across districts. Third, an equal amount of \$6,000 should be injected into the bank account of each of these domestic helpers, a group not being protected by the Mandatory Provident Fund.

Surely, in order to be more comprehensive, the Government should follow England's successful experience in eliminating poverty, and firmly lay down the employment strategy of making work possible, making work pay and making

work skilled. Specific measures include setting the minimum pay, formulating an employment-friendly social security scheme, providing proper protection and outlets to service industries engaging more women (for example, domestic helpers).

The Government should also consider bringing in progressive element in the taxation system to establish the "principle of affordability", narrow the wealth gap and bring about re-distribution of wealth. It is the Government's responsibility to give the poor a hand, provide them with comprehensive education and training, and see to it that the rendering of labour does receive respect and reasonable reward.

With these remarks, I oppose the original motion of the Liberal Party and their amendment to the amendment, and support LEE Cheuk-yan's amendment.

MS LI FUNG-YING (in Cantonese): Madam President, according to media reports, at present the Employees Retraining Board (ERB) has enormous resources, with the foreign domestic helpers (FDH) levy that funds the Board reaching an accumulative balance in excess of \$4 billion, a sum estimated to be enough to cover the Board's spending for 10 years. As ERB now has enough resources, naturally it provides a good opportunity to improve both the quality and quantity of its courses. However, at the same time, it also arouses a lot of clamours calling on the Government to abolish the FDH levy, just as in the case of this Council's motion debate of today.

It is on the basis of the Employees' Retraining Ordinance that the Government collects the FDH levy. In 2003, the hiring of FDHs was drawn into the category applicable to importing ordinary non-skilled workers in order to impose the levy on employers of FDHs. According to explanation from the Government, it was not just for the purpose of providing ERB with resources that the FDH levy was imposed. In 2003, there was a Report on Review on the Policy on Foreign Domestic Helpers, according to which the first justification for the imposition of the levy is (I quote): "Given that employers of FDHs are enjoying services offered by foreign workers, it is reasonable that they contribute towards the training and retraining of the local workforce (especially those with relatively low work skills) and promotion of job opportunities for local employees" (end of quote). In other words, it is an obligatory duty for employers of FDHs to pay the FDH levy.

Our policy on FDHs has a history of some 30 years. Over the 30-odd years, our society and economy have had enormous changes. Since the time when the policy on FDHs was first implemented, Hong Kong has been transformed from a city where economic development was driven by manufacturing industries, into a metropolitan city where financial service industry is dominant. Following the restructuring of the economy, the majority of non-skilled workers can only sell their sweat and blood at miserably low prices in a labour market where supply exceeds demand. Here is an example. Those working as security workers or cleansing workers have to work long hours and accept low pays. The fact that the Wage Protection Movement waged by the Government with full strength proves to be ineffective is clear evidence. The policy on FDHs has been in effect for more than 30 years. Initially, it mainly served expatriates. It has changed and become mainly for hiring by locals. In view of this, in order to increase local workers' job opportunities, I all along have been urging the Government to comprehensively review the relevant measure.

I am not in favour of abolishing the FDH levy for the reason that ERB has accumulated much FDH levy. When the Government decided to impose the FDH levy in 2003, actually it was not "raising the knife upon" employers. When the Government imposed a monthly FDH levy of \$400 at that time, it was put into effect by taking away from FDHs \$400 a month (lowered from \$3,670 to \$3,270). The so-called responsibility to train local workers was in fact shouldered by those ill-paid FDHs.

At present, the minimum pay for hiring a FDH is \$3,480 a month. There is now an outcry calling for the abolition of the FDH levy. Yet I do not hear any request to raise the pay of FDHs back to the level prior to the actual imposition of the FDH levy (that is \$3,670). In my opinion, to do away with the FDH levy in this way is most unfair to FDHs, those who, for the sake of meagre wages, come here to serve Hong Kong people and yet leave their own native places, and give up the chance of looking after their own families. It is beyond doubt that to do away with the FDH levy in this way can only lower the cost of those employing FDHs. This will make it even more difficult for local workers to compete in the labour market of domestic helpers. So, no matter it is from the perspective of protecting the "rice bowls" of local workers or for the sake of upholding FDHs' rights and interests, I am firmly against today's motion.

Madam President, finally I must refer to a book recently published by Mr Joseph WONG, the former Secretary for Commerce, Industry and Technology — "Ping Xin Zhi Shuo" (meaning "words straight from the heart"). There is a paragraph in which the author mentions the policy on FDHs. He says: "There are in Hong Kong hundreds of thousands of FDHs. Even when our economy was having the worst of times, there was still no strong voice urging the Government to curb the policy, one that basically has no upper limit. The reason is that local families and women benefiting from the policy are really numerous. Among them are probably quite a few representatives of the labour sector". I find this paragraph of Mr WONG, which does not tally with fact, very disappointing. That representatives of the labour sector in this Council asked the Government to comprehensively review the policy on FDHs is something that can be found in the minutes of meetings. At the debate on the policy address of 2001 and later at the Panel on Manpower, both I and Mr LEUNG Fu-wah, a former colleague of this Council persistently asked the Government to comprehensively review the policy on FDHs. That the Government cannot hear the strong voice calling for a review of the policy on FDHs is definitely not because representatives of the labour sector are those benefiting from the policy. Rather, it is because the voice of those representing the labour sector has always been on the weak side in the establishment. It is that the Government listens to voices selectively, and turns a deaf ear to some voices.

Madam President, I am strongly against today's motion and amendments. These are my remarks.

DR KWOK KA-KI (in Cantonese): Madam President, I, being one of the middle-class individuals required to pay the "foreign domestic helpers (FDH) levy", surely agree that the FDH levy should be reduced or done away with.

However, when I look at it from another angle, the question is not that simple. Do not imagine that all problems can be solved upon the elimination of the FDH levy. I am also a Hong Kong person who has to rely on FDHs to keep living arrangements basically on track in my family. Like many Hong Kong people, we often rely on their help to make it possible for my wife and I to go out to work to earn meagre incomes to support the family. So, their usefulness to Hong Kong is not questionable.

To put an end to the FDH levy without correspondingly giving them the due pay is, in my opinion, hard to justify. At that time our economic situation was bad. Also, because of the Asian financial turmoil, we were able to gain a little benefit. Well aware that these FDHs' own countries were also facing grave economic problems, we believed that, no matter how much we cut their pay, they were just unable to leave our labour market and return to their native places. I think that the approach then adopted was somewhat ungentleman-like.

By now, our economy has taken a turn for the better. However, as a matter of fact, on account of changes in exchange rates, the economy of countries in south-eastern Asia has also bounced back. Therefore, it is in fact becoming more and more difficult for many local employers to get good or hard-working foreign employees to work in Hong Kong. So, I agree that there should be no further cut on their pay. It is even advisable to make up for the few hundred dollars of pay taken, or cut from them in 2003.

On the other hand, the Employees Retraining Board (ERB) has become one of the training venues of many local workers who are jobless or have difficulty in finding employment, making it possible for them to acquire some skills and look for other jobs. It does not matter whether this is by intention or for reason of misunderstanding. Many people may have the impression, or even criticize that the work of ERB is not satisfactory, and that many of those trained may not have gained proficiency in certain skills nor obtained sustainable and useful skills to successfully get on with their employment in the local job market.

However, no matter what, ERB in fact plays an irreplaceable role in helping many people find alternative jobs in Hong Kong. Some of the new plans implemented by ERB over the past years in fact show us that it is able to comply with the needs of the market in training unemployed workers for certain skills. I am pleased with this. However, the Government at this point of time should not absolutely stop putting in resources here.

I support Mr LEE Cheuk-yan's amendment. That is to say, in order to make it possible for ERB to have long-term development, we have to see to it that the Government injects at least \$20 billion into the fund to let it accumulate and earn profits. On top of this, there has got to be matching by the Government with regard to any source of funding. That is to say, before the FDH levy is abolished, there should be 100% matching by the Government.

For any sum collected from employers, a corresponding sum should be paid to ERB so that ERB can have enough capability and resources to expand its scope of work, and thus make it possible for workers to find employment after their participation in the retraining programme.

I agree with the views shared by many colleagues. ERB has got to have some changes with regard to both long-term development and the current scope of work. I remember that I mentioned to the Secretary the problems encountered by many workers injured at work when going back to their posts. In fact this is precisely something that the Government should work on. That in fact should be worked on with great efforts. Among that is mandatory post-injury rehabilitation. Also, with some involvement of ERB, workers injured at work, including those seriously injured or those whose injuries impair their ability to make a living, should get compassionate treatment. It is common knowledge that many construction site workers and bar-benders in fact are not entirely unable to work after getting injured. However, they will not be able to make it if they are asked to return to construction sites to resume the work of bar-bending or concrete dispensing. But, under the existing system, one that is quite rigid, they must return to construction sites for work, performing even some toughest tasks, such as concrete dispensing and bar bending. They will be considered to be suitable for resumption of duty only when they are able to perform those tasks.

Such an "across-the-board" approach is a mean one. It is an approach not from the perspective of workers. As a result, it ultimately helps neither the employers nor the workers. I am of the view that improvement should be sought when ERB is to set new direction for the future so as to be in line with the Rehabilitation Programme for Employees Injured at Work, which is now definitely not successful. More resources should also be put in. This includes asking both employees and employers to have joint participation in some compulsory rehabilitation programmes. As a matter of fact, for a long time such programmes have been in effect in some foreign countries, for example, Australia and the merits have also been revealed.

Finally, when we are to make a decision on the levy, my view is that ERB's resources should not be ignored. I, however, also think that the Government should not wash its hand of the matter, and just pass the buck to employers. If the Government keeps on refusing to discharge its due

responsibility, and takes no initiative to give resources to ERB, then it is unreasonable to ask employers, that is, the several hundred thousand members of the middle class in Hong Kong, to foot the bill for no reason.

Anyway, my worry is that if today's original motion and Andrew LEUNG's amendment are indeed passed, it can neither help FDHs nor give assistance to many of those unemployed in Hong Kong. So, Madam President, I have no choice but to support Mr LEE Cheuk-yan's amendment. Thank you, Madam President.

MR SIN CHUNG-KAI (in Cantonese): Madam President, the Government introduced "foreign domestic helpers (FDH) tax" in 2003. In fact, every person in Hong Kong knew that was for reason of serious fiscal deficit. The Government wanted to use that to increase revenue or replenish necessary expenses. However, there came a demand for judicial review from FDH groups. So, for a long time it was impossible to put the money collected to use. As a result, a sizable amount has been accumulated.

At that time, the Government, on the one hand, asked employers to pay \$400 a month as "FDH tax", and, at the same time, cut FDHs' minimum pay by \$400, thus seemingly obliging employers with no extra payment. However, after three years' inflation, the Labour Department has recently increased FDHs' minimum pay from \$3,270 to \$3,480. In other words, the actual burden on those employing FDHs has gone up.

Although all Hong Kong people understand that it was for reason of fiscal deficit that the Government introduced FDH levy in 2003, never has the Government admitted that fiscal deficit was the reason for bringing in the levy. On the contrary, it banked on words of the so-called Task Force on Population Policy, saying that "FDHs account for the bulk of our transient population," that "it is reasonable to impose the levy on employers of FDHs to bring them on par with employers of other imported workers under the Supplementary Labour Scheme".

Hong Kong Government imposes many restrictions on the importation of labour, among which are requirements to give preference to local workers, go through the newspaper advertising procedure, put up recruitment notice in the Labour Department, and import foreign workers only after making arrangement

for tailor-made courses by the Employees Retraining Board (ERB) if appropriate. According to an information paper on importation of labour presented to the Legislative Council in 1992 by the Education and Manpower Bureau of the Government, labour importation schemes also had other regulations, such as a limit capping the total of imported workers at 25 000 at any time — though just now LI Fung-ying said it was a policy setting no upper limit, this is the sole exception — and a requirement for employers to pay wages through the bank with auto-pay arrangement.

However, FDHs now staying in Hong Kong already number more than 200 000. Employers of FDHs also need not pay them wages by auto-pay. If the Government considers the importation of FDHs to be no different from other labour schemes, I wonder why the Government does not ask employers to comply with these regulations.

Obviously, the Government's remark that "the importation of FDHs is no different from other labour importation schemes" is just for the purpose of covering up its intention of accumulating wealth by unfair means. However, this way of accumulating wealth is both awkward and unreasonable.

Let us give this a thought. What sorts of families have the need to hire FDHs? The most typical ones are those double-income families with children and seniors to care for. In simple words, if both husband and wife have to go out to work, then they have to get someone to take care of their children.

On the one hand, the Government is trying to encourage our citizens to "have three children". But who is to look after the children? In the case of many double-income families, there will be grave impact on the family income if one of the parents resigns to look after the children. So, to many couples, hiring FDHs is the only way out. However, the Government's policy is no better than "lip service". Although to have more children is being encouraged, the punitive "FDH tax" is being imposed on families that hire FDHs to look after children.

Furthermore, as residential places for the elderly who need care are too few — we have told the Government many times that residential places for the elderly are quite lacking — and their families who have to toil for their daily bread and can ill-afford to send them to private homes for the aged, have to hire FDHs to provide home care to the elderly. Because the Government's policy

on caring for the elderly is too conservative, demand far exceeds supply in the case of residential places for the elderly. Instead of helping the people, the Government on the contrary asks these families to pay the punitive "FDH tax". Is this a policy adhering to the people-oriented principle?

Why do we consider that to be a punitive tax? An annual tax payment of \$4,800 is equivalent to the tax payable for \$30,000 to \$40,000 of extra income — in simple words, if it is regarded as tax, the tax payable by a family earning \$30,000 to \$40,000 is close to this amount. Or it is equivalent to the rates payable in respect of a property with rentable value as high as \$8,000. Or it is equivalent to the stamp duty payable for purchasing \$5 million of stocks. However, people have to pay this tax not because they are buying properties or stocks, but because they are hiring FDHs to look after children or their seniors.

What is more, in terms of tax rate, this levy is very high. At present, the minimum pay of FDHs is \$3,480. The FDH levy is almost equivalent to a tax rate of 12%. Why must the Government set such a high tax rate? Is the hiring of FDHs hazardous to people's health? Has it got to be so punitive? Otherwise, why must the Government impose such a punitive tax?

Madam President, members of the public all know that it was in fact on account of the fiscal deficit of 2003 that the Government imposed the tax. It was then proposed by Antony LEUNG. By now, however, the Government has notched a fiscal surplus of \$126.5 billion for the current year — close to \$130 billion. (It was just announced today that there was an additional sum of \$8 billion.) The levy for ERB, which amounts to a few hundred million dollars a year, is rather nominal to the Government. However, from whom is this sum of a few hundred million dollars collected? It is perhaps from FDHs. Perhaps it is from parents with young children. Perhaps it is from children who have to look after their old parents. It does not matter from whom it is collected. The Government is in fact abusing the interests of those people already heavily burdened.

Madam President, the Democratic Party supports the original motion and Andrew LEUNG's amendment to the amendment.

MR ALBERT CHENG (in Cantonese): President, I at first thought that this motion, one on ceasing the imposition of the foreign domestic helpers (FDH) levy, was moved by the democrats, the reason being that this is a motion very

much about principle. Later I learned that it was proposed by the Liberal Party, which gave me a little surprise. My feeling is that it is fortunate that it is the Liberal Party that moved the motion.

Also, believing that ceasing the imposition of FDH levy is an uncontroversial matter of major right and major wrong, I sat in my office and listened to colleagues' speeches while doing my work. However, after listening to the speech by Mr LAU Chin-shek followed by the speech of Mr Frederick FUNG, my blood went boiling. I immediately drove here from the Government Headquarters

(Mr Albert HO stood up)

PRESIDENT (in Cantonese): Mr HO, do you want to raise a question of point of order?

MR ALBERT HO (in Cantonese): President, it seems that a quorum is not present.

PRESIDENT (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)

PRESIDENT (in Cantonese): Now we have a quorum. Mr Albert CHENG, please go on with your speech.

MR ALBERT CHENG (in Cantonese): Thank you, President. Thanks to Mr Albert HO for summoning back Members to listen to my speech. Many thanks to him. In fact I also wanted to do that, but I felt embarrassed. *(Laughter)*

Let me go on with my speech. With regard to this motion on ceasing the imposition of "FDH tax", I am very grateful to the Liberal Party. I have to say it again because they were absent when I said so earlier on. I said it was fortunate that the Liberal Party moved the motion.

At first I thought that the motion was uncontroversial and that every person would agree. Members from the democratic camp, in particular, should agree. However, as stated by me earlier on, I was watching television in the office and suddenly I heard words of objection from LAU Chin-shek and Frederick FUNG. Alarmed, I immediately drove here. I think this point is very important.

Colleagues from the Democratic Party earlier on also said that this was a poll tax imposed on employers. I, however, do not look at it from this angle. The Employees Retraining Fund (ERF) is, of course, important. We have so many unemployed people. There is also restructuring in the economy. We have got to retrain unemployed workers. This leaves no room for disagreement. However, this is the Government's responsibility. Let us suppose that these FDHs are local workers. I wonder if Members representing trade unions (for example, Frederick FUNG, LAU Chin-shek and LI Fung-ying) will agree to impose the tax on those poor people to support the training of poor people. This is something impossible. What is more, they are foreigners. Here is an element of discrimination. As stated by Mr Ronny TONG and Ms Margaret NG, this is discrimination, which is unlawful.

This is a matter of principle, not a matter of money. Whether or not ERF has enough money to spend is another issue, not to say that it is now so "flooded". Even its chairman Andrew LEUNG also says that there is enough money, that no more money should be allocated to the Fund, and money is actually not the core of the matter. The Fund has more than \$4 billion. If it is well invested, there can be an annual yield of \$400 million. In the event that there is a shortfall, then let the Government provide subvention. If there is still not enough money, then nothing can be done. However, there is no justification to tax the disadvantaged group.

How can we say that as workers need retraining, money has to be taken from people even worse off? Never have I heard of such an idea. So I felt that I must say something though I had no intention to speak at first. Hence, I came back to speak. I consider this to be a matter of principle. It is also an issue

about discrimination. It is also something that we should be ashamed of. As a government, how can it possibly do this to those FDHs, people at the bottom of society, people who are making contributions to our community In fact, there is no need to say anything. We may put aside all principles and reasons and say nothing. This is basically something that should not have been done. They belong to the most vulnerable disadvantaged group. For a disadvantaged group to tax on the most vulnerable disadvantaged group is, to me, indeed something unheard of. So, in my opinion, any person objecting to the original motion and the amendment to the amendment is shameful.

I am going to support the original motion but will oppose the amendment moved by Mr LEE Cheuk-yan. Why? President, it is because the amendment has a pre-requirement. That is to say, if the Government does not set aside \$20 billion, then the motion should be rejected. ERF is another matter. I am prepared to move a motion to ask the Government to inject money into ERF. However, it is not okay to keep on taxing those FDHs for reason of no injection of \$20 billion to ERF. This is shameful. If we do not pass this motion or the amendment, then my feeling is that today is going to be the most unforgettable day that I have had during my years in this Council.

Thank you, President.

(Mr Frederick FUNG stood up)

PRESIDENT (in Cantonese): Mr Frederick FUNG, is it that you want to clarify the part of your speech that is being misunderstood?

MR FREDERICK FUNG (in Cantonese): It is a question of point of order. I would like to clarify the part of my speech that is being misunderstood by him.

PRESIDENT (in Cantonese): Are you saying that your speech is being misunderstood?

MR FREDERICK FUNG (in Cantonese): Yes, that is correct.

President, in the speech just now delivered by me, there was mention of the point that the present original motion calls for the abolition of the tax on foreign workers. The tax on foreign workers earlier on mentioned by me is superficially levied on employers. In reality, a sum of \$400 is taken away from each foreign worker. If the original motion specifies not that \$400 is not to be levied on employers, but that after the abolition of the \$400-tax, there will be a pay increase going back to the foreign workers, then it will be very clear.

However, under the present original motion, it is just that the \$400-tax is not to be levied on employers. This does not mean adding \$400 back to the pay of the foreign workers. It is just that employers need not pay the \$400.

Thank you, President.

MR ALBERT CHENG (in Cantonese): President, I still have speaking time. I would like to raise a question of point of order. I just want to make clarification.

PRESIDENT (in Cantonese): Do you want to make clarification?

MR ALBERT CHENG (in Cantonese): I have not misunderstood the words of the Honourable Mr Frederick FUNG. I am still against him. *(Laughter)*

PRESIDENT (in Cantonese): I am not a computer. I do not remember whether or not Mr Frederick FUNG has said those words. *(Laughter)*

(Mr Frederick FUNG nodded his head)

PRESIDENT (in Cantonese): Have you said those words? Very well, I believe you.

MR FREDERICK FUNG (in Cantonese): I did say those words. I wrote them down.

MRS ANSON CHAN (in Cantonese): Madam President, the so-called "foreign domestic helpers (FDH) tax" under discussion today is in fact formally known as "Employees Retraining Levy". Our economy had a downturn in 2003. To get more revenue, the Government imposed on those employing FDHs a monthly "Employees Retraining Levy" of \$400. The purpose at first given was for the training of low-skilled local workers. Early that year, the mandatory minimum monthly pay of FDHs was lowered from \$3,670 to \$3,270. Hence, the monthly tax payment of \$400 paid by an employer of FDH for hiring FDH was exactly offset by the "pay cut". It can be said that there was no "extra spending" on the part of employers of FDHs. So, at that time, there was little complaint.

It is not altogether inexcusable for the Government to impose levy on account of poor economy. However, on further consideration, this levy is in fact "both groundless and unjustifiable". First, with regard to the so-called "Employees Retraining Levy", why must the cost of retraining be shouldered by employers of FDHs? Obviously, it smacks of unfairness to employers of FDHs. As stated last week by Mr Matthew CHEUNG, the Secretary for Labour and Welfare, "the Government needs to ensure that the local workforce receive proper training and retraining in order to enhance their employability". Both training and retraining should be the Government's responsibility. The Government should provide direct appropriation instead of indefinitely "raising the knife upon" middle-class families.

Next, from a financial point, between 2003 and the end of March this year, the accumulative balance of the levy grew to \$4.4 billion. The funds have never been utilized. Now the Government has a lot of fiscal reserve and surplus. It is more reasonable and logical to inject money into the Employees Retraining Fund (ERF) directly from every year's revenue with no further requirement for employers of FDHs to pay. The Government's ability to tax the upper class in the community has always been limited. But members of the middle class are required to discharge the responsibility of providing welfare to the lower class. With the middle class under the pressure from the upper, middle and lower sectors, their discontent has enveloped the whole society.

We must not forget that for the average middle-class families, for example, young couples with small kids, both spouses have to go out to work. If the parents of neither the husband nor the wife have the time or energy to look after their kids, they have no other option but to hire a FDH. Furthermore, some families hire FDHs because of the need to look after their seniors. The

reason is that at present there are not enough nurseries or elderly care services. Examples like those given above are many. They are also very common in Hong Kong. Why does the Government impose levy on these families? What justifications does the Government have? It is essential to mention that, because of the intensity of inflation in recent years, expenditure on hiring FDHs has become a definite burden on members of the middle class. Besides, the monthly levy paid by employers of FDHs now can no longer be "offset". It is now real cash out of one's pocket. Over the past year, the prices of daily necessities such as fuel, rice, oil, salt, clothing, food, rent and transport have all gone up. Continuation of the "FDH tax" really adds to the heavy burden of the middle class.

If it is argued that since FDHs, like Hong Kong people, enjoy our health care, transport and recreational facilities when they work here, tax is, therefore, payable, then why is not tax directly imposed on FDHs? Even if the above argument does stand, FDHs themselves are, however, on low wages. Just as in the case of other Hong Kong people in the lower sector, who similarly enjoy public facilities but because of their low wages, they have not fallen into the "tax net". If we apply the same principle in considering the matter, then FDHs also need not pay any tax. The Government should not hold double standards towards FDHs. What is more, when the minimum pay of FDHs was lowered by \$400 that year, it was tantamount to exploiting FDHs.

Given the fact that the authorities have not got enough justifications to continue the imposition of "FDH tax", I here urge the Government to abolish, as soon as possible, this unreasonable "Employees Retraining Levy" so as to let the middle class and FDHs have "half" a moment to gasp for breath at a time of soaring prices. At the same time, I urge the Government to conduct a review to see if it is necessary to raise FDHs' minimum pay so as to counter inflation. The Government should also review as soon as possible the future direction of the work of the Employees Retraining Board (ERB) and see if it is necessary to inject money into ERB so that in future there can be "grounds and justifications" for it to use its resources for the training and enhancement of the workforce. With these remarks, I support the original motion of Mr Tommy CHEUNG.

MR KWONG CHI-KIN (in Cantonese): Madam President, that year the Government imposed on employers of imported workers a levy (commonly known as "imported workers' tax"). It was a measure for the protection of

local workers. Imported workers' tax adds to the cost of hiring imported workers, thus correspondingly improving local workers' employment opportunities. Imported workers' tax, including the "foreign domestic helpers (FDH) tax" now under discussion, is also used for training purposes to enhance the overall quality of local workers. The original mission of the Employees Retraining Board (ERB) is to give the unemployed retraining for them to rejoin the workforce. However, there is now more money, the surplus being in excess of \$4 billion. ERB ought to be more forward-looking and adopt preventive strategy to provide against possible troubles so that workers need not avail themselves of retraining only after losing their jobs.

ERB now has more money, which can be of use in many ways. So long as it is properly spent to enhance the quality of the local workforce, members of the labour sector do not mind having too much. So, the Federation of Trade Unions opposes Tommy CHEUNG's original motion as well as Andrew LEUNG's amendment, and also does not support LEE Cheuk-yan's amendment.

Hong Kong has for long been transformed from an economy of labour-intensive manufacturing industries to a knowledge-based economy. Globally, the old way of operation of letting the lowest price win is being phased out. Taking its place is the quality of products and service. In order to enhance the quality of products and service, it is necessary to first enhance the quality of human resources.

The competitiveness of a community is also determined by the quality of its human resources. Hence, to see if a place can steadfastly provide sufficient and high-quality human resources, investors also pay much notice to the education and life-long learning condition of the place where they invest.

In words spoken, the SAR Government has, ever since its inception, put a premium on human resources. However, according to what the Government said, the so-called putting a premium on human resources often means the importation of talent. Therefore, our scheme for the importation of talent has been relaxed again and again. This is a lazy way, whereby we, instead of running education and training properly ourselves, simply recruit from other places their talent. How can there be such a "bargain" in the world? In order to safeguard a place's supply of talent, then besides recruiting talent from the outside, it counts even more to work properly on education, training and life-long learning. None of the above is dispensable.

It has recently been heard from a mainland professor that Denmark's training system is very sound. When a worker goes unemployed, the Government makes arrangement for him to get training so as to equip him for the hunt for another job. The fact is that every year the Danish Government spends 4% of its GDP on the people's life-long learning. Every year at least one half of the working population spend some time on training or retraining.

Because of her emphasis on developing human capital, which is further supplemented by policies supportive of the development of enterprises, Denmark has lately been chosen as the world's most business-friendly country by The Economist of England in a survey report entitled "Global Business Environment Scores and Ranks 2008-2012". In the same report, Hong Kong dropped to the seventh place from last year's sixth place on account of over-concentration of resources on the financial industry with little regard for the development of human capital and technological research.

Hong Kong has not got a set of sound policy on life-long learning. There is just the Continuing Education Fund. In his life time, each citizen may have \$10,000 for life-long learning. However, as we all know, for courses previously charged for \$1,000 or \$2,000 each, the training bodies are charging several thousand dollars each instead, the reason being that government subsidies are now available. One applying to the Continuing Education Fund can only get \$10,000, a sum only enough for one to take up a course or two. How can this be regarded as life-long learning?

In the face of economic restructuring, workers are displaced from their original jobs. Now the Government provides retraining courses. However, the main direction of the retraining courses is not retraining. Nor is its goal the enhancement of skills. On the contrary, retraining lasting a few weeks or a month is being provided on a so-called "market-oriented" basis quite short-sightedly. After that, the workers will be pushed back into the market for job hunting. With the economic structure under the different industries utterly lopsided, workers can only find positions like cleaners, security workers, domestic helpers and masseurs. With retraining going on non-stop, supply exceeds demand, which drives down pays and thus aggravate the problem of working poverty.

As ERB has accumulated several billion dollars of "FDH tax", we should do some planning to see how to make good use of this sum of "FDH tax" to enhance the quality of our workforce. For example, at present, working persons wishing to study must burn the midnight oil and attend classes after work. Never has the Government had a policy on training leave. Employers also will not give employees days off for them to attend classes. Why not consider using the levy collected for ERB to subsidize employees' training leave?

Another example, the Construction Workers' Registration System now in force requires workers to receive training and take certifying tests. To attend classes, they have to stop working. There is also the need to pay registration fee. All these need money. Can the levy collected for ERB be spent on workers of various trades who wish to enhance their skills? One more example, can it be spent on the pre-employment training of young school leavers to enhance their employability?

Madam President, the levy collected for ERB can in fact be for many many uses. If our human capital can be effectively enhanced, it will lead to a healthier growth of our economy. So, we consider certain Members' proposal to cease the imposition not appropriate.

Madam President, I so submit.

MR JAMES TO (in Cantonese): President, the Government, holding that it is the responsibility of employers of foreign domestic helpers (FDHs) to provide training to those rendered jobless by the economic restructuring, has been imposing a levy on employers since 1992. However, we wonder whether or not the Government has the responsibility to provide training to people made jobless by the economic restructuring.

I think the answer is that most people agree that the Government does have the responsibility to provide training in this respect. According to the Appropriation Bill 2008 presented by the Government this year, "From 2008 to 2009, the Government will cease its annual recurrent subvention to the Employees Retraining Board (ERB), which will then be financed by the Employees Retraining Levy." What is the reason for the Government to put an end to the subvention to ERB? Is it just for the reason given, namely, that the accumulative balance already stands at several billion dollars? Or, is it that the

Government itself is also somewhat not happy with the work of ERB? Or, is it that the existing unemployment rate is, as in the words of certain government officials, close to the lowest level in their lifetime and, hence, the Government finds it no longer necessary to fund ERB to control or manipulate the unemployment rate?

On taking a further look at ERB's courses, we in fact have some doubt too. According to their website, at present ERB's major courses are for the training of domestic helpers, post-natal helpers, and security workers. As a matter of fact, many of those so-called persons with low skills and low academic attainment now were once management people when the manufacturing industries were at their peak. Yet the courses of ERB are providing training for them to go downwards, not upwards, asking them to be trained for jobs of more inferior skills. Should this be ERB's long-term objective?

President, Mr Andrew LEUNG's amendment is for the effective utilization of the existing Employees Retraining Fund (ERF). The Democratic Party is not going to go against it. I think members of the public will also give support. However, at a time when it appears that the Government is pulling back subvention, we have one query, namely, whether or not ERB is able to effectively utilize the money in ERF. Is it necessary for the Audit Commission to take a further look to see if ERB can effectively utilize the Fund? Some citizens spoke to me half-jokingly that in the event of no effective utilization, ERB had better "refund" members of the middle class what they have paid to hire FDHs to look after kids or the elderly.

President, these are my remarks.

MR CHAN KAM-LAM (in Cantonese): President, as early as the year 2000, on account of the prolonged depression in our economy as well as continuous fiscal deficit, some people began to bring up proposals to the SAR Government to impose the "foreign domestic helpers (FDH) tax" or charge a working visa tax on every FDH so as to get new sources of revenue. Then in 2002, the Government carried out a review of the policy on FDHs.

In November 2002, when putting forward to the Government expectations in respect of the Budget for the year 2003-2004, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) suggested to the Government that

consideration be given to the idea of imposing "FDH tax" on employers. In the end, the Government proposed to include FDHs in the Supplementary Labour Scheme. At the same time, an Employees Retraining Levy of \$400 was imposed on employers of FDHs, and the minimum pay of FDHs lowered by \$400. The measure adopted by the Government then did draw criticism of displacing concepts in disguise. Anyway, it is indisputable that at that time the Government did come up with a plan clear of discrimination against FDHs and more acceptable to employers of FDHs. At that time, we also welcomed the idea as we believed that the levy collected could be used to beef up the training and retraining of local workers, inclusive of domestic helpers.

With our economic situation getting better, the rate of unemployment drops steadily. These few months, the FDH levy has accumulated to more than \$4 billion, providing the Employees Retraining Board (ERB) with dependable monetary income. The scope of ERB's service targets has been extended, as a result of which, it is estimated, its annual expenditure will rise, by two stages, to \$1.4 billion. Anyway, given its existing reserves, there is enough to finance ERB's operation, and keep it going for quite a reasonable length of time. So, we are of the view that the need for the Government to impose FDH levy is no longer that compelling.

President, before the introduction of the FDH levy in 2003, the minimum mandatory pay of FDHs was reduced from \$3,670 a month to \$3,270. So, when employers of FDHs paid the monthly FDH levy of \$400, the payment incidentally was offset by the "pay cut" of \$400. Paying nothing extra, employers of FDHs voiced relatively little objection. However, our economy later took a turn for the better. The minimum pay of FDHs went up by a total of 6.4% over the three consecutive years of 2005, 2006 and 2007, rising from the original figure of \$3,270 to the current amount of \$3,480. Furthermore, with inflation forecast to escalate, the minimum pay of FDHs is bound to be further revised upward this year. Hence, the offsetting arrangement in respect of the \$400 of 2003 has long been part of history. The monthly payment made by employers of FDHs has long ceased to break even. It is something paid in extra. If the Government continues to impose the monthly FDH levy of \$400, then it is in a way a penalty on middle-class families, people among whom the hiring of FDHs is more common.

Mr Matthew CHEUNG, the Secretary for Labour and Welfare, earlier on also disclosed that currently the money for the Employees Retraining Fund (ERF) was mainly from the FDH levy. In the past, because of the hiring of a

lot of imported workers during the period of the construction of the new airport, ERF managed to be self-sufficient. However, following the completion of the construction of the new airport, there was insufficient funding for the Fund. So, the Government had to inject into it \$300 million to \$400 million a year. Later, the Government brought in the FDH levy, which subsequently constitutes the bulk of the funding. By now, there is an accumulative balance of more than \$4 billion. So, it can be said that the Fund, now no longer kept frozen and can be used to finance ERB, is from contributions paid almost entirely by employers of FDHs. In our opinion, to keep on collecting the levy and let employers of FDHs single-handedly help the Government train local workers is a practice unfair to them.

At the time when there was a downturn in the economy, the Government had to open up new sources of revenue and "raise the knife upon" members of the middle class by increasing salaries tax and bringing in new tax items in a bid to suit measures to the time. This is excusable. However, given the fact that the current accumulative balance of ERF is enough to keep ERB going for several years, DAB holds that the Government just need not keep on collecting the said tax, and that it is also time to temporarily cease the imposition of the tax.

Just as in an earlier case, where the Government decided to lower the Business Registration Certificate Levy in respect of the Protection of Wages on Insolvency Fund on account of the Fund having a reserve amounting to more than \$1 billion, DAB thinks that the policy for the Government to temporarily cease the imposition of retraining levy on employers of FDHs is basically the same in principle.

Regarding the amendment moved by Mr LEE Cheuk-yan, though it similarly asks the Government to put an end to the FDH levy, it puts in a request rigidly asking the Government to make a one-off injection of \$20 billion into ERF. In the opinion of DAB, this proposal to deploy a huge amount of public money is not just a request with no scientific basis, it also goes against the principle of prudence in financial management. What is more, ERF is financially very well-off now. There is just no need for a huge injection of fund. So, we have reservation about that amendment.

These are my remarks.

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

MS MARGARET NG (in Cantonese): President, I would like to particularly thank Mr CHAN Kam-lam for the speech just delivered by him. I remember that when the Government at the time imposed the now so-called "foreign domestic helpers (FDH) tax" as a surcharge, I was strongly against it. I said it was not lawful. It is because to add tax and to impose tax both require approval from the Legislative Council. That year the Government said that it definitely was not additional tax, and that the levy was to be imposed in accordance with legislation already in existence. Today, we heard from Mr CHAN Kam-lam words saying that that was in fact a tax item, and that the imposition should stop as there is sufficient appropriation from the Treasury.

President, having waited for so many years, I ultimately managed to have the matter clarified.

MR LEUNG KWOK-HUNG (in Cantonese): At the time of the imposition of the "foreign domestic helpers (FDH) tax" I was not yet a member of the legislature. However, at that time I was a columnist, and I lashed out at it continuously. Think about it, FDHs leave their native places to work here, solving for local families the problem of household chores so as to make it possible for many women or men to go out to make contributions to our economy and create wealth for Hong Kong. In fact, the move to impose "FDH tax" then was both shameless and contrary to heavenly principle.

In the first place, it does not matter whether hiring huge numbers of foreign workers here is for employment in the construction industry or for investment. They are all hired workers. Every hired worker works for money. This is also business. Most members of the petty bourgeoisie or middle class are hiring FDHs — even some residents in my housing estate are also hiring FDHs — they are not hiring FDHs in order to exploit them. Perhaps FDHs have to work long hours and are being under-paid. These are all unfair to them. However, this is different from the exploitation of workers by capitalists. So, it is unreasonable to mix up the two. Why was a FDH kicked around by others like a football? Let us take a look at the situation to see what it was at that time.

At that time, our Government said there was fiscal deficit, and that it was, therefore, necessary to eliminate the deficit. However, there was reluctance to provide money for the training of workers. Hence organizations claiming to be

championing the cause of workers, for example, trade unions, agreed to the move. Is it that local workers are workers whilst Filipino workers are not workers? The move went like this. First, a tax was imposed on employers unlawfully. Then a way was opened for them to take money back from the domestic helpers, the ones serving them daily. What sort of government is this? It has committed murder with a borrowed knife. In the end, either conscientious employers spent \$400 less or unscrupulous employers took back the tax payment accordingly. Consequently, poor people who worked as domestic helpers suffered more.

Of all Members of the Legislative Council, I am the one who often attend meetings of Filipino maids. They invariably turn livid on the mention of the said tax. Yet, given the political spectrum then prevailed, many people actually managed to use such a levy to convince local workers, claiming that they were serving the workers. I am of the view that to get to such a state of affairs in the course of running trade union movement or labour movement can be regarded as betrayal. The reason is that there should be no national boundary for workers.

Very well, has our Government had any reflection after doing such a wrong thing? Seemingly it has. It once suggested ceasing the tax. But now it does not want to cease. Honourable Members, workers' training then brought in by the Government was in fact a ploy used to lower the figure of unemployment. Now, there are a lot of jobs in the market. Workers not given wage protection are suitable for low-paid jobs. The market is teeming with them, thus invigorating the economy. That is tantamount to supplying some blood and sweat for those ruthless real estate businessmen and monopolists to suck inside the pyramid. It is only natural that the Government finds no more need for such training. However, it says that it is still necessary to continue the imposition. What has happened? In reality, it is very simple. This is indeed politics. It is precisely because FDHs have no political representative. FDHs are being discriminated against by Hong Kong people. Our political elites, social elites and economic elites keep on teaching Hong Kong people to discriminate against the working class of other places, including those of our home country. This is indeed a tragedy.

Therefore, those who celebrated here on that day should feel ashamed today. To cease the imposition of "FDH tax" is in fact to right a wrong, which has transferred the responsibility that ought to have been shouldered by those fat cats that have for a decade or two benefited from the bubble economy to the

middle class for further transfer to those impoverished women. Had the Government then, or even now, brought in progressive profits tax or actually imposed a tax called training tax, then it would have been very clear. He who earns more pays more. He who earns nothing pays nothing. Do not ask workers to pay if there is no wish to exploit them. Is this correct? Why did so at that time? Why did our legislature turn things upside down? It is in fact very simple. They did not dare to offend the Government, who, in turn, did not dare to offend the rich and yet wished to impress workers favourably. Hence, here comes a David's deer. So I always apologize to those Filipino maids whenever I run into them. I tell them that nothing can be done, that the reality in Hong Kong is like this and that our legislature is also like this.

Very well, the imposition of the tax is to cease now. Someone said so. However, it is still necessary to effectively utilize the existing Employees Retraining Scheme. According to Mr LEE Cheuk-yan, before the imposition ceases, the Government should make a one-off injection of not less than \$20 billion. At first I did wish to support him. However, I gave it another thought. The imposition of the tax must cease first, how can the imposition be allowed to go on? So, I have no choice. In fact I find him more responsible. It is because he thinks that there is still something to be done with regard to retraining. He still has some sense of commitment. However, on this matter, I am unable to vote in his favour.

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

MR CHIM PUI-CHUNG (in Cantonese): President, the restructuring of society is a fact. There can be no denial. However, whose fault is it? It is the fault of society. Who should be responsible for the fault of society? First, to whom does society belong? It is the Government. Then, to whom does the Government belong? It is the people. So, the Government, as the people's representative, has to be responsible for the fault of society's restructuring and be responsible for the fault of society. However, because of this fault, there may be progress.

What was on the mind of the Government was that those unemployed in Hong Kong once numbered more than 200 000 whilst workers hired also numbered more than 200 000. The Government said that if the families

concerned hired those 200 000-odd people instead of foreign domestic helpers (FDHs) to do housework, then nobody would be out of employment. As this relatively lowly job type in fact this is not that lowly. To hire a domestic helper costs more than \$3,000 a month in wage. In addition, both meals and accommodation have to be provided. These expenses add up to more than \$5,000. In Hong Kong, many relatively lowly workers cannot even earn \$5,000 a month. There is the saying that small sums add up in the long run. We ought to do the mathematics more carefully. Hence, the Government mixed up matters and passed the buck to employers by saying that they had to foot the bill of the retraining programme as they had made more than 200 000 people jobless by hiring cheaper workers. Surely, that might have been a very smart idea from government officials then.

However, let me do some calculation for the Government. Suppose there are now 200 000 FDHs, and each employer pays an annual levy of \$4,800. There is an annual income close to \$960 million for the Government. Of this, a sum of \$400 million goes to retraining. Left behind is a sum of \$560 million. Why is there such surplus? The Government should make a review and keep no more reserves. Suppose there are now 250 000 FDHs, the total of the levy will amount to \$1.2 billion. There will be a surplus of \$800 million if the Government spends \$400 million a year. Why is there such surplus? Therefore, President, I myself think that the review should start with figures. As retraining costs \$400 million a year, I myself think that it needs to charge each employer just \$100 a month. If there are 200 000 FDHs, the Government will have an annual income of \$240 million from the FDH levy. Then it only requires a supplement of \$160 million. As the reserves stand at \$4.4 billion, it is basically enough to provide supplements for 30 years. Who knows who will still be around after 30 years? Suppose there are 250 000 FDHs. Then the Government is to provide an annual supplement of \$100 million. With the reserves standing at more than \$4 billion, there can be supplements for more than 40 years. To do so is to comply with public opinion.

I am against immediately ceasing the imposition of FDH levy. Why? If the collection of the \$400 is to stop, the money will go back to the employers. As the employers can afford to hire FDHs, why do they mind to pay \$400 more? This is not punishment. It is done by mutual consent. We should take from it \$300 and hand it directly to FDHs so as to benefit them. This does not necessarily mean extra benefit for FDHs. It just restores for them the pay level enjoyed by them three or four years ago before the pay cut. We need not argue.

Even if the Government is to give no supplement to retraining, there is no reason for it to act like a thief stealing from another thief by giving no supplement and collecting payments from employers for deposit into the reserves. This does not make sense.

There is one more problem. My opinion is that there is no need to work up the so-called issue that FDHs are being discriminated against by us, the people of Hong Kong. We all know that it is of their own accord that FDHs come here. Singapore is also a developed city, a developed place or even a developed country. As far as I remember, their pay level for FDHs is only 60% or 70% of ours. Given this, I wonder why we "pretend to be loaded" whilst we are not that "loaded", and say that we are paying less. If pay cut did have great impact on FDHs, they would not have opted to work here. Why are they here? Are they going after the "fragrance" of Hong Kong? Here, many homes are very small. Many persons are not qualified to hire domestic helpers. Yet they still hire domestic helpers, and let them sleep in their living rooms or any other places. Of course, this is the choice of domestic helpers themselves. They make the choice neither at gun point nor under duress. Domestic helpers also enjoy human rights. To work here, they even have to pay high commissions. So, we, as legislators, should not stir up feelings or say nonsense, but ought to face up to reality bravely. Certainly, we can be of different views. On the question about right and wrong, it is definitely not okay to consider oneself to be absolutely right and regard others as totally wrong. This way of thinking or doing things should definitely come under criticism. So, my suggestion is for the Government to review the policy.

Furthermore, retraining is also something very important. The Retraining Scheme costs several hundred million dollars a year, giving retraining to workers not having enough skills. It is hoped that the Retraining Scheme is not like Methadone, the treatment drug, which only aims at training them for alternative jobs without making any improvement for them. This very much warrants active review by the people concerned in both the Government and the Employees Retraining Board. It is hoped that they can really accomplish something useful. I firmly believe that, as a government, the Directors of Bureaux are very responsible and do wish to do something good. In such case, there should be review and study. Do not just give us "the thumb-down sign" when we make proposals. Officials should discard the bureaucracy of yesterday, consider the suggestions of today and also accept others' opinions. Society as a whole can then progress. Only this is considered constructive, in

which case the opinions expressed by us as legislators will be useful. Otherwise, it is just empty talk, and will not be constructive ultimately.

President, I do not want to exhaust the seven minutes of my speaking time.

MR ALBERT CHAN (in Cantonese): President, in his speech just delivered, Mr CHIM Pui-chung said that the imposition of this levy was just like drug addicts taking Methadone. It is very correct to say so. Addicted is not just the Hong Kong Government. In this Chamber, some Members also belong to certain groups or organizations that rely upon, and live on, the Employees Retraining Fund (ERF) derived from the foreign domestic helpers (FDH) levy. Such interests give those organizations strength. President, those organizations probably ought to declare interests.

President, this "FDH tax", one for use by ERF, basically has been erroneous since its inception with regard to rationality, logic, and worthiness. Moreover, it is a policy going from one mistake to another mistake. In his speech delivered earlier on, Mr Albert CHENG said many things that are also at the bottom of my heart. I am not going to repeat them. Basically, the entire FDH levy is filled with discrimination. Why is there no tax imposed on foreign businessmen in Hong Kong? Why no additional tax imposed on professionals coming here to work? Why no other tax imposed on international funds coming here for investment on top of the profits tax? Why target this tax against domestic helpers at grass-roots level whose power of organization is the weakest and who have to toil the hardest to earn their living with blood and sweat? Apparently, the Government was then bullying the weakest of the disadvantaged groups.

Regarding wages for FDHs, if supporters of workers' rights are to make a comparison of existing wages among workers, the Government really should do a review. If FDHs' current pay is taken into account, it is definitely a far cry from the minimum pay and maximum working hours advocated by many trade unions.

If there is support for labour movement The labour movement should be an international movement devoid of boundaries, racial segregation, or social divisions. Power and privileges should be the same. We should not cut their

pay and privileges because these people are from some third world countries or backward places. Hence, any person giving only conditional supporting for ceasing the imposition of this "FDH tax" is going against the fundamental principle of trade unions and international labour rights. Our demand is for the abolition of a discriminatory policy. To this no condition whatsoever should be attached. Therefore, I call upon representatives of labour bodies or those claiming to be representatives of labour bodies — some of them have left this Chamber and I know not where they are — to clearly identify themselves with the working class as well as with the position of workers.

President, the two issues in fact should be dealt with separately, "FDH tax" and ERF being in fact two distinct matters. Similarly, Hong Kong Government's many policies on taxation and the financial assistance being given to the lowest-pay workers or CSSA recipients are also two different matters. The way in which the Government distributes the overall revenue representing the Treasury's main source should be dealt with comprehensively as "a package". The Government definitely should not "raise the knife upon" a disadvantaged group, people who are unable to get representation in the local political circle to speak for them. LEUNG Kwok-hung in the past attended many such gatherings. I did so not so often. However, I occasionally did attend a gathering or two. Basically, I deeply sympathize with FDHs.

So, President, we should in fact do fairness to FDHs. This is also applicable to employers of FDHs. I think many Members here in this Chamber also hire FDHs. Their contributions to our families and our society are unquestionable. As they do make contributions to our society, we should not apply to this group of people a discriminatory policy.

Over all these years in this Chamber, seldom have we supported the proposals made by the Liberal Party. It is even rather unusual that both LEUNG Kwok-hung and I are going to support this proposal of the Liberal Party. This is a miracle in history. However, our support is based on two different class concepts. The Liberal Party puts forward the proposal mainly in the interests of employers — I want to point out this position clearly. If the Liberal Party were not dictated by the interests of employers, there should have been a proposal to restore the previous pay to domestic helpers after the abolition of the "FDH tax".

As we all know, the Hong Kong dollar, being pegged to the US dollar, has been depreciating continuously in recent days. Given the fact that the Hong Kong dollar has been depreciating against the currencies of FDHs' countries, their wages in fact have been dropping continuously over the past few years. So, if there is fairness to be done to these domestic helpers' pay, it is only reasonable that upon the abolition of the \$400-levy (it is hoped that the Secretary, friends in the labour sector and friends in the Liberal Party will give support while doing them fairness), this sum of \$400 should at the same time be restored in their pay. In this way, the matter can be accounted for in history and the label depicting Hong Kong as biased against domestic helpers be removed.

President, I am of the view that the issue about ERF should be dealt with separately. As stated by me just now, it should not be linked up with this one. In fact the Government may either make additional subvention from the Treasury to this Fund annually, or inject additional money when the Fund is exhausted. Should it be \$10 billion, \$20 billion, or \$5 billion? This is already another issue. Labour bodies living on ERF, of course, think that the more money that the Government injects, the better it will be. However, if a lot of financial assistance is required here, then I wonder what is to be done in other areas, such as CSSA, "fruit allowance" and health care. Why must the stand adopted towards ERF take precedence over the old, the frail and the disabled? How about patients' rights and privileges? So, this aspect will have to be discussed jointly next time. President, although we do not support the amendment, we, very exceptionally, do support the original motion moved by Tommy CHEUNG of the Liberal Party.

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

DR FERNANDO CHEUNG (in Cantonese): President, the idea leading to the imposition of the "foreign domestic helpers (FDH) tax" (also known as "FDH levy") was from the population policy of 2003. This population policy is in fact also quite peculiar. How come the population policy gave rise to the "FDH tax"? According to the Government's document at that time, the objective of the population policy is, in fact, to implement Hong Kong's vision ensuring that Hong Kong becomes an attractive major city in Asia in which to live and work; developing a socially cohesive and stable society that recognizes that the community's diversity strengthens its cosmopolitan outlook; contributing to the

modernization of China while also supporting Hong Kong's long-term development. This is the objective of our population policy. What has this to do with the "FDH tax"?

To be honest, many recommendations in the whole document on the population policy were quite baffling. Among the things mentioned were the adverse economic effects of having a large elderly population group. Also mentioned were matters like quality-related demographic problems. One of the final recommendations was the imposition of FDH levy. At the same time while it proposed to impose a monthly levy of \$400 on the employers, it also proposed to reduce the minimum pay of FDHs by \$400. President, I think this is confession not under duress. On the one hand, a levy of \$400 was imposed on the employers. On the other hand, employers were told that the wages payable by them could go down by \$400. As such, when the employers were to pay the \$400, where would they get that \$400?

Let us give this a thought. Currently, the monthly median income stands at \$10,000. The household median income is between \$16,000 and \$17,000. Families each earning less than \$16,000 a month (making up one half of the total of the families) in fact fall into the so-called middle category. Earning \$10,000-odd to \$20,000 a month, each family still has to hire a Filipino maid and support a child. It is financially very pressing to have to pay \$400 on top of other usual expenses. Perhaps there are some people who, because of unsettled conscience, consider that they should shoulder the cut of \$400 from the pay of Filipino maids and keep the pay of Filipino maids (or FDHs of other nationalities) unchanged. Could there be many such people? I think there are some like that. However, to be honest, in this respect, the Government has made use of a weakness in human nature. Using such weakness and a mechanism, it bypassed the Legislative Council, and said that it was neither a tax nor discrimination against FDHs as the levy was just imposed on employers. This is the fact.

President, such a "FDH tax" is definitely discriminatory, and absolutely oppressive to workers on low wages. These people are from foreign places. Of course, we have to protect local workers. But we must not forget that these foreigners have in fact set free quite a lot of our local manpower. According to the Government, in order to avoid abuses as far as possible and minimize the chances of having FDHs taking up local jobs, there was the proposal to bring in a FDH levy. However, the Government at the same time admitted that these two

so-called employment markets were in fact separated. In paragraph 13 of the document on population policy, the Government said that a survey in October 2000 found that foreign domestic helpers and local domestic helpers constituted two distinct markets in terms of supply and demand. This is stated in the Government's document, which goes on to say that "local domestic helpers prefer part-time jobs and households requiring full-time domestic helpers prefer foreign domestic helpers." As the two markets are different, I wonder why there are concerns about abuses or the need to minimize the chances of having FDHs taking up local jobs. Both were mentioned in the Government's document.

The truth is that the Government just wanted to collect money from the public. In 2003, the Government was indeed in grave financial straits, and thus brought in the levy, one not labelled as tax. Consequently, many middle-class families have to take money out of their own pockets in order to protect the interests of their domestic helpers. Take for example a family earning \$30,000 a month, or \$360,000 a year. If the husband and wife have a child and are supporting parents, the amount of tax that they are required to pay this year is in fact zero. However, if they hire a Filipino maid, then the amount of tax that they are required to pay is \$4,800. This is quite ridiculous. To many middle-class families, especially families not earning too much, the sum of \$4,800 is quite a heavy burden.

To shift the "FDH tax" onto FDHs is in fact to reduce their pay by more than 10%. For FDHs, we already have adopted quite a few pieces of discriminatory legislation. They cannot become permanent residents, regardless of their length of service here. On the contrary, some so-called expatriates, that is, those senior administrative personnel from overseas, are qualified to apply to become permanent residents after spending seven years in Hong Kong, and need not come under a regulation requiring them to leave Hong Kong within two weeks after vacating a post. We are already quite harsh to FDHs. Why still shift onto FDHs those so-called retraining expenses, for which the Government should in fact be held responsible and liable?

President, I support Tommy CHEUNG's original motion. These are my remarks.

MRS SELINA CHOW (in Cantonese): President, the Civic Party opposes the imposition of the levy on employers of foreign domestic helpers and considers it a kind of racial discrimination. As we all know, the Civic Party supports setting a minimum wage. After a minimum wage is set, I wonder if it would cite the same ground to demand that the wage for foreign domestic helpers be made on a par with that for local workers. If it cites such a ground, the same dispute may arise. I wonder if this will happen at that time.

President, it is true that the Liberal Party supported the imposition of the levy on employers of foreign domestic helpers in 2003 because at that time, the Government was financially in difficult circumstances. In fact, at that time, this measure was just a stop-gap one. We also considered many other means. In fact, the Liberal Party did not support the Government indiscriminately. We had considered the substantial depreciation of the Peso, the Philippine currency, relative to Hong Kong dollars in the several years before 2003. Since domestic helpers from the Philippines were all paid in Hong Kong dollars, their income had appreciated a lot. At that time, we considered that in terms of the Philippine currency, Peso, even taking such a step would not take away a substantial portion of their real income. As we all know, the great proportion of their wages is sent back home. At that time, it was on this ground that we supported such a move. On the one hand, it was intended to ease the financial difficulties of the Hong Kong Government; on the other hand, we believed that doing so would not have too great an impact on foreign domestic helpers.

We in the Liberal Party are not just concerned about the benefits of employers and totally disregard the situation of employees, as Mr Albert CHAN claimed earlier. This is not true. We can see that since 2003, the wage for foreign domestic helpers has increased from \$3,270 to \$3,480 now and it will continue to increase. We believe that this will be the case because as far as we know, the Immigration Department constantly carries out reviews and will review how the wage should be adjusted in view of a basket of factors, although it does not say expressly how it will make adjustments. It is a pity that no official from the Immigration Department or the Security Bureau is present today. Perhaps, as the Financial Secretary put it, the majority of them are listening to the radio. If this is the case, I wish to make an appeal to them. If they can spell out with great transparency this basket or series of considerations and the bases for adjusting the wage of foreign domestic helpers, I believe employers would appreciate doing so greatly and accept them because the great majority of employers are in fact scrupulous. Generally speaking, they treat

their foreign domestic helpers very well and regard them as though they were members of their family. They will definitely not try to exploit these domestic helpers; rather, they will accept as far as possible a very sound and consistent basis for making adjustments to the wages of these domestic helpers.

I wish to state clearly that the Liberal Party absolutely supports investing in the retraining of workers. As Hong Kong is a very advanced society and we want to develop into a knowledge-based economy, we greatly support this kind of investment. All along, the Liberal Party strongly supports and is even willing to call on individual employers or enterprises to make investments in manpower training. Doing so can benefit society as a whole. However, this is the responsibility of the Government rather than certain employers.

Moreover, we heard Members from the labour sector say that the minimum wage of foreign domestic helpers had to be propped up and the levy on employers of foreign domestic helpers increased. This in fact smacks of protectionism. President, if we really do so, there is no ground for making employers a tool of protectionism or even making them fork out money to help the Government accomplish something. I think this is wrong because I believe local workers definitely have the competitiveness to ask for a pay higher than those foreign domestic helpers. I have not done any scientific calculation. However, we can all appreciate this. If we compare local domestic helpers with foreign domestic helpers in such aspects as language, culture and customs, in fact, local domestic helpers definitely have an edge over foreign domestic helpers as the latter come from another country, have to receive training and employer and employee have to adjust to one another in many areas.

I wish to make one point clear. Just now, several Members, such as Mr LEE Cheuk-yan and others, said that the Liberal Party was not committed to retraining. In fact, I think the Government has to be committed to it. It does not mean that the Government must spend \$300 million now if it has spent the same amount in the past. However, first, is it necessary to make a leap from \$300 million to \$1.2 billion all of a sudden? Is it really necessary to spend so much money? If the Government can prove that there is such a need, that it is necessary to spend this sum of public funds, the Government can try to persuade Members to lend their support. Now, the foremost question is: Is retraining necessary? If it is, is it necessary to spend so much money on it? The second question is: Should the employers of foreign domestic helpers foot the bill?

MS AUDREY EU (in Cantonese): President, first of all, I wish to respond to the point made by Mrs Selina CHOW in her speech just now that the main ground of the Civic Party's opposition to the levy imposed on employers of foreign domestic helpers (the levy) was that it was discriminatory in nature. She said that since the Civic Party supported the setting of a minimum wage, she wondered what view we would take when the setting of a minimum wage was discussed in the future. President, this is very simple. No matter how one looks at this matter, be it horizontally, vertically or diagonally, one cannot possibly look at it with discrimination, can one? President, this is my simple response to Mrs Selina CHOW.

However, we are not talking about a minimum wage today but the levy. Members from the Civic Party who spoke include Mr Ronny TONG, Ms Margaret NG and Dr Fernando CHEUNG. They cited many grounds in opposition to the levy. Not only did they point out the issue of discrimination, they also pointed out that when the Government proposed the levy to the Legislative Council, in fact, the levy did not have a proper status, it was not justifiable and it was all about concocting various pretexts. The Government collected a tax on the pretext of certain population policies, saying that it would be used for retraining. However, in fact, it did not go through the required legislative procedures of the Legislative Council before collecting a tax and this is also the main reason for our opposition to it.

President, I will not repeat what various Honourable colleagues from the Civic Party have said. I only wish to talk about our decisions concerning the voting that will take place later. We mainly support the original motion proposed by Mr Tommy CHEUNG. They have talked about the grounds and I will not repeat them. As regards Mr LEE Cheuk-yan's amendment, President, I wish to make it clear that we in the Civic Party will abstain. The reason is not that we do not support the Employees Retraining Fund (ERF). We support it very much and we agree that the Government has to be responsible for it. We also agree that injections should be made when necessary and requests for funding should also be made to the Legislative Council when necessary. However, we think that retraining and the levy are two entirely different matters and should be dealt with separately. Of course, the Government will concoct some pretexts and adopt the approach of substituting concepts. On the one hand, it says that it is collecting the levy from employers; on the other, it is in fact deducting the wages of foreign domestic helpers. Therefore, we think the issue relating to the ERF should be dealt with separately.

Another reason that we will abstain from voting on Mr LEE Cheuk-yan's amendment is that we think that injecting a large sum of money at one go and then using the interests derived from it to carry out retraining will lead to a problem facing this kind of funds, that is, a sum of money is locked up for one single purpose. President, the Civic Party does not oppose such a fund. However, as various funds were established for various purposes and they would lock up large sums of money, often, public funds could not be used flexibly in areas in which they are most needed, so as to make the money serve the greatest purpose. For this reason, I can only stress that at the present stage, I think it may be necessary to discuss the issue of capital injection in greater detail in future. This is the reason for our abstaining from voting.

As regards Mr Andrew LEUNG's amendment, President, it only serves to revert the motion to its original state as proposed by Mr Tommy CHEUNG and there is neither any addition nor a lot of deletions. For this reason, President, we will also support the amendment moved by Mr Andrew LEUNG. We also wish to make it clear that the Civic Party absolutely supports retraining and thinks that the Government has the responsibility to do more and better in this regard. If there is any need for the Government to request for funding or capital injection into the ERF, we will actively consider each and every request. Thank you, President.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call on Mr Tommy CHEUNG to speak on the amendments. The speaking time is five minutes.

MR TOMMY CHEUNG (in Cantonese): I am very grateful to Mr LEE Cheuk-yan for his concern about this motion and the additions he made to the wording of the original motion.

I believe that Members all share the same view because we all agree that the levy on employers of foreign domestic helpers (the levy) should be abolished immediately. However, after this levy of \$400 per month is abolished, should

this sum of money be credited to foreign domestic helpers? Mr LEE Cheuk-yan did not make it clear just now. The way he put it is rather "shifty". The levy of \$400 has all along been paid by employers. However, judging from the way that Mr LEE Cheuk-yan put it, it sounded as though it were all paid by foreign domestic helpers. We found that there was something wrong in saying so. We think that the levy and the adjustment of the wage of foreign domestic helpers are two separate matters and they should not be confused.

Whether the wage for foreign domestic helpers should be adjusted or not should be dealt with in accordance with the existing mechanism. When determining the minimum wage for foreign domestic helpers, the Government should take into account the prevailing state of the economy, the employment condition, the employment market, the wage trend, movements in the Consumer Price Index, and so on. In fact, in the past, the Government has adopted these indicators as the criteria in adjusting the minimum wage of foreign domestic helpers and, as a number of Members put it, it had been adjusted upward according to the inflationary trend in the past three years. If the wage of foreign domestic helpers is to be increased by \$400 in one go, this is equivalent to an increase of 11.5%. This would be being generous at the expense of employers. I hope Members would not jump to any conclusion about the increase when the review by the Government will soon yield result.

As regards capital injection, we also understand that Mr LEE Cheuk-yan is concerned that if the Government stops collecting the levy, this will be tantamount to "turning off the water tap" of the Employees Retraining Board (ERB). In addition, in the past, he also caused divisions between employers and employees frequently. This time, he wanted to divide off the Liberal Party by making it sound as though we did not support the work of the ERB, thus adversely affecting the retraining provided to 90 000 retrainees and service expansion. However, as Mr Andrew LEUNG and Mrs Selina CHOW said just now, such a situation would not occur.

When we spoke on the motion earlier on, we already pointed out that the Government had in fact concocted pretexts in order to assign to the ERB an item that was originally not under its ambit and shifted all the responsibilities that it should assume to employers of foreign domestic helpers. As a result, employers of foreign domestic helpers have to shoulder a host of retraining expenses. In the past, the half-year expenditure of the ERB was less than

\$400 million on average. However, the levy collected alone has almost reached \$4.5 billion. If the average rate of return for the Exchange Fund is applied to this sum of money, with an annual rate of return of 7% on investment, it is already enough to meet the expenses of the ERB. Moreover, this considerable sum of capital amounting to \$4.5 billion is already enough to meet the operating expenditure of the ERB for over a decade in the future even if the Government does not make any further capital injection.

As regards the several additional items to be included in the future, they should continue to be financed with the Government's general expenditure. Therefore, even if the ERB expands its ambit and scope of service, as long as the Government remains committed, the problem of insufficient funding will not occur. For this reason, the concerns voiced by Mr LEE Cheuk-yan and other Members of the labour sector are unfounded and unwarranted. Obviously, they have fallen into the ploy of the Government to sow discord. In fact, many Honourable colleagues said that they all supported the work of the ERB.

As regards the issue of capital injection, as Mr Andrew LEUNG said just now, given the amount of capital injection proposed in the amendment, given the close to \$4.5 billion already in the Employees Retraining Fund, if a capital injection of \$20 billion is to be made, the total will stand at \$24.5 billion. In fact, a large amount of social resources will be locked up, so this is in fact impractical as well as unnecessary.

Madam President, I so submit.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I would like to thank Mr Tommy CHEUNG for moving this motion today and the valuable views expressed by the Honourable Members. I have been listening attentively to the remarks and arguments made by the 24 Members, but allow me to reiterate that the Employees Retraining Levy (the levy) collected from employers of foreign domestic helpers (FDHs) is, I must stress, a levy rather than a tax. This arrangement is in line with the Government's established policy, under which employers hiring low-skilled imported labour should contribute towards the training and retraining of the local workforce. This is an obligation of the employers. The Government is also required to maintain the arrangement of collecting the levy from employers of FDHs to ensure stable and sustainable development of our training and retraining

services, with a view to providing the local workforce with appropriate training and retraining so as to enhance their employability and equip them to meet the challenges arising from globalization and a knowledge-based economy.

Earlier on, I have briefed Members on the policy background of the imposition of such a levy and the need for maintaining the levy arrangement. Now, I am going to further introduce how the Employees Retraining Board (ERB) utilizes the collected levy, which is very important, to offer more comprehensive and diversified training and retraining services for the local workforce. A consolidated response will also be made to Members' remarks.

Just as I said earlier, the ERB has completed a strategic review of its future role and responsibilities and released a consultative document in January this year, making a number of recommendations on the provision of training and retraining services to the local working population concerning self-enhancement. To achieve its various work objectives and provide focused services — I must stress that they are focused services — the ERB needs a stable and sustainable source of funding to maintain its future services and operation.

In response to the policy direction advocated by the Chief Executive in the 2007-2008 policy address, the ERB has relaxed the eligibility criteria of the Employee Retraining Scheme (ERS) on 1 December 2007 to cover people aged 15 or above, with education level at sub-degree or below. Furthermore, it has increased its training places by 10% from 100 000 to 110 000 in the 2007-2008 financial year, and intends to provide more training places in the future so as to meet the service targets' placement needs and aspirations.

Just now a Member said that with the improvement in the local economy and employment situation, the ERB witnessed a steady decline in the enrolment of its courses in recent years, and hence questioned the need to further expand its training places. I must stress that while there is an overall improvement in our economy and a drop in the unemployment rate, we should not forget that ERB's present service target is no longer confined to those low-educated middle-aged unemployed people. Relaxation of the age limit and academic qualification will significantly increase the number of eligible applicants. According to the data taken between December 2007 and February 2008, if we look at the unemployed people alone, the number of eligible people has increased by more than 100% from about 43 900 to nearly 100 000. What is more, ERB's future service target will no longer be confined to those unemployed people, but those eligible

in the whole working population. Insofar as the whole working population is concerned, the number of people eligible for ERB's retraining courses will reach 2.69 million. Therefore, sufficient training places must be provided by the ERB in the days to come in order to cater for the training needs arising from the existing and new service targets. The ERB intends to provide 150 000 and 200 000 training places in 2008-2009 and 2009-2010 respectively. While increasing the number of training places, it will also strive to enhance the content and quality of its training courses so as to achieve equal emphasis on quality and quantity. Number is not the only thing that matters, an equal emphasis on both quality and quantity is necessary.

The ERB understands that nowadays in the 21st century, it is not enough for employees to acquire deeper and broader job-specific skill. They should also develop their self-learning ability — just as Mr LAU Chin-shek said — or life-long learning ability. For this reason, the ERB will adjust the principle and content of its services. Not only will improvement and expansion be made, sustainable development will also be introduced. This is pretty important for the purpose of fostering sustainable employment and enhancing the ability of the local workforce.

In the consultation paper, the ERB has proposed a new vision to provide a flexible, quality and resilient workforce for the knowledge-based economy of Hong Kong. To realize this vision, the ERB emphasizes much on enhancing the quality of its training courses and services. For this, it prepares to operate the Manpower Development Scheme. Not only vocational training will be provided free of charge to the unemployed, subsidized skill upgrading courses will also be provided for the employed, together with training courses on generic skills for the service targets as a whole, which include betterment of personal attributes and foundation skills like languages, numeracy and information technology. Progression ladders will be mapped out for developing human capital among different trades, thereby facilitating the upward mobility of manpower in the job market.

The ERB is strengthening the courses and services currently provided to the existing service targets, that is, middle-aged and grass-roots unemployed people. These include diversifying the scope of the training courses, extending the training hours, incorporating workplace experience into the training courses and reinforcing its placement support services. Meanwhile, the ERB is also actively expanding the network of training bodies, and is working with a number

of quality providers in training or professional bodies to explore new courses in different areas with great market potentials, with a view to providing appropriate training having regard to the aspirations of the new service targets. It is hoped that the courses can be enhanced both in breadth and in depth, so as to meet the service targets' different levels of needs.

New training courses that are expected to be launched in the middle of this year, which Members might be interested, do not only cover cleaning workers and domestic helpers. Rather, they also cover Junior Clerk, Meetings, Incentive Travels, Conventions and Exhibitions Project Assistant, Assistant Merchandiser, Information Technology Assistant, Clubhouse and Recreation Assistant, Fitness Instructor, Tourist Guide, Insurance Agent and Financial Planner, and so on. More new courses will be organized in the future. To ensure that the workforce can remain in continuous employment and enhance their abilities, continuous efforts will be made by the ERB to co-operate with quality training bodies and organize more new courses that gear towards market needs. Furthermore, follow-up services will also be provided to the trainees to help them secure suitable jobs.

In order to enhance the quality of the training courses, the ERB will work closely with its training partners to assist and promote internal quality management within these bodies, thus ensuring recognition of the training courses under the Qualifications Framework. By enhancing the recognition of the courses, the trainees can then progress smoothly to the advanced training courses and march on the road of continuous learning and self-enhancement.

Furthermore, the ERB plans to enhance the training of personal attributes, which are required of in both social life and work, in full-time placement-tied vocational courses. This includes training on work attitude and job adaptation, life planning, adversity management, communication skills, emotional management, time management, personal financial management, team spirit and professional integrity, as well as foundation knowledge about job search and employment, through which the trainees will have their mindset tuned and adaptability enhanced so as to prepare them for continuous employment.

In a knowledge-based society, professionalization of skill is not only a sign of social development and advancement, but it is also the one and only way for the local workforce to maintain their competitive edge amid globalization and regionalization. For this reason, the ERB endeavours to promote skill

assessment and professional certification with a view to expanding the trainees' employment horizons so that they can walk up the profession ladder. Last year, the ERB joined hands with the Occupational Skill Testing Authority of Guangdong and started off with Health Masseurs. The Authority conducts National Occupational Qualification Assessment for graduates in Hong Kong, hence facilitating them in obtaining the National Occupational Qualification Certificate. The ERB is planning to expand their co-operation by offering Occupational Qualification Certificate of low skill and medium skill at this stage. With the provision of a through-train service for certain trades, training, assessment and certification services are provided free of charge to its service targets.

Being an international financial, trade, logistics, tourism and information centre, Hong Kong should have the talents with the necessary professional qualifications to take up the relevant posts. The ERB is considering to strengthening co-operation and communication with these industries, and help those who are interested in joining the industries to do so by obtaining the necessary professional qualifications through its various training schemes.

The ERB has always attached great importance to maintaining close liaison and communication with different employers and stakeholders, so that the training courses can tie in with the needs and changes of the job market. Employers' participation and acceptance of its graduates are keys to the success of the training schemes. To achieve this end, the ERB should establish close partnership with employers of different sectors so that its services can be fully comprehended and utilized by employers. In the days to come, the ERB will strengthen co-operation with the industrial and commercial sector (small and medium enterprises (SMEs) and social enterprises in particular) so as to learn about their demands for labour force and skills. Industry-based consultative networks will also be established to enable the involvement of the relevant stakeholders (including employers) in the design of training courses, ensuring that they can better meet the market needs.

Furthermore, the ERB will identify the training needs of fast-growing industries and actively consider the provision of a through-train service, the Organizational Human Resources Health Check service, by commissioning professional bodies to identify for the SMEs and social enterprises the skills

required of their human resources. It will also enhance the competitiveness of these enterprises by helping their employers to consolidate, develop and implement vocational training and in-service skill-upgrading programmes.

The ERB has all along provided tailor-made courses for individual employers, and the contents of which have jointly been developed by the ERB, the employers and the training bodies to ensure that they meet the employers' needs. The ERB will strengthen the provision of these tailor-made courses, with the SMEs and social enterprises as its primary targets. These specific training courses will not only help resolve the difficulties that these enterprises encounter in employment and training, but will also expand the employment horizons of the trainees.

In 2001, the Government set aside \$400 million for the establishment of the Skills Upgrading Scheme (SUS) to provide focused skills training for our elementary workers. The SUS has achieved satisfactory results since implementation, and has been praised highly by both the employers and employees of different sectors. While the ERS in the past mainly provided training services to the unemployed before they switched jobs, the SUS provided focused in-service training to the elementary workers. If the design and articulation of the courses of the two Schemes can tie in with one another, there will be greater benefits to both the employers and employees and more effective utilization of the training resources. For this reason, the ERB intends to gradually provide subsidized skills upgrading courses at the earliest in 2009-2010 to help promote in-service workers' self-enhancement and competitiveness. As the majority of enterprises in Hong Kong are SMEs that generally lack the resources and experiences required of training, it is believed that the ERB could provide the necessary training services to SMEs and social enterprises.

Madam President, in order to tie in with the pilot scheme proposed by the Chief Executive in the 2007-2008 policy address, to trial the one-stop employment support mode, the ERB will strengthen the service of the retraining resources centres. A one-stop Training cum Employment Resources Centre will be opened in Sham Shui Po in September this year on trial, providing tiered services to cater for different user needs, ranging from consultation to case management, assistance in formulating personal career plans and targets, making training referral, as well as providing employment support and job matching services.

Being a special trial point of the pilot scheme, the government department concerned will refer those with special difficulties in seeking jobs, the so-called "job-seekers with special difficulties", to the newly established one-stop Training cum Employment Resources Centre for specific support services. The services concerned are tailored to the background of the trainees and the support previously received, but with the adoption of new approaches with an objective of reviving their motivation to work.

With regard to these "job-seekers with special difficulties", the ERB will consider providing in-depth training to them to upgrade their job-searching skills so that they can further enhance their personal attributes and motivation to work, and confirm their career aspirations and develop a positive work attitude. The ERB will liaise and join hands with the Labour Department to help them enter the labour market.

It is hoped that through the provision of appropriate training and employment services, the disadvantaged (including the non-engaged youth, people with disabilities and industrial accident victims mentioned by Dr KWOK Ka-ki just now, rehabilitated offenders, new arrivals and ethnic minorities) will receive the necessary training and opportunities to facilitate their integration into society. For instance, more placement-tied training courses will be offered in English for the ethnic minorities. There will also be courses on Workplace Chinese to beef up their abilities in listening, speaking, reading and writing Chinese in order to increase their employability. Furthermore, appropriate training courses for the rehabilitated offenders will also be actively explored to facilitate their reintegration into the community upon release. In 2008-2009, a total of about 9 500 training places will be provided by special programmes for the disadvantaged, among which 3 000 are offered by the Community Harmony Course specifically designed for the new arrivals and ethnic minorities.

To facilitate the new arrivals and the ethnic minorities entering the labour market to achieve self-actualization and develop individuals' potential, the ERB plans to use Tin Shui Wai as a trial point to launch two community-based Community Harmony Courses which aim at enhancing the trainees' generic employment skills, assisting the local people with such need to formulate career plans, increasing their knowledge about the employment culture of the community and the area, enhancing their job-searching skills, and at the same time enhancing their personal values, teaching about psychological well-being, emotion and stress management and communication skills, so as to facilitate their

earlier integration into the community and formulation of employment targets. The courses concerned will provide a total of 3 000 training places. If the programme is proved effective, the ERB will extend the relevant services to other communities.

The ERB has always been taking care of the unemployed since its establishment, and has strived to provide them with training and employment support services on all fronts. In times of economic difficulty, it had helped many people re-entered the labour market. However, due to resources constraint, ERB's primary service target in the past was only unemployed people aged 30 or above with junior secondary education or below. Its total expenditure was about \$400 million a year. Following the expansion of both the service target and scope of training, the ERB will have a new strategic role and additional responsibilities. Apart from increasing the training places to cater for the needs of the existing and new service targets, it will also implement the recommendations of the strategic review report to, just as I have highlighted earlier on, comprehensively enhance the content of the training courses, improve their quality and expand the service area. In order to gradually implement all the recommendations, it is estimated ERB's total expenditure for this financial year is around \$1.1 billion, but not as little as \$400 million. With the implementation of the various initiatives, it is expected that the total expenditure will further increase in 2009-2010 and in the following years.

Madam President, I would like to briefly respond to the speeches made by some Members earlier on. Do allow me to say that some arguments are full of misunderstandings, and even misleading. For instance, some Members described the collection of levy from employers of FDHs as disgraceful, not noble, shameful, a backdoor act that has bypassed the Legislative Council and a misnomer as well. Critical remarks have been made on it. A Member queried the absence of a legal basis of such a levy, and even went so far to say that it was unconstitutional and discriminatory. While a Member considered the imposition of the levy an exploitation of the disadvantaged FDHs, another Member said that the imposition of such a levy was simply for recovering financial deficit in 2003. Here, let me briefly state that the many controversies over the collection of the levy and the setting of minimum wage for the FDHs. Over the past few years, we have time and again accounted this matter to the Legislative Council and to the court in the years during which the matter was under a judicial review. In fact, the Court of Appeal had accepted all the justifications submitted by us and ruled that no judicial review was necessary.

It is believed that Members should be well aware of the legal justifications, which I am not going to repeat here in great detail. I just wish to briefly state a few points. Firstly, the levy is actually paid by the employers but not deducted from the FDHs' wages. I believe none of the Members present at the meeting has done this to the FDHs they employ. Secondly, in the years following a \$400 reduction to \$3,270 in 2003, three upward revisions have been made, just as Members have pointed out clearly earlier on, increasing the wage by \$210 to the latest amount of \$3,480. For the adjustment mechanism mentioned by Mrs Selina CHOW just now, it is actually under the purview of the Labour and Welfare Bureau but not the Immigration Department. It is an established mechanism that has been operating effectively for a long time, basing on a basket of economic indicators. Why was wage reduction necessary? Because of the deflation that set in between 1999 and 2003, and we merely did act in accordance with the indicators. It had nothing to do with the levy, and they were absolutely unrelated. I hope that Members will understand this.

Madam President, I am so delighted tonight to learn that some Members supported both the direction of development and the work of the ERB. I have just given a detailed account of its new positioning and way forward, it is hoped that Members will continue to render their support to ERB's work and provide valuable opinions as before so that we can work hand-in-hand to upgrade the quality of the working population in Hong Kong.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Andrew LEUNG to Mr LEE Cheuk-yan's amendment, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew LEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Andrew LEUNG has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Miss TAM Heung-man voted for the amendment.

Ms LI Fung-ying, Mr WONG Kwok-hing, Dr KWOK Ka-ki, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the amendment.

Dr Raymond HO and Mr Abraham SHEK abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LAU Chin-shek, Mr Albert CHAN, Mr Frederick FUNG and Mr LEUNG Kwok-hung voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, 18 were in favour of the amendment, five against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 20 were in favour of the amendment and six against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): I now put the question to you and that is: That Mr LEE Cheuk-yan's amendment, as amended by Mr Andrew LEUNG, to Mr Tommy CHEUNG's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

PRESIDENT (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Miss TAM Heung-man voted for the amendment.

Ms LI Fung-ying, Mr WONG Kwok-hing, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the amendment.

Dr Raymond HO and Dr KWOK Ka-ki abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LAU Chin-shek, Mr Albert CHAN, Mr Frederick FUNG and Mr LEUNG Kwok-hung voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, 19 were in favour of the amendment, four against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 20 were in favour of the amendment and six against it. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG, you may now reply and you have three minutes 48 seconds.

MR TOMMY CHEUNG (in Cantonese): President, concerning the explanation given by Secretary Matthew CHEUNG when commenting at the beginning that it had to be ensured the Employees Retraining Board (ERB) would continue to receive support in the form of resources, so as to expand its training programmes, enhance the employability of workers of various ages in Hong Kong and equip them for a knowledge-based economy, the Honourable colleagues from the Liberal Party and I all support this point.

However, the Government insists that it has to continue to collect a levy from employers of foreign domestic helpers. Just as I said when proposing the motion, the Government is being self-contradictory. It has contradicted its past policy that foreign domestic helpers and imported workers performed jobs of a different nature, so no levy should be imposed on employers of foreign domestic helpers. Just like the Liberal Party, many Members have pointed out the hypocrisy and greed of the Government, so I do not intend to repeat such views.

However, no matter what, I hope all of us can see the true face of the Government clearly and will not fall into the trap set by the Government, which exploits the issue of the funding for the ERB, so that the Government can have the pretext to refuse to stop collecting the levy.

President, just now, the Secretary spent 18 minutes and 48 seconds on detailing the quality retraining courses to be offered in the future. I think the Secretary can keep this speech. When the Government stops collecting the levy and has to request this Council to approve the funding for the ERB, he should take this speech out and read it out again in the meeting of the Panel for

Manpower and even in that of the Finance Committee. I call on him not to waste the time of Honourable colleagues any more because our meeting tonight is already very long. However, I believe Honourable colleagues all understand the problem of the Secretary.

I suddenly heard some Honourable colleagues say that they supported the levy on the ground that this was a protectionist policy and local domestic helpers had to be protected. I am very surprised because all along, I have the impression that this is a levy and employers have to pay the levy to the Government. Should we do something about this? When some Honourable colleagues mentioned the protection of local workers, then some of our friends from labour unions also said that workers had to be protected. I do not know what the views of people in the labour movement are. Just now, Mr Albert CHAN also mentioned other issues and queried if there were any vested interests. I am not going to talk about these now. However, I do not know why Members would suddenly bundle so many issues together.

Nevertheless, lastly, I wish to stress that the Liberal Party supports raising the overall quality of the working population because this is relevant to the interests of the Hong Kong public as a whole. However, it is only reasonable that this responsibility should be shouldered by the Government instead of being shouldered by 250 000 employers of foreign domestic helpers alone.

For this reason, I am grateful to the 19 Members who spoke and I hope Members will support my motion. Thank you, Members.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Tommy CHEUNG, as amended by Mr LEE Cheuk-yan and Mr Andrew LEUNG, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Selina CHOW rose to claim a division.

PRESIDENT (in Cantonese): Mrs Selina CHOW has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr Fernando CHEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Miss TAM Heung-man voted for the motion.

Ms LI Fung-ying, Mr WONG Kwok-hing, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the motion.

Dr Raymond HO and Dr KWOK Ka-ki abstained.

Geographical Constituencies:

Mr James TIEN, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mrs Selina CHOW, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Albert CHAN, Ms Audrey EU, Mr LI Kwok-ying, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the motion.

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LAU Chin-shek and Mr Frederick FUNG voted against the motion.

Mr Jasper TSANG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, 19 were in favour of the motion as amended, four against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 22 were in favour of the motion as amended, four against it and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, she therefore declared that the motion as amended was carried.

PRESIDENT (in Cantonese): Second motion: Human rights and the right to return to one's hometown.

I now call upon Ms Emily LAU to speak and move her motion.

HUMAN RIGHTS AND THE RIGHT TO RETURN TO ONE'S HOMETOWN

MS EMILY LAU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, my motion is to urge the Central Government to honour the commitment it made when bidding to host the Olympic Games seven years ago that it would enhance human rights and develop democracy. Moreover, as a number of Hong Kong people, including more than 10-odd Members of the Legislative Council, have been unable to return to the Mainland for almost 20 years, we call on the Central Government to respect the right of the Chinese nationals in Hong Kong to freely travel to and from the Mainland, and urge the executive authorities of the SAR Government to assist these people to have their right to return to their hometown reinstated.

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

Deputy President, today marks the 100-day countdown to the Olympic Games. Since the Olympic flame will arrive in Hong Kong this afternoon, many members of the public are already celebrating the event. However, while we are being happy and excited, we have to think about some of the universal core values, such as human rights, freedom, democracy, and the rule of law. Deputy President, perhaps we should look at what had been said by Beijing officials during the bid to host the Olympic Games seven years ago. LIU Jingmin, the then Executive Vice President of the Beijing 2008 Olympic Games Bid Committee and the Vice Mayor of Beijing said, "By applying for the Olympics, we want to promote not just the city's development, but the development of society, including democracy and human rights. If people have a target like the Olympics to strive for, it will help us establish a more just and harmonious society, a more democratic society, and help integrate China into the world."

Deputy President, the theme slogan of the Olympic Games is "One World, One Dream". I believe many people of the international community, even though they are not Chinese, also share with us the same dream and wish for a democratic and free China that respects the rule of law and human rights, as well as enjoys affluence and prosperity. Speaking of human rights, Deputy President, I believe you recall that China signed the International Covenant on Civil and Political Rights on 5 October 1998. It has been almost 10 years since then, but so far the National People's Congress (NPC) has not endorsed it. I believe if the NPC is willing to endorse this Covenant, China is ready to display to the international community that it really wishes to honour its pledge made seven years ago.

Deputy President, in fact, Beijing's bid to host the Olympic Games provides a very good chance to inform the international community that there are improvements in various fronts in China, which has become a great country and a rising nation with more confidence. But what have we seen recently? Deputy President, on 1 April, the Olympic flame was flown from Beijing to overseas countries by a special Olympic-chartered plane to start the torch relay in 19 countries. When the torch arrived at London, Paris, and San Francisco — the cities in Britain and the United States which Hong Kong has always wished to surpass (the so-called "surpass Britain and catch up with the United States"), it

was met with numerous protests. Those protests were related to human rights incidents in Tibet, Sudan and Darfur as well as the Falun Gong and other human rights incidents. Some protesters even grabbed for the torch. Related to various fronts, these protests have aroused grave concern among the international community as well as within China.

Deputy President, at that time, a friend of Beijing — the Australian Prime Minister Kevin RUDD — was invited to visit Beijing and speak in the Beijing University on 9 April. While he said that Australia recognized China's sovereignty over Tibet, he admitted at the same time that there were significant human rights problems in Tibet. He urged all parties to find a solution through dialogue. As a matter of fact, the suggestion to "find a solution through dialogue" has been put forward by many people in many countries before, including those in Hong Kong and the Mainland.

Deputy President, by 11 April, the Executive Board of the International Olympic Committee (IOC) held a one-week meeting in Beijing. At that time everyone was nervous. As the incidents had created a storm of controversy in the international community, the IOC had to discuss whether they had to cancel the rest of the global torch relay. After the meeting, the IOC President Jacques ROGGE said that the ongoing torch relay would continue. However, he said the protests had created a crisis and urged China to honour the promises of improving the human rights conditions they had made during their bid for the Olympic Games. But how did the Ministry of Foreign Affairs of China respond to it? They criticized ROGGE, and asked him not to link the political issue with the Olympic Games. Deputy President, linking the political issue with the Olympic Games was what the Chinese Government did seven years ago. Today, those of us in Hong Kong are asking the Chinese Government to cash this cheque.

Deputy President, Mr Albert HO and I are members of the China Human Rights Lawyers Concern Group. The Concern Group wishes that the Central Government will honour the pledge it made years ago. We ask for the release of the human rights activist GUO Feixiong incarcerated in Guangdong, the blind legal professional CHEN Guangcheng who represented residents in Shandong, the labour lawyer WANG Sen in Sichuan, and the human rights activist HU Jia in Beijing. We also urge to stop the house arrest and persecution of the human rights lawyer GAO Zhisheng of Beijing, and the human rights lawyer ZHENG Enchong and his family of Shanghai.

Deputy President, I read some information when I was preparing for this motion, including information from the Network of Chinese Human Rights Defenders, the Dui Hua Foundation, the Committee to Protect Journalists, and the International Confederation of Free Trade Unions. According to the information from these organizations, many intellectuals, including writers, reporters, lawyers, human rights activists, and trade unionists have been arrested and jailed by the Chinese Government in recent years on charges related to speech inciting others to commit an offence and political offence, such as inciting subversion against the national government, subversion against the national government, or subversion by means of cult. Deputy President, the information and data I have obtained are based on the calculation of the Dui Hua Foundation — an organization founded by Mr John KAMM, whom I believe many of you have heard of. The Foundation has found that as at 31 March this year, there are more than 14 600 prisoners of conscience and political prisoners in Chinese prisons (as estimated by the Foundation, the number of which is absolutely under-estimated). According to the Foundation, among the data, the official number of prisoners is over 4 800 persons, the unofficial number of prisoners is over 3 900 persons, and the number of those involved in "active" prisoner cases is over 4 200 persons.

Deputy President, these are evidences on which we query whether the human rights conditions in China have been improved over the years. Why have so many patriots whose mutual wish for an affluent and civilized China ended up being sent to prison and tortured? Why is the situation like this? Why has China turned a deaf ear to what it said seven years ago?

Deputy President, the Olympic spirit advocates friendship, unity and fair play. It encourages mutual understanding and helps promote a better and more peaceful world. The reason behind our debate on this motion today is because 10-odd Members of this Council and many residents in Hong Kong do not have the right to return to the Mainland. I do not understand why the Central Government refuses to allow us to return. I have found a document on the Internet. Deputy President, it is released by the Central Government that serves as a guide to residents in Hong Kong and Macao who wish to return to the Mainland. Persons denied issuance of the Home Visit Permit include: (a) those who are considered prone to robbery, theft and drug trafficking; (b) those who present fabricated cases and submit falsified documents; (c) those who suffer from mental diseases. *(Laughter)* Deputy President, I wonder under which category the 10-odd persons of us have been classified.

Deputy President, it is late at night now. I guess we wish to find something to entertain ourselves.

Deputy President, I move the motion today with the hope of delivering the following messages to the Central Government through this Council. First, we wish that we still have freedom of expression and freedom of speech in Hong Kong. We can see that there have been improvements in some areas in the Mainland, but we are not allowed to return to China and see for ourselves. Meanwhile, we also see retrogressions in some areas. Tens of thousands of people are imprisoned in China just because their thoughts and speeches have to be suppressed. Therefore, I wish the SAR Government will be able to deliver this message to the Central Authorities for us. Furthermore, we also hope that it can address the query in the hearts of Hong Kong people, and that is, why are so many elected representatives of public opinion not allowed to return to the Mainland to communicate with the Central Authorities?

Finally, I would like to say a few more words. In fact, my motion does not refer to Hong Kong. However, recent incidents have made us feel that the SAR is like a bird startled by the mere twang of a bow-string, panic-stricken and always in fear. I do not know whether the Liaison Office of the Central People's Government in the SAR often calls the Chief Executive's Office, giving out instructions to the Government. The Government does not allow some sculptors to visit Hong Kong. Some movie stars and writers may not be allowed to come to Hong Kong as well. Deputy President, are there new policies in Hong Kong now? I thought the Olympic Games had given us a chance for people all over the world to see the best of us. Unfortunately we have succeeded only to produce the opposite effect. If we allow this situation to continue, it is equivalent to telling others that Hong Kong is already under "one country, one system". This really makes us feel very regretful. Nevertheless, as long as we are here, we will continue to strive for Hong Kong and hope that the people in the Mainland will also be able to enjoy freedom, democracy and the rule of law as soon as possible.

With these remarks, I beg to move.

Ms Emily LAU moved the following motion: (Translation)

"That this Council urges the Central Government to honour the commitment it made when bidding to host the Olympic Games seven years ago that it would enhance human rights and develop democracy;

moreover, as a number of Hong Kong people have been barred by the Central Government from returning to the Mainland for almost 20 years, this Council calls on the Central Government to respect the right of the Chinese nationals in Hong Kong to freely travel to and from the Mainland, and urges the Executive Authorities to assist these people to have their right to return to their hometown reinstated."

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

DEPUTY PRESIDENT (in Cantonese): Mr TAM Yiu-chung is prepared to move an amendment to this motion. Mr LEE Cheuk-yan is prepared to move an amendment to that amendment. The motion and the amendments will now be debated together in a joint debate.

I will first call upon Mr TAM Yiu-chung to speak and move his amendment to the motion. Then, I will call upon Mr LEE Cheuk-yan to speak and move his amendment to Mr TAM Yiu-chung's amendment.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, I move the amendment to Ms Emily LAU's motion. Originally I wished to congratulate the President. It was announced yesterday that she had the honour of being a torchbearer. This torch of mine is only a miniature.

Up until the meeting, there were 100 days before the Beijing Olympic Games. But right now it is about an hour to 1 am. So from now on, only 99 days remain until the Opening Ceremony. The Olympic flame has already arrived in Hong Kong today. Just like people in all provinces and cities throughout the country, people in Hong Kong are fervently waiting for this major event in 100 years. The objective of the modern Olympic Games is to achieve unity peace, friendship and progress by breaking down barriers of races, cultures and nationalities. It encourages mutual understanding by observing fair play and promotes a harmonious and better world through joint efforts. Nowadays, China commits itself to continuous reforms and opening-up, with a view to enhancing the integrated strength of the nation, and achieving further development of human civilization. It is the pride of every descendant of the

Chinese race that China is able to contribute to the world during the process of the revival of our nation by organizing the Olympic Games. The Democratic Alliance for the Betterment and Progress of Hong Kong fully supports Beijing in organizing the Olympic Games, and cheers for the athletes of Hong Kong and the Mainland.

I have collected some information during my preparation of the amendment. In March this year, pro-Tibet independence activists committed various crimes of arson and looting in Lhasa. Their offences can be fully illustrated in these photos. We have also watched such acts many times on television. The subsequent series of numerous protests against the Beijing Olympic Games and acts of insults to China have demonstrated the enormous external instigations encountered by China in the rise of our nation. We can see from these photos that the transmission of the Olympic flame has been continuously disrupted and sabotaged in many European countries and in the United States. During the transmission of the flame in London of the United Kingdom on 6 April, protestors made several attempts to wrench the torch away. Some protestors even used fire extinguishers to extinguish the flame. On 7 April, Tibet independence supporters and activists from Reporters Without Borders repeatedly blocked the bus that transported the Olympic flame in Paris of France. Members of the Green Party attempted to extinguish the Olympic flame with fire extinguishers. Moreover, when the Chinese disabled athlete JIN Jing was carrying the torch, a pro-Tibet independence youth tried to snatch the torch from her. JIN Jing was almost pushed out of the wheelchair onto the ground. Evidence of all these can be found in photos. On 10 April, due to security reasons, the torch relay route in San Francisco of the United States was not only cut by half, the torch also "disappeared" for a time. To the disappointment of thousands of Chinese who gathered to welcome the arrival of the Olympic flame, it was subsequently transported by a convoy of vehicles to areas far from the protestors.

Let us also look at the massive unjust and biased reports on the 14 March violent incidents in Lhasa from the western media. Take the photos of CNN of the United States as an example. We can see that, after editing, protestors' attacks on troop carriers were reported as police cars chasing after protestors. When Nepalese policemen and Indian policemen arrested protestors, German television stations N-TV and N24, the Washington Post and the Fox Television of the United States, the Thames of the United Kingdom had instead reported that protestors were arrested by Chinese public security officials. Deputy President,

these reports are evidence. This approach of handling the information on Tibet riots is a kind of violence committed by media, an act of deception, and publicity that distorts facts. The subsequent developments of events have indicated that these acts were conducted in order to pave the way for the activities of disrupting and sabotaging the transmission of the Olympic flame staged in April.

During the Olympic torch relay in San Francisco on 9 April, the western media had even publicly hurled insults at the Chinese people in front of the camera, among which the worst came from CNN's commentator Jack CAFFERTY. In a programme, he used comments to attack the Olympic torch relay on the one hand, and adopted vicious words to denigrate the Chinese people on the other hand. He made his slander that the Chinese are (I quote), "basically the same bunch of goons and thugs they've been for the last 50 years." (End of quote) All people with conscience should severely condemn these false reports and remarks that insult China. Therefore, if some Honourable colleagues of this Council plan to vote against my amendment, I hope they will think twice about — what kind of negative message your votes will bring?

The second part of my amendment proposes that the SAR Government should assist those Chinese nationals in Hong Kong who are in need to return to the Mainland on the premise that the provisions of the Basic Law and the principle of "one country, two systems" are complied with, and the system of exit and entry administration in the Mainland is respected. This is a reiteration of the "one country, two systems". According to the provisions of the Basic Law, for entry into the SAR, mainland residents have to go through the process of application for approval. As a reciprocate arrangement, for entry into the Mainland, Hong Kong residents similarly have to comply with the system of entry administration in the Mainland. Some people are not allowed to return to the Mainland for various reasons all of us know only too well. But we cannot damage the "one country, two systems" on grounds of certain personal reasons of these people, and ask the Mainland to completely give up the right of exit and entry administration. The "one country, two systems" is an overall concept. We must not base on our self-interest as a starting point, and at times demand "two systems", but at other times, like in this motion, emphasize "one country" only. Of course, in order to enhance the exchange between the people in both places, we will be delighted to see the SAR Government assist the Chinese nationals in Hong Kong who are in need to return to the Mainland. The amendment of Mr LEE Cheuk-yan deletes the basic requirement that "the

provisions of the Basic Law and the principle of 'one country, two systems' are complied with, and the system of exit and entry administration in the Mainland is respected". Therefore we oppose the amendment.

I so submit. I hope Members will support the amendment proposed by me. Thank you, Deputy President.

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

"To add "supports the hosting of the Olympic Games by Beijing and now" before "urges the Central Government"; to delete "that it would" after "seven years ago" and substitute with ", so as to effectively promote the State's development on the fronts of environmental protection, education, sports, technology, economy and culture, etc, and help"; to add "in order to enable the Central Government to successfully honour its commitment, this Council opposes all acts to boycott the Olympic Games, and to disrupt and sabotage the transmission of the Olympic flame, and condemns all remarks which are false and insulting to China;" after "develop democracy;"; to delete "as a number of Hong Kong people have been barred by the Central Government from returning to the Mainland for almost 20 years, this Council calls on the Central Government to respect the right of the" after "moreover," and substitute with "this Council urges the SAR Government to assist those"; to delete "to freely travel to and from the Mainland, and urges the Executive Authorities to assist these people to have their right" after "Chinese nationals in Hong Kong" and substitute with "who are in need"; and to delete "reinstated" immediately before the full stop and substitute with "on the premise that the provisions of the Basic Law and the principle of 'one country, two systems' are complied with, and the system of exit and entry administration in the Mainland is respected, so as to enhance the exchange between the people in both places"."

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

DEPUTY PRESIDENT (in Cantonese): I now call upon Mr LEE Cheuk-yan to speak and move his amendment to Mr TAM Yiu-chung's amendment.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, I move an amendment to Mr TAM Yiu-chung's amendment. Members can see that in the amendment proposed by me, I have, in fact, retained the part regarding the Olympic Games and human rights in Mr TAM Yiu-chung's amendment to Ms Emily LAU's motion. We fully agree with the view put forward by Mr TAM Yiu-chung on remarks insulting to China just now. It is our belief that the Chinese should by no means be insulted like that. And we fully disagree with the related remarks.

Just now Mr TAM Yiu-chung said that facts had been distorted by many western media. We have all along believed that there should be freedom of the press, but facts should not be distorted. However, we believe that the official media of the Chinese Government should not distort facts as well. Furthermore, the Chinese Government should not forbid foreign media or local media to cover any news items. Freedom of news coverage should be respected. Insofar as freedom of news coverage and freedom of the press are concerned, we adopt the same yardstick to foreign media as well as to the Chinese Government. With respect to Mr TAM Yiu-chung's remarks, we agree with the majority of it. Therefore, I have not amended any part of his amendment.

I am also pleased that he agrees with the part related to "this Council urges the Central Government to honour the commitment it made when bidding to host the Olympic Games seven years ago" as proposed in Ms Emily LAU's original motion. For the moment, I will not comment on the subsequent part of "effectively promote the State's development on the fronts of environmental protection, education, sports". He also agrees that this facilitates the enhancement of human rights. Since he also agrees that the Chinese Government should honour the commitment it made when bidding to host the Olympic Games seven years ago to enhance human rights, his view is consistent with the stance of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. Therefore, we should both belong to the colour of orange. However, the colour of his clothes is neither orange nor red. I do not know what actually the colour is. But I hope there is orange colour amidst the red colour, and there is red colour amidst the orange colour. This would then be perfect.

The first half of Mr TAM Yiu-chung's amendment has retained the part regarding the Chinese Government should honour the commitment it made when bidding to host the Olympic Games in Ms Emily LAU's motion. We welcome

this. However, the second half of the amendment has made me feel that the DAB is really confusing right and wrong. How can the right of a Chinese national in Hong Kong to return to his hometown be denied? In deleting "their right to return to their hometown reinstated", and changing the wordings to assist those who are in need to return to his hometown, he has turned the right to which we are entitled into a magnanimous favour granted by the Government. Deputy President, I think this is really confusing right and wrong.

Let us go back to the part regarding the Olympic Games and human rights. Deputy President, many people criticize that the Olympic Games have been politicized. First, the Chinese Government had indeed made a commitment when bidding to host the Olympic Games. In making the commitment, the Chinese Government had committed itself to a political pledge. All we are doing right now is asking it to honour the political pledge it had made at that time. If the Olympic Games have been politicized, it was the Chinese Government which had politicized the Games in the first place. Second, let us look at the list of torchbearers prepared by the SAR Government. Is this not a politicized process? Is this not an act of dividing spoils among the politically privileged class? I do not know how the two Secretaries are going to explain to the people of Hong Kong. Do all the people of Hong Kong, just like what Mr TAM Yiu-chung said, "know only too well" and know that this is basically an act of dividing political spoils?

On the other hand, Deputy President, many people are saying that this is "the Olympic Games of the prosperous era". But why are we not feeling happy about it? As the Olympic Games will be staged in China, everyone should be happy and pleased. And if you are a bit unhappy and displeased, that means you are not patriotic. If you are a bit unhappy and displeased, that means you are not supportive of the Olympic Games. We would really like to see "the Olympic Games of the prosperous era". However, what we would like to see is not only China's efforts in hosting the Games, but also China's improvements in human rights, freedom and democracy. We wish to see the release of pro-democracy activists and HU Jia, and invitations extended to them to attend the Opening Ceremony of the Olympic Games. We wish to see China opening up freedom of speech, including criticisms on the censoring of networks among the people by the Beijing Government during and after China's bid to host the Olympic Games, and criticisms on various issues such as arrests of pro-democracy activists and human rights in Tibet. If the Chinese Government is willing to open up freedom of speech, such an inclusive act will give a real meaning to "the Olympic Games of the prosperous era".

Deputy President, my speaking time is almost up. I would also like to talk about the right to return to one's hometown. With the exception of the trip with the Chief Executive, I have not been able to return to my own country since the 1989 pro-democracy movement. We believe that this is the right to which we are entitled. Mr TAM Yiu-chung said that we should "know only too well". If this is the case, is he regarding all of us as those who suffer from mental diseases? What I fear most is to hear people say that we "know only too well". Why can things not be said in an explicit, clear, frank and forthright manner? Deputy President, we believe that the right to return to one's hometown is a right to which we are entitled, and therefore should not be deprived by others. We believe pro-democracy activists, including the exiled activists, should also be able to return to their country. Thank you, Deputy President.

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

Mr LEE Cheuk-yan moved the following amendment to Mr TAM Yiu-chung's amendment: (Translation)

"To delete "urges the SAR Government to assist those" before "Chinese nationals in Hong Kong" and substitute with "calls on the Central Government to respect the right of the"; to delete "who are in need" after "Chinese nationals in Hong Kong" and substitute with "to freely travel to and from the Mainland, and urges the Executive Authorities to assist these people to have their right"; and to delete "on the premise that the provisions of the Basic Law and the principle of 'one country, two systems' are complied with, and the system of exit and entry administration in the Mainland is respected, so as to enhance the exchange between the people in both places" immediately before the full stop and substitute with "reinstated"."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to Mr TAM Yiu-chung's amendment, be passed.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, we wish to listen to the views of Members first before responding.

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, China is the third Asian country to host the Olympic Games. Forty-four years ago, in 1964, after being defeated in the War for more than a decade, Japan had the ability to host the Games. South Korea was the second Asian country to host the Olympic Games in 1988. So the Chinese should be happy but do not deserve to be very proud. After all, two other Asian countries had gone ahead of China.

I firmly believe the Chinese people in Beijing and around the world are happy that China is able to host the Olympic Games. As a matter of fact, China should have hosted the event eight years ago. However, it lost in the bidding by a margin of one or two votes at that time, so it was only able to host the Games eight years later. It is "better late than never". Despite being late for so many years, it is still worth being excited and encouraged. I firmly believe Beijing absolutely has the ability to do a good job in organizing the Olympic Games.

Deputy President, we fully understand that there is a force throughout the world which lacks an understanding of China, but at the same time acts in an over-cautious manner towards China. The United States is the major component of this force, with Japan playing a supporting role. Many countries in Western Europe are not absolutely anti-China. But undoubtedly, there is a lack of understanding of China among these countries. They are even more amazed that the Communist Party can change with such a speed. The Chinese Government will have to manifest itself to the whole world in this regard.

(THE PRESIDENT resumed the Chair)

We have to understand that it has been nearly 60 years since the liberation of China by the Communist Party. We should also be able to see the progress made in China over the past 60 years. It is particularly so when Hong Kong is so close to China, there are no reasons why we do not understand this. What

Ms Emily LAU said just now was her own feeling, or represented a kind of prejudice and theory of the world. She probably thinks this is the view of the mainstream or main trend. However, we have different opinions on this issue.

It is absolutely understandable that, as Members of the Legislative Council, we are unable to arrive at a consensus on this political issue. In respect of human rights, I personally think that we absolutely have human rights in Hong Kong. Otherwise, how can we be allowed to openly criticize our own country in this manner? I have to emphasize once again that Hong Kong is not an independent country. It is a special administrative region of China under the principle of "one country, two systems". We should leave Hong Kong if we do not accept China. I strongly believe that we cannot but accept that we are Chinese. We have to have sufficient understanding of this first.

Speaking of that force, I believe that the reunification of Hong Kong with China was the result of the wrestling of power between China and Britain. The Chinese Government informed Britain that it would restore its sovereignty over Hong Kong at an appropriate time, and the British Government had to assess its own power and strength. Correspondingly, the future problem of Taiwan is an issue between China and the United States. When China actually reaches a stage of great power and strength, it will inform the United States that it will restore its sovereignty over Taiwan. We will witness such a situation in the future.

In respect of the current issue of the Home Visit Permit, personally I absolutely support that any Chinese national in Hong Kong has the right to return to his own country without being subject to approval. On the other hand, I also hope that we, as Chinese, will not go glaringly against China. I firmly believe that all of us present in this Chamber understand that at times, we may make mistakes and commit wrongdoings, and have differences in thoughts, views, positions, opinions and perspectives. I believe the Chinese Government in the old days would have absolutely refused to accept these views. However, nowadays, there are two factions of opinions within China. Many opine that if such views cause no harm to China, they should be allowed to put into practice. But we will have to put forward such proposals more proactively. Just now some Members have mentioned those who suffer from mental diseases. I can only say that they suffer from political mental diseases. And this is a fact.

Therefore, I very much hope that all of us are ready to negotiate and face the issue. Surely it does not mean that a country has to kneel in front of us and admit its mistakes? It cannot be denied that a country belongs to the people. But as the people of the country, we have to adopt a proactive attitude. Putting forward views is good, but views should be put forth in a friendly and constructive manner. As Members of the Legislative Council, our role is to monitor the operation of the Government. We do not have the obligation or responsibility to put forward our views to the Government. You can refuse to listen to my personal views, and even regard them as nonsense. But I have to tell certain groups of Hong Kong people. I also firmly believe people in Hong Kong absolutely agree with my views. If we have good proposals, we can send someone to put forward our views to some representative organizations, or we can contact the Liaison Office of the Central People's Government in the SAR or related departments in the Mainland. While these views would not have been accepted in the past, I firmly believe that they will be accepted under present circumstances. Why do we, as the Chinese people in Hong Kong, criticize and even condemn our own country here?

With a history of several thousands years, this huge country of ours tends to cling to established practices, particularly those of the Communist system. So we will have to ask it to accept views and constructive proposals. It hinges on the negotiation and co-ordination of all sectors to create a better and more harmonious society in Hong Kong. Meanwhile, representatives of the SAR Government should adopt a more proactive attitude and take the lead in the Legislative Council in putting forward issues for discussions.

President, these are my views.

MR CHEUNG MAN-KWONG (in Cantonese): President, the Democratic Party is supportive of China in bidding to host the Olympic Games. But we hope the Central Government will honour the commitment it made when bidding to host the Olympic Games seven years ago that it would enhance human rights and develop democracy.

Recently, the pro-Tibet independence activists dealt a heavy blow to the transmission of the Olympic flame in various parts of the world. In Paris, the flame was extinguished four times. As a Chinese, I feel uncomfortable with such embarrassing situations.

While the Democratic Party opposes the independence of Tibet, we support a peaceful dialogue between the Central Government and the Dalai Lama. We express dissatisfaction at the false reports and remarks insulting to China made by some international media. However, it does not mean that the Chinese Government itself should not have any reflections. Why did it throw itself into confusion? After the Lhasa riots, why did it tell international and Hong Kong media to leave, impose news blockade and cause subsequent criticisms for implementing such measures? Why does the Dalai Lama actually have more international credibility and connectivity than China?

The economy of China has taken off for years, and the hosting of the Olympic Games is regarded as the rise of a nation. However, since the People's Republic of China was founded, there have been records of persecution of dissidents and suppression of human rights which are too numerous to record. The undesirable practice of suppression behind closed doors has not been improved since the 4 June incident. The Chinese Government was still "killing chickens to warn monkeys" and sent warning messages to the people on the eve of the Olympic Games by imposing a heavy sentence on HU Jia, a frail-looking intellectual and a human rights activist. In promoting the so-called civilized Olympic Games and harmonious Olympic Games, the Chinese Government is only contradicting itself by arresting and imprisoning HU Jia.

China is not only practising suppression behind closed doors. It has been 10 years since the reunification of Hong Kong with China, but China is still depriving some Members of the pro-democracy camp of the right to return to their hometown. What Mr TAM Yiu-chung says about knowing only too well is, in fact, an act of using the right of entry to suppress and curb dissidents. Despite the fact that the whole world is joining in the jubilation of the Olympic Games, and the door of China is opened to every country for this universal event, China has singled out the pro-democracy camp and is still refusing their access to the Mainland. In promoting the so-called civilized Olympic Games and harmonious Olympic Games, the Chinese Government is being self-contradictory by denying the right of the pro-democracy camp to return to their hometown.

With the barbarous attitude of the Chinese Government towards dissidents, officials of the SAR naturally follow suit. The Danish artist Jens GALSCHIOT had visited Hong Kong twice and had not caused any troubles before. This is

the third time Jens GALSCHLOT visits Hong Kong. He has indicated that he will support the Olympic Games and will not cause any embarrassments to the transmission of the Olympic flame. His only plan is to paint the Pillar of Shame, a sculpture designed by him, in orange. So why has the SAR Government suddenly developed this phobia about orange colour and censor the freedom of expression of an artist?

The orange colour of Jens GALSCHLOT is a mixture of red colour and yellow colour. The red colour represents China and the yellow colour represents democracy and human rights. Mixing red colour with yellow colour will become orange colour. It is hoped that the Pillar of Shame will become the hope of a democratic China, a hope that does not violate the commitment made by the Chinese Government when bidding to host the Olympic Games. Surely it does not mean that the Chinese Government is afraid of the orange colour because it is afraid of democracy? Surely it does not mean that the SAR Government denies the access of Jens GALSCHLOT to Hong Kong because it is afraid of the orange colour? Today Members of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) are wearing T-shirts of a colour they call the brownish red, which in fact, is the colour of orange red. So can the DAB be said to collude with Jens GALSCHLOT in initiating an orange revolution?

The SAR Government announced the name list of 120 torchbearers yesterday, among which 42 are athletes, while 39 surprisingly come from the political and business sectors. Being one third of the torchbearers, these two sectors are equal in proportion with athletes. Torchbearers from the political and business sectors include LI Gang, TSANG Hin-chi, LEUNG Chun-ying, KWOK Ping-kwong, Victor LI Tzar-kuoi, Pansy Catilina HO Chiu-king, and so on. It is possible for torchbearers of the Olympic Games to include people from various sectors, but how have they been selected? One third of the torchbearers surprisingly come from the political and business sectors. Is this not a situation of a presumptuous guest usurping the host's role? The selection process of torchbearers is completely a black-box operation of "one's own buddies", a political trade-off and "pork distribution from Grandpa", a small-circle game of distinction of affinity, to enable Chinese officials, pro-China privileged class, major property developers and descendants of tycoons who do not have direct relationships with sports to represent Hong Kong. Even Miss China Cosmos ZENG Guang, who has only been to Hong Kong twice as a participant of a beauty pageant, is able to represent Hong Kong, distorting the Olympic spirit and

image of Hong Kong. China has said that the Olympic Games should not be politicized. But the strong political implications in the name list of torchbearers of the SAR have doused the Olympic flame with cold water, leaving those Hong Kong people who support the Olympic Games much frustrated.

Torchbearer TSANG Hin-chi said, "I will run if I can. I will use a wheelchair if I cannot. Who dares to grab my torch?" Mr TSANG Hin-chi, Hong Kong people treat the Olympic Games with "grand respect" and are not interested in grabbing your torch. However, we hate to see people browbeating others by virtue of their powerful connections, as well as people with ferocious gestures and angry looks. We hate to see people taking the place of CHE Kuk-hung who won the first gold medal in the Asian Games for Hong Kong, and CHEUNG Wai-leung who won four gold medals in the Paralympic Games. It does not mean that a person who frequently donates generous sums of money must become a torchbearer. Why do people like TSANG Hin-chi, who belong to the privileged political and business class, not give up their places for someone more suitable, so that more places of torchbearers can be vacated to the protagonists of the Olympic Games — athletes of Hong Kong?

President, hosting the Olympic Games provides a historical opportunity for China to reach out to the rest of the world, and to rise as a nation. However, the rise of China among various powerful nations in the world hinges not only on the take off of its economy or the bid to host the Olympic Games, but the ability to move in tandem with the world in respect of human civilization and human rights. It is only through this that we can establish the dignity of a nation and gain respect from various countries of the world. There is no need for the people of China to be demoralized, angered, ready to boycott foreign products, and xenophobic due to incidents encountered in the transmission of the Olympic flame. Instead, we should ponder on China's road to progress. China should move beyond the arenas of economy and the Olympic Games to the arenas of enhancement of human rights and development of democracy. We should regard the setbacks of the Olympic Games as the foundation on which a self-reliant nation can be built and human rights can take off. We should channel reforms and opening up towards democracy, prosperity and strength. This is the most heartfelt wish of all Chinese, and the most sincere quest of all patriots. Thank you.

MR LAU CHIN-SHEK (in Cantonese): With respect to today's motion, my fundamental stance is that the Beijing Olympic Games should be supported, human rights should be continuously enhanced, and Home Visit Permits (HVPs) should be returned. Many colleagues have spoken on the Beijing Olympic Games and the enhancement of human rights. I have more experiences with HVPs, so I will focus my speech on this aspect.

President, I was forbidden to return to my hometown for 11 years from 1989 to 2002. I was blacklisted by Taiwan from 1988 to 1993. So during the four years from 1989 to 1993, I was blacklisted by both sides of the Strait. I suffered the pain of being not able to return to my home, to return to my country, and to take care of my mother for the whole period of 11 years. That is why I had the deepest feeling of having the HVP reissued to me. The abnormal condition has returned to normal eventually for me.

However, I know that HVPs have not been returned to many colleagues of the Legislative Council. I hope that, like me, their HVPs will be reissued to them, so that they can return and see for themselves the condition of their hometowns, and visit those they hope to visit.

President, from 2002 to 2005, I was only allowed to return to the Mainland once a year, or up to three times a year with my permit. It was until 2005 that I was issued a 10-year Home Visit Card to return to my hometown to take care of my mother. I was unable to return to my hometown for 11 years, and have been able to return to take care of my mother for the past eight years only. This is just a small effort of mine to compensate my mother for the hardship she had gone through in bringing me up. About 10-odd days ago, my mother passed away in her sleep. I would like to thank all my friends and members of the public who have shown their concern for me and who have helped me.

President, it was said that there were conditions attached when HVP was issued to me. My present colleague Mrs Anson CHAN was the former Chief Secretary for Administration. She played a very important role in the matter of my returning home to visit my mother. Mrs CHAN knows about all the details whether conditions were attached. I believe she will make some fair remarks.

As a matter of fact, officials of the high level of the then Government knew that I really hoped to visit my mother. Taking into account my mother was over 90 years old, if anything should happen to her, I would have asked to

return to the Mainland, but would not have known what to do, and certainly the image of the Government would have been tarnished. Furthermore, several principal officials of the Government wished that with my return to the Mainland, other Members of the pro-democracy camp would also be able to return to their hometown one after another.

Looking back on the whole process, I think there are several points over which the Government and all of us can ponder. First, the issuance of HVP for me to return to my hometown was initiated by the SAR Government. At that time Anson CHAN and several government officials discussed how to go about it with me. Therefore, I think the offer of assistance extended by the SAR Government first is very important. Second, I adopted the approach of taking it one step at a time to resolve the issue. At the beginning, I was issued one permit every time. At first it was issued for me to return at the time of my mother's birthday. Then it was issued for me to return during the New Year. Such an arrangement was maintained for a period of five whole years. Eventually HVP was reissued to me.

In respect of the reissuing of HVP, I believe one point is very important. When I got my HVP, I thought the Beijing Government was the winner, because the authorities' reissuance of permits to those who were originally unable to return to their hometown had made people think that the authorities were opening up. The SAR Government was also a winner, because it had provided assistance to me. Meanwhile, I was also a winner, because I was able to return to my hometown to visit my mother. In this process, I appreciate the approach of the SAR Government. I also appreciate the approach of the Beijing Government. It is mutual appreciation. My permit has been normalized in this process of interaction and mutual trust.

In respect of changes in China, we believe that different persons have different observations and different conclusions. As trade unionists, we were shocked and heartbroken by the mining disasters. Some people have great expectations for economic development and are proud of the growth in this aspect. However, I think what is more important are changes manifested in the residents and the people over the past two or three decades. Have they smiled more often or otherwise? Have they been more daring or frightened in speaking out? It will need our personal presence to feel and to experience. I think this opportunity should not be given to me alone, or to those whom the Beijing Government regards as obedient and "good" children, or children it loves

most. The opportunity should also be given to members of the family who are mischievous or even those who cause trouble, so that they can experience the process of change as well.

Recently, it is written in an article of the *People's Daily*, "let the world see a China which is more open, more inclusive, and more confident". I believe and very much hope that these wordings are not found in articles only, but will be materialized in reality. This is our common aspiration. Thank you, President.

MR HOWARD YOUNG (in Cantonese): Madam President, today's motion includes two parts. The first part is about the recent popular topic of the Beijing Olympic Games, while the second part is about the issue of returning to hometown for a number of Hong Kong people.

First of all, the historical moment of the flame receiving ceremony of the Beijing Olympic Games torch relay to be held in Hong Kong will arrive two days later, that is, the day after tomorrow. I believe it is the wish of the majority of Hong Kong people to witness this historical moment. It is also their wish that the Olympic Games will be held in Beijing smoothly without a hitch in August, as reflected in the outcome of the survey conducted by the Hong Kong Youth Association in the middle of this month. According to the survey, 78% of the respondents are offended or extremely offended by various protests of the pro-Tibet independence activists. Moreover, nearly 83% of the respondents oppose or extremely oppose the attempts of certain countries to use the excuse of the issue of Tibet to politicize the Beijing Olympic Games with the hope that the event cannot be held smoothly. Therefore, we support the amendment proposed by Mr TAM Yiu-chung today. We believe that the olive branches of the Olympic Games should symbolize peace and honour. In the ancient Olympics, the Olympic torch was carried by Olympic representatives to deliver the message of cease fire to various city-states. So torchbearers were regarded as holy ambassadors of peace. The Olympic spirit asks various parties to leave behind political, racial and cultural prejudices, and to compete on a level playing field in sports.

There is a unique meaning in Beijing's bid to host the Olympic Games. The Beijing officials did make some pledges in saying that "By allowing Beijing to host the Olympics Games, it will help promote all economic and social progress and will also benefit the further development of our human rights

cause." Meanwhile, Beijing has also made a series of pledges in the areas of environment, education and culture. Continuous efforts have also been made. In fact, Ichiro KONO, the Chairman of the Tokyo 2016 Bid Committee, is of the view that China has indeed honoured the pledges it made when bidding to host the Olympic Games. Jacques ROGGE, the President of the International Olympic Committee has also pointed out that the Chinese Government has devoted a lot of efforts in improving the environment and protecting intellectual property rights. Therefore, we firmly believe that the Central Government will honour these solemn pledges. Meanwhile, we agree that the performance of the overall development of China should be assessed from the macro perspective, instead of targeting on the development of individual items. We also oppose finger-pointing at the policies of the Central Authorities by the Legislative Council of SAR.

Madam President, next, I will talk about the second part of the motion, that is, the issue of the Home Visit Permits (HVPs) for a number of Hong Kong people. I believe this is an issue that mainly bothers certain members of the pan-democratic camp because some of them are still without HVPs and have not been able to return to the Mainland for a very long period since the 10 years of reunification. We also opine that at this moment when our country is hosting the Olympic Games, the Central Authorities should allow them to return to the Mainland to personally experience this major event, and thereby understand the latest developments in the Motherland and the daily lives of the people.

In March this year, JIA Qinglin, the Chairman of the Chinese People's Political Consultative Conference also stated in the Report on the Work of the Standing Committee of the National Committee of the Chinese People's Political Consultative Conference that contacts with Hong Kong and Macao people should be strengthened. However, it is impossible to clap with just one hand. We are of the view that it takes efforts from both the pan-democratic camp and the Central Authorities. Members of the pan-democratic camp should also indicate to the Central Authorities that they are willing to receive olive branches, and are ready to leave behind prejudices to talk and communicate with the Central Authorities.

In fact, on as early as 7 July 2004, Mr James TIEN already moved a motion in this Council on "Facilitating communication between the Central Government and the pro-democracy camp in Hong Kong". He clearly urged the HKSAR Government to actively facilitate better communication between the

Central Government and the pro-democracy camp in Hong Kong with a view to eliminating the division and polarization in the community, and to assist members of the pro-democracy camp who are in need in obtaining the Mainland Travel Permit for Hong Kong and Macao residents.

However, we do not think that the Central Authorities should open the door for all who wish to return to the Mainland just because of this reason, so that these people are allowed to disregard the exit and entry policy of the Mainland, and travel to and from the Mainland at will. Furthermore, as a special administrative region, Hong Kong should not intervene in the exit and entry policy of the Mainland. Otherwise, it will contravene the original concept of the "one country, two systems".

Therefore, although we agree that the Executive Authorities should assist residents of Hong Kong to travel to and from the Mainland, we also agree with the view of Mr TAM Yiu-chung, that is, on the premise that the provisions of the Basic Law and the principle of "one country, two systems" are complied with, the reasonable requirements of the exit and entry administration in the Mainland should be respected and apprehended. We find it impossible to support the original motion of Ms Emily LAU and the amendment of Mr LEE Cheuk-yan.

Madam President, I so submit.

DR KWOK KA-KI (in Cantonese): Madam President, it is very timely for Ms Emily LAU to move this motion today. I believe when Ms Emily LAU got this slot, she had not thought it would be so timely because today precisely marks the 100-day countdown to the Olympic Games, precisely when the torch arrives in Hong Kong, and precisely when many of our colleagues celebrate the Olympic Games by wearing red clothes and orange clothes.

In fact, originally, the Olympic Games are not related to human rights. The only relationship between the two started seven years ago when the Beijing 2008 Olympic Games Bid Committee made its pledge to the International Olympic Committee in bidding to host the Olympic Games in China. The most important point in the pledge, which is the focus of today's topic, is the enhancement of human rights and development of democracy. It is indeed a joyful event for us to hold the Olympic Games in Beijing. But let us take a look at our country. Many inequalities can still be found. We can find corruption and rotten practices, disparity between the rich and the poor, those who should

be studying are robbed of their chances to study, and policies of equal distribution of wealth not being implemented. Furthermore, we can find collusion between businesses and the government. Corrupt government officials have massive wealth amounting to thousands of millions, billions and even tens of billions. Many of them are even able to take part in gambling in Macao. When we see that developments of human rights and democracy are finding it difficult to move forward in the Mainland, our joy is naturally dampened.

Today, our country has the ability to host the Olympic Games. Apart from the ability of making improvements in the areas of environment, education, technology, economy, and culture, if our country had seized the opportunity to enhance human rights and develop democracy, we would have taken pride in being Chinese. We would have been able to tell others that, generally speaking, our system was fair and open. If there were freedom of the press and freedom of speech in China, I believe we, as Chinese people, and many Chinese in the Mainland, would have thought that these were more worth being happy about than hosting the Olympic Games.

In fact, the Olympic sacred flame cannot be considered sacred as the Olympic flame was lighted 2000 years ago when polytheism was still dominant in Greece. Today, we all know that the Greeks are believers of the Orthodox Eastern Church. The word "sacred" refers to the Olympic spirit. And as some of our colleagues have mentioned, this Olympic spirit symbolizes peace, justice, and equality. I do not know whether the Chinese have thought of this profound meaning when they light the Olympic flame and hold it up high in the air. Is it possible for freedom, equality and justice to have full play through the sacred flame? Otherwise, the sacred flame is meaningless. In fact, it has never had any meaning. The spirit of the flame cannot be spoken by words. It has to be given play by actions.

I paid attention to the speech delivered by Mr TAM Yiu-chung just now. I totally agree with his views at the beginning of his speech, including expressing regrets over the false reports of CNN, the distortion of what happened in our country by governments of foreign countries, and the remarks insulting to China. However, I have different opinions on what he said at the end of his speech. He said that anyone who opposed his amendment had to think thrice. The message I have received is that anyone who opposes him is basically unpatriotic. This remark is, in fact, very dangerous. Many countries and regimes have used this kind of remark to make people shut up. Such a remark carries the implication

that you are unpatriotic when you oppose; you are unpatriotic when you oppose Article 23 of the Basic Law; you are unpatriotic when you oppose the policies of the Central Government.

In fact, an act of not opposing is not an expression of patriotism. Being patriotic is not only a gesture of formalism. I also hope that the wealth and strength of my country are real, and that my Motherland can stand proud among the international community, so that we can tell others that China, our country and our Motherland, is similar to other countries of the international community, in that we have law, respect for the rule of law, freedom of the press, the equal right to take part in elections, and the right to remove government officials. All these are what people of the international community wish to have, irrespective of the people of China or people of other countries in the world. We wish we can enjoy all these. I do not think people with such a wish are unpatriotic.

As for linking the right to return to one's hometown with human rights, the only time I have heard of this was in Mr LAU Chin-shek's speech. He talked a lot of his personal feelings. The most impressive feeling I got from the speech was that he had used many times the relationship of a mother and son to describe the relationship between us and the Central Authorities. Probably it is due to the deep-rooted culture of the Chinese, the Government is always having the paternalistic right. When the parents consider that you are good, you can come home. When the parents consider that you are mischievous, you cannot come home. One day when the parents think that you are no longer mischievous and that you are correct in your behaviour, you can then come home. All these cannot be regarded as the right to return to one's hometown. I do not hope that the colleagues who are without the Home Visit Permit or the right to return to their hometown are to obtain their right to return to their hometown under these circumstances. This is not something we cherish.

As a matter of fact, nobody will oppose the Olympic Games, or the Olympic flame. Nobody wishes for the sabotage of the Olympic flame. However, under the current circumstances when China is hosting the Olympic Games, if we had human rights and the rule of law, and if every Member of the Hong Kong Legislative Council, just like other people, was entitled to the same right to return to the Mainland, we would have been more joyous, more delighted, and more proud of the Beijing Olympic Games.

Nevertheless, even if the Beijing Olympic Games turn out to be lack-lustre, I, as a Chinese and as a member of the community in Hong Kong, am of the view that we should support the Games. However, our support does not mean that we have to give up our demands for the country to improve on certain things. I believe that all of us, who are Chinese, if we want to be proud of being Chinese, should promote the progress of our Motherland, hoping that it will not choose to stay in the old rut, and ignore others' criticisms without further reviews.

I so submit. Thank you, Madam President.

DR JOSEPH LEE (in Cantonese): President, the Olympic Games is a quadrennial major event of the world. I believe everyone in every corner is feeling the excitement. This time around, the Olympic Games will be held in China. The transmission of the Olympic flame has already stirred up a lot of controversies and the issue of the Games being politicized. However, today, I do not wish to talk about whether the Olympic Games have been politicized or the torch relay. I will focus my discussion on the issue of the right to return to one's hometown.

All of us agree it is really a big event for us that the Olympic Games will be held in China. This is the first time ever that China is able to host the Games, a fact that all of us are very happy about. However, as a matter of fact, a group of Hong Kong people will not be able to return to our Motherland to take part in the Olympic Games. Of course, they have the opportunity to watch the Equestrian Events in Hong Kong. But they cannot return to the Motherland to watch other events of the Olympic Games. Why is that so?

In reality, there is a group of Hong Kong people, regardless whether they are dissidents, or pro-democracy activists, or even our colleagues of the Legislative Council, who have been refused access to China and have been unable to return to the Motherland for a very long period of time. This is indeed very disappointing. Recently, Miss Liza WANG also asked whether Home Visit Permits (HVPs) could be issued to 12 Members of the Legislative Council to enable them to return to the Motherland for visits or exchanges. Her views roused a lot of discussions at that time. As a matter of fact, this did not work either.

As a Hong Kong resident, I feel very disappointed about this. Since Hong Kong is now a part of China, why are certain Hong Kong people unable to return to the Motherland to see the current outlook of our country? As Mr LAU Chin-shek has mentioned just now, we can return to the Mainland to see whether there are more smiles on the faces of the people in Beijing, Shanghai or other places; and whether it is easier for them to speak out. This, in fact, is the most principal and the best method of communication, and a very positive method as well. I really do not understand why, until now, a group of people are still unable to return to the Motherland.

Talking about the issue of HVPs, according to my understanding, HVP was the product of the former British Hong Kong Government. Since Hong Kong was a colony at that time, the emergence of HVPs was to enable Hong Kong people with the identity of Hong Kong Chinese to conveniently return to the Mainland for visits of relatives. However, with the return of the sovereignty of Hong Kong to China, we are now living in the same place. Thus, we belong to the same group. I do not understand why we should still discuss the issue of HVPs. Of course, some of you present here are lucky to have HVPs, so that you can travel to and from the Mainland freely and conveniently, irrespective of academic exchanges, communication or business purposes. A group of people really wish to go back to the Motherland in order to find out for themselves the current developments in China. But according to my understanding, they have been unable to return to the Mainland for a long period of time, probably for as long as 20 years. They can only learn about the situation of China through news footage or other channels. Since that is the case, how can they have a greater understanding of the developments of the Motherland?

I believe the hosting of the Olympic Games provides a very good opportunity. The Chinese Government and the SAR Government will be able to consider whether this opportunity can be used to assist this group of people. They may genuinely wish to return to the Motherland for on-site visits with the hope of understanding current developments of the Mainland directly by themselves. What is the difference of the Olympic Games held in China with those held in other places? They should be given a chance to understand the current developments of the Motherland by the relevant authorities. It is my belief that communication is a very important element when we talk about opening door and a need for harmony.

I hope that China's hosting of the Olympics Games will provide a chance for the Central Government and the SAR Government to reconsider whether a group of dissidents, pro-democracy activists and Members of the Legislative Council formerly being refused access to China can be given an opportunity to return to the Mainland to take part in this major event and to see for themselves the present development of the Motherland, with the hope that they will have an understanding of a deeper level. This will bring positive progress to promoting democracy in China as well as democracy or human rights in Hong Kong. I hope that our Government, our Motherland, and certain people in Hong Kong will look into the matter from a positive perspective through this discussion and debate. I also hope that the group of people will be able to have HVPs issued to them, the right to return to their hometown reinstated to them, and the right to return to their hometown exercised by them, so that direct exchanges and communications can be made. I believe this will generate positive effects to promoting various exchanges and communications in the future. Thank you, President.

MR RONNY TONG (in Cantonese): President, when I read Mr TAM Yiu-chung's amendment for the first time, I read from the beginning to the end, and could not find anything with which we do not agree. But when I read more carefully, I have found that the only point we can put forward as a basis for argument is that Ms Emily LAU is talking about the right of the Chinese nationals to freely travel to and from the Mainland in her motion, while Mr TAM Yiu-chung is talking about assisting those Hong Kong people who are in need to return to their hometown under the system of exit and entry administration. I do not know what makes up a need for Ms Emily LAU to return to the Mainland. If we are talking about fundamental human rights, is there anyone who does not have this need? Why is the term "need" used? The word "need" represents something "we can do with" and something "we can do without". If my interpretation is correct, then there is a large difference in the stance of Mr TAM Yiu-chung with the stance of Ms Emily LAU. It is a matter of a minute discrepancy leading to a gigantic error.

President, I have also asked myself what actually the relationship between the Olympic Games and the Home Visit Permit is. Why do we talk about them together? I began to understand after I had heard the speech of Mr TAM Yiu-chung delivered just now. Mr TAM Yiu-chung talked high-spiritedly that by breaking down barriers of nationalities and races, the Olympic Games were

the manifestation of coexistence. I was saddened after hearing this. If this is true, why is our country able to break down the barriers of nationalities and races, but cannot tolerate different opinions and thoughts of its own people? Why is it unable to break away from the attitude of imposing political retaliation on its people with different political opinions?

My wife often rebukes me (what she rebukes is always right) and says, "Ronny, why do you treat other people so well but treat your family so badly?" President, I think there is some truth in her words. Sometimes it is particularly easy for you to tolerate outsiders, but it is difficult to tolerate your own family, your own children, people of your own extraction, and people of your own race.

President, meanwhile, I also think of the Constitution of our country. I do not know if you remember what Article 33 of the Constitution is about. Article 33 prescribes that all citizens of the People's Republic of China enjoy the same rights. I am a Chinese citizen. I can return to the Mainland every day. Why can Emily LAU, Albert HO and YEUNG Sum not do the same? What is the difference between us? President, Article 41 of the Constitution of our country prescribes very clearly that citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. If someone exercises these rights in Hong Kong, will political retaliation be imposed on him? President, let us not talk about the Constitution. Let me not talk in the capacity as a lawyer, but in the capacity as an ordinary person. We can only achieve harmony through inclusiveness, and progress through criticism. Our country China is a great nation. Why can such a huge nation not tolerate Emily LAU, Albert HO and YEUNG Sum? What is so extraordinary about them?

President, we are standing here to talk about the Olympic spirit. And I can see that colleagues are wearing clothes of red colour or orange colour — I will not argue with you what colour it is — but have we really thought about what the Olympic spirit is? Have we searched on the Internet to find that out? President, my assistant did that for me. The Olympic Charter prescribes that any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is not complying with the Olympic spirit and is incompatible with belonging to the Olympic Movement. This is a spirit of inclusiveness, and a spirit of anti-discrimination. Yesterday I learned about the so-called name list of the torchbearers in Hong Kong from newspapers. Is such a name list compatible with this spirit?

Our country imposes political retaliation on citizens with different political opinions so that they will not be able to return to their home. I was touched when I heard Mr LAU Chin-shek speak just now. But let us come back to the common point we share, and that is, the Olympic spirit should be a spirit of inclusiveness, openness and equality.

I wish to tell a story. I have searched on the Internet for the story of the Olympic torch. A man called PROMETHEUS stole the sacred flame and gave it to mankind. What does this represent? It represents civilization and the spirit of coexistence being brought to mankind. Where have this civilization and this spirit of coexistence gone? There should be a common point shared by the Olympic Games and the Home Visit Permit. Unfortunately, today, this common point represents a regression in Hong Kong and a fact our country wishes to change. It is nearly 12 am now. But when we talk about this issue, it simply makes us difficult to sleep with peace of mind.

MR LI KWOK-YING (in Cantonese): Madam President, the Olympic Games is a major event to which the international sports community accords a high degree of importance. Since this is the case, many countries in the world regard hosting the Olympic Games as a great honour. Countries with keen intention of hosting the Games have to go through intense competition with other countries before they succeed in winning the bid to host the event. This time around, the Olympic Games will be held in Beijing for the first time. Beijing's success in bidding to host the Games has not only made every Chinese feel proud of himself, but has also marked a new milestone of our Motherland's advance towards modernization, and its readiness to proactively take part in more international activities and to strengthen liaisons with other countries of the world.

It is only a few months before the opening of the Olympic Games in Beijing. Right now, the transmission of the Olympic flame is going at full steam. Recently, skirmishes have erupted over the transmission of the Olympic flame in various places of the world. Apart from the rare occurrences of people grabbing for the torch and attacks of torchbearers, many western media have seized on the pretext and made a fuss over the Lhasa riots, filing many biased reports that severely sabotage the international image of our Motherland. However, all these acts have not dampened the strong support shown and excitement felt by the Chinese people all over the world for the Beijing Olympic Games. It is obvious that the Chinese communities around the world support

the transmission of the Olympic flame. The Chinese people in some places even voluntarily organize assembly activities for the very first time, just to express their support for the Beijing Olympic Games. It can be said that the Beijing Olympic Games has linked up all the Chinese scattered around the world, an unprecedented act which has taken the patriotism of the Chinese around the globe to a uniting peak.

Madam President, the Beijing Olympic Games is able to enhance the international image of our Motherland in a positive manner. It also provides a good chance for our Motherland to display to the world the integrated strength and the blossoming soft power of our nation. The so-called "soft power" is different from some powerful nations in the world, which resort to coercion to force other countries to make compromises. On the contrary, based on a philosophy of rising with peaceful means, a soft power is capable of giving full play to its inherent attractions, including attractions in terms of culture and political values, and playing an active role on the stage of international diplomacy with the image of a responsible nation.

As a matter of fact, in recent years, our Motherland has devoted continuous efforts to cultural development, as well as enhancement of humanistic quality, the result of which is obvious to all. Up until now, Confucius Institutes have been set up in 64 countries, including the United States, Germany and African nations, with the aim of helping people of various countries understand the Chinese traditional culture. Through organizing exchanges of cultural activities, our Motherland is building long-term contacts with various social strata of other countries with a view to gradually building a relationship of mutual trust. Apart from cultural activities, our Motherland is also devoted to the development of multilateral diplomacy, such as establishing co-operative organizations and organizing summit meetings with other countries, with a view to contributing proactively and voluntarily to the peace of the world.

The Beijing Olympic Games has provided a chance for various countries in the world, particularly those people who lack an understanding or those who have a misunderstanding of our Motherland to find out for themselves the determination and sincerity of our modern Motherland to progress and advance towards international development. In order to host the Olympic Games, the Central Government has proactively sought improvements in various areas of the Mainland. Previously, people expressed worries that the poor air quality of Beijing would hinder sports tournaments of athletes, and might even threaten the health of athletes. In this connection, the Beijing Municipal Government has

implemented a series of measures to improve pollution, including strengthening control of coal burning pollution and industrial pollution, and maximizing the reduction of emissions. The Beijing city has allocated more than \$120 billion to environmental improvements from 1998 to 2006. Several thousand public transport vehicles have also been eliminated or improved this year. Recorded data has indicated that the air quality of Beijing has been much improved than before. As pointed out by the representative of the Capital Afforestation Committee, the pledges of the seven environmental indices made by Beijing when bidding to host the Olympic Games have been fully honoured, including building more environment-friendly facilities and expanding green space.

Madam President, with a long history, the Olympic Games is a major international sport event. We should definitely not link the Games with politics. Of course, the rapid development of the strength of our Motherland has resulted in unnecessary speculations and worries of many western countries. Some people with malicious intentions have taken the opportunity of the Olympic Games to make bullying and insulting acts towards the Central Government and the people of our Motherland. However, justice is in the hearts of the people. The progress and the rise with peaceful means of our Motherland are obvious to all. As a Chinese, we should be proud of ourselves that our Motherland has the ability to host the Olympic Games. We must not be influenced by those trouble makers with malicious intentions and put forward unreasonable demands to and deliver harsh criticisms on the Beijing Olympic Games and the Central Government. These acts will ruin the determination and sincerity of our Motherland in hosting the Olympic Games and strengthening international exchanges.

Madam President, I so submit.

MR FREDERICK FUNG (in Cantonese): President, after reading Ms Emily LAU's motion and the two amendments, I have rather mixed feelings.

Personally, I feel much excitement about the Olympic Games. I watch the televised broadcast of events of each Olympic Games with concentration. Through the Olympic Games, we can see athletes compete for victory after intensive training. During the competitions, they display their efforts of striving for their goals, the result of whether they win or lose is no longer important. We can also see countries, even if there are conflicts, wars, or

life-and-death struggles among them, come together in the Olympic Games to devote their efforts to sports, irrespective of nationalities, races, colours of skin, politics, ideologies, and religious beliefs. That is something we feel very happy about.

I remember China lost with so very little margin when it made a bid to host the 2000 Olympic Games. At that time, all members of my family were so unhappy. When China made a bid for the second time, they made a bid to host the 2008 Olympic Games. During the live broadcast of the announcement of the bidding result, all members of my family gathered together in front of the television. We watched while chanting we would win, we would gain the right to host the event, because we really hoped that China would be able to host an international event. This was an important event for the Chinese people. We very much hoped that China would succeed. When China eventually won the bid, members of my family shouted with sheer happiness. Hosting the Olympic Games is worth being happy about. It makes us feel so proud of being Chinese. This is the first feeling that I have when I talk about the Olympic Games.

However, I have a second feeling as well, as the issue of human rights is also mentioned with the topic of the Olympic Games. Just now I have mentioned that the Olympic spirit itself surpasses the distinction of races, colours of skin, political ideologies, and even religious beliefs. To much of my delight, the Central Government has pledged to make improvements on these issues when bidding to host the Olympic Games. All of you know that the pan-democratic camp and I have a lot of different opinions and arguments. In fact, from the 1980s up until now, we have kept on hoping that China will be strong and prosperous, and that the Chinese people will be able to enjoy civil rights, freedom and democracy. But I am of the view that after successfully bidding to host the Olympic Games, we have let some chances slip by, and I particularly refer to the Central Government.

First, since the Central Government has made promises, why has it not strengthened certain practices during the process? Second, why did it arrest and interrogate some dissidents three or four months before the Olympic Games? I really do not understand this. Moreover, another issue that stirs me deeply is the Home Visit Permit (HVP). I have to mention again my relationship with the pan-democratic camp when I talk about HVP. We all know that in the 1990s, we were not called the pan-democratic camp. We called other members of the pro-democracy camp "the democratic mainstream", while we called ourselves

the Hong Kong Association for Democracy and People's Livelihood (ADPL), because we belonged to "the non-democratic mainstream". At that time we knew that some friends we had known for more than 20 years did not have HVPs. We were of the view that it was unacceptable. We felt that they were legitimate residents as well as Chinese, so why could they not return to the Mainland?

Some members of the ADPL became Hong Kong Affairs Advisers and Chinese People's Political Consultative Conference Deputies in 1994 and 1995. We went to Beijing to hold meetings with LU Ping twice a year. Since then we put forward the issue of the resumption of Hong Kong once a year. We did not refer to the resumption of land in Hong Kong, but the resumption of people in Hong Kong. If you wish to achieve the resumption of people in Hong Kong, you will have to achieve the resumption of the hearts of people in Hong Kong. I cannot say that returning HVPs is a method of buying popular support, but at least, it is an important part in the resumption of the hearts of people in Hong Kong. Although in the debate of the previous motion just now, "Ah Yan" rebuked me of this and that; up to this minute, I still think that HVP is not only an issue of the Executive Authorities in maintaining that "We have the authority to issue it to you and we have also the authority not to issue it to you". According to the Constitution, the Central Government recognizes the legitimate identity and status of the Chinese in Hong Kong. Since this is the case, I do not see why some Chinese are refused access to the Mainland. This has made me feel uncomfortable, and I have been feeling uncomfortable for more than a decade. This issue has also been on my mind for more than a decade.

I believe this is a very good opportunity. The Olympic Games has provided a very good opportunity. Is Hong Kong really capable of making use of the Olympic Games the theme slogan of the Beijing Olympic Games is "One World, One Dream". As for Hong Kong, what is "One World, One Dream" of the Hong Kong people? The Central Government has all along said that we have to build a harmonious society. Is this not an opportunity to do so?

I think we have really let the opportunity slip by. Apart from not dealing with the issue of being denied access to the Mainland of some of our colleagues, or those Chinese who legitimately reside in Hong Kong with no criminal records, the handling of the list of torchbearers also indicates the waste of a good opportunity. I do not say this because I have not been selected as a torchbearer;

but because the fact that I am not a torchbearer reflects certain realities. First, who sets the rules of the Selection Subcommittee? Why has there not been an open selection of torchbearers in which the people of Hong Kong feel that they can participate? Second, since they have asked the pro-establishment faction and other political figures to be torchbearers, why have they not asked members of the pan-democratic camp? I am not referring to myself. Is it possible to invite the President to give application forms to members of the pan-democratic camp who have not been nominated? I have to specify, it is not necessarily given to Frederick FUNG. What is the meaning of the term "participate" to which I have referred? It is to ensure that people will not say nobody from the pan-democratic camp has been nominated, and that nobody from the camp has applied. It is exactly because Sham Shui Po has nominated me and I have at least one nomination that nobody can make that comment. In this way, a harmonious situation will emerge. Third, why have so many members of the first generation and the second generation of the business sector been asked? All of you know that I have been involved in alleviating poverty. Why have the working poor not been asked? Why have the disabled people not been asked? Why has "Ah Pun", the disabled person who had wished to die, not been asked? Right now he is trying his best to live. If he was asked to be a torchbearer, would that not be a great encouragement to us?

I have all along thought that the more number of athletes become torchbearers the better. I am of the view that we have not used the Olympic Games to encourage and arouse emotions, relationships, love, and harmony among the Hong Kong people. The difference between TAM Yiu-chung's amendment and the amendment of "Ah Yan" lies in whether there is a need for HVP. But in my opinion, whether there is a need or not, legitimate Chinese nationals and Hong Kong residents should have the right to be issued HVPs. Thank you, President.

MRS ANSON CHAN (in Cantonese): Madam President, with the amendment proposed by TAM Yiu-chung, the motion on "Human rights and the right to return to one's hometown" proposed by Ms Emily LAU today has almost become a debate on "Support for the hosting of the Olympic Games by Beijing", which seems to alter the nature of the original motion.

First of all, I would like to talk about the motion on "Human rights and the right to return to one's hometown" as moved by Ms Emily LAU and amended by Mr LEE Cheuk-yan. As we all know, some Members of the Legislative Council as well as residents of the pan-democratic camp have been barred from returning to the Mainland for visiting relatives, sight-seeing or on business by the Central Government over the past 20 years. And what is the reason for that? It seems that an official explanation has never been given. In my impression, it has been said that the pro-democracy camp should "know how things stand" or "know only too well" as referred by TAM Yiu-chung just now. As a matter of fact, besides the pan-democratic camp, members of the public also know how things stand or know only too well. Over the past 20 years, in terms of human rights and the development of democracy in Hong Kong, since there are complete divergence in the views of the pro-democracy camp and the direction the Central Authorities wish Hong Kong will go along, members of the pro-democracy camp have been regarded as dissidents by the Central Authorities. Therefore, over the past 20 years, they have to pay the price for not being able to return to their hometown.

It has been over a decade since the resumption of sovereignty over Hong Kong by China. The status of Hong Kong residents has also changed to Chinese nationals in Hong Kong now. China itself, irrespective of political or economic development, is moving towards the direction of converging with the world. With respect to the implementation of universal suffrage in Hong Kong, the suspicions and resistance of the Central Government towards this issue 20 years ago have transformed to the endorsement of the Standing Committee of the National People's Congress in implementing universal suffrage for the election of the Chief Executive in 2017 and for the election of all Members of the Legislative Council in 2020. The laws of "the ball is round" and "the world is really progressing" are manifested. In the past, the Central Government was of the view that Members of the pro-democracy camp did not understand the current situation of China, so they were refused access to China. In fact, by taking the opportunity of this year being the Olympic Year to reinstate the right to return to one's hometown, thereby allowing all Members of the pro-democracy camp and residents to travel freely to the Mainland, the Central Government will not only generate positive impacts among the public opinion of the international community and Hong Kong, but also contribute to building a harmonious society. Just as Mr LAU Chin-shek said earlier, this will be a three-win situation.

According to Article 13(2) of the Universal Declaration of Human Rights, "Everyone has the right to leave any country, including his own, and to return to his own country." This is a fair and equal right that should not be deprived of because of different political views. If the Chinese nationals in Hong Kong are refused access to the Mainland because of their differences with the Central Government in respect of democratization processes in Hong Kong, how will the international community be convinced of the determination and sincerity of our country in implementing reforms, opening up as well as moving towards human civilization?

In hosting the Olympic Games, our country has emphasized it will do a good job in organizing the event. This illustrates that China is ready to go global and move onto the common track of the international community. Respect for human rights, attaching great importance to environmental protection, improvement of people's livelihood, and development of democracy are routes we must take to integrate into this track.

There have been rapid economic developments in China for more than a decade now. There is a saying that "There is nothing like seeing it for yourself". If the right to visit one's hometown is reinstated to Members of the pan-democratic camp and residents so that they will be able to see for themselves, I believe with their frequent opportunities to access the Mainland, there will not be much difference in their views and feelings with members of the public who frequently travel to and from China and Hong Kong. Several years ago, the reissuance of Home Visit Permit to Mr LAU Chin-shek so that he could visit his elderly mother was applauded and recognized by the general public. Unfortunately his mother passed away a while ago. If the Permit had not been issued, he would not have been able to fulfil filial devotion to his mother over the past several years. Granting the right to return to one's hometown is the fundamental expression of respect for human rights.

As descendants of the Chinese race, we will fully support our country in hosting this year's Olympic Games, because every Chinese has the wish that China will be strong, prosperous, and moving towards human civilization. During the talks I delivered in a number of overseas visits I had made in recent months, I informed these countries that people would be able to learn about the rapid developments in China in recent years through participating in the Beijing

Olympic Games. As a matter of fact, in order to host the Olympic Games, China has made a lot of improvements in areas such as environmental protection, civic education, sports, culture and economy.

This afternoon, I took part in the Flame Receiving Ceremony of the Beijing 2008 Olympic Torch Relay, and heard Chief Secretary for Administration Henry TANG refer the Olympic torch as a symbol of hope and dreams, of friendship, peace and equality. Since this is the case, I urge the Central Authorities and the SAR Government to respect the right of the Chinese nationals in Hong Kong to freely travel to and from the Mainland. The SAR Government should voluntarily and proactively assist those Hong Kong residents who are unable to return to the Mainland to have their right to return to their hometown reinstated.

Mr TAM Yiu-chung's amendment altered the original motion to "assist those Chinese nationals in Hong Kong who are in need" with the aim of restricting the activities only to "enhance the exchange between the people in both places". This does not comply with the principle that everyone has the right to return to his country as stated in the Universal Declaration of Human Rights. Therefore, I oppose the amendment proposed by Mr TAM Yiu-chung.

With these remarks, Madam President, I support the original motion of Ms Emily LAU.

DR YEUNG SUM (in Cantonese): Madam President, the Democratic Party supports China in bidding to host the Olympic Games, and opposes the independence of Tibet. However, opposing the independence of Tibet is not equivalent to disrespecting the culture and autonomy of the people of Tibet.

Last week, a commentary was published in the *People's Daily*, the official mouthpiece. The writer expressed his hope that the country would (I quote) "establish the spirit of a nation, and conserve the state of mind of a nation. Let the world see the unity, rationality, wisdom, and courage of the Chinese people. Let the world see the openness, inclusiveness, self-confidence and self-reliance of China." (End of quote)

Meanwhile, we saw the Chinese people surround the Carrefour Supermarkets and the Consulate General of France. We heard insults and abuses. The situation was like the replication of Yihetuan over a hundred years

ago. In fact, the strength of China nowadays is far above that of the late Qing Dynasty. It is no longer the weak nation that could not resist the trample of various foreign powers. Protests are nothing extraordinary. When meetings of the World Trade Organization are held in European countries and in the United States, there are often waves after waves of protests. If we cannot stand these protests and regard them as enemies, resorting to adopting iron-fist approach against them during the period of the Olympic Games, then it looks we still have a long way to go if we wish to converge with the international community.

I hope that the Government which represents the people will really be inclusive as depicted in the above commentary. Hong Kong is the first Chinese city of the torch relay. But unfortunately, controversies have kicked up a storm in public opinion even before the torch arrives. Sculptor Jens GALSCHOT had said he would only lead a peaceful demonstration but was repatriated ruthlessly. This act has damaged the image of Hong Kong in the international community. I am afraid if the SAR Government has acted in accordance with instructions from its superior, the world will only see that the spirit of a nation is non-existent, the state of mind of a nation is void. Openness is false, closing down is genuine. There is nothing like inclusiveness, the real practice is exclusion. Blindness has submerged rationality. There is a lack of courage to tolerate different opinions. It is also sad if the SAR Government has acted in accordance with its own initiative. Guessing the mind of the superior is an overall mentality of servitude. This is only the modern edition of "The Ugliness of Officialdom".

In bidding to host the Olympic Games seven years ago, the Central Government made pledges of improving the development of society as a whole, including democracy and human rights. Civil rights movements have risen one after another subsequently. Many human rights activists such as HU Jia are imprisoned. Seven years ago, the Beijing 2008 Olympic Games Bid Committee assured the international media that China welcomed all international media to Beijing to cover the 2008 Olympic Games and report on other aspects of China. But all foreign reporters were expelled from Tibet. The well-written article of the Government is one thing, while reality gives us another story.

The Democratic Party supports China in hosting the Olympic Games in Beijing. However, we urge the Central Government to honour its promises one after another, and not to remain at the level of a nation of slogans only. It is only by doing so that China will be respected by the international community.

Many of us who support the democratic movement in the Mainland have been refused access to China over the past 20 years. It makes us feel helpless that, as Chinese nationals, we do not have the freedom to travel to and from the Mainland. The amendment urges the authorities to assist only those Chinese nationals in Hong Kong who are "in need" to return to their hometown. As a matter of fact, who are "in need" is really the key point of this part of the amendment. And what a clever expression it is. To some people, is going back to his hometown for the purpose of paying respect to the ancestors, or visiting family members makes him a person who is in need, while going back to his country for the purpose of sight-seeing or visits makes him a person who is not in need? The freedom of travel to and from his country is the right of a Chinese national, why should we be deprived of this right by those in power?

From the 1989 pro-democracy movement up until now, I have been unable to return to the Mainland. As a representative of public opinion, why am I being refused access over the past 20 years? Mr CHIM Pui-chung mentioned those who suffered from political mental diseases. Madam President, indeed, people with different political opinions are not equivalent to those who suffer from political mental diseases. I am taking Mr CHIM Pui-chung's words as a joke. But sometimes he sounds very serious when he is joking in real earnest. Should he be really serious about what he said, then I can only express my regret. Mr Allen LEE, a former Member of the Legislative Council, often tells me to go back to China to take a look at the rapid development in the Mainland. In fact, it is not I who do not want to see for myself. It is only that we are refused access to our country because of our differences in political views. So am I the one who should be sad, or is it the country that should be sad?

Treating its own nationals with a lack of inclusiveness is the behaviour of small nations without self-confidence. Placing what the authorities represent at the centre of everything, the ruling Chinese authorities are severely banning people with different political views to take half a step into its territory. The so-called openness, inclusiveness, self-confidence, and self-reliance are simply words of window-dressing.

It is my sincere wish that the Government of our country will be lenient to people holding different political views. It is only through adopting a pluralistic approach towards its community that a country may achieve genuine progress.

It is only through taking democracy into account, respecting the rule of law, and honouring its pledges that China can be accepted and respected by the international community. With these remarks, I support the motion.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, there is a famous saying, "Where liberty dwells, there is my country." But now it seems there is a tendency that "Where the Olympic Games dwells, there is my country."

In fact, loving a country does not require it to host a major international sports event. Many of our colleagues have regarded the Olympic Games as something of a supreme value, and urge us not to politicize the Olympic Games. However, what does history tell us? We know that the French people modernized the ancient Greek Olympic Games with the hope of avoiding war. Unfortunately, the World War broke out soon after the first modern Olympic Games had been held. A strange thing happened soon after the War had ended. The notorious Nazi Germany became the host of the Olympic Games in 1936, degrading the venue of the Olympic Games to a place for publicizing the militarism of Nazi Germany. The torch relay, which is regarded by us as a distinguished event right now, was started when Berlin hosted the Olympic Games. At that time, HITLER wished that the transmission of the torch would be held throughout the whole Europe. This is not the end of it. According to the original plan, Tokyo would have been the host of the next Olympic Games to be held in 1940. Fortunately, it was not held. In fact, it could not be held, because it was wartime then.

Honourable Members, I do not know what kind of treatments those who had opposed the Berlin Olympic Games and the Tokyo Olympic Games had suffered. I know that one of the treatments was called the "treatment of a non-national". The above two countries are good at using the treatment of a non-national to persecute dissidents and their families, as well as their sympathizers.

This kind of treatment of a non-national is what we having been receiving today. Regarded as non-nationals, we have been unable to obtain our Home Visit Permits (HVPs). However, this is only a very small punishment. At that

time, the treatment of a non-national was death, imprisonment, and endless persecutions. When we are fighting for the issuance of HVPs for ourselves here, I cannot help but think of some people who had no choice but to be exiled in order to exchange for freedom after the 4 June incident, or those who are imprisoned for political reasons by the Communist Government of China. The exiles are neither able to come to Hong Kong, nor return to the Motherland. This is what grief is. A country which imposes this kind of treatment will never be able to wash itself clean no matter how many times it hosts the Olympic Games.

When Mexico hosted the Olympic Games in 1968, students in Mexico took to the streets to protest against the extravagance, waste, corruption and political autocracy of the Government. As a result, over 200 people were shot. The 1980 Moscow Olympic Games was campaigned against and boycotted on the grounds that the Soviet Union invaded Afghanistan. The People's Republic of China had originally planned to return to the Olympic Games that year, but had to give up in the end. The 1984 Los Angeles Olympic Games was similarly boycotted by the countries of Eastern Europe for the reason that REAGAN tyrannized over the world and invaded Central America. Were these Olympic Games not politicized? Did China not declare its position? There was a time when the People's Republic of China withdrew from the venue of the Olympic Games in protest at the presence of two Chinas. Was this not politics? Therefore, when someone urges today not to politicize the Olympic Games or says the Games should not be politicized, he is either ignorant of history, or is saying this against his conscience.

In fact, today there is only one reason when we say that the Olympic Games should not be politicized, and that is, for the duration of the Olympic Games, we should not criticize the host country — our Motherland. I went to the Cultural Centre to express my views today. The "elderly men at Victoria Park" present verbally abused me. They nearly wanted to beat me. Seeing this, I think history is indeed ironical. I am young and have no chance to experience the Cultural Revolution. However, there will be a day when I may experience it.

Honourable Members, I have just quoted "Where liberty dwells, there is my country." This is a famous saying. What does it mean? The meaning is that only places where liberty can be found deserve to be the Motherlands of people. However, some other people have said, "Where liberty does not dwell,

there is my country." In a land without liberty, we have to fight for this universal value. There is a saying of the Communist Party, "Workers do not have Motherland." If this is the case, those who use foreign countries as pretexts to suppress human rights today have to ask themselves whether they are right in doing so.

I am not interested in the Olympic Games and I do not watch the Games. If due to hosting the Olympic Games, I am asked to give up my principles, give up protesting against my compatriots being politically persecuted and subject to social injustice, I will call a halt to bringing about this major international event. And I will not give up. A man has his moral qualities. A country has its moral qualities as well. Those who respect moral qualities of people, and those who respect moral qualities of other people deserve to have a country. I will not accept an ideology that advocates one-party dictatorship or authoritarian governance, or a demeanour of a nation that suppresses dissidents in order to maintain policies of social inequality, or even degrade people of the country to non-nationals. I urge all of us to continue fighting for human rights, freedom, and democracy in China during the period of the Olympic Games, so that the compatriots of our Motherland will not be silent.

MR FRED LI (in Cantonese): President, I have some feelings for today's topic. I do not have a draft of the speech. I am just going to talk about my feelings.

I listened attentively when Mr TAM Yiu-chung proposed his amendment. Something in his speech made me feel rather distressed. He said that some of our colleagues should "know only too well" why they were not able to return to China.

On 1 July 1999, I joined a litchi tour with the aim of tasting litchis in China. My travel document was confiscated at Huanggang. The public security officers of the Mainland did not offer any explanations at all for confiscating my document. I really "knew nothing at all". Until today I still have no idea what it was all about. In 2001, I quietly went to the China Travel Service to apply for a Home Visit Permit (HVP) directly by myself without any guidance of "a person with a high status". I got my HVP. That office was rather quiet and low-profile, and there were no reporters. At that time, I was rather surprised that I could get the travel document. However, one and a half

years later, it was again on 1 July, it was again at Huanggang, and again I intended to taste litchis, my document was confiscated once again. I still do not understand why my HVP was confiscated twice.

In 2005, QIAO Xiaoyang came to Shenzhen to hold a seminar. I thought it provided an opportunity. He specially informed me via the Liaison Office of the Central People's Government in the SAR to process my document. As a result, the processing of my document was completed in three days. I then went to Shenzhen to take part in a seminar of the Basic Law. I really do not know what "knowing only too well" means. Probably TAM Yiu-chung knows why my documents were confiscated. Probably he had instructed people to do so. I do not know. Therefore, I wish to tell the friends of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) that I really "know nothing at all". I really have no idea what it was all about.

I am of the view that these practices should not be encouraged. Which legislation have we Hong Kong people contravened so that we are barred from returning to the Mainland? Is it because we do not support every act of the Central Government, instead, we criticize policies of the Central Government, and query the principle of "one country, two systems"? Is it because the Central Government is not satisfied with us when we ask it to do better, so that we are refused access to China as a kind of punishment? Is it because what we say is not compatible, we show no support, we do not wear red clothes to express our support for China in hosting the Olympic Games, we do not shout three cheers to show our patriotism? If this is the case, it is really too horrifying.

I hope that colleagues of the Council understand that this should not be used as a kind of punishment, or as a method to distinguish "your own people". When we return to the Mainland, what can we do to such a huge country? I believe the Central Government is not afraid of what we will do in the Mainland. It simply dislikes what we express in words. Our actions in Hong Kong are disgusting so we are barred from going to the Mainland. It is not because the Central Government is afraid we will get involved in some kind of revolution. What can intellectuals like us do when we return to the Mainland?

I have just come back from a trip to Beijing with the Consumer Council. Beijing is a city worth visiting. But many of our colleagues are unable to go there. What is the reason for this? I really do not understand. They should visit the place and exchange their views with the local officials.

In fact, the Mainland advocates protection of consumers' rights. Mr Albert HO, we talk about protection of rights, but the protection of rights in the Mainland is restricted to protection of consumers' rights. With respect to food safety, they have done a marvellous job in the protection of consumers' rights in this area. We also had many discussions. They devoted a lot of efforts in combating counterfeit goods. They spare no efforts in eradicating piracy, with hotlines put in place for this purpose. I learnt a lot about how they operate during my visits. However, these efforts are not found in other areas. Efforts of protection of rights have not been evenly distributed to other areas. Protection of rights is considered good, but is only restricted to consumers' rights. Our colleagues hope that protection of rights can be expanded to other areas, such as human rights, democracy, and the rule of law.

The Legislative Council visited Europe in March and by coincidence the riots in Tibet broke out at that time. After 14 March, even the Frenchman at the hotel reception talked with me about the issue of Tibet. I began to understand that he might have some sweeping generalizations in his mind. The basic view he held was that China was suppressing a democratic and free Tibet and persecuting the people there. Of course I did not agree and started to debate with him. He was of the view that there was no future for Hong Kong because there was inadequate democracy and no universal suffrage at all. I thought he had some idea and knew that we came from Hong Kong. I told him I was a member of the opposition party in Hong Kong — Secretary Stephen LAM likes to call us the "opposition camp". I told him even though I was a member of the opposition party in Hong Kong, I was equally supportive of hosting the Olympic Games, and opposed to the sabotage of the Olympic flame — I absolutely oppose such an act. The process of the transmission of the flame should not be disrupted. He was very surprised that why I, a member of the opposition camp, did not support the independence of Tibet. I told him these were two different things. I also did not support the independence of Taiwan, but instead, I demanded the unification with Taiwan.

It is clear that different things cannot be mixed together. These positions do not represent whether we are patriotic. It is not necessary to put labels on us. We are only doing what we should do. It is said that there are some radical members and some moderate members in the pro-democracy camp. And I am said to be one of those moderate members. However, the principle is very clear. It is incorrect that we are refused access to the Motherland. It cannot be said that we "know only too well". The words "know only too well"

should absolutely not be used as a pretext to treat the whole issue lightly. I also think that we should not just put the blame on fate. I think other colleagues should speak for us. This is an issue of right and wrong. The Government should also help these people fight for access to the Motherland.

Even the Kuomintang's LIEN Chan — we are still reading the history of the Kuomintang and the Communist Party trying to fight each other fiercely — can actually pay an official visit to the Mainland in a high profile now. How can parties like ours in Hong Kong compare with the Communist Party? We are still far behind. It is really not necessary to be afraid of us or try to punish us. I think it should not act like that. I do not know if anyone from the DAB will respond. I hope that he will explain what "knowing only too well" means. Then I will have an idea, or I will see the light suddenly, so that I can avoid having my document confiscated again. I so submit.

MR ALBERT CHAN (in Cantonese): President, each time Mr Fred LI went to taste litchis, his Home Visit Permit (HVP) was confiscated. Obviously he was able to canvass votes through the litchi tours, making the regional Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) jealous. Subsequently secretive reports were made, resulting in the confiscation of his HVP, thus, censoring his brilliant tactic of canvassing votes. This is obviously a political grudge. The DAB should "know only too well".

President, Mr TAM Yiu-chung said those who had no HVPs should "know only too well". I have HVP, but I do not know why I have my HVP. I really "know nothing at all". I often analyse this with my friends. This was particularly so during the time when I was still a member of the Democratic Party. Even people like CHAN Shu-ying and NG Wing-fai had no HVPs, while I had my HVP. It made me feel I had no political status at all. Why should the second-string figures have no HVPs, while I, who vehemently protested against TUNG Chee-hwa and was actively anti-TUNG during all those years, was still able to have my HVP? It seemed that the status of TUNG Chee-hwa lagged behind the political stance of certain people.

According to the analysis I conducted at that time, there were three possible reasons for that. First, I was not a Committee member of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. Since many people fought for being a Committee member, I did not take part in the

fight. Second, I was excluded by the Democratic Party. I was not in the power nexus of the Democratic Party, and was not elected as a Central Committee member. Third, I did not gatecrash the boundary. There were several times when they attempted to gatecrash the boundary, but I did not take part in them. Andrew CHENG's HVP was confiscated because he gatecrashed the boundary, among other reasons. Some people have their HVPs confiscated because they have gatecrashed the boundary. I do not know whether these three are the reasons. If there is something like they should "know only too well", there is a possibility that these three reasons have, instead, made them classified as the Five Black Categories or Three Black Categories, whose HVPs are confiscated.

President, with respect to today's motion, the original motion of Ms Emily LAU is, in fact, a principle that can be universally applied. But surprisingly, it is amended and the issue of "need" is now added. I am not going to repeat the justification put forward earlier by Mrs Anson CHAN. Based on the same reason, I also oppose the amendment of Mr TAM Yiu-chung, because he has used many reasons which put labels on others, such as alleging others of opposing his amendment because they are pro-foreign powers. This, in fact, is a traditional means employed by the leftists. Secretary TSANG has just left the Chamber, so I cannot ask him to teach me a few tactics now.

President, the right to return to one's hometown provided by HVP is, in fact, very important. Fortunately I have my HVP and have been able to return to the Motherland for visits. I often go to the Mainland for massage — each time I go with my wife. I have been able to learn more about the Mainland during each of my trip. Of course I do not mean learning more about massage. I refer to cultural and political developments — particularly by talking with some officials of rural businesses of the Mainland, I have been able to experience and understand the progress and opening up in respect of governance in the Motherland.

When I first returned and contacted them more than a decade ago, there was no harm in talking with them about the 4 June incident. In short, nothing would happen as long as you did not go shouting "topple the Communist Party" on the streets. We were able to give our analysis of current affairs and express our views on the Cultural Revolution. There were frank and sincere exchanges among us. All these exchanges have facilitated my understanding of the developments in China.

I have often emphasized that there are two levels in any kind of researches. One is the rational comprehension, and the other is the emotional recognition. The two of them have implications on each other. Views on various issues that are not based on actual participation and without emotional recognition are biased. Probably the DAB have so frequently returned to the Mainland to taste litchis and are surrounded by the sweetness of litchis, that they have sweet memories of and high expectations for the Motherland. Without the emotional recognition, there may be a kind of barrier between us and the things we look at, or a layer of grey film that blocks our clear vision. I absolutely believe that if HVPs are expeditiously issued to all the friends of the pro-democracy camp, it will certainly facilitate the mutual communication and understanding of both parties.

As a matter of fact, the Chinese attach great importance to feelings towards the homeland. "Uncle Wah" is not here today. If "Uncle Wah" were here, he would have talked more about poems and verses on feelings towards the homeland. I asked my assistant to look up some poems and verses on these feelings of various Dynasties, such as Tang, Sung, Yuan, Ming and Qing. There were many poems and verses on feelings towards the homeland in the Tang Dynasty, from "Feelings from looking at the Moon" written by BAI Ju-yi, to poems of LI Bai and DU Fu. There were also many such poems and verses in the following Dynasties of Sung, Yuan, Ming and Qing, such as "Pride of Fishing Families" written by FAN Zhong-yan in the Sung Dynasty.

It is a very important recognition for a Chinese when he has the chance to return to his hometown, and build a feeling towards the land and environment of his own origin. Did our Chief Executive not also return to his hometown in glory after his success in the election? One can return to his hometown in glory after being elected a Member of the Legislative Council. When I returned to my hometown years ago, I was introduced as "a celebrity in Hong Kong". It was an honourable title. Therefore, participation and contact are very important. Poems and verses will be handed down to our descendants. Next year will mark the 20th anniversary of the 4 June incident. In the blink of an eye, it will be 19 years since many friends have been without HVPs. Twenty years is a generation already. I propose that friends of the pro-democracy camp who do not have HVPs join together to publish a collection of poems. It can also be a publication of joint declaration or a collection of essays. I believe this

collection will circulate throughout the world, with a possibility of being translated into various languages. There is even a possibility that it will have a chance to be the winner of the Nobel Prize in Literature in the future.

In a free and democratic society, it is a scandal if a group of representatives of public opinion have not been able to obtain HVPs for 20 years. If we can put this historical fact down in writing and publish it in a book, it will certainly be handed down to our descendants, so that a piece of unrighteous and unjust historical fact can be recorded. It is hoped that *Ming Pao* will help in inviting Members of the Legislative Council who do not have HVPs to write and publishing the articles as a collection, thereby this ugly page of history will be handed down to our descendants, and the policy of refusing to issue HVPs will be passed down because of its infamy for thousands of years. Thank you, President.

MS MARGARET NG (in Cantonese): President, it is late at night now. My speech will be as short as possible. I listened attentively to every Member's speech. My feeling is that all Members who spoke in this Council are patriots. However, I can see two different mentalities of patriotism. The first one is manifested in a pride for a strong and prosperous country, which is capable of spreading renown far and wide, but will not tolerate any challenges. The second one is manifested in an aspiration after a free and opened-up country, which interacts with the civilized world, and will tolerate criticisms. I would like to ask, which patriotic behaviour benefits the development of the country more and the future of China more?

The first kind of patriotic behaviour has aroused fear and cautiousness in the international community, which have actually shown in the recent news reports. The second kind of patriotic behaviour is universally welcomed for its genuine contribution to global peace. Today we talk about the right to return to one's hometown, which is, in fact, the touchstone of these two patristic behaviours, that is, how to treat its own nationals' criticisms against the Government and the country.

We saw Mr TAM Yiu-chung eloquently state his case that the most we could do was to help those who were in need to return to their hometown. Will this kind of harsh attitude benefit the country or will the kind of persistence of Emily LAU benefit the country? Recently, controversies aroused by the

reverberations of various activities related to the Olympic Games have stimulated strong emotions of many overseas Chinese groups, as well as emotions of anti-foreign enterprises in the Mainland. We can also see the continuous efforts of the leaders of our country to take the heat off by actions and speeches. President, have these not clearly indicated which behaviour the future of China will benefit from the perspective of the leaders of our country?

President, as I sit here in the Chamber, I can see one party is feeling proud but worried, and the other party is also proud of themselves. Although these two behaviours are opposing each other, peaceful debate can still be held in this Council. The phenomenon has exactly highlighted this kind of civilization is still present in Hong Kong. And I hope that this kind of civilized debate will be carried on in the Hong Kong SAR.

In Mr LEUNG Kwok-hung's speech just now, he said that "Where liberty dwells, there is my country." I was rather displeased with it. I have all along agreed to what Mr LEUNG Kwok-hung said, but I do not agree with this point. However, I shared the same feeling when he mentioned another saying, "Where liberty does not dwell, there is my country." My deepest identification with the Chinese race is based on my identification with the several thousand years of Chinese history, and the suffering endured by the Chinese people, particularly the many prices they have to pay in their fight for an open, democratic, free and equal society. President, it is my hope that if the Hong Kong SAR is to contribute to China, it will alleviate the suffering of the Chinese people, so that we will have a brighter future. In this way, our debate today will not be in vain. Thank you, President.

DR FERNANDO CHEUNG (in Cantonese): President, the topic of our discussion today, the right to return to one's hometown, pales into insignificance when compared to the suffering of the Chinese people. As mentioned by a number of Members earlier, for many years, the Chinese people have been denied a just and open environment in which everyone is entitled to take part, have a say, and find a footing. Therefore, today's debate is all the more meaningful.

President, I think we cannot be categorized as unpatriotic. We have debated from the 100-day countdown to the Olympic Games to 99-day countdown. This Council has fully indicated our grave commitment to human

rights, the right to return to one's hometown, and the Olympic Games. I would also like to thank Ms Emily LAU for putting forth this motion debate.

I hope that Mr TAM Yiu-chung will not mind too much. If there are Members who oppose his amendment, it is only because his amendment seems to have deviated from the spirit of Ms Emily LAU's original motion. In Ms Emily LAU's motion, she clearly states that it is related to human rights and the right to return to one's hometown. However, Mr TAM Yiu-chung has added his discontent with various acts of insults to the Chinese people and sabotage to the transmission of the Olympic flame in the first part of his amendment. And most important of all, he has deleted the most important sentence in Ms Emily LAU's motion, that is, "as a number of Hong Kong people have been barred by the Central Government from returning to the Mainland for almost 20 years, this Council calls on the Central Government to respect the right in Hong Kong to freely travel to and from the Mainland, and urges the executive authorities to assist these people to have their right to return to their hometown reinstated." In this long sentence, with the exception of the words "to return to their hometown", almost the whole sentence is deleted. The sentence is then changed to urge the SAR Government to assist, that is, to assist those who are in need. This point really makes it difficult for people to support Mr TAM Yiu-chung's amendment.

In fact, our country is a great nation. We have often referred to "the rise of a nation". Now that Beijing is even hosting the Olympic Games, why can it not allow its own nationals, not only ordinary nationals, but representatives of public opinion of the Special Administrative Region elected through democratic elections or returned by functional constituencies, to go back to the country? Obviously it is not because of the fear that Mr Fred LI will cause trouble when he returns to the Mainland to taste litchis. It is a kind of punishment, with the implication that I have the authority. If I do not like what you say, I will do according to my preference, and decide whether you can travel to the Mainland. Moreover, it also serves as setting an example. We can take a look at the recent arrest of HU Jia, which seems to be related to the Olympic Games. We thought that as China was going to host the Olympic Games, it would focus in appearing to be more inclusive, make more allowances for different views and voices. But why was HU Jia arrested and sentenced to prison for three and a half years in such a high profile and exactly at this time? The crime HU Jia had committed was said to be incitement. As a matter of fact, his actual offence was publicly criticizing human rights in China, and releasing articles with foreign reporters

through the Internet. In a generally open society, anyone can voice these words or release criticism of the country or the Government at any time. However, such an act becomes sedition in the Mainland. I believe the Central Authorities are doing this to set an example, with the aim of warning all, particularly some dissidents, that if you cause trouble at this time, you will suffer the same consequence as that of HU Jia.

The most heartbreaking thing is that this is, in fact, completely unnecessary. We can say that sport itself has its holiness, and the Olympic Games represents inclusiveness, unity and the spirit to participate. But today, who is taking the lead to politicize the Olympic Games? The name list of torchbearers who are responsible for the transmission of the Olympic flame in Hong Kong has become a kind of dividing political spoils. Many Members have mentioned this and the public is able to see for themselves. We know only too well, and know those who advocate with vehemence that "sport should not be politicized" are exactly the people who politicize sport. In fact, why have so many efforts been devoted to this? Why has everyone got so tensed up? I came across a government official today and we talked. He said that the SAR Government had got tensed up. The word they use is "zero tolerance". It turns out that errors are not to be tolerated in the transmission of the Olympic flame. So this time it is mobilization for all. All related personnel are not allowed to take leave. Everyone exerts all his strength in the task. If the Government combats domestic violence with the same "zero tolerance" attitude and exerts all its strength like this, I believe the number of domestic violence cases will be drastically reduced.

President, recently I read an article from the *Next Magazine* which quoted words from HAN Han, a blog in China. I think the words are very incisive. He said, "Sometimes the situation becomes rather entangled. This is a country where people do not have any rights to watch CNN, but have every right to campaign against CNN." This is really laughable. But these words reflect exactly the current situation in China today. It is my wish that we will soon progress to the other kind of patriotic sentiment just mentioned by Margaret NG. It is my wish that our country will be open and free. Thank you.

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

MR MARTIN LEE (in Cantonese): Madam President, Dr David LI tabled a Private Bill in end of May 2001 for the merger of the Bank of China (BoC) and another bank. At that time, he indicated to Members of the Democratic Party that he was very unwilling to set up a bills committee, because once it was set up, the matter would be delayed and the merger could not take place within the summer. For all that we supported him, Mr Albert HO, having studied the Bill, held that it had problems, and if it was passed without amendment, it would be detrimental to the BoC clients. After a lengthy examination and a copious discussion between his group of lawyers and Mr Albert HO, an agreement was eventually reached that it was not necessary to set up a bills committee and the Bill was passed on 12 July 2001.

The then President of the BoC was very happy, calling and inviting me for a meal which I have politely turned down because we were only executing our public duty. He asked for my suggestion and I said I would like to visit the BoC. He then treated us to a breakfast at the top floor of the BoC. We talked about the Olympic Games and we all expressed great interest in watching the Games in China, but we could not return to the Mainland. We then asked him what could be done. He said that in view of the development of China, we could definitely be able to return to the Mainland by then. I asked him whether it must be so and he said yes affirmatively. I asked him if he could make a pledge and he said yes. Dr David LI then said, "You pledge so." We were all very happy.

Now, the then President LIU Jin-bao was imprisoned, not because he had agreed to be my guarantor, but because he had committed some crimes. Even my guarantor is now in prison. I believe if he wants to watch the Olympic Games, he perhaps can only follow my way, but he may not even be able to watch television because prisons in the Mainland may not have televisions and I can at least watch television in Hong Kong.

This reminds me of another incident. A few years ago some Hong Kong journalists interviewed me in the United States. I said Martin Luther KING had said "I have a dream" in the place where I was standing at that time, but I had two dreams: one was the dream of democracy and the other was the dream of returning to my hometown. In response to my remark, a senior official of the Liaison Office of the Central People's Government in the SAR said in Hong Kong that I should keep on dreaming. A Chinese national, wishing to return to his hometown, can do so only in his dream. I do not know whether he has ever

thought about this as something to be proud of or something sad? Why can a Chinese national only return to his hometown in his dream? We now often speak of "One World, One Dream", but when I mention this dream, it reminds me of my dream of returning to my hometown and of democracy. Democracy has been kept from coming true. When can it turn into reality? No one knows.

When bidding to host the Olympic Games in Beijing in 2001, the Mayor and Vice-Mayor of Beijing clearly declared to the international community that by hosting the Olympic Games in Beijing, they sought not only to construct their city, but more so was that they wished to establish democracy and human rights; if they were given a goal, it would be easier to realize these aspirations in 2008. How beautifully they have put it, but have they realized it?

When the transmission of the Olympic flame was sabotaged in many democratic countries, Chinese people were certainly unhappy. But have they ever thought about the fact that dissidents will certainly make use of this opportunity of the Olympic flame transmission held in democratic countries where reporters of world-class news agencies such as CNN and BBC will surely be there to cover the event to bring out their message? This is nothing to be surprised at. Have Members ever thought about the fact that if this Olympic Games is to be held in a city in the United States and the Olympic flame is relayed around the world, there will also be people taking to the streets because the Iraqi war waged by the United States has also aroused much dissatisfaction around the world? Thus, we simply need not worry for it stands to reason that under such a circumstance the transmission of the Olympic flame will be sabotaged. Sabotage will happen to any country hosting these activities. Particularly when the country has explicitly made so many promises but failed to honour them, how can it blame other people? Certainly though, if it is a totalitarian country such as Vietnam and North Korea, nothing will happen and not even any grumbling will be heard from beginning to end. This is more than clear. But if the Olympic flame has to be transmitted to democratic countries around the world, the country should be more tolerant and generous and not to be on such high guard.

Madam President, it seems that I can only keep on dreaming this dream. Mr TAM Yiu-chung said one should "know only too well". Many Members do not understand what he meant. Beijing people often say to me that if you ask him something he does not know how to answer, he will say you should "know

only too well". What he meant is, he does not know why you cannot return to the Mainland, and you should know it yourself. I believe if I wish to return to my hometown, I can do so, as long as I make a confession and admit whatever wrongdoings you request me to admit. Some Members in this Council have done the same. In fact, during the 4 June incident, Members, be they of the leftist, neutral or rightist camp, were all united. TAM Yiu-chung walked besides me in the march. Later, those who were willing to toe the line were allowed to return to their hometown. He said one should "know only too well" and I indeed "know only too well" why he can return to his hometown. All "tamed" are allowed to go to their hometown. However, time really flies. LEUNG Chun-ying also said that he had participated in the march but he soon toed the line. At that time, there were many advertisements on newspapers. The Hong Kong Alliance in Support of Patriotic Democratic Movements of China has collated some of them. Many people said Chinese people did not kill Chinese people. This becomes part of history. As to the remark that we should "know only too well" why we cannot return to China, we indeed "know only too well", but I hold that it is worthy for us to pay this price. We do not want *(The buzzer sounded)* Thank you, Madam President.

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

MR ANDREW CHENG (in Cantonese): Madam President, it is now 1 am already, but I think the later it goes, the better the debate gets. I have been listening to the discussions and debates of several Members. I am perhaps inspired by the speeches of the few Members preceding me. I have been listening attentively, in particular to Ms Margaret NG's reference to the two kinds of attitudes to patriotism. I find it truly inspiring. We, in Hong Kong, can have the opportunity to speak one's mind without reticence. Precisely because we have this opportunity, we hope that the 1.3 billion compatriots in our country can enjoy the same opportunity; also precisely because of this conviction we have, we hope that Ms Emily LAU's motion on "human rights and the right to return to one's hometown" today can be passed.

Madam President, rights of the people go first because without people, there will be no Olympic Games. Unlike "Long Hair" (Mr LEUNG Kwok-hung) who said he did not like watching the Olympic Games, I like watching all sorts of sport events. I hold that the display of sportsmanship and

the nurturing of one's determination through participating in sports and competing on a level playing field have a positive impact on the development of the person and society. I thus love watching sport events. Sometimes when I saw the national flag — not only the five-star flag of China, but also that of any country — slowly rise after the award of a gold medal, I found it very touching. I hope that we will be equally excited about our country having secured the right to host this Olympic Games. Regarding the part on the "people" of this motion debate on human rights and the right to return to one's hometown, many colleagues have already expounded just now on the rights to return to one's hometown. I wish to talk about the middle part of Mr TAM Yiu-chung's amendment, that is, "in order to enable the Central Government to successfully honour its commitment" — that is, the commitment China made when it bid to host the Olympic Games that it would seek to enhance and improve human rights and develop democracy — "this Council opposes all acts to boycott the Olympic Games, and to disrupt and sabotage the transmission of the Olympic flame, and condemns all remarks which are false and insulting to China". Madam President, after reading it, I find it not quite logical.

What does opposing all acts to boycott the Olympic Games get to do with improving human rights and democracy? If I pledge to enhance human rights, and when I find someone insulting me or making such remarks, more so should I respect him. I oppose him because he should not make such a remark but I respect his remark. This is precisely the foundation of free speech and democracy. I thus cannot see why honouring that commitment or enabling the Central Authorities to successfully honour that commitment requires us to oppose all acts to boycott the Olympic Games. The two are in fact not very related. The only relation between the two is that we have another attitude to patriotism, that is, "everything about the Central Authorities is correct and no one dares to say no". Hence, some colleagues also said just now that the Hong Kong SAR Government had to do its best for fear that it would be reprimanded by our "Grandpa" for jobs not well done and thus damaging the careers of its officials. This is what it is all about.

Mr Albert CHAN just left the Chamber. When we were having night snacks just now — night snacks are provided here but not now because it is already 1 am and they are probably all consumed — he showed me his Home Visit Permit and said, "Look, this is my Home Visit Permit". But he then added that he "knew nothing at all". I wish to respond to him here that it is, in fact, very simple. How can we "know nothing at all"? The person exalted by

the State can be the homecoming star. If the State does not like to allow you to return to your hometown or is not fond of you, you will become, as Mr CHIM Pui-chung has put it, a person with political mental diseases. The mentally ill are marginalized in society, but they are small in number, and those being marginalized are dreaded by all because they may hack people if they get insane. Therefore, it is better to keep away from them. These people with political mental diseases thus become increasingly rejected. Mr Albert CHAN is correct only about one point, that is, Mr Fred LI, leading a group to the Mainland to taste litchis, has snatched away the "rice bowl" of the Democratic Alliance for the Betterment and Progress of Hong Kong or many other political parties which have a good relationship with the Central Authorities. They have certainly backstabbed him. Mr LI had better organize a longan tour next time and not a litchi tour again.

I think Members are not "knowing nothing at all". They do know it only too well, just that they dare not say it out, while we, naive and innocent as we are, will only call a spade a spade. Frankly, I believe no one will resist improving human rights and developing democracy. I came across a piece of news about the Petitioners' Village in Beijing. Madam President, I have never been to Beijing. These people are indeed pitiful. Why do they have to petition Beijing? Because these people, living in provinces thousands of miles away, have been oppressed by venal officials in their hometown. Some of them, leaving their house in the morning, have no house by night and even their parents dead. Cannot bear it any longer, they go to Beijing to petition. However, when they arrive in Beijing, they have no one to cater to their needs. These people have thus gathered at the Petitioners' Village. Because of the Olympic Games, the Village is forced to be relocated. These people are again humiliated and deprived of the chance to vent their discontent and fight for the rights they deserve. Having heard such incidents, how patriotic should we be towards the Olympic notion? Mr Albert HO and Mr LEE Cheuk-yan both wear orange clothes. Madam President, I have colour weakness, but I can identify deep red colour, like the clothes Mrs CHAN is wearing. Adding a little yellow to red turns the colour to orange. The purpose of The Colour Orange campaign is the addition of humanity. The humane side of the Olympic Games is the ignition of the Olympic torch and the relay of the dream and this dream is human rights. I was a student of Salesian English School. Its motto is "Alere Flammam". This is precisely our goal. Thank you, Madam President.

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

MR JASPER TSANG (in Cantonese): President, I know if I do not speak Albert HO seems hesitant about raising his hand. (*Laughter*)

I would like to make a response to Mr TAM Yiu-chung's amendment first. Mr Andrew CHENG said his amendment was illogical, but I cannot see why. According to Mr TAM Yiu-chung's argument, he opposes not the remarks, but acts which disrupt or sabotage the transmission of the Olympic flame. He is referring to the acts, the acts of boycott. As a matter of fact, there are people doing so. They call on athletes not to participate in the Olympic Games and other country leaders around the world to boycott the Games so as to hinder the Games from successfully held, or at least part of it from successfully held. Frankly, this does not relate to the question of human rights and freedom at all.

Foreign commentators of some knowledge and foresight have pointed out that recently quite a lot of people have referred to a book called *The CIA's Secret War in Tibet* again, which is about the secret war waged by the CIA of the United States in Tibet, and such critiques have never stopped. Then, another foreign commentator ENGDahl (Members may have read his articles) pointed out that the reason for President BUSH to have given the green light was that he wanted to "stir up" the matter. What is the CIA "stirring up" in Tibet? Supporters of Tibetan independence are not thankful to the CIA for they gradually realize that the CIA is not truly supporting their independence. The CIA simply does not want Tibet to become independent. It only wishes to continue "stirring up" the matter. It supports them to "stir up" matters in China, causing China all sorts of troubles. With the Olympic Games approaching, the CIA wants to "stir up" the matter, causing China all sorts of troubles.

It is really amusing to have brought up such matters. Some claimed that China assigned its Armed Police to disguise as monks and assault people. With the Olympic Games approaching, why on earth did China have to create such incidents? All of a sudden these incidents happened at different places. Such incidents are precisely what the amendment opposes. The huge efforts, manpower, expenses and resources China has spent seek to prevent and address these problems. Can you blame it for, out of sheer worry, banning some potential trouble-makers from entering its territory? This is where the truth is. It concerns not freedom of speech and is not about publishing an article or two, right?

Allow me to borrow an expression of "Long Hair" — "Bro" — they were not simply publishing one or two articles, it is more than clear that they are I read about "The Colour Orange" on the Internet. Play no more tricks. What does its colour orange represent? Is it just a mixture of the red and yellow colours? I have read its manifesto. Its colour orange represents the colour of the clothing of the Tibetan monks and the Tibetans, right? It says the colour orange is how should I render it into Chinese? It is the colour of the prison-guard uniform of the Guantánamo prison. It explicitly says in its manifesto that the campaign targets at the Beijing Olympic Games. It does not initiate this campaign only after coming here, instead it has called on the world long ago to take part in "The Colour Orange". This is what happened.

Some of our colleagues said that we were against overseas media distorting the truth, but the Chinese Government has not distorted the truth. How did our colleagues distort the truth? Speak only the truth. A few Members have used the list of Olympic torch-bearers as the evidence for politicizing the Olympic Games. They said they were against politicizing the event and claimed that the list was the evidence. CHEUNG Man-kwong is the most explicit among them, but his mathematics is poor. He described how the political and business sectors have equally pieced up the pie with the athletes. But among the 120 torch-bearers in Hong Kong, current and retired athletes account for 40 and 13 torch-bearers respectively, making 53 in total. Although he stated that athletes accounted for less than half of the torch-bearers, how do we compare with other places? In Kuala Lumpur, Malaysia, athletes and people in the sports sector account for 25% of the torch-bearers; London has a higher percentage of 37.5%; Canberra, reaching 46.3%, is even a little better. However, I have calculated that for Hong Kong, 66 torch-bearers (more than half of the total) are athletes and people in the sports sector, the number of which is more than that of all the other cities. He said many torch-bearers were from the political and business sectors, but how many of them are from the political sector? Only LEUNG Chun-ying, LI Gang and our President. (*Laughter*) The President belongs to the political sector, right? You can count them all with one hand. Why do the District Council (DC) Members belong to the political sector then? Let us take a look. The DC Members, for instance, Mr CHAN Siu-tong, the bearded guy from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), is a badminton team manager nominated by the DC. He is not the team manager of this term, and he is nominated not because many members of the

DAB were returned in November last year, but because he was specifically chosen in the last term. As for the rest, they are chosen as torch-bearers because they all have duties related to sports, right? This is what happened.

As to the business sector, our sponsors have the right to nominate 20% of the torch-bearers (24 torch-bearers). This number does not exceed that of other places. Take San Francisco as an example, of the 78 torch-bearers, 19 of them (a quarter of the total) are nominated by the sponsors. The number exceeds that of Hong Kong. In the list published in the newspaper, only 10-odd (less than 20) torch-bearers are businessmen. How could he say that the political and business sectors have accounted for one third of the torch-bearers and that they have equally pieced up the pie? I do not know how he has arrived at that figure. How could he say this?

Besides, TSANG Hin-chi is targeted. Some of TSANG Hin-chi's remarks, I know, are not welcomed by Members. This fellow elderly supported the bidding to host the Olympic Games. When he was the advisor to the 2008 Olympic Games Bid Committee, he spared no expense and effort. It was tough. Other than him, there leaves only LEUNG Chun-ying. He is the convenor of the Executive Council, while President represents let us not say represents one person is nominated from the Legislative Council and one from the Executive Council. Then, how many are from the business sector? How could this be coined as sharing political spoils? Are such remarks not insulting? Is this not an act of smearing the Olympic torch relay?

He then opined that the pan-democrats were not allowed to be the torch-bearers. "Bro", is it a little ridiculous that the people making such remarks, who have been holding a torch of their own running besides for "The Colour Orange", wish that by so doing they can be included in the list of torch-bearers? Who should be the torch-bearers? Certainly it should be those who truly support the Olympic Games and actively support the torch relay.

MR ALBERT HO (in Cantonese): Madam President, in fact, no matter if Jasper TSANG speaks or not, I still want to speak because after changing my clothes, I must make an appearance. *(Laughter)* I will first give a response because he particularly wants me to give a response before he can feel at ease. He made an

analysis on the anti-China forces in the international community. In particular, the United States often harbours malevolent intentions and foments unrest in Tibet. I certainly will not defend the foreign policy of the United States. I can tell him that I have certainly outdone him in the number of times that I went to the Consulate General of the United States to stage protests, and by a wide margin at that.

I do not agree with the policies of the United States in various areas and I am even strongly opposed to them, including to its offensive in Iraq. However, Members should not blow some of the so-called interference of the international community these days out of proportion and regard them as a collective conspiracy of some countries to cause interference. If this were really the case, I suggest that Mr Jasper TSANG should say to the Central Authorities that it was not a matter of these countries boycotting our country; instead, our country should boycott them. Why should they go to Beijing to cause trouble? In comparison, as everyone knows, many people among us have for a long time supported our country in its development and in its genuine implementation of the Olympic spirit, yet we are barred from returning to our country. In contrast, when those people who are believed to foment unrest and undermine the territorial integrity of our country said they wanted to boycott our country, our country is all jittery and fearful that they will not come to China. In fact, if our country has the gumption, it should be our country that boycotts these countries. Therefore, this point is very important and we must not blow things out of proportion. We have to discern the facts and still less should these external forces — which may not be something that we have to reckon with — become an excuse for us to clamp down on dissent. This is the most important point.

In this world, there are always many different forces and this is a fact. A government should have a good understanding of the international situation and this is also a fact. However, it can by no means implement an oppressive policy on account of this. This definitely and certainly must not be the ground for implementing a policy of prolonged suppression of press freedom and the freedom of speech.

Madam President, we said at the very beginning that the Olympic Games should not be politicized. However, regrettably, although the Olympic Games are basically and entirely a major sports event, when has it ever been possible to separate it from politics, the economy and society? Please look at who the first

torch-bearers of the torch relays in countries world-wide were. All of them were the heads of countries. In our country, it was the State President, in the United States, it was the President of the United States and in India, it was the Prime Minister of India. If this is not politics, what is it? In addition, the economy is also a major factor. We could see that there was a building boom in Beijing and many residents had to be relocated. Many people also had their land or abodes repossessed due to the Olympic Games this time around. In fact, many livelihood issues have also arisen, so it can be seen that in fact, the Olympic Games are inseparable from such factors as political, economic and social factors. For this reason, do not tell us again that we can just talk about sports and disregard all the other factors.

As we all know, back then, when our country succeeded in its bid to host the Olympic Games, apart from the promise made by the Beijing 2008 Olympic Games Bid Committee to enhance human rights and develop democracy, we must not forget that our country also became a signatory to the International Covenant on Civil and Political Rights in 1998. The whole world hoped that it could be ratified by the NPC quickly. In fact, people also had a lot of other expectations. At that time, as a Chinese in Hong Kong, of course, I was very happy because our country was successful in its bid to host the Olympic Games. At the same time, there was an opportunity for it to improve its overall human rights record and promote democracy. There were also high hopes on the implementation of universal suffrage in 2007 and 2008 in Hong Kong. Perhaps even the DAB would support universal suffrage and that would really be terrific.

However, Madam President, everything has come to nothing. In the past few years, the developments in a lot of matters have gone in the opposite direction. It is now past one o'clock in the early morning and the days of the Olympic Games are drawing closer. However, in many of its actions, our country has deviated further and further from the true Olympic spirit, on which TAM Yiu-chung read out a passage clearly just now. This is exactly what grieves us.

Madam President, of course, actions such as boycotts and interventions cannot get off the ground as those countries are just engaging in empty talk. Will those countries really impose a boycott or economic sanctions? Of course, they will not. This is not the overall policy of the United States and there is a great deal of hypocrisy in this. It has said a lot but all that it hopes is to do business on the Mainland. Does it really care very much about human rights?

Sometimes, even I cannot help but feel doubtful. However, in the international community, there are still a lot of politicians care about human rights and many international organizations and civil groups that really want to break down the barriers between races, so that human rights and the freedoms can be respected. For this reason, if our country cherishes its people just as it cherishes the Olympic torch, our conscience is clear in the face of heaven and our country. Even if the torch is really snatched by someone, this hardly matters and this is only a glitch.

Madam President, finally, I think that apart from LIU Jin-bao, another person most worthy of mention is Liza WANG. Although she only made the ordinary remark that "we should all be returned our Home Visit Permits", this showed that not only is she fair-minded, she is also a moral person with backbone. In contrast, those people who just engage in empty talks or who take little action but talk a lot ought to be ashamed.

MR LEE WING-TAT (in Cantonese): President, when Mr Jasper TSANG spoke just now, he asked whether or not the sharing of political booty existed in the Hong Kong leg of the Olympic torch relay. In fact, he only made one point, that is, the figure in terms of percentage but he did not mention the fact that the whole process was a black-box operation. In our country alone, there were also similar mechanisms of self-recommendation, nomination or selection. Although whether or not such a mechanism is an open one can be a subject of further debates, at least, such a mechanism does exist, whereas in Hong Kong, there is only the Olympic Committee of Hong Kong — Mr Timothy FOK is not in the Chamber now — and perhaps also the Liaison Office of the Central People's Government in the HKSAR, to deal with this matter.

Therefore, the crux of the matter is not just the number of athletes or the criticism of members of the pan-democratic camp that this is a black-box operation and political booty sharing. The heading of the editorial of *Ming Pao* today is, "Black-box operation in selection smacks strongly of favouritism. List of torch-bearers fails to unite society". The editorial of *Hong Kong Economic Journal* reads, "Always the same group of people: A small circle in the torch relay". These two newspapers are more popular among the intellectuals. I do not think Mr TSANG would think that these two newspapers have any bias that would lead them to criticize the approach adopted by Hong Kong or our country on this matter.

In fact, Jasper TSANG does not have to stick to his gun. Justice is in the hearts of the people. This matter has broken the hearts of Hong Kong people. Just think about this: If Hong Kong people had been able to play a part in nominating the people whom they hope would act as torch-bearers, in fact, this would have become an activity involving all members of the public. However, I do not understand why Secretary TSANG Tak-sing did not do so. Consequently, this exercise at a cost of over \$100 million for promoting the Olympic Games could only be carried out in a very narrow scope and there was no participation by the general public.

Today, I met a commentator who writes for cultural columns. He also said that a so-called social microcosm should not just include rich people. Many people worthy of respect in Hong Kong for example, the representatives of firemen, police officers and other workers who served Hong Kong and made sacrifices, or even ordinary members of the public and poor people from Tin Shui Wai, could have also been torch-bearers. It is only when people from all walks of life are included that one can call it a microcosm of society and only in this way can such a claim be justified.

Therefore, as the comments of the *Ming Pao* put it, this so-called "microcosm" can at the most be a microcosm of the rich and powerful instead of a true microcosm of society. Therefore, Jasper TSANG has to know that this is not just a criticism levelled by the pan-democratic camp in general or by several members therein, rather, this is the criticism voiced by a lot of members of the public in the phone-in programmes of radio stations last evening and today.

Regarding the comments made by Jasper TSANG just now, the second point that I found most disappointing was that whenever some major events happened, it would be said that there was incitement, manipulation or influence by foreign forces. In fact, such an argument would be used on every occasion. From the 1989 pro-democracy movement to the issues in mainland China involving civil right activists, there would always be someone who pointed out from a certain perspective that the people concerned were controlled or influenced by foreign forces. In fact, we will never get a clear answer to this question unless there is a lot of evidence to prove that these groups or people are indeed being directly controlled and this has to be founded on hard facts. However, often, the grounds given are all very tenuous in nature.

Today, I read a magazine which says that the CIA, the NDI of the United States or some other organizations once funded some activities of the Reporters Sans Frontieres as well as some activities of the pan-democratic camp in Hong Kong. This is tantamount to saying that we as a group are controlled by those people. In fact, I think such an argument reflects poorly upon Mr Jasper TSANG's oratorical skill. I think this is nearly the worst of all arguments because it can be used most easily to incite people. This is just like saying, "You are so unruly as to allow yourselves to be controlled by the United States.". The Democratic Party has been the subject of such accusations for over a decade and some people maintain that the Democratic Party has definitely received funding from the Government of the United States. However, I often say that given the financial system in Hong Kong, if there were such accounts, it would not be difficult for the Hong Kong Government to find out. If the Democratic Party or the pro-democracy camp is subjected to

(Mr Jasper TSANG raised his hand)

MR JASPER TSANG (in Cantonese): President, I wish to clarify.

PRESIDENT (in Cantonese): Is it a point of order?

MR JASPER TSANG (in Cantonese): President, I trust you know that I seldom interrupt when other people are speaking. However, I wish to clarify. I wish to clarify after he has given his speech.

PRESIDENT (in Cantonese): You may. Mr LEE Wing-tat, please go on.

MR LEE WING-TAT (in Cantonese): I do not mind being interrupted when giving my speech.

Although this is not a claim made by Jasper TSANG, such claims are common in the leftist camp, which often says that the groups in the pan-democratic camp collude with overseas countries and receive their funding, that their policies are not independent at all but are influenced by other people.

However, no evidence has ever been found and what could be found was only some very indirect evidence, yet these groups are described as not having their own thinking. This is in fact very pathetic.

If such an argument were to hold water and if this were true, how possibly could the so-called pro-democracy camp in this Chamber continue to receive the support of the Hong Kong public? It can thus be seen that this is not true at all.

Jasper TSANG brought up whether or not some groups on the Mainland were indirectly influenced, funded or controlled by the CIA of the United States. This is in fact a mystery that can never be solved. However, saying so can easily incite our nationalist sentiments because on whatever issue, one can level the accusation that some Chinese were at the beck and call of the United States, thus conveniently labelling those people. Moreover, it is also the easiest way to incite hatred among people. However, Members must remember that although nationalist sentiments and nationalism can easily unite the people of a country, it can also easily make the people of a country parochial. This kind of sentiment can easily be incited but it can also make the people of a country more parochial and lack international vision.

Therefore, when our country and Mr Jasper TSANG both agree that our country should move towards internationalization, I hope one should not lightly or irrationally incite nationalist sentiments. Our State leader is very shrewd. He called on people not to blockade the Carrefour Supermarket chain because doing so was pointless. Doing so will only increasingly expose our country as a big but uncivilized nation which has not yet moved towards internationalization.

Therefore, President, the foregoing two points are my response. Thank you, President.

PRESIDENT (in Cantonese): Mr Jasper TSANG, please clarify.

MR JASPER TSANG (in Cantonese): President, I know that I can only clarify what I have said. If I say that I did not try to incite people by appealing to their irrationality, my clarification will turn into a debate. However, just now, Mr LEE Wing-tat said more than once that some people were controlled by overseas

countries or the CIA. I am concerned that this will lead to the misunderstanding that it was me who said this. In my speech, I never said that any person was under any control. I only cited an article written by a foreign commentator on current political affairs, William ENGDAHL, and in that article, he cited the text of a book, *The CIA's Secret War in Tibet*.

This is my clarification.

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

(No other Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, Ms Emily LAU, you may now speak on the amendments. You have up to five minutes to speak.

MS EMILY LAU (in Cantonese): President, good morning. Thank you. I also thank Mr TAM Yiu-chung for moving his amendment. Mr TAM Yiu-chung's remark that "we know only too well" has really whipped up a heated debate. Sometimes, when one comes across a mainland official, if you ask him what the matter is, he will say, "You should know only too well.". That means you have done something wrong, you ought to know it and you ought to be punished. Mr TAM, I believe many Honourable colleagues found this remark of yours totally incomprehensible. What wrong have we actually done, President? Why should we "know only too well"? Why can we not return to the Mainland for some 10 to 20 years? Mrs Anson CHAN mentioned the Universal Declaration of Human Rights, which says that all people have the right to return to their countries. President, Article 31 of the Basic Law says, "Hong Kong residents shall have freedom to travel and to enter or leave the Region.". This is not written into the Constitution of China but it does not mean that its citizens do not have such a right.

Just now, Mr Jasper TSANG responded to the views of Mr Andrew CHENG on behalf of Mr TAM Yiu-chung. What Mr Andrew CHENG said was very right. Mr TAM Yiu-chung said that in order to enable the Central Authorities to fulfil their promise smoothly, we had to oppose any boycott

imposed by other people as well as anti-China remarks. How possibly will this help in any way, President? He said that it was necessary to enable the Central Government to fulfil its promise smoothly but what is this promise about? It is about improving human rights and developing democracy. However, he talked about other things and in fact strayed from the subject. However, I am also very pleased because I now know the DAB understands that the Central Authorities have made such a promise and together with us, it is asking the Central Authorities to fulfil such a promise. Concerning the issue of human rights, just now, I said that at least, over 10 000 people were enduring the hardship of imprisonment and there were many incidents of violation of human rights. But the DAB did not talk about them in detail. However, I hope they can also admit to this here and after admission, they have to help deal with this. Otherwise, given such a poor human rights record of our country and the suffering of tens of thousands of people, even if our country was to host 10 more Olympic Games, it would be all in vain. Therefore, I hope the DAB will understand this.

Mr TAM Yiu-chung said, "You agree with what we said about such things as remarks that insult China. If you oppose this amendment, will people not find that something is not quite all right?" Mr TAM, you are bundling two things together and you have bundled one thing that people care about the most. As Dr Fernando CHEUNG, Mrs Anson CHAN, many Honourable colleagues and I have said, we believe the most important thing is the right of Chinese nationals in Hong Kong. However, you wanted to twist this around by saying that they did not have such a right and it would be given only when someone is in need. President, if people ask me if I have the need, I would say that I do not have such a need. If I can go back to my country only "when I am in need", I would rather not go back there in my whole life. What does "in need" mean? This is really puzzling.

We have made it very clear that this is a right and we demand that the Central Authorities reinstate this right and respect such a right. However, in the amendment, all these are deleted. Instead, it conveys one message: Look at the Basic Law. However, I found that nowhere in the Basic Law is it said that rights need not be respected. The amendment also mentioned exit and entry administration. President, the existing exit and entry administration is already very strict and we are having a difficult time on account of it. Since those applications for multiple entry visas were all turned down, even the business sector approached me for help and I also had to write to the Secretary. The Secretary knew this and it was not long ago that the Secretary gave me a reply.

Even the Hong Kong public have been dragged into this matter. Imposing exit and entry administration in this way has caused widespread fear in Hong Kong and I also had a taste of this kind of exit and entry administration before. If this kind of exit and entry administration is adopted, even though we are in great need, it will not help in any way.

Therefore, President, concerning this amendment, I have no alternative. We do not want to send the wrong message either. However, while the DAB and Members who support the amendment of the DAB say at other times, "In fact, I also hope that you can go back to the Mainland.", what we find in this motion is that it says, "You will be given assistance only when you are in need". President, if this is not hypocrisy, what else can we call it?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, there are 99 days to go before the opening of the Beijing Olympic Games, and the Olympic flame has arrived in Hong Kong yesterday. To host the Olympic Games is a century-old dream of our nation. The 2008 Beijing Olympic Games is the first Olympic Games to be held on Chinese soil, and its significance to the Chinese is obvious enough. After 30 years of reform and opening up, the increase in the integrated strength of our country, the rapid growth of our economy and the development of society at a tremendous pace have laid a solid foundation for the Beijing Olympic Games.

The Hong Kong Special Administrative Region (SAR) is privileged to be a co-host city for the 2008 Beijing Olympic and Paralympic Equestrian Events and be able to share the honour of hosting these magnificent events, and showcase to the international community the successful implementation of "one country, two systems" in Hong Kong.

The SAR Government tenders its full support to our country for hosting a high-level Olympics Games with distinguishing features. We deeply believe that with the implementation of the concepts of "Green Olympics, High-tech Olympics and People's Olympics", our country can promote the harmonious development of society, showcase the splendid Chinese culture and enhance the understanding and friendship between the people of China and those of other countries.

To make the staging of this mega event which will be watched by billions of people worldwide a success, the active participation of the community with the notions of solidarity, fair play and diligence as well as the eagerness to fight for and obtain victory are required, thereby strengthening the capability of autonomy and creativity within the country, and externally fostering communication and mutual trust with the world, so that the economy and the community will find their way to the rising path. According to the spirit of the Olympic Charter, the Beijing Olympic Games should not be affected by factors of politics, religion or race.

In Hong Kong, ever since we have undertaken the hosting of the Olympic Equestrian Events, the International Olympic Committee, the Federation Equestre Internationale and the Beijing Organizing Committee for the Games of the XXIX Olympiad have been giving us strong support and commented highly on the preparation work of Hong Kong. We will continue to do everything we can and commence the various preparation work for the equestrian events in a comprehensive and specific manner prior to the approach of the Olympic Games to ensure the successful staging of the Olympic and Paralympic Equestrian Events.

We hope that, with the platform of the Olympic Games, we can promote the Olympic spirit of solidarity, fair play and friendship and the concepts of transcendence, integration and equality as enshrined in the Paralympic spirit to build a more harmonious and integrated community.

The Home Affairs Bureau will, in collaboration with different sectors of the community, including the District Councils and organizations such as the Sports Federation and Olympic Committee of Hong Kong, the National Paralympic Committee of Hong Kong, youth groups and schools, continue to promote the Olympic spirit in the community, including establishing the Olympic Live Site, implementing the Free Admission Scheme of the recreational venues and facilities, organizing roving exhibitions, special museum exhibitions of the Leisure and Cultural Services Department, cultural and sports competitions, celebration activities and so on.

We have also actively encouraged young people to participate in promotional activities of the Olympic Games in order to enhance their understanding of our Motherland and enable them to experience the team spirit of the Olympic Games through the staging of the Beijing Olympic Games. In

the coming few months, the Home Affairs Bureau will continue to subsidize various Olympics-related activities targeted at young people and enhance their understanding of the Olympics.

The values advocated in the Olympic spirit convey mankind's common dream of the pursuit of a bright future. They echo with the spirit of Hong Kong people of competing with eagerness, striving for advancement and self-confidence.

With 99 days to go in the countdown to the Olympics Games, I hope that Honourable Members can, together with all the Hong Kong people, support our country for organizing a successful Olympics Games and support Hong Kong for the successful staging of the equestrian events.

With these remarks, Madam President, I hope that Honourable Members can support the amendment proposed by Mr TAM Yiu-chung and oppose the amendment proposed by Mr LEE Cheuk-yan and the original motion proposed by Ms Emily LAU.

(Mr Albert CHAN raised his hand to indicate an intention to speak)

PRESIDENT (in Cantonese): Is it a point of order?

MR ALBERT CHAN (in Cantonese): President, can the Secretary explain, after speaking for such a long time, the relationship between his speech and the motion?

PRESIDENT (in Cantonese): This does not seem to be a point of order. However, if you wish to express your views, you may go ahead.

(Mr Albert CHAN sat down)

PRESIDENT (in Cantonese): It is very good that you have sat down.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, the subject for discussion today is the Olympic Games. Mr TAM Yiu-chung's amendment also mentions the fronts of environmental protection, education, sports, technology, economy and culture. Let us explore the related subjects from a wider perspective.

The State initiated the four modernizations in 1978. With the reform and opening up in the past 30 years, the State's economy has developed by leaps and bounds and the standard of living of its people improved substantially. For the Gross Domestic Product alone, it has grown by 67 times from \$360-odd billion in 1978 to \$24,900-odd billion in 2007, and its annual total of imports and exports has grown to US\$2,100-odd billion in 2007.

At present, the State has become the fourth largest economy in the world, preceded only by the United States, Japan and Germany. According to the forecast of the 11th Five-Year Plan, the State's Gross National Product will increase 7.5% every year, so it is only a matter of time that China will climb up to the world's third largest economy.

The economic takeoff of the State's economy not only benefits the more rapid developing coastal cities and the Eastern Region, but also the rural population. In 2007, the poverty-stricken rural population was less than 15 million, which has dropped by 6.7 million people as compared with the previous year.

Other than the more developed areas such as the Pearl River Delta (PRD) Region and the Yangtze River Delta Region, the Central Government also has strategic planning for the other regions. The Central Government is now taking ahead the West Region Development; and it also intends to revitalize the old industries in the North-Eastern Region and a strategic plan is in place to facilitate the rise of the Central Region. Returning to the rural population, many tax items can now be exempted and its younger generation can even enjoy free or subsidized education. On the technology front, the aerospace technology of China has already made it possible to embark on lunar expedition.

On the whole, after rejoining the United Nations in the 1970s, the State's international position and influence have escalated. Developed and developing countries around the world as well as countries in the third world are our good friends.

Hence, the conclusion is, we have to have confidence in the State's development and actively support the State in hosting the 2008 Olympic Games. In this connection, we should adopt three attitudes:

First, it is the glory of our nation that the State, being a major developing country, can host the 2008 Olympic Games.

Second, the State can be further open up to the world and facilitate its own development through this Olympic Games. As a Hong Kong citizen and as the Hong Kong Special Administrative Region (SAR), more so we should make concerted efforts to support the Mainland to successfully host the 2008 Olympic Games and, on our part, successfully host the equestrian events in Hong Kong.

Third, we can certainly continue to hold divergent views on the State's development, including putting forth different viewpoints on its status of human rights, but we certainly should not link the 2008 Olympic Games to political issues.

The motion of today mentions the arrangement on returning to the Mainland. Individual Members of this Council expressed their wish for more opportunities to learn about the development of the Mainland. In this connection, the SAR Government basically adopts a positive attitude.

Thus, the Chief Executive Mr TSANG arranged a visit to the PRD Region for all Members of the Legislative Council in September 2005; we arranged a seminar in Shenzhen in December 2005 for Members of different political parties to exchange their views on constitutional development with officials of the Hong Kong and Macao Affairs Office and the Legislative Affairs Commission of the Standing Committee of the National People's Congress; and the Security Bureau, in the light of the need to commission the Western Corridor, arranged a site visit for relevant Members on the co-location arrangement in March 2007.

In fact, the SAR Government very much hopes that exchanges between the Mainland and Hong Kong can be established on a continual basis. I remember the former Governor of Hong Kong Chris PATTEN once remarked, "It takes two to tango". In other words, the two tango dancers have to be in the same tempo. The Central Government and the SAR Government have demonstrated their sincerity in making the arrangements in 2005. Regrettably, Members of

the opposition camp, instead of making use of the opportunity in that year to further their relationship with the Mainland, vetoed the 2007 and 2008 political reform package.

Nevertheless, the SAR Government has continued to seize whatever opportunity it can to arrange exchanges between the Mainland and Members of different political parties in Hong Kong. For instance, in the 10th anniversary of the reunification last year where State leaders have come to Hong Kong, we arranged all Members to participate in the celebration ceremony on the 10th anniversary of reunification. In this connection, I must emphasize that we will continue to make use of and seize every opportunity we can to do so.

However, regarding Hong Kong people, including Members present here, wishing to go to the Mainland for visits and duty visits, according to the "one country, two systems" principle, this is controlled by mainland authorities which vet and approve such applications in accordance with mainland legislation.

Before I conclude, I wish to respond to Ms Margaret NG. She mentioned specially her appreciation of today's meeting in which different viewpoints could be expressed and the two attitudes towards patriotism. It is true that this Council is pluralistic, which embodies the success of "one country, two systems". But I do not wish that we remain pluralistic and contentious forever. I do hope that one day, Members will reach a consensus after contention on the election packages of 2012 and arrive at a set of consensuses on attaining universal suffrage in 2017 and 2020.

With these remarks, Madam President, I hope Members will support Mr TAM Yiu-chung's amendment and oppose Mr LEE Cheuk-yan's amendment and Ms Emily LAU's original motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr LEE Cheuk-yan to Mr TAM Yiu-chung's amendment, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

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

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN 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 LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 17 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): I now put the question to you and that is: That Mr TAM Yiu-chung's amendment to Ms Emily LAU's motion be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted for the amendment.

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

Geographical Constituencies:

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

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, 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 against the amendment.

Mr LAU Chin-shek and Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, 17 were in favour of the amendment and seven against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, eight were in favour of the amendment, 15 against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

PRESIDENT (in Cantonese): Ms Emily LAU, you may now reply and you have three minutes 20 seconds.

MS EMILY LAU (in Cantonese): President, I thank the 23 Members who have debated this motion for more than three hours. However, the outcome will probably be that of getting nowhere. However, if some people insist on adopting an attitude that we consider highly hypocritical and incomprehensible in the discussion, there is nothing we can do. This also explains why we could not go to the Mainland in the last 20 years.

In fact, Secretary TSANG Tak-sing did not debate on the motion moved by me. What he said was mainly about supporting the Olympic Games, so Mr Albert CHAN put forward a very right question. Secretary TSANG said that we would co-host the Olympic Games and this would underline the achievements of "one country, two systems". I think Secretary TSANG is probably wrong because from the current viewpoint of the international community, we have become a laughing stock. The freedoms and the rule of law that we have will probably vanish very quickly and there is no knowing when democracy will come. Secretary Stephen LAM said that it took two to tango and Mr Howard YOUNG also said earlier that we could not clap with just one hand. May I ask what we in the pro-democracy camp have not yet done? If the Central Authorities were to say that they want to have dialogue with us, we would surely do so. If they were to ask us to go to the Mainland, we would do so. What more do they want from us?

President, if a lot of pre-requisites are set and we are required to fulfil them before it is possible to of course, I cannot speak on behalf of my Honourable colleagues but if we were willing — if we were willing to wag our tails and beg for condescension, not only could we get our Home Visit Permits,

we would also have wealth and fame. We would probably have several luxury cars parked outside the Legislative Council Building and perhaps many of us would be living in luxury apartments. When we are on vacation, we could travel in luxury. Members all know about these things and they can see them. If one knows how to embark on such a course, one would get rich. I wonder if these were the conditions that the Secretary talked about. Mr LEUNG Kwok-hung was right in saying that we had our principles. We will not become mute in order to get our Home Visit Permits. Even if we were to get them, we could no longer hold our heads high.

We are upright Chinese nationals and we should be entitled to such a right. However, we were deprived of it for no reason. I think this is very regrettable and shameful. Sometimes, some people would say, "We support you.". However, when they got to Beijing, these people would say, "This is not very appropriate and we should not say things in such a way.". When the legislature voted, they would even vote against what was put forward by us. Therefore, we in the pro-democracy camp can see the ways of the world very clearly. However, we have our own principles and our perseverance and we will not give up. The Central Authorities want to punish us in such a way and tell the public not to elect us. However, we were still elected on each occasion. I hope people in the Central Authorities will open their eyes. We are upright Chinese nationals and if we are rejected like this, the Government of our country will become a laughing stock of the international community.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Emily LAU be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Emily LAU rose to claim a division.

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

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

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

Functional Constituencies:

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

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the motion.

Geographical Constituencies:

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

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

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the motion and 16 against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 17 were in favour of the motion and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 7 May 2008.

Adjourned accordingly at four minutes past Two o'clock in the morning.

Annex I

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2	By deleting the Part.
21	In the proposed definition of "wasted costs" - (a) in paragraph (a)(i), by deleting "improper or unreasonable" and substituting "seriously improper"; (b) in paragraph (a)(ii), by deleting "misconduct or default" and substituting "serious misconduct"; (c) in paragraph (b), by deleting "delay, misconduct or default" and substituting "delay or misconduct".
22	In the proposed section 18(3), in the Chinese text, by deleting "辯論" and substituting "對辯".
62	In the proposed section 1(3)(b), by adding "and Mesothelioma" after "Pneumoconiosis".

64 By adding immediately before subclause (1) -
“(1A) Section 31 is amended by
renumbering the new section 50 as section
51.”.

64(1) By deleting “section 50(1)” and substituting
“section 51(1)”.

64(2) By deleting “section 50(2)” and substituting
“section 51(2)”.

64(3) By deleting “section 50” and substituting
“section 51”.

64(4) By deleting “section 50(3)” and substituting
“section 51(3)”.

78 By deleting the clause and the cross-heading
immediately before it and substituting -

“Companies Ordinance

78. Interpretation of Part XI

Section 341(1) of the Companies
Ordinance (Cap. 32) is amended, in the
definition of “pre-amended Ordinance”, in
paragraph (c), in the Chinese text, by

repealing “號)第” and substituting “號)附表 2

第”. ”.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

COMMITTEE STAGEAmendments to be moved by the Honourable Margaret NGClauseAmendment Proposed

Part 3 By deleting the Part.

[NEGATIVED]

Annex II

ENERGY EFFICIENCY (LABELLING OF PRODUCTS) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the definition of “Secretary”, by deleting “, Transport and Works”.</p> <p>(b) In the English text, in the definition of “test report”, in paragraph (b), by deleting the full stop and substituting a semicolon.</p> <p>(c) By adding –</p> <p>““excepted product” (例外產品) means a prescribed product to which section 11A(3) does not apply by virtue of section 11A(4);</p> <p>“updating notice” (更新通知書) means a notice served by the Director under section 11A(1).”.</p>
3(1)	In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所的處置的一部分而供應的訂明產品，或是在與該項處置”.
3(2)(f)	In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所以外的處所的處置的一部分而供應的訂明產品，或是在與該項處置”.
4(1)	<p>(a) In the English text, by deleting “that product” after “unless”.</p> <p>(b) In paragraph (a), in the English text, by adding “that product” before “is a product of”.</p>

- (c) In paragraph (a)(ii), by deleting “and”.
- (d) In paragraph (b), in the English text, by adding “that product” before “bears an energy label”.
- (e) In paragraph (b)(i), by adding “and” at the end.
- (f) By deleting paragraph (b)(ii).
- (g) In paragraph (b)(iii), by deleting the full stop and substituting “; and”.
- (h) By adding –

“(c) the information set out on the energy label of that prescribed product conforms with the specified information submitted by the manufacturer or importer to the Director in respect of the model or, if the specified information has been amended pursuant to section 9 or 10, the specified information as read subject to section 9 or 10.”.

- 5(1)
- (a) In the English text, by deleting “that the product” after “has ensured”.
 - (b) In paragraph (a), in the English text, by adding “that the product” before “is a product of”.
 - (c) In paragraph (a), by deleting “and”.
 - (d) In paragraph (b), in the English text, by adding “that the product” before “bears an energy label”.
 - (e) In paragraph (b)(i), by adding “and” at the end.
 - (f) By deleting paragraph (b)(ii).
 - (g) In paragraph (b)(iii), by deleting the full stop and substituting “; and”.

(h) By adding –

“(c) that the information set out on the energy label of the product conforms with the information included in the record.”.

5 (a) By adding –

“(1A) Subsection (1)(b) does not apply to a compact fluorescent lamp that is supplied as part of or in connection with the disposition of any specified premises.”.

(b) By adding –

“(3) Subsection (1) does not apply to a person who –

(a) is an employee who does not exercise managerial functions; and

(b) supplies a prescribed product in accordance with the instructions given to him by his employer in the course of his employment.

(4) If an employee who does not exercise managerial functions supplies a prescribed product knowing that the product –

(a) is not a product of a listed model; or

(b) does not bear an energy label,

he commits an offence and is liable on conviction to a fine at level 6.”.

6(3)(b)(iv) In the English text, by deleting “approved” and substituting “recognized”.

6(3)(d) By adding “and the year” after “reference number”.

- 6(4) By deleting paragraph (b) and substituting –
- “(b) a document showing that the institution has met the criteria for recognition set by the Director;”.
- 9(1) By deleting “specified information or a specified document submitted to the Director under section 6” and substituting “information submitted to the Director under section 6 occurs”.
- 9(2) In the English text, by deleting “from that” and substituting “from those”.
- 10(2) By deleting paragraph (c) and substituting –
- “(c) whether the specified person still supplies the model in Hong Kong; and”.
- 10(6) By deleting “a listed model is no longer available in the market” and substituting “he no longer supplies a listed model in Hong Kong”.
- New By adding –
- “11A. Specified person to update energy efficiency grading on initiative of Director**
- (1) If the Director revises or approves any revisions to the calculation method of the energy efficiency grading of a prescribed product specified in the approved code of practice, the Director is to serve an updating notice on every specified person to whom a reference number that is included in the record has been assigned in respect of the product.

- (2) In an updating notice, the Director is to –
- (a) notify the specified person of –
 - (i) the new calculation method of the energy efficiency grading of the prescribed product that has been specified in the approved code of practice; and
 - (ii) the date on which the new calculation method will take effect (“effective date”);
 - (b) specify a date for the purposes of paragraph (c) and subsection (3) (“the specified date”); and
 - (c) require the specified person to submit the following information in a specified form to the Director before the specified date unless he no longer supplies the prescribed product or the prescribed product is an excepted product –
 - (i) the reference number assigned to the model of the prescribed product; and
 - (ii) the calculation of the energy efficiency grading of the prescribed product in accordance with the new calculation method, and the grading so calculated.

(3) Where an updating notice is served on a specified person in respect of a prescribed product, for the purposes of complying with section 4(1)(b)(i), the energy efficiency grading that is to be shown on the energy label of such prescribed product, supplied by that person on or after the specified date, is the energy efficiency grading calculated in accordance with the new calculation method referred to in subsection (2)(a)(i).

(4) Subsections (2)(c) and (3) do not apply in respect of a prescribed product if it meets any condition specified in Schedule 3.

(5) For the avoidance of doubt –

(a) a specified person to whom a reference number has been assigned in respect of an excepted product; and

(b) any person to whom a specified person has supplied a prescribed product (whether or not it is an excepted product),

may continue to supply the product in the same manner the product could have been supplied under this Ordinance before the effective date.”.

12(3) By adding “and to imprisonment for 6 months” after “level 6”.

13(2) By deleting paragraph (d) and substituting –

“(d) any change in the information referred to in paragraphs (a), (b) and (c);”.

13(2)(f) By deleting the full stop and substituting “and any change in such particulars.”.

14(3) By deleting “section 33” and substituting “section 33(2)(a) and may be extended by the Director if he considers that there are reasonable grounds for doing so”.

14(7) By adding “or by an extension under subsection (3)” after “modified after an appeal”.

15(1) By deleting “is supplying” and substituting “supplies”.

16(1)(c) In the English text, by deleting “from that” and substituting “from those”.

- 18(3) By deleting “level 1” and substituting “level 6”.
- 21 By adding “not below the rank of assistant electrical inspector” after “public officer”.
- 24 By adding –
- “(1A) Where an authorized officer enters any premises under a warrant, if so requested, he is to produce the warrant for inspection.”.
- 28(3) In the Chinese text, by deleting “送達第(2)款所指的通知書的 30 日內被認領” and substituting “第(2)款所指的通知書送達的 30 日內被領回”.
- 30(1) By deleting “the action” and substituting “either or both of the actions”.
- 30(2) (a) In the English text, by deleting “action that the Director may take under subsection (1) is” and substituting “actions that the Director may take under subsection (1) are”.
- (b) In paragraph (a)(iii), by adding “and” at the end.
- 37 By adding –
- “(5) The hearing of the appeal is to be open to the public unless the appeal board determines that there is good reason for it to be held in camera.”.
- 38(6) By deleting “due to the Government”.
- 38(7) In the Chinese text, by deleting “違罪” and substituting “犯罪”.

New By adding –

“38A. Privileges and immunities of members of appeal board and witnesses

(1) The chairman and members of the appeal board have, in the performance of their functions under this Part, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that Court.

(2) A witness, party to any appeal or representative appearing before the appeal board is entitled to the same privileges and immunities as he would have in civil proceedings in the Court of First Instance.”.

40 By adding –

“(5A) The Director is to, before exercising the powers under subsections (1), (3) and (5), consult as the Director thinks fit such organizations which, in the opinion of the Director, represent the interests of –

(a) manufacturers, importers and other suppliers, where applicable; and

(b) consumers,

of energy-using products to which the code of practice applies.”.

41(3) In the Chinese text, by adding “經核准” before “實務守則”.

43 By deleting the clause and substituting –

“43. Liability of employers

(1) Any act done or omission made by a person in the course of his employment (“employee”) is treated for the purposes of this Ordinance as done or made by his employer, as well as by him.

(2) In any proceedings for an offence under this Ordinance brought against an employer in respect of an act or omission of his employee, the employer is liable to be convicted of and be punished for that offence unless he establishes the defence described in subsection (3).

(3) Where any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to show that –

- (a) the act was done or the omission was made without his knowledge or consent; and
- (b) he exercised all due diligence to prevent his employee from doing the act or making the omission, or doing an act or making an omission of that description, in the course of his employment.”.

44 By deleting the clause.

46(a)(i) By adding “addressed to the Director and” before “delivered”.

46(a) In the Chinese text, by adding “將” after “而言，”.

46(b)(i) By deleting “delivered to the individual” and substituting “addressed to the individual and delivered to him”.

46(c)(i) By adding “addressed to the company and” before “delivered”.

46(d)(i) (a) By adding “addressed to the body and” before “delivered”.

(b) In the English text, by deleting “giving it” and substituting “given”.

- 46(e)(i) (a) By adding “addressed to the partnership and” before “delivered”.
- (b) In the English text, by deleting “giving it” and substituting “given”.

New By adding –

“47A. Time limit for prosecution of offences

Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under this Ordinance –

- (a) within 6 months after the commission of the offence; or
- (b) within 6 months after the offence is discovered by or comes to the notice of the Director.”.

49 By adding –

“(1A) The Director is to state in the notice referred to in subsection (1)(b) the reasons for granting the exemption.”.

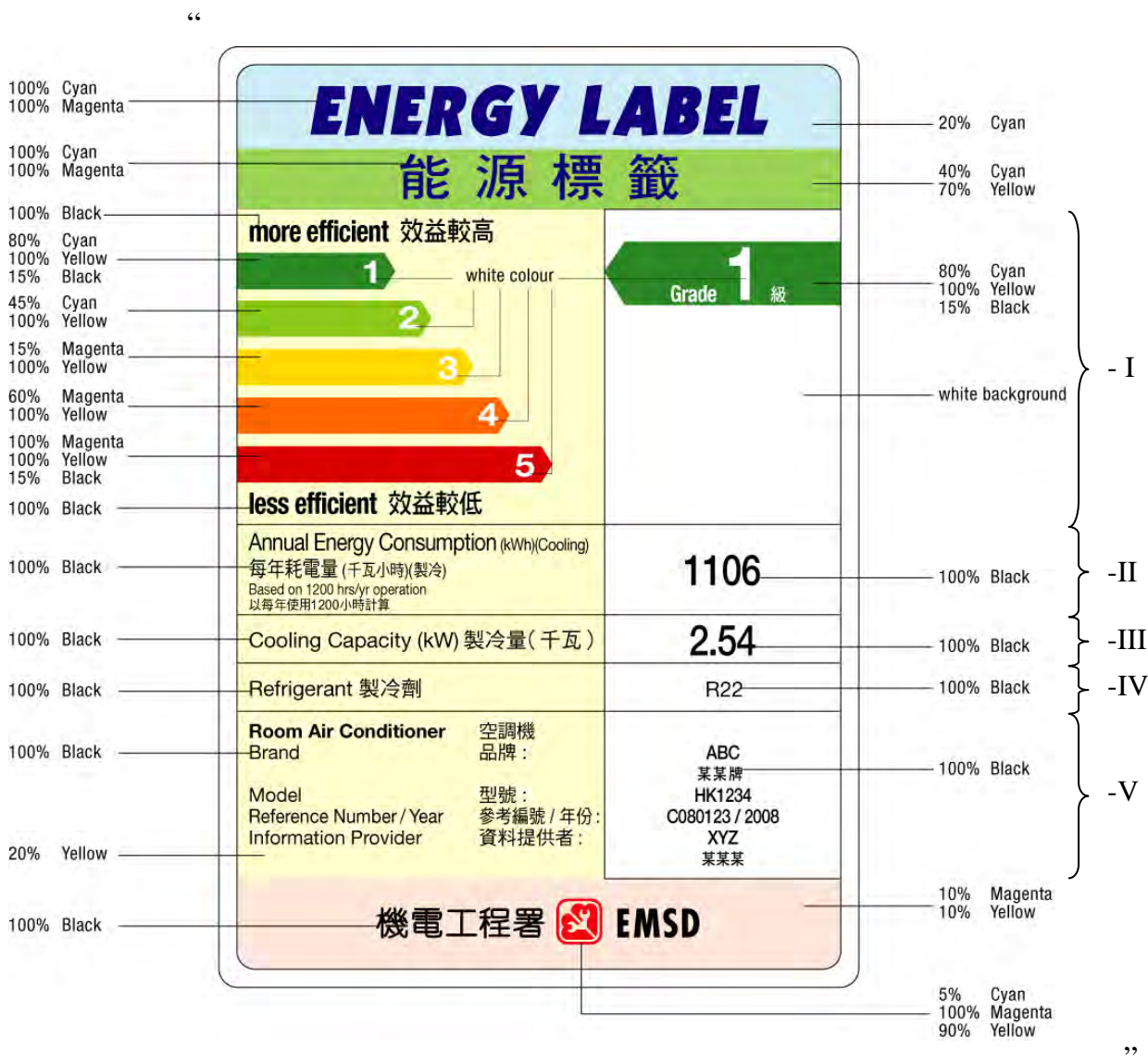
51(2) By deleting everything after “make copies” and substituting –

“available –

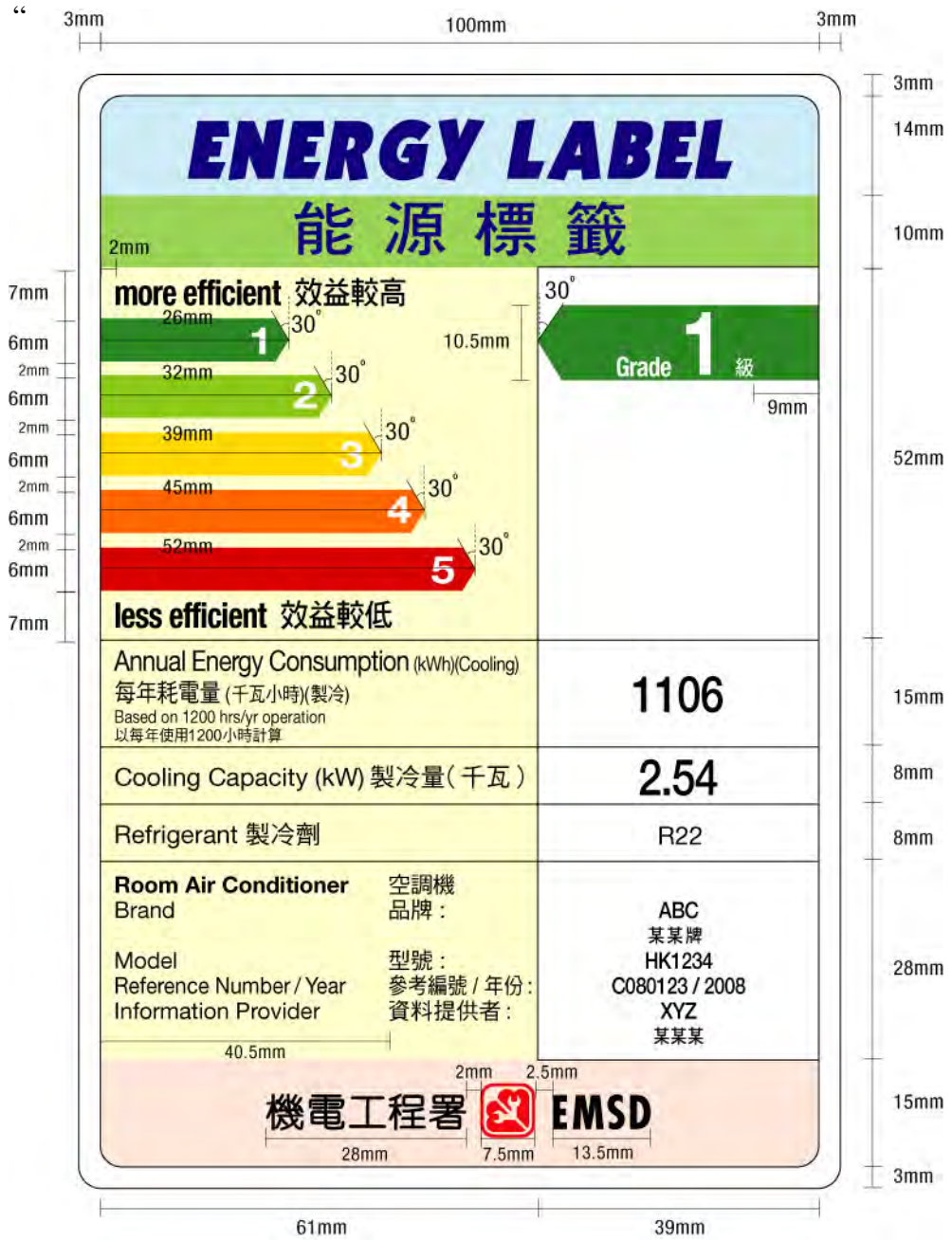
- (a) at the office of the Electrical and Mechanical Services Department during normal office hours; and
- (b) through such other means as the Director considers appropriate.”.

- 52 (a) By renumbering the clause as clause 52(1).
- (b) In subclause (1), by deleting “1 and 2” and substituting “1, 2 and 3”.
- (c) By adding –
- “(2) An order made under this section may contain such incidental, consequential, supplemental, transitional or savings provisions as may be necessary or expedient in consequence of the order.
- (3) An order made under this section to amend Part 1 of Schedule 1 is subject to the approval of the Legislative Council.”.
- 54(1)(c)(iv) By adding “and the year” after “reference number”.
- 54(2) In the Chinese text, by deleting everything after “作為” and before “有關連” and substituting “某項指明處所的處置的一部分而供應的，或是在與該項處置”。
- Schedule 1 Within the square brackets, by adding “& Sch. 3” after “54”.
- Schedule 1, Part 2, Division 1, section 4 By deleting “is assembled in factory and”.
- Schedule 1, Part 2, Division 3, section 3 In the Chinese text, in the definition of “非整合式熒光燈”, by deleting “震流器” and substituting “鎮流器”.

Schedule 2, By deleting the energy label and substituting –
 Part 2,
 section 1



Schedule 2, Part 2, section 2
 By deleting the energy label and substituting –



”

Schedule 2, Part 2, section 3, Table A In column 2 opposite to Area V, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2, Part 2, section 4 In column 1 –

- (a) by deleting “Reference Number” and substituting “Reference Number / Year”;
- (b) by deleting “參考編號：” and substituting “參考編號 / 年份：”;
- (c) by deleting “reference number and” and substituting “reference number, year and”.

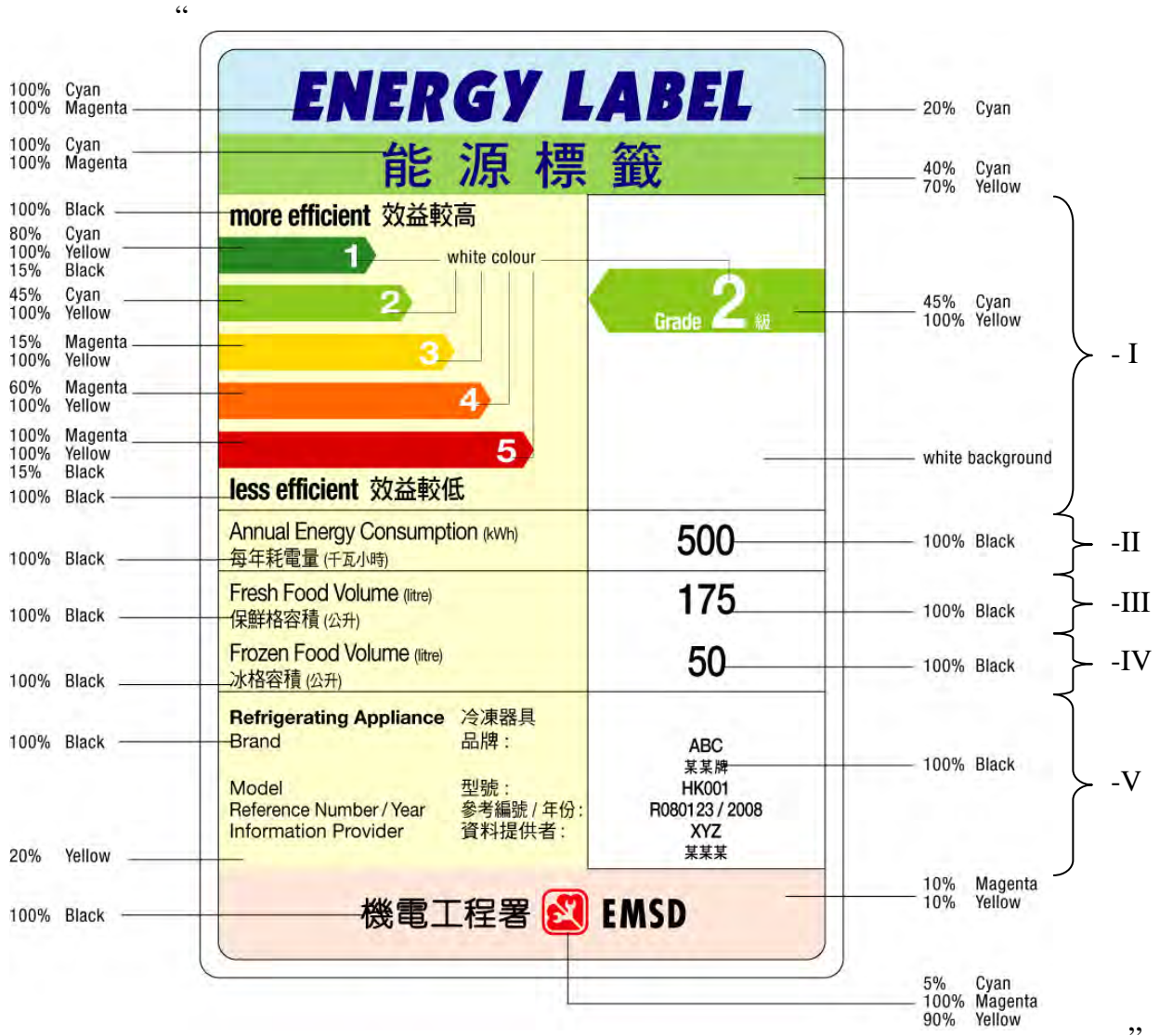
Schedule 2, Part 2 By deleting section 5 and substituting –

“5. (1) Subject to subsection (3), the energy label is to be attached or affixed to a prominent position of the room air conditioner and is to be clearly visible.

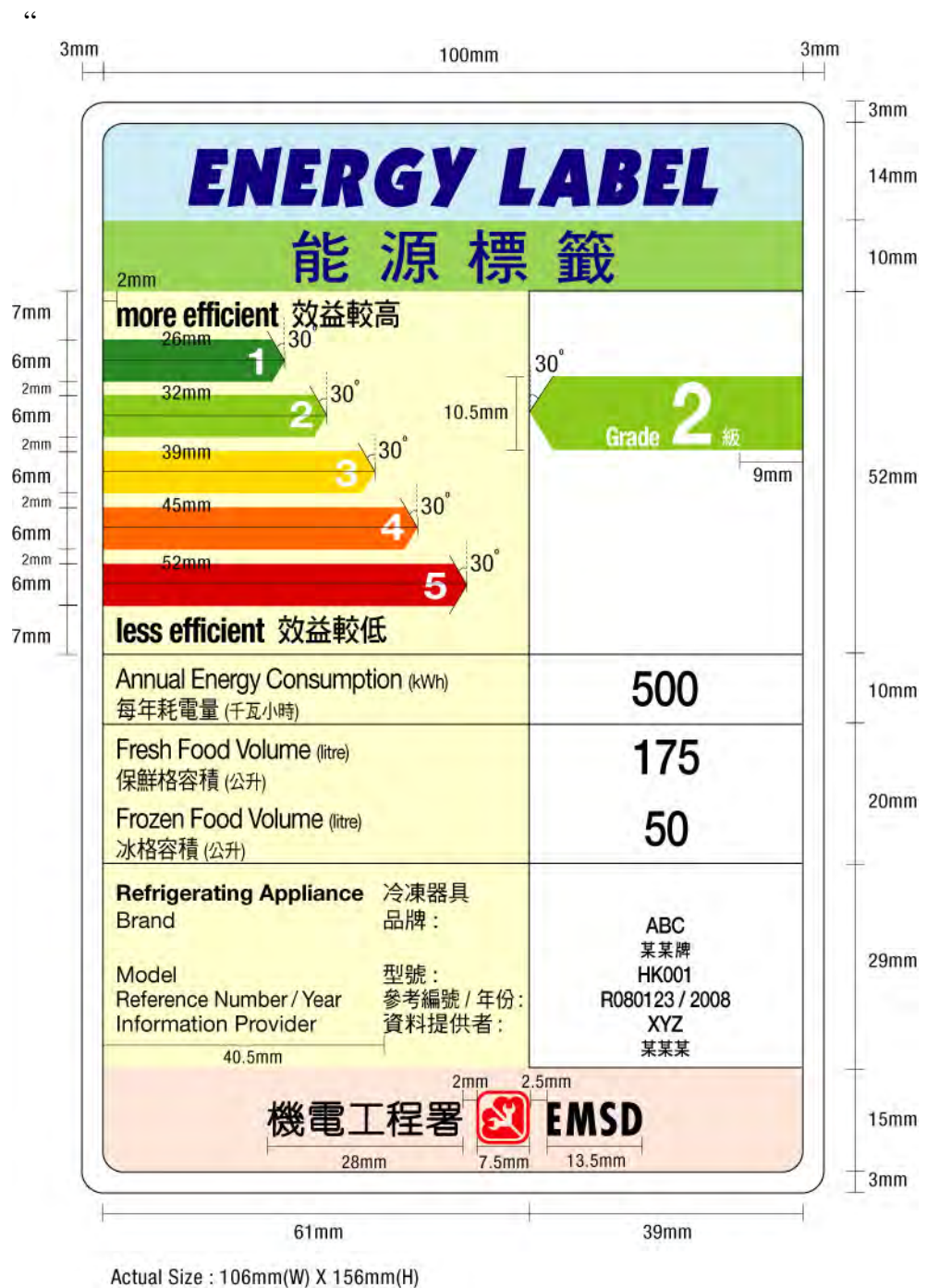
(2) For the avoidance of doubt, if only part of the room air conditioner is being exhibited, the energy label is to be attached or affixed to a prominent position of that part and is to be clearly visible.

(3) The energy label may be attached to the room air conditioner or its packaging in a manner specified by the Director where the Director has approved its being so attached.”.

Schedule 2, By deleting the energy label and substituting –
 Part 3,
 section 1



Schedule 2, By deleting the energy label and substituting –
 Part 3,
 section 2



Schedule 2, Part 3, section 3, Table B In column 2 opposite to Area V, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2, Part 3, section 4 In column 1 –

(a) by deleting “Reference Number” and substituting “Reference Number / Year”;

(b) by deleting “參考編號：” and substituting “參考編號 / 年份：”;

(c) by deleting “reference number and” and substituting “reference number, year and”.

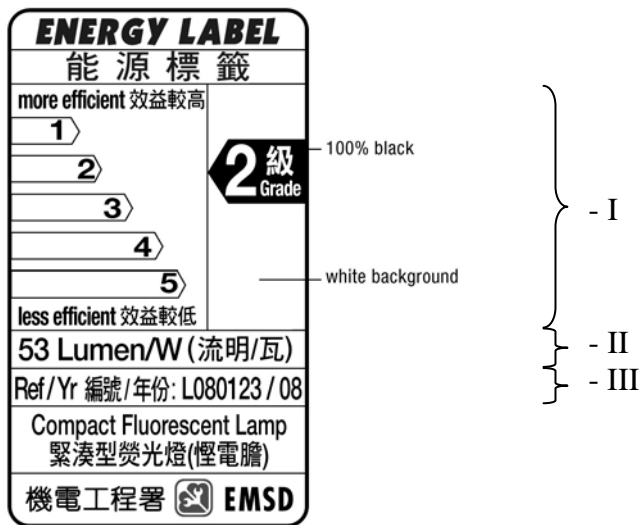
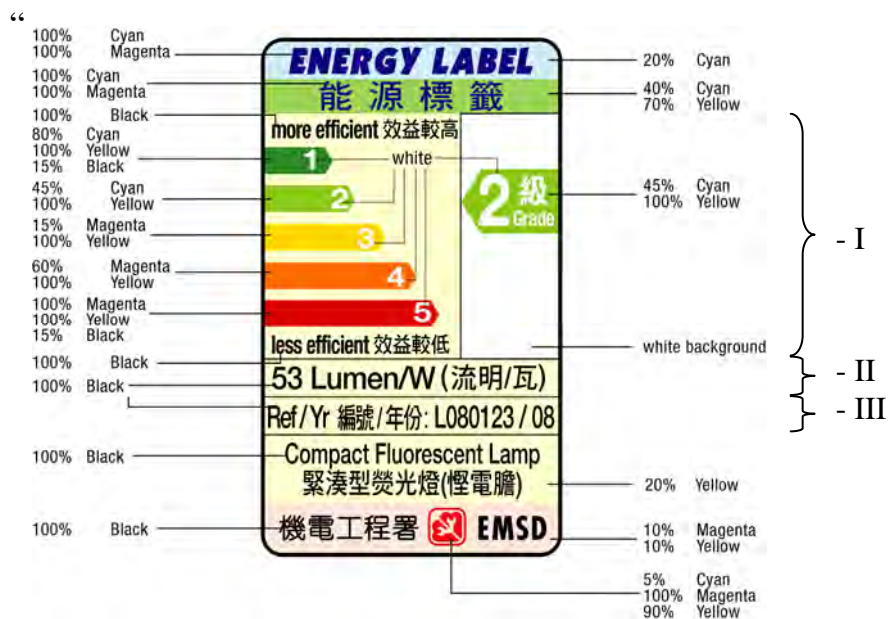
Schedule 2, Part 3 By deleting section 5 and substituting –

“5. (1) Subject to subsection (3), the energy label is to be attached or affixed to the top front door or a prominent position of the refrigerating appliance and is to be clearly visible.

(2) For the avoidance of doubt, if only part of the refrigerating appliance is being exhibited, the energy label is to be attached or affixed to a prominent position of that part and is to be clearly visible.

(3) The energy label may be attached to the refrigerating appliance or its packaging in a manner specified by the Director where the Director has approved its being so attached.”.

Schedule 2, Part 4, section 1



Schedule 2, Part 4, section 2

By deleting the energy label and substituting –



Schedule 2, Part 4, section 3, Table C

In column 2 opposite to Area III, by adding “, the year in which the reference number is assigned or, where the energy efficiency grading is calculated in accordance with the new calculation method under section 11A of this Ordinance, the year in which the new calculation method takes effect” after “assigned by the Director”.

Schedule 2, Part 4, section 4

In column 1 –

- (a) by deleting “Ref.” and substituting “Ref / Yr”;
- (b) by deleting “編號：” and substituting “編號 / 年份：”;
- (c) by deleting “Character of reference number” and substituting “Characters of reference number and year”.

New By adding –

“SCHEDULE 3 [ss. 11A & 52]

CONDITIONS

1. The conditions specified for the purposes of section 11A(4) of this Ordinance are that –

- (a) the prescribed product is a room air conditioner or refrigerating appliance that is specified respectively in section 1 or 2 in Part 1 of Schedule 1 and has been manufactured in or imported into Hong Kong before the effective date; or
- (b) the prescribed product is the subject of a contract –
 - (i) that has been entered into before the effective date for the procurement of the product; and
 - (ii) under which the product is to be supplied as part of or in connection with the disposition of any specified premises.

2. In this Schedule, “effective date” (生效日期) means the date stated by the Director in an updating notice under section 11A(2)(a)(ii) of this Ordinance as the date on which the new calculation method of the energy efficiency grading of a prescribed product takes effect.”.

Appendix I

WRITTEN ANSWER**Written answer by the Secretary for Financial Services and the Treasury to Mr LEE Cheuk-yan's supplementary question to Question 2**

As regards the question of why only 13 out of the 105 directors prosecuted in 2006-2007 were convicted and the effectiveness of criminal prosecution, as pointed out by the Secretary for Financial Services and the Treasury in responding to Members' supplementary questions to the oral question raised by Mr LAU Chin-shek at the Legislative Council meeting on 30 April 2008, the Mandatory Provident Fund Schemes Authority (MPFA) issued a total of 105 summons against company directors and managers in 2006-2007. Since each person may receive more than one summons, the 105 summons actually involved a total of 15 company directors or managers only. In fact, 13 of them have been convicted, indicating that the MPFA's prosecution actions are effective.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Transport and Housing to Mr Tommy CHEUNG's supplementary question to Question 3**

As regards the additional resources required for increasing the runway capacity, the Civil Aviation Department (CAD) has been pursuing a number of measures to improve air traffic management with a view to increasing the runway capacity of the Hong Kong International Airport. These include improving the air traffic control (ATC) system, reviewing the design of air routes and flight procedures, co-ordinating with neighbouring ATC authorities to improve the use of airspace and air traffic management in the Pearl River Delta Region.

Regarding the ATC system, the CAD has obtained funding approval of \$1,565 million from the Finance Committee of the Legislative Council to replace the existing ATC system with a view to enhancing the Department's air traffic handling capacity. Moreover, the CAD will create 50 air traffic management related positions in the next five years to handle the increase in aircraft movements.

Since the enhancement of runway capacity requires complementary work in various aspects, it is difficult to simply quantify the resources required for every additional aircraft movement. We will continue to review the resources requirement from time to time to ensure that the target runway capacity of 68 aircraft movements per hour will be met by 2015.

Appendix III**WRITTEN ANSWER****Written answer by the Secretary for Home Affairs to Mrs Selina CHOW's supplementary question to Question 4**

As regards the provision of parks which admit dogs, according to the information provided by the Environmental Protection Department, under the Country Parks Ordinance, a person who keeps a dog under control may bring the dog into a country park. Dog lovers bringing their dogs into country parks are expected to remove the dogs' excreted waste. The Agriculture, Fisheries and Conservation Department has provided dog latrines or waste collection bins at hot-spots for dogs within country parks.

Appendix IV**WRITTEN ANSWER****Written answer by the Director of Leisure and Cultural Services to Dr KWOK Ka-ki's supplementary question to Question 4**

As regards specific information about on which major parks in the urban area the Administration has conducted consultation, the Leisure and Cultural Services Department (LCS D) has consulted the respective District Councils (DCs) or Area Committees (ACs) and proposed that parts of some suitable parks be opened to allow members of the public to bring dogs in. These parks include Wong Nai Chung Road Rest Garden, Nam Cheong Park, Lai Chi Kok Park, Yau Ma Tei Service Reservoir Rest Garden, Gascoigne Road/Nathan Road Rest Garden, Hong Lee Road Rest Garden, Sun Yat Sen Memorial Park and Swimming Pool Complex, Kwong Fuk Park, Mui Shue Hang Playground and Wo Yi Hop Road Garden. The respective DCs have rejected the proposal of opening the first seven parks on the above list but endorsed the opening of the last three. We are now following up the improvement works to these three venues so that they can be opened as soon as possible for members of the public to bring dogs in.

When deciding to open any LCS D venues to allow members of the public to bring dogs in, the Department will take account of district demands and seek support from the DCs and the local community. The criteria for consideration include the explicit requests from the local community, the support from the respective DCs/ACs, the avoidance of nuisance to other users and the surrounding environment caused by bringing pets, including dogs, into the venues, and the selection of venues with cleaners on duty and provision of hosepipes to facilitate routine cleaning, which is necessary for keeping the place in good sanitation conditions.

The LCS D will select suitable areas in parks under its management and consult the DCs on the opening of these areas to allow members of the public to bring dogs in. Meanwhile, the LCS D will also put forward proposals to the respective DCs on opening parts or the whole of some selected parks under planning to allow members of the public to bring dogs in so as to meet the needs of dog owners in the districts.

For any enquiries concerning the above supplementary information, please feel free to contact Mr David CHAIONG, Senior Leisure Manager (Land-based Venues), by phone at 2601 8872.

Appendix V

WRITTEN ANSWER**Written answer by the Secretary for Food and Health to Mrs Selina CHOW's supplementary question to Question 5**

As regards the timing for consultation with the Legislative Council on the Tin Shui Wai Hospital project, the Bureau has already identified a suitable site for the project and worked out the proposed project scope including the specialties and services to be provided in the hospital. We will consult the Yuen Long District Council (DC) on 3 March 2009 on the site selection and other details of the project proposal. Subject to discussion at Yuen Long DC, we will conduct technical assessments for the project. It is our aim to consult the Legislative Council on the project proposal and seek its approval for funding support in 2010 with a view to completing the project in 2014-2015.