

OFFICIAL RECORD OF PROCEEDINGS

Saturday, 12 July 2008

The Council continued to meet at Nine 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 CHAN YUEN-HAN, S.B.S., J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

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

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

DR THE HONOURABLE YEUNG SUM, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

THE HONOURABLE 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, S.B.S., 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 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.

MEMBERS ABSENT:

THE HONOURABLE CHEUNG MAN-KWONG

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

DR THE HONOURABLE KWOK KA-KI

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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, S.B.S., 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

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): We now continue to examine the Independent Police Complaints Council Bill. We are dealing with clause 37, which is printed in page 90 of the Script. Mr James TO, you may speak.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

MR JAMES TO (in Cantonese): Chairman, having learnt from the experience of having no time for even a bite for the whole day yesterday, I took two breakfasts this morning because I was afraid of not even having time for lunch.

Chairman, for the record, having listened to the Secretary's analysis yesterday, I went back and further examined the functions described in clause 7(1). In fact, there is a great difference between new subclause (2A) and subclause (3) proposed respectively by the Secretary and me because insofar as the former is concerned, if a disclosure is made in accordance with clause 37(2)(a), there is actually no means to ascertain that the disclosure concerned is necessary for performing the functions described in clause 7.

In order to render the record complete, I must highlight that in fact, under clause 7(1)(a), (b) and (c), clause 7(1)(a) mainly pertains to the monitoring of investigations conducted by the Commissioner. If a problem has been detected, the Independent Police Complaints Council (IPCC) may make recommendations to the Commissioner and the Chief Executive. Paragraph (b) is the same in that it specifies the monitoring of matters relating to the discipline of the Commissioner and the IPCC may advise the Commissioner or the Chief Executive of its opinions in this regard. According to paragraph (c), if a deficiency in the practice or procedure concerned has been identified, in like manner, it may also be raised with the Commissioner or the Chief Executive. For that reason, if these matters are to be taken up with someone other than the Commissioner or the Chief Executive, is this necessary for the performance of functions? This is actually not easy to prove.

Consequently, Chairman, if I do not propose the amendment to subclause (3) (it is actually an amendment made by Mr Ronny WONG, former Chairman of the IPCC), that is, the disclosure concerned must be considered as a performance of the functions described in clause 7(1), in other words, whenever the IPCC wishes to convene a press conference, so as to disclose the facts about which differences arise, it will need to give this a second thought because clause 7(1) clearly states that any problem detected may only be raised with the Commissioner or the Chief Executive. In addition, the IPCC may not be able to prove that it has undertaken sufficient work or has fully convinced them. What is more, given that many of the clauses stipulate that matters may be raised with the Chief Executive, the IPCC will very often have to undertake what is mentioned in those clauses, for example, reporting to the Chief Executive, submitting recommendations, and so on, while having no idea as to whether or not the Chief Executive has already given a reply (because our proposal was negated, our original intention was to request that the Chief Executive must give a reply). Even though he may not agree with what has been raised, he can still give a refusal. If one or two months have lapsed but the Chief Executive still has not given a reply, the IPCC will not know whether or not he will do so even by the third month. If the Chief Executive still has not given a reply, the IPCC will actually have no idea as to whether he has already given instruction to the Commissioner of Police to resolve the differences. If he has done so, why does the IPCC still have to disclose the facts for public discussion? Therefore, if it has to be proved that the relevant disclosure is necessary in accordance with clause 37, this is in fact quite difficult.

Generally speaking, members of the IPCC will be in a state of constant anxiety. Should they be put in that position? Even if they have raised the relevant matters with the Chief Executive, does it mean that they have to further send him an ultimatum? Are they supposed to inform the Chief Executive saying, "Given that we have issued an ultimatum to you, if you still do not give a reply so as to resolve the differences, we will make a disclosure in accordance with clause 37(2). If you do not give a reply despite all this, we will consider the disclosure concerned to be necessary." It will not do this. However, if it really has to do so, the situation arising at that time will be interesting.

If subclause (2A), which is proposed by the Government, is adopted, in fact, this will by no means serve the original purpose of the IPCC to disclose all the facts about which the differences in opinion arise because it is difficult to prove that the disclosure is necessary. For that reason, it can be said that the clause concerned contains a hidden deadfall or secret "way out". Chairman, I only wish to explain the reasons in greater detail.

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

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 37 which adds subclause (2A).

Proposed amendment

Clause 37 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if that amendment is agreed, Mr James TO may not move his amendment to clauses 37(3) and (4).

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr Fred LI, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 33 Members present, 21 were in favour of the amendment and 11 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Mr James TO may not move his amendment to clause 37(3) and to delete subclause (4), which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 37(4).

Proposed amendment

Clause 37 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Mr LEE Wing-tat (represented by Dr YEUNG Sum) may not move his amendment to clause 37(4)(d) and (e). However, he may move the remaining amendments proposed in relation to that subclause.

CHAIRMAN (in Cantonese): Dr YEUNG Sum, you may move your amendment. We have now reached page 96 of the Script.

(Dr YEUNG Sum could not locate the relevant part in the Script)

CHAIRMAN (in Cantonese): I am sorry. It should be page 94 of the Script.

DR YEUNG SUM (in Cantonese): Madam Chairman, I move the amendment in order to add paragraphs (f), (g) and (h) to clause 37(4) which relate to the disclosure of the identity of a complainant. Thank you, Madam Chairman.

Proposed amendment

Clause 37 (see Annex V)

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

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CLERK (in Cantonese): Clause 37 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendment to clause 37, I now put the question to you and that is: That the clause 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.

SECRETARY FOR SECURITY (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 19A together with clause 19.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Security, you have my consent.

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 19A together with clause 19.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider new clause 19A together with clause 19.

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.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 19A Record of interview.

CHAIRMAN (in Cantonese): The Secretary for Security has given notice to move an amendment to clause 19, in order to amend subclause (8), delete subclause (9) and add new clause 19A; Mr James TO has also given notice to move an amendment to subclauses (8) and (9) of clause 19.

Members may now debate the original clause, the amendments of the Secretary for Security and Mr James TO as well as new clause 19A jointly. I will now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, clause 19 confers power on the Independent Police Complaints Council (IPCC) to interview any person who is considered to be able to provide information or other forms of assistance to the IPCC in relation to an investigation report or interim investigation report for the purpose of its consideration of such report. Under the existing arrangements made by the IPCC, an interviewed person may be accompanied by his legal representative in ordinary circumstances to attend an interview conducted by the IPCC. The legal representative concerned may provide legal advice to the interviewee, but he may not address the interviewers of the IPCC on his behalf. The Bills Committee proposed that this existing arrangement be written into the Bill and given that the IPCC and the Administration do not have any objection to this proposal, we seek to amend subclause 8 to specify that a person interviewed by the IPCC has the right to be accompanied by his solicitor or barrister to attend an interview conducted by the IPCC.

Mr James TO has proposed that a person interview by the IPCC has the right to be accompanied by, in addition to his lawyer, one other person specified by him to attend an interview conducted by the IPCC. I have to emphasize that an interviewed person's attendance at an interview is entirely voluntary. The IPCC should have full discretion to decide who is to be interviewed and who is allowed to be present at an interview. This discretion is crucial to the IPCC's consideration of whether an interview should be conducted with the person requesting the interview and whether a person is to be allowed to accompany the interviewed person, after considering the circumstances of individual "reportable complaints". The existing clauses 19(1), (2) and (5) of the Bill reflect this

discretion should be retained. As to Mr James TO's proposal that this discretion be abolished, we find it difficult to agree with it.

The original subclauses (8) and (9) specify that the IPCC must keep a record of each interview conducted with the person concerned and such record may be used in the IPCC's performance of its functions in accordance with the Bill and for the disclosure of information pursuant to clause 37. The Bills Committee is of the view that the wording of the subclauses concerned is relatively difficult for the general public's comprehension. For that reason, we propose that clause 19A be added to substitute the original clauses 19(8) and 19(9), so as to state clearly that the IPCC must prepare a record of interview and keep such record within such period as may be necessary for the performance of its statutory functions while such record may only be used in the circumstances stipulated in clause 37(2). We propose that subclause (9) be deleted in consequence and it is not necessary for Mr James TO to propose an amendment to subclause (8), which has the same effect.

The amendment has obtained the majority support of Members of the Bills Committee. I implore Members to support and endorse the amendment while opposing Mr James TO's amendment.

MR JAMES TO (in Cantonese): Madam Chairman, the point under discussion now is that the IPCC is subject to an extremely restricted situation in respect of interviewing a witness. In other words, the IPCC needs to wait for the Complaints Against Police Office (CAPO) to complete its investigation, which may take half a year or more, and the completion of the interim investigation report before the IPCC can interview a witness. In fact, regarding the purpose of the interview, it is apparent from the context that apart from facilitating the performance of the IPCC's functions, another actual and important purpose of the interview of the complainant is that in seeking a meeting with the IPCC, the complainant is probably dissatisfied with and wishes to review the findings of the complaint. He wishes to convince members of the IPCC to conduct a review, in a bid to rewrite the findings of the complaint which has been overruled or which he is dissatisfied with.

Now, on the part of the Government, if the complainant does not have any new arguments, that is, at the completion of investigation of a certain complaint if the complainant seeks a review of or wishes to rewrite the findings of the case

but he does not have any new arguments, merits or logic, the Government cannot review or rewrite the findings of the case. Thus, it requires the CAPO to conduct a professional investigation before arriving at a conclusion. Certainly, "professional" can be in the sense of a professional investigation, or, as described by Chairman Ronny WONG Fook-hum, it can be a professional cover-up of facts, preventing the truth from coming to light and the complainant from redressing his injustice. As such, it is indeed very difficult for the complainant, who is an ordinary citizen, to present his new merits and logic to the IPCC at the interview in the absence of assistance of a third person and to convince members of the IPCC to review and rewrite the findings of the case. It is also difficult to strike a balance.

After hearing the views of the Bills Committee, the Government said that by common sense the presence of a counsel, who should be able to assist the complainant, in the interview will not be denied, but the counsel can only accompany the complainant and he has to remain silent. The reason is that the counsel does not have a right of audience and he cannot conduct proceedings on behalf of the complainant as he does in Court; and he can only accompany the complainant in the interview. Certainly, the counsel can request a temporary suspension of the interview in order to tell the complainant outside the meeting room what to say, but the one to speak has to be the complainant — though he is saying what the counsel has told him — and not the counsel because the counsel does not have a right of audience. Certainly, although it is said that the complainant can engage a solicitor or counsel, not everyone has the capacity to do so. An ordinary citizen, restricted by his education level or various factors such as age and social exposure, may be unable to present his merits in a complicated case. But the Government responded, "Nothing can be done. You cannot have a third person accompanying you in the interview"; "It is my authority to accept or reject your request. You can beg me. You can beg the IPCC and I will let you have a third person accompanying you"; or "You admit your ignorance, your stupidity and your incapacity, and I will allow you to have company. This is not your authority. You have to beg me and admit your poor state, your stupidity and your lack of means". What kind of system is this? He is asking for a review and an interview, but the drafting of the Bill, as seen from the context, has turned the clauses into a hurdle that can never be overcome.

According to our experience, these people accompanying or assisting the complainant are very likely to be Members of this Council or their senior

assistants. I believe many Members, be they leftists, neutrals or rightists, must have received such cases. Thus, I always wonder why Members of the pro-government camp have been so resistant to independent investigations. Have their supporters not run into such grievances and injustices? The persons accompanying the complainants are often Members of this Council, their senior assistants, or experienced social workers and voluntary agencies such as the Society for Community Organization or the Wharf T&T Social Club. They assist the complainants to present their grievances in a systematic and logical manner among the complicated arguments, information and facts, in a bid to convince the 18 guardians, that is, members of the IPCC. This is indeed not an easy task and the accompanying persons serve to assist the complainants to present their case to the IPCC.

Without doubt, the authorities will say that the complainant has to give evidence, and he has to be the one to recount the situation and explain what he heard and saw at that time. The complainant certainly has to present his case himself, and other people or Members' assistants cannot answer questions on his behalf. For example, only the complainant can provide details such as who he saw on 27 April at the bus stop. Right? But we are now talking about the stage when the investigation has been completed. This is often a time when the complainant has to deal with the unsatisfactory result and he needs to find out how to make further analyses and present his merits to convince the IPCC to change or rewrite the CAPO's findings which he disagrees with. This is indeed a very difficult task. It is very difficult even for our experienced colleagues to find a clue among the complicated information and facts. But the Government said no and pointed out that the IPCC has the discretion to accept or reject such requests for this is its authority.

From my point of view, however, the complainant should have the right to seek assistance. If the Government uses confidentiality as the reason, it may well add a confidentiality clause. But now no confidentiality clause has been added, not even in the part of the Bill concerning the complainant. Then how can the Government say that the complainant is not allowed company by another person in the interview? Why is a person seeking justice not allowed to be accompanied by another person in presenting his grievances?

Madam Chairman, I wish to cite another similar example. I hope that Members, after listening to my example, will also find the Government has gone

overboard. If a police officer is facing a hearing, he has the right to be accompanied by a colleague at the hearing to present his case. For example, a police constable facing dismissal or disciplinary action can find one of his previous co-working police constables, inspectors or superintendents to accompany him at the hearing to present his arguments together. Why? Because this is a very important procedure to him. He is seeking justice and facing a serious disciplinary hearing. Although he cannot bring along a solicitor or counsel to attend the hearing, the point is that not all ordinary citizens can bring along a solicitor or counsel either. Hence, the role of solicitor or counsel is precisely to accompany a vulnerable member of the public to seek justice and present his complicated arguments in front of honourable members of the IPCC and to fight the professional cover-up by the CAPO which professionally hides and distorts details of the cases and overrules these cases in the end. This is what Chairman Ronny WONG Fook-hum said.

If the system is designed in such a way, it is indeed class discrimination. Those capable of engaging a solicitor or counsel will have someone to help them, but those lacking the means to engage a solicitor or counsel are not allowed to even have company. This again proves that the design of the existing system, as described by Chairman Ronny WONG Fook-hum, serves to protect the police and cover things up. Are you penniless? Are you incapable of presenting your case? Come and beg me then! The IPCC may perhaps allow you to have an accompanying person. I hold that there should not be any discretion in this regard. Given that a police officer facing disciplinary proceedings can also have a colleague to accompany him to present his case, why does an ordinary citizen Please bear in mind that in disciplinary proceedings against police officers as mentioned, the suspected police officer has received professional training and is familiar with hearings and investigations of cases; yet, he still needs a colleague to accompany him. However, for ordinary citizens involved in cases of police officers abusing power to have a third person to accompany him in the interview, it is at the discretion of the IPCC. How unfair is this system!

Madam Chairman, regarding my amendment to clause 19(8), my preliminary suggestion has been incorporated into clause 19A(2) proposed by the Government. Madam Chairman, I have put forth many views and amendments in the Bills Committee scrutinizing the Bill, and the Government only accepted those which it considers as trivial, technical or which can better polish the Bill. As for the important amendments, however, the Government has accepted none

of them. Hence, in future, the Government may say that it has accepted many amendments proposed by Members, but those amendments are technical in nature and very few of them are amendments with substance. For amendments to protect people's ability to lodge complaints and seek reviews, to facilitate the IPCC to more effectively monitor the CAPO and to prevent members of the Police Force from abusing power, the assistance rendered by such amendments is technical in nature rather than offering real help.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, I do not have anything to add.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to clause 19 to amend subclause (8) and delete subclause (9).

Proposed amendment

Clause 19 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if that amendment is agreed, Mr James TO may not move his amendment to subclauses (8) and (9) of clause 19.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr Martin LEE, Mr Fred LI, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG, Mr

Ronny TONG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 40 Members present, 24 were in favour of the amendment and 15 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Mr James TO may not move his amendment to subclauses (8) and (9) of clause 19, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 19 as amended.

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

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that new clause 19A be read the Second time.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 19A be read the Second time.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 19A.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that new clause 19A be added to the Bill.

Proposed addition

New clause 19A (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 19A 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): Clause 22.

MR JAMES TO (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clause 18A together with clause 22.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr James TO, you have my consent.

MR JAMES TO (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider new clause 18A together with clause 22.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the committee of the whole Council to consider new clause 18A together with clause 22.

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

(Members raised their hands)

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

(No hands raised)

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

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): New clause 18A Council's endorsement of investigation report.

CHAIRMAN (in Cantonese): Mr James TO has given notice to move amendments to clause 22 and to add new clause 18A; the Secretary for Security has also given notice to move an amendment to clause 22.

Members may now debate the original clause, the amendments of Mr James TO and the Secretary for Security as well as new clause 18A jointly. I will now call upon Mr James TO to speak first, to be followed by the Secretary for Security; but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Chairman, on completion of an investigation, the CAPO will write a report in accordance with clause 16 and earlier, we has discussed the contents of such report. However, what work has to be undertaken by the IPCC after its consideration of the report? Surprisingly, this is not specified in the original Blue Bill. Anyway, we have no idea as to why this is the case. That said, one point that is stated clearly is that the IPCC must make recommendations after examining the contents of the report. In fact, according to the current procedure, the IPCC's endorsement of those reports is the essence of its work. That is to say, its duty lies mainly in considering whether or not a report should be endorsed.

Of course, under the present arrangement, the so-called endorsement of those reports is done in writing in the majority of cases. In this debate, Members of various factions have particularly reminded the IPCC or the Government of matters in this connection and raised a question as to whether or not the IPCC can still do that in the future. Certainly, we have also taken account of the fact that members of the IPCC are engaged in many other businesses and for that reason, how should they do that? I have no idea. Convening meetings for discussions on every case will not work either. No matter what, the endorsement or otherwise of a report represents an important procedure. We had a long discussion in the meetings of the Bills Committee on matters including what to endorse and the meaning of "endorse" because when we take another look at clause 16, we will find that it states clearly the contents of the report including, for example, a summary of the case, the details of the complaint, the facts unearthed after investigation, a finding of facts as to whether or not the complaint is substantiated (perhaps let me use such terms as "conclusion" or "decision"). That is to say, they have an established practice to consider whether or not a report is to be endorsed.

The content of clause 18A proposed by me is — this kind of drafting is actually adopted in many laws — that the IPCC shall not endorse an investigation report unless it is satisfied with the contents of the report and the manner in

which the interview and collection of evidence has been conducted. The thrust thereof is that it must be satisfied and is of the view that there is no problem, alright? However, the amendment proposed by the Government is that a report can be endorsed if the IPCC finds its contents alright. Of course, some may say this only seems to be a matter of adopting a positive or negative kind of wording. In fact, however, the emphases of the two kinds of wording are different — of course, despite the fact that they may resemble each other in substance and actual operation, the crux of my amendment is that unless the IPCC is really satisfied, it should not endorse the report. What is emphasized here is to ascertain that there is absolutely no problem in the report. If there is anything wrong, it should not endorse the report. That is to say, emphasis is put on identifying inadequacies or detecting problems from this perspective instead of considering the report purely from a positive perspective. I think that this is a common wording adopted in endorsing a meeting or a report.

Of course, in all fairness, be it that this wording or the Government's wording is adopted, when it comes to actual operation, the practice adopted by the members may be that they will definitely not endorse the report if they are not 100% satisfied. They will probably consider the contents of the report from this perspective. However, I opine that this wording can provide the members with a clearer focus, that is, whether or not to identify inadequacies. I think that this is important.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO has proposed to add clause 18A in order to specify that the IPCC shall endorse an investigation report submitted by the police if it is satisfied with the contents of the report and the manner in which the interview or collection of evidence has been conducted.

In the existing operation, the IPCC will definitely scrutinize the investigation report submitted by the police on each "reportable complaint" and where necessary, request the latter to provide more relevant information or make clarifications, so as to facilitate its monitoring of whether or not the police have handled and investigated the complaint concerned in a fair and impartial manner. Upon scrutiny, the IPCC will endorse the outcome of the investigation if it gives its consent to the classification of the complaint. In addition, as I mentioned earlier when proposing the amendment to clause 18, it is a mutual understanding

between the IPCC and the police that disciplinary matters relating to members of the Police Force fall within the purview of the Commissioner of Police. For that reason, when the IPCC endorses the outcome of the investigation, it does not include the endorsement of the decision made on disciplinary matters. In other words, Mr James TO's proposed addition of clause 18A, which requires the IPCC to indicate whether it is satisfied with all the contents of the report, does not reflect our existing practice. Neither is it compatible with the consensus that disciplinary matters fall within the purview of the Commissioner of Police.

In fact, we had proposed to the Bills Committee to add a new provision that the IPCC might endorse the classification of the complaint after considering the investigation report. However, at that time, the Bills Committee was of the view that it was not necessary to do so.

In accordance with clauses 7(1)(a) and 16 of the Bill, which respectively specify the functions of the IPCC and the duty of the police to submit the investigation report to the IPCC, the statutory IPCC will actually maintain the practice of scrutinizing the investigation report and considering whether or not to endorse the outcome of the investigation. Therefore, Mr James TO's proposed addition of clause 18A is not necessary and it also goes against the existing operation. I implore Members to oppose Mr James TO's proposed addition of clause 18A.

I propose that the two recommendations made by the Bills Committee be adopted in the proposed amendment to clause 22.

Clause 22 confers power on the IPCC to require the police to inform the complainant of the classification of the "reportable complaint". Under the existing practice, after the IPCC has endorsed the outcome of the investigation and the classification of the complaint, the police will definitely inform the complainant or his representative of the latter, unless the complainant has expressly indicated that he does not wish to be so informed. In order to reflect the existing practice and respond to the recommendations made by the Bills Committee, the amendment provides that the police must inform the complainant of the classification of the "reportable complaint". Since the IPCC is currently responsible for informing the complainant or his representative of the classification of his request for review and the reasons for the classification, the amendment also specifies the duty of the IPCC in this regard.

Mr James TO's amendment seeks not only to amend the IPCC's power of requiring the police to inform the complainant of the classification of his "reportable complaint" to a duty of so doing, but also to specify that the police must, upon the IPCC's endorsement of the investigation report on the complaint concerned, inform the complainant within a time limit specified by the IPCC. At present, the police have made a performance pledge of informing the complainant of the classification of his complaint within 10 working days upon the IPCC's endorsement of the classification. The police will be committed to issuing a notification to the complainant in accordance with this performance indicator without undue delay. If a mandatory requirement is introduced to specify that the police must inform the complainant within the time limit specified by the IPCC, in special circumstances, the police may be unable to comply with the time limit specified by the IPCC while the IPCC may fail to set an appropriate time limit in the light of the circumstances of individual cases. Consequently, a failure to enforce clause 22(1) may be caused. For that reason, we hold that it is more desirable to specify the time limit for informing the complainant by administrative means (just like by way of the existing performance pledge) so as to maintain the necessary flexibility.

In addition, Mr James TO's amendment provides that the police are required to inform the complainant of, in addition to the classification of the complaint and the reasons for the classification, the summary of the investigation concerned, the finding of facts in relation to the complaint and the evidence in support of the finding, an account of the disciplinary action taken or to be taken by the police and such other information as the police or the IPCC may think necessary. Under the existing practice, the CAPO will submit to the IPCC the detailed information obtained by investigation, so as to facilitate the IPCC's in-depth monitoring of how the police have handled and investigated the complaint. Such information very often involves the internal procedures of the police and for that reason, disclosure to the public is inappropriate. We are of the view that the original clause 22 has already provided that the complainant must be informed of the reasons for the classification of his complaint and there is no genuine need to disclose to the complainant all the information obtained by the police in the course of investigating the complaint. Therefore, I urge Members to oppose Mr James TO's amendment.

Clause 21 provides that a request for review must be raised within 30 days after the complainant has been informed by the police of the classification of the

"reportable complaint" concerned. Some Members of the Bills Committee are of the view that the 30 days should be counted from the date of the complainant's receipt of the notification issued by the police.

At present, the police issue the notification of the classification of the "reportable complaint" to the complainant generally by way of recorded delivery unless the complainant has requested other means (for example, by facsimile or e-mail) of receiving the notification. In order to facilitate the calculation of the time limit for raising a request for review, we propose to add subclause (2) so as to determine the time as to when the complainant receives the notification issued by such means as by hand, facsimile or e-mail. The amendment has gained the support of the Members of the Bills Committee.

Having summarized the views expressed just now, I urge Members to support the Government's proposed amendment to clause 22 and oppose Mr James TO's amendment. Thank you, Madam Chairman.

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

MR JAMES TO (in Cantonese): Chairman, as a common saying goes "we should keep up with lifelong learning", for new issues will come up every day. We, as well as members of non-governmental organizations or the other organizations concerned, have been concerned about the police complaints for a long time, but I believe the in-depth debate today is quite an eye-opener. Just listen to the speech made by the Secretary earlier — perhaps the discussion held in the past was not so sharply focused — we will find that the system has been so unfair.

The reasons cited by the Secretary to oppose my amendment to clause 22 is a real eye-opener to Members. Why? When a person lodges a complaint, he will have to go through all the troubles, but in the end, he will come to this pass: "Buddy, your complaint is not substantiated, for the evidence is insufficient." In what way is the evidence insufficient? In which aspect is the evidence contradictory? What are the details of the situation? Sorry, all this cannot be disclosed to the complainant, for the Secretary says that it involves confidential and internal information of the police. All in all, he will only be informed that an entity called the IPCC has considered his complaint and come to

the conclusion that the evidence is insufficient. In other words, even the complainant himself will not be told of the reasons and evidence concerned in detail. He only knows that someone has considered his case and concluded that the evidence is insufficient. What entity is it? The IPCC. Who are its members? People appointed by the Chief Executive.

I think this is the most unfair system in the world. This succinctly explains why more and more people are reluctant to make use of the police complaints system. If I want to complain and have sufficient evidence, I may go for criminal prosecution, initiating private criminal proceedings. If I am eligible for legal aid, I will submit an application to the Legal Aid Department to initiate civil proceedings. By initiating the proceedings, I may at least force the other party to present the evidence in the Court. Certainly, at present, the Government will by all means offer them "hush-money". That is to say, in order to prevent the spread of these scandals, the Government will offer "hush-money" as compensation. If I bring the case to Court against the Government, I will at least know the story of the Government side. The case will then be adjudicated by an impartial judge. Eventually, I will know the whole truth and the result, which is not possible under the existing police complaints system where the complainant will know nothing. The complainant will not even know the reason his case is unsubstantiated. He only knows that a group of members of the IPCC has examined his complaint, but the investigation concerned is done by the police, which means that the investigation of police officers is conducted by other police officers. Worse still, even the former Chairman of the IPCC said that such a system was untrustworthy. For their "colleagues" may play tricks, only saying that the complaint case is unsubstantiated. They can only make strenuous efforts to spot the falsehood among an avalanche of cases, and see whether they can conclude a few cases as substantiated cases each year. This is the situation under the existing system. It is but an unfair game that seeks to cover up the whole truth.

In my amendment, I propose to specify that the complainant should be notified of the summary of the investigation, stating the finding of facts in relation to the complaint and the evidence in support of the finding. For example, in a complaint against a police officer for slapping the complainant for no reason, it may turn out that a third party witnessing the incident gives this statement: "Sorry, no one has slapped you." I often received complaints of a similar nature. Surely, not every case is related to complaints against the

police, but some of them are. Take a case related to the running down of a child as an example. The case involves the death of a child, who was run down by a public light bus on King's Road, North Point. The family of the child was surely in deep sorrow, but the Traffic Wing of the Police Force eventually decided not to initiate charges against the driver of the public light bus. The family of the child would definitely feel terribly upset. After negotiations, colleagues of the Department of Justice let me read some of the files under confidentiality terms. He said, "Mr TO, I would let you read some of the files under confidentiality terms." After reading those files, I understood that the incident had happened all of a sudden on that day, and that a number of owners of nearby shops and the driver of a school bus on the road witnessed that the child had run across the road suddenly. The public light bus driver was indeed the victim, for the child just ran onto the road suddenly. After I had read those files, the Department of Justice allowed me to tell the party concerned of the general concept and summary of the information I had read. In other words, I might tell him, "I have read the files and there is evidence proving that the child did run onto the road suddenly. Three to four independent witnesses stated similarly that they had seen the child, the deceased, run onto the road at the time." This arrangement can at least let the complainant know that several witnesses saw the course of the incident. With regard to this incident, if this is classified according to the criteria set down by the IPCC, the complaint will be about the Traffic Wing of the police failing to conduct detailed investigation. That arrangement can at least provide the evidence supporting the decision and let the complainant know that a number of independent witnesses did see the child run onto the street. For one thing, this proved that a detailed investigation had been conducted, for colleagues had already obtained the statements from witnesses at the scene. Eventually, the complaint was not substantiated, for a detailed investigation had already been conducted.

With regard to the classification of complaints and the reasons for the classifications, an account of the disciplinary action taken by the Commissioner should be made in case the complaint is substantiated. Please bear in mind that I am referring to an account of the case, not the detailed description of the course. The worst approach is just telling the complainant that, "Your complaint is substantiated," and that is all. He will not even be told that a disciplinary hearing has been commenced by the Commissioner. Worse still, the Government objects to telling the complainant so. What kind of system is it? When the complainant knows that his complaint is substantiated, is it not only natural for him to ask what penalty will be imposed? The penalty may not necessarily be dismissal. However, the authorities have to inform the

complainant of the penalty involved, both of the penalty already imposed and that to be imposed in future. Nonetheless, this information is kept confidential at present. Even if the complaint is substantiated and that the police officer concerned has been dismissed, though this is the actual fact, the authorities cannot tell the complainant that the police officer concerned has been dismissed because of his substantiated complaint. But this is the exact practice to let the complainant feel that the complaints system is effective. I know that the existing system is no longer effective. As the Chairman of the IPCC, Ronny WONG, said, they have to make strenuous efforts to identify a few cases which call for a hearing, but the penalty imposed after the hearing may be far from satisfactory. Besides, even when penalty is imposed in the end, the complainant is not informed of it. Of course, the number of unsubstantiated complaints is even greater. As for substantiated complaints in which penalty has been imposed, there are only a few such cases among the several thousands of complaints. The results of these cases are considered satisfactory, but still, the authorities want to hide these cases and do not inform the complainant. This is really puzzling. Why is our system like that? Are we tricking ourselves? Why? The complainant cannot be told of the disciplinary hearing conducted in response to his substantiated complaint, not even the result of the disciplinary hearing. Why?

Chairman, we are veteran Members, relatively speaking, we surely know that the Secretary will say that information related to the past performance of police officers, including poor record, attendance of disciplinary hearings and other incidents, is the personal record of civil servants, which should not be disclosed to outsiders. Wow, this information certainly should not be disclosed to outsiders under normal circumstances, but the question is that a complaint has been made in this regard and a reply must be provided to the complainant. The complainant has every right to know the result of his complaint and the follow-up action taken accordingly.

As the Government opposes my amendment to clause 22 and considers that no information should be disclosed to the complainant, it means this requirement will also be applicable to complainants of substantiated complaints. Regarding the small number of substantiated complaints, the result of the complaints should have made them convinced, but since they are not told of the result, they will still consider the present system problematic and inadequate. As a result, not only complainants of unsubstantiated complaints will rebuke the authorities, complainants whose complaints have been substantiated will also scold the

authorities. Why? For the authorities have not told the complainant how his case has been followed up and what penalty has been imposed. All the information is kept from the complainant. Will the Government tell us whether it is incredibly stupid? Why did the Government design such a system? Really, what else can I say!

Chairman, I will now come to another focus of discussion. Initially, I thought the views of the Government were close to our proposals, but the Government denied that. Regarding the report mentioned by us under clause 16, the Government opposes clause 18A, which originally makes it mandatory for the IPCC to endorse the content of the investigation report. I thought the Government earnestly hoped that the issue on findings of facts and classification would be passed. But if Members look at clause 16 again carefully, they will find that the provision is made on shaky ground. Why? Concerning the disciplinary action referred in clause 16(2)(d), please bear in mind that it is not referring to the details of the disciplinary action, it is only an account of the action taken. The two is subtly different. The provision is carefully drafted, for this is only referred as an account of the action taken by the Commissioner in connection with the complaint. In other words, it only requires an account of the disciplinary action taken by the Commissioner.

If a case considered by the IPCC as "ridiculous" is eventually substantiated, but the Commissioner says that no disciplinary action will be taken, then there will be no need to give such an account. Do Members think that the IPCC should endorse the report concerned in that case? The answer is in the affirmative. The IPCC will still have to endorse that report, while it can only tell the complainant after endorsing the report that the IPCC can tell him nothing about the disciplinary action. Therefore, after endorsing the report, the IPCC will inform the complainant that his case is substantiated, but for other follow-up actions, the complainant has to ask the Commissioner of Police. In that case, should an independent committee be established to monitor the imposition of proper penalty by the Commissioner of Police? It may perhaps be necessary, for this aspect is beyond the scope of monitoring of the IPCC. Otherwise, when a complainant, who has made a complaint to the IPCC, discovers that no penalty has been imposed even though his complaint is substantiated, or that the penalty imposed is inappropriate, this aggrieved complainant will have no redress. Regarding complaints made by the public against abuse of power by the police, no penalty is imposed in many of the substantiated complaints, even if penalty is imposed, it may be inappropriate and

too lenient, just like a slap on the palm, and yet the complainant has no way to appeal against it.

However, I think if we have to create a system dedicated for handling appeals from complainants, it will be quite silly. We should make use of the existing system. Since a system has already been put in place, we should make full use of it. The IPCC is the most suitable organization to handle this, for it can draw on the experience it has accumulated from the large number of cases handled. Besides, colleagues of the IPCC will not act arbitrarily, and they will only impose appropriate penalty within a certain range. Actually, if Members have studied a large number of cases, it does not matter whether they are lawyers or not, they will learn that it is difficult to adopt some scientific approaches to specify the penalty, such as a "red-flag", caution for two years or a deduction in salary, to be imposed on certain kinds of conduct. This difficulty is found both in the imposition of penalty in Court and disciplinary hearing. The adoption of scientific approaches, such as chemistry formulas, in imposing penalty is impossible. A range has to be set to govern the several possibilities of light, medium and severe penalty, and the most severe penalty may be dismissal or criminal prosecution,

Members of the IPCC will have to consider whether an account of the action concerned should be endorsed. If certain actions will be taken in future, the authorities will inform them that it will take certain actions or certain actions are in the process, only that the result is pending. After all, members of the IPCC cannot refuse to endorse the report for this reason, for the authorities have already told them that actions have been taken. However, members of the IPCC may query in future why the penalty imposed is often so lenient. They may submit their views in this respect to the Commissioner of Police. They may also propose to the Commissioner for the imposition of slightly heavier penalties in future. However, if the authorities fail to inform members of the IPCC whether it will take disciplinary and follow-up actions, and if the IPCC considers it "ridiculous" that no action is taken, the authorities should not request the IPCC to endorse the report.

Moreover, with regard to the provision in paragraph (e), I think the requirement is rather silly. It is blather. The provision specifies that the Commissioner of Police should inform the IPCC of the information he thinks necessary. Please bear in mind, the information the Commissioner of Police thinks necessary to inform the IPCC may be other issues, not necessarily

disciplinary actions. He may say that he has amended certain rules and practices or procedures in view of the situation, or that he may consider it necessary to inform the IPCC of the experience of a certain march, and state that he will make improvement. If the IPCC considers the change of practice made by the Commissioner incorrect, or that the change is inadequate, the IPCC will not endorse the report submitted by the Commissioner. When the IPCC considers the follow-up carried out by the Commissioner inadequate, it is absolutely justified to reject the report. It is specified in clause 7(1)(c) that the function of the IPCC is to identify deficiency in practices or procedures, and that the IPCC will inform the Commissioner of the deficiencies it identified and request the Commissioner to make improvement. If the Commissioner has made improvement to the satisfaction of the IPCC, the latter will endorse the report. If the IPCC has identified deficiencies but the Commissioner fails to make improvement or proper improvement, it will not endorse the report. This function is specified explicitly in clause 7(1)(c). Since this function is specified explicitly in the provision, why does the Secretary still say that endorsement of the information in question is unnecessary? What kind of a monitoring system is it?

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

MR MARTIN LEE (in Cantonese): Madam Chairman, at present, in regions around the world practising common law, the development of laws has reached a stage where the Courts consider people in the authority to make decisions should provide justifications, sufficient justifications, to the affected parties, so that instead of guessing why they lose or win the case, they will know the reasons. Emphasis is made that in case anyone loses and the decision concerned is not in favour of him, it is necessary to provide him with a reason. Otherwise, this will give rise to suspicions and many other problems, thus the credibility of the Government will be affected.

I have a judgment of a case in Britain on hand, which I would like to read out. The case is *R. v Islington LBC, ex parte Trail* [1994] 2 F.C.R. 1261. The judge said,: "The giving of reasons is important for two reasons: (a) it is a valuable form of self-discipline to a decision-maker in ensuring that the decision arrived at is properly articulated; (b) it is essential that the recipient of the

decision, and particularly an adverse one, should be able, instantly, to know why he lost his application, not only for the purpose of giving satisfaction to someone who is subject to an administrative process, but also for assessing the potential for a challenge by way of judicial review or any other appellant remedy."

The following judgment is made by the Court of Appeal in Hong Kong on the case *Oriental Daily Publisher Ltd v Commissioner for Television and Entertainment Licensing Authority [1997] 3 HKC 93, 102D*. This is per Mr Justice Chan, and this is what he said, "There is also a growing tendency to make express provisions in legislation creating administrative tribunals requiring the relevant tribunal to give reasons for its decisions. In the absence of an express provision, it is a matter of construction of the relevant statute to see whether such a duty can be implied. But the courts are more ready nowadays to imply that such a duty exists. It will instil greater public confidence in our system if those who are in a position to make decisions affecting others would give reasons for their decisions."

The last sentence is indeed the most important. It is said that for the sake of instilling public confidence in the Government and its system, all persons in a position to make decisions affecting others should give reasons for their decisions. Therefore, having heard the many arguments advanced by James TO earlier, Madam Chairman, I think that if we pass this Bill, it will further jeopardize the protection of the public. For under the present system and this system formulated by way of legislation, no one lodging a complaint against the police will get, at the least, a thorough investigation and a clear reply.

Madam Chairman, in fact, the Complaints Division of this Council does not accept complaints against the police. I asked the Legal Adviser of this Council earlier and he told me that the Rules of Procedure of this Council or other provisions did not prevent us from accepting those complaints. This is a decision made by Members of the Legislative Council, who decided to hand over this responsibility so that we will not be responsible for investigation. This is the case. The Legal Adviser reminded me that according to Article 73 of the Basic Law, we indeed have the power to do so. Article 73(8) of the Basic Law specifies the functions exercised by the Legislative Council of the Hong Kong Special Administrative Region, which states that the Council shall "receive and handle complaints from Hong Kong residents". This is subject to no restriction. Paragraph (10) specifies that the Council can "summon, as required

when exercising the abovementioned powers and functions, persons concerned to testify or give evidence."

Therefore, Madam Chairman, I hope that the Legislative Council of the next term will re-examine the need to maintain the restriction of its power in this respect. If complaints made by the public to the CAPO are not investigated thoroughly, Members of the Legislative Council will have the responsibility to handle such complaints. In that case, the Legislative Council had better exercise its power in this respect, so that the public may lodge their complaints to Members. I hope the Government will think over this thoroughly to see if it really wants it this way. If the authorities are bent on protecting these black sheep, who are in the minority, it may be forcing Members of the Legislative Council to provide with the public the opportunity to lodge their complaints to Members. For Members may then make a fair decision on their grievances, and Members will surely give reasons for their decisions.

Madam Chairman, Members may say, "Martin LEE, again, just before you bid us farewell, you lob the ball to our court." But I have no choice. I hope that Members of this Council, no matter they side with the left, the central or the right, will become united. Actually, the existing system is fraught with pitfalls, for this will create much pressure in society, which may give rise to social unrest in future. These systems will cause dissatisfaction among the public, and the public at large will become dissatisfied with the police. What good will it do to the police? What good will it do to the Government? What good will it do to society?

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

DR YEUNG SUM (in Cantonese): Chairman, today, Martin LEE and I has an important duty: to make impromptu speeches, so that James TO can be relieved to answer the call of nature and grap a bite. Since I have undertaken this duty, I have to sit behind him and listen to his blaring speech. His voice is so deafening and powerful that we sometimes feel unbearable. However, my heart sank as I heard him going on and on. The two of us thus started doing some preparation. Martin LEE went to seek the advice of the Legal Adviser while I

looked up the Basic Law. We found out that Members of the Legislative Council are subject to no restriction in receiving complaints. We have not only the resources to do but also the power to summon.

Therefore, Martin LEE and I decided to make an official public declaration on behalf of the Democratic Party here today. We hope that the Legislative Council of the coming term will examine this situation again. This is the public expect us to act as the watchdog. They hope that we will monitor the Government. However, concerning unfair treatment of the public by the police, all existing systems are ineffective. We have been making strenuous efforts over the past dozen of years, and the Government at last submits the Bill to the Legislative Council today, but we cannot but oppose it. It has pushed us to this pass that we have no alternative but propose to review the functions of the Legislative Council and the power conferred on this Council by the Basic Law. If the proposal is passed, the Legislative Council may announce that it will accept from the public any complaints against the police, which will be specifically handled by Members. If the Commissioner of Police does not come to the Legislative Council to explain the case, we will summon him to this Council to testify in front of the camera.

Secretary, please consider this. The Democratic Party will not go back on its words. Thank you, Chairman.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I would like to respond to the two points expressed by Mr Martin LEE. First, I have to reiterate that we definitely will not tolerate or condone those so-called black sheep in the police. Second, Mr Martin LEE's remarks suggest that under the Bill, we will give no reason for the decision made according to the provisions therein. I may perhaps read out the proposed clause 22 to Members: regarding the "Notification of classification of reportable complaint and result of review", "in the case of a reportable complaint that is not a request for review, the Commissioner must notify the complainant; or (where the reportable complaint was made by a person on behalf of the complainant) the person who made the

complaint, of the classification of the reportable complaint and the reasons for the classification."

That means we will give the reasons, not as suggested by Mr Martin LEE that we will provide nothing.

MR JAMES TO (in Cantonese): Chairman, this shows exactly the inadequacy, for the reasons to be given will be very simple. If any Judge of the Court adopts the practice of the IPCC in providing reports to the parties concerned, I think the Judge will be dismissed immediately. The judgment given by a Judge must include the analysis of both sides of the story, or even three to four contradictory versions of the fact. His analysis will then explain why he believes the defendant has committed the theft offence, why he believes the defendant has the motive to do so, and why he believes the security guard saw the nervous expression of the defendant when the security guard rushed out, and so on. The Judge must analyse every piece of evidence instead of giving a reason in general. By the same token, the investigation officers concerned must be plausible, so that an objective third party will consider them convincing. Since the complainant concerned is subjective, he may not be convinced. But the investigation should reach a standard that an objective third party considers it convincing. The discussion involved and the judgment made should be based on facts. But we can see that none of these practices is found under the existing system. Even if there is, it is only limited to the provision of information by the Commissioner to the IPCC, but the IPCC is still restricted from telling the complainant eventually, for it can only inform the complainants of some simple statements or sentences.

Chairman, I would like to add that even in cases mentioned by the Secretary earlier that certain information could not be disclosed to the complainants, there are solutions. The Secretary may include a phrase to the effect that certain information, which cannot be disclosed to the complainant, will be withheld after the IPCC has weighted the various circumstances. For instance, a complainant should need to know the judgment and the detailed justifications and facts involved, but in view of the law-enforcement situation, certain information, which really cannot be disclosed after weighing various factors, can be withheld to the necessary extent. If the provision is drafted like this, it can at least provide a consideration for doing so. However, the existing provision as drafted completely excludes the possibilities of considering such

factors. No information can be disclosed to the complainant, whether or not it is made confidential for reasons of law enforcement, all issues will be barred from disclosure to the complainant.

Chairman, this is not the first time we scrutinize this type of Bills. Four years ago, around the same period when the end of Session was near, we passed the Interception of Communications and Surveillance Ordinance, and these formulas are adopted. If anyone complains of being intercepted, where the interception is illegal, he may complain to Justice WOO, OK? If Justice WOO has to inform the complainant, under all circumstances, whether or not his complaint is substantiated, why he is being intercepted and whether or not he has been intercepted, the complainant, even if he is a thief, will know that he has been intercepted and will thus get some useful information. Certainly, this is not applicable to every case.

However, under certain circumstances, Justice WOO can surely inform the person concerned whether he has really been illegally wiretapped. In the annual report submitted by him, one case is mentioned. In that case, the telephone number of the subject of wiretapping is similar to that of another person. Due to the similarity of the two telephone numbers, the wiretapping on the wrong number was only discovered seven days later. Justice WOO then ordered the police to find the victim of the incident for he was entirely innocent. But the police failed to locate him so far. Therefore, under certain circumstances where security will not be compromised and investigations will not be affected, the details of the situation, such as the reference of facts, may be disclosed.

At present, what kind of complaints is the largest in number? Among the thousands of cases, most cases are complaints against frame-up of a relatively insignificant nature. However, even for these insignificant complaints, the reference of facts and detailed justifications cannot be disclosed to the complainants. No wonder complainants, despite having their complaints substantiated, are not convinced, for they do not know the follow-up action and the disciplinary action to be taken by the authorities. Are not the authorities asking for troubles? Why should such a system be established?

The authorities must be carried away by its eagerness to protect the so-called confidentiality of police operations. If the authorities are really concerned about that the information cannot be disclosed to the complainants

under certain circumstances, it may specify the circumstances in which the complainants will not be notified of such information. For instance, it may be special operations involving dangerous undercover work or other operations, or investigation involving special operative procedures. There is no reason that the authorities should draft the provision in such a way that all information will not be disclosed to the complainants.

Members will now see that the Secretary's opposition to my amendment to clause 22 is totally unjustified.

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

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment?

MR JAMES TO (in Cantonese): Chairman, I move that new clause 18A be read the Second time. Chairman, to put the record straight, I would like to state that I have mistakenly referred to it as clause 22, which should instead be 18A.

Proposed addition

New clause 18A (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 18A be read the Second time.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the motion.

Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the motion.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, 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 CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, three were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, 10 were in favour of the motion 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 motion was negatived.

CHAIRMAN (in Cantonese): As the motion on the Second Reading of new clause 18A moved by Mr James TO has been negatived, I now give leave for Mr TO to revise the terms of his amendment to clauses 22 to delete the reference to clause 18A therein.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 22 be amended.

Proposed amendment

Clause 22 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 22.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Mr LEE Cheuk-yan, Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 35 Members present, 21 were in favour of the amendment and 13 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Secretary's amendment has been passed, Mr James TO may not move his amendment to clause 22, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 22 as amended.

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

(Member raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 20.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the heading, subclause (1) in the Chinese text and paragraph (a) of subclause (1) of clause 20, which seek to substitute "警監會" with "監警會"

and "須具報投訴" with "須匯報投訴", and to divide the provision into paragraphs.

The amendment is supported by the Bills Committee. I implore Members to pass the amendment.

Proposed amendment

Clause 20 (see Annex V)

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 Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move the amendments to clause 20(1)(b).

Members may now debate the original clause and the amendments proposed by the Secretary for Security and Mr James TO jointly. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 20(1)(b) be amended, as set out in the paper circularized to Members.

Clause 20 empowers the IPCC to require the police to provide any information or material relating to, or to clarify any fact or discrepancy relating to, a "reportable complaint". In the course of the investigation of "reportable complaints", the police may discover some "substantiated other than reported" allegations. Since the classification of these allegations will be included in the investigation reports of "reportable complaints", clause 20(1)(a) empowers the IPCC to require the police to provide any information or material relating to these allegations.

Some members of the Bills Committee proposed that subclause (1)(b) should provide a more comprehensive coverage. Having considered their views, we think that though the coverage of the reference to the "fact" and "discrepancy" in the existing clause is quite broad already, we propose that, to make the clause more comprehensive, the word "findings" be added to cover all findings made by the police in the course of investigations.

The amendment is supported by a majority of members of the Bills Committee, I thus implore Members to support and pass the amendment.

Mr TO's proposed amendment to subclause (1)(b) specifies that the IPCC may require the police to clarify, in addition to "fact", "discrepancy" and "findings", any "allegation", "ambiguity", "point of doubt" or "view". We consider the amendment unreasonable and unnecessary, which will also make the clause too lengthy. Besides, "ambiguity", "doubts" or "points" in fact equal to "fact", "discrepancy" and "findings", which is also covered by subclause (1)(a) that empowers the IPCC to require the police to provide information and material. Therefore, we oppose Mr TO's amendment.

MR JAMES TO (in Cantonese): Chairman, this is actually a matter of wording. But why is the wording so important? For when we require the Commissioner of Police to provide clarification, as under clause 20(1)(b), it is important to know what should be clarified. According to the original wording of the Blue Bill, it is "any fact or discrepancy". However, in my view, there are many things in this world other than the fact or discrepancy referred in the report or discussion, for instance, a description may be presented in many different angles,

so we must seek clarification. In gist, all things that need to be clarified have to be clarified. Am I right? However, it seems somehow strange to draft it this way. I thus think of adding a few words to the clause, so that all issues that need to be clarified can be covered.

The Government said having regard to our views, it would add one more item. I think we have to take into account the attitude adopted by the Government at the Bills Committee, particular that of the Deputy Secretary for Security, Mrs TING. I have to mention Mrs TING in particular, for she acted like a tape recorder. No matter what issue was being discussed, be it reasonable or not, she would battled against it. She would repeat her point of view, stating that a certain issue was not related to another one. Her views were repetitive. I have never come across any Administrative Officer like Mrs TING — perhaps I have, but he has left the service by accepting the voluntary retirement scheme, the "fat chicken package", so to speak. During the scrutiny of the Bill at the Bills Committee, Mrs TING treated us with this approach. Her attitude is perhaps a reflection of the attitude of the Secretary. If the Secretary is mindful about this, then pardon me for trying to be strict before being generous, for I fear the Secretary will argue with the IPCC at the time. By then, the Commissioner of Police may say that the legislation only provides for the clarification of "fact" and "discrepancy". Now, the Government only proposes to add one more word, that is Chairman, let me first look up that word. It should be in clause 20(1)(b). Only one word is added to that clause, and I think it is inadequate. Therefore, I would rather

CHAIRMAN (in Cantonese): It should be the word "findings".

MR JAMES TO (in Cantonese): Yes, the word is "findings". I see the word "findings" in the English text. Why do I consider it inadequate? I will explain it in detail.

My amendment includes the following words: "discrepancy, allegation, ambiguity, doubts or points". "Discrepancy" includes that related to the law itself. Why do I say the inclusion of the word "allegation" is important? For certain issue, which is the fact what is the definition of "fact"? Things that have been proved are facts. There may be two versions and one of it is used eventually. The word "findings" or "fact" is used here. But "allegation" is

different, for it refers to the one-sided description of certain issues. Can this be regarded as the "fact"? Eventually, that description may not be proved. So under such circumstance, I can only refer to that as an "allegation". However, can the IPCC seek clarification of such "allegation" and see whether the "allegation" is justified? Can it require clarification of what the "allegation" is referring to? The words "doubts" and "points" are similar in meaning.

To put it direct, I mean to say that the IPCC can require the Commissioner to clarify any issue it considers clarification is necessary. If the Commissioner can do so, he will. But if he cannot, he will say so or explain why he cannot do so. It is as simple as that. I just want to preclude the Government from saying at the time that only "discrepancy", "fact" and "findings" can be clarified, and issues other than "fact", "discrepancy" and "findings" are "doubts" or "allegation". Otherwise, the Government will just give an apology and say that no clarification will be provided on the ground that it is not specified in the law. At the meetings of the Bills Committee, the Government stood firm in its battle line. I would go further to say that it refused to compromise on all issues, only with the exception of a few issues of a technical nature. To me, these issues are only technical.

I do not know why the Government is reluctant to compromise. I speculate that the Government does not compromise because there may be some intrigue. For in certain circumstances, the Government may be unwilling to clarify the "allegation", "doubts" and "points", and so on. It does not clarify not because it cannot but because it wishes not. Therefore, I would rather narrow the range of power of the IPCC in requiring the provision of information and clarification. I will try to expand the coverage of the IPCC to the greatest extent, attempting to include the widest range of possibilities covered by those words. Otherwise, we may not necessarily know this problem at the time. Surely, when the dissatisfaction of the IPCC is at its peak, it may perhaps come forward to make the situation public. But even if it wants to do so at the time, can it satisfy the requirement laid down in clause 37 that the disclosure must be "necessary"? I have doubts about that. Therefore, if the IPCC is often at the peak of dissatisfaction, and that it is often drowned in dissatisfaction, we do not know when they will again consider it intolerable, as in the case of Chairman WONG, who eventually came forward to make public remarks. In that eventuality, members of the IPCC will come forward and voice their dissatisfaction in public. By then, the public will know this is all but a fraud.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate he did not need to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move that clause 20(1)(b) be amended.

Proposed amendment

Clause 20 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to clause 20(1)(b).

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Dr Fernando CHEUNG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 30 Members present, 19 were in favour of the amendment and 10 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Secretary's amendment has been passed, Mr James TO may not move his amendment to clause 20(1)(b), which is inconsistent with the decision already taken.

MR JAMES TO (in Cantonese): We have now come to page 115 of the Script. Chairman, I move the addition of subclause (3) to clause 20.

Chairman, sometimes, I also find it strange. Indeed, clause 20(3) now under discussion is adequate in allowing colleagues of the IPCC to obtain all the information, including Certain events occurred in the last couple of months have given us a better understanding of the situation. We notice that in the face of civil proceedings or other proceedings, there is a tendency of the police to settle the incidents by paying "hush-money". It seems to be the latest strategy to offer compensation in civil cases or resort to conciliation, where an agreement, including a declaration of secrecy, will be reached with the party concerned to prevent the party concerned from disclosing the information. Honestly, the information The IPCC noticed the emergence of this phenomenon over the past few years. It also found that many complaint cases were withdrawn for this reason. It thus asked the police to provide the relevant information, but after several years, it still had not received the relevant information. As a result, it made public these cases. At the Bills Committee, we obtained the evidence in this respect and confirmed that the situation was true. We have disclosed some of the information through questions posed in the Legislative Council. Chairman, I propose the addition of subclause (3) to clause 20, which has made reference to — no, not making reference, but copied from the manuscript of the former Chairman Ronny WONG, SC. He meant to state that this provision was essential in ensuring that the IPCC could actually obtain the information protected by the so-called "claim of legal professional privilege".

Chairman, during the voting carried out earlier, I felt very upset. I thought: Have colleagues in this Council not received complaints from the public? I was pondering one point in particular. Recently, I had received a number of cases and the complainants concerned had approached the Hong Kong Federation of Trade Unions (FTU) before. I wonder, since Mr KWONG Chi-kin is a lawyer and Miss CHAN Yuen-han claims that she will protect the interests of the grassroots and wage earners — I hope she can hear that — why would Mr KWONG Chi-kin, Miss CHAN Yuen-han and the FTU A number of amendments to the Bill will enable the IPCC to exercise more power under the so-called existing system to obtain more information and to deal with the situation more effectively; but please bear in mind, the IPCC has no right to carry out investigation. Nevertheless, these arrangements have all been

negated by them, and amendments seeking to improve the existing system have too been negated.

Of course, if Members of the Legislative Council heartily agree with the practice of allowing police officers investigating police officers, I think it will be even more regrettable. I know that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has stated unequivocally that even if the investigation of police officers is conducted by police officers, they will support it all the same. I do not know whether colleagues from the FTU also support that. The Liberal Party has already shown its support. Do colleagues from the FTU support it? I do not know. I do not know whether Miss CHAN Yuen-han shares the same view. I notice that when my various amendments were put to the vote yesterday, her absence was conspicuous. I can appreciate that. I may be cynical, but why does she come back to vote today? I earnestly hope that she will speak in response.

I know that this amendment may not be passed, but I believe all political parties and groupings claiming to protect the interest of the public, the grassroots in particular, should More often than not, the complaints I received involve conflicts arising from the contact between police officers and the grassroots. Worse still, complaints against abuse of power may be caused by misunderstandings. Why do those among us, who vigorously claim that they represent the interests of workers, the public and wage earners, fail to see their grievance? Why do they still play the jackal to the tiger? They are supporting a government that suppresses the public, preventing them to have access to a fair system.

Proposed amendment

Clause 20 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendments jointly. Does any Member wish to speak?

MS MIRIAM LAU (in Cantonese): Madam Chairman, Mr James TO proposes the addition of subclause (3) to clause 20, which seeks to confer on the IPCC certain power of investigation to require the police to provide information

protected by the legal professional privilege. Mr James TO said that the IPCC must obtain such information to conduct investigation to correct the injustice for the public. I believe Members will not have strong views about this objective. We all hope that the IPCC can find out the truth by all means to remedy the injustice suffered by the public. However, when the legal professional privilege is involved, I have other opinions. I have been a lawyer for several decades. I always regard the legal professional privilege sacrosanct, which is a teaching from my mentor. Regarding the information and documents provided to me by my clients, I will definitely keep them confidential. I strongly believe that I am obliged to do so. Therefore, I will keep my mouth shut and not say a word about this. Surely, I have to understand that it is the client but not the lawyer who enjoys the right, the legal professional privilege. The legal professional privilege enjoyed by the client as of absolute right.

According to the amendment now proposed by Mr James TO, both clients and lawyers will not enjoy this right in the interest of remedying injustice suffered by the public, which has completely ignored the principles behind the legal professional privilege. I think Mr James TO holds that it will be difficult for the IPCC to do monitoring work if it does not have the information, and it is thus necessary for the IPCC to obtain more information. Mr James TO has more than once said that information cannot be obtained through various channels owing to the barriers imposed. For this reason, he now attempts by legislative means to make certain documents related to the communication between lawyers and clients obtainable. Since the requirement is legally binding, the information must be provided.

However, does it mean that when a monitoring organization is given the monitoring function, those subject to monitoring must make everything transparent, providing all the information required, including all the documents and information protected by the legal professional privilege? If such is the case, the Securities and Futures Commission (SFC) may as well require all securities companies to provide all the documents relating to their communication with lawyers, for the SFC is the regulatory authority. By the same token, the Estate Agents Authority (EAA) may require all estate agents to submit all information on their communication with lawyers, and as estate agents are supervised by the EAA, they must provide such information. But I believe Mr TO will probably say that their cases are different, for they are supervisory authorities of the community while the IPCC, the one we are now referring to, is a monitoring authority of the Government at a higher level. He may say that

the police are so powerful that legal means must be resorted to to make the relevant information obtainable, for otherwise it will be impossible for the IPCC to monitor the police.

Let us look at the case of The Ombudsman, who is responsible for monitoring all government departments. I believe no single government department or the police will be easy to deal with, for government departments also have enormous powers. However, is there any provision under The Ombudsman Ordinance that allows The Ombudsman to obtain from government departments all the legal advice they have sought or the documents related to their communication with their lawyers? I have gone through the Ordinance, but I do not see there is such a provision. We may now look at the case of the Legislative Council, which is responsible for monitoring the Government. The Government is strong, is it not? But the Legislative Council is not weak, for we have the Legislative Council (Powers and Privileges) Ordinance. I also notice that when the Legislative Council requires someone to come to this Council to provide information or documents, this person is "entitled to the same right or privilege as before a court of law". In other words, if that person is in the Legislative Council, the practice adopted by the Legislative Council in handling the case should not go beyond that adopted by the Court.

How will the Court deal with these cases? There are many cases in this respect. Mrs Selina CHOW cited one of these cases yesterday. What weighting does the Court accord to legal professional privilege? I have looked up more information about this to find out how is public interest — when complaints have to be made on behalf of the public, it is public interest — treated as opposed to legal professional privilege when both are involved? There are past cases on this. We always know that legal professional privilege is absolute power, kind of complete right. But how should this be dealt with when public interest is involved? In the *R v Barton* case of Britain in 1972, the Appeal Court said that when public interest was involved, the Court must weigh public interest against legal professional privilege to decide should legal professional privilege prevail, or should public interest override legal professional privilege, which rendered the latter nullified or abolished. However, later in 1995, there was another case in Britain, the *R v Derby Magistrates' Court* case, and the absolute nature of legal professional privilege was reiterated.

In another case in Britain in 1996, the *R v Derby Justices*, the Chief Justice of the case, Lord TAYLOR said, and I quote: "I am of the opinion that no exception should be allowed to the absolute nature of legal professional privilege, once established." These cases, in fact, show clearly that legal professional privilege is an absolute right. This is the right of the clients. There is but limited exception, that is, when the communication between a lawyer and his client involves criminal and fraudulent conduct, the client cannot make use of the legal professional privilege to shield him from the liability.

Apart from this rare exception, I do not see from other literature any perspective other than that. Certainly, Mr TO may say that since the Government is not seeking advice from external lawyers but from its own lawyers, for instance, seeking legal advice from the Department of Justice, the legal advice sought should be regarded as part of the information of the Government. For this reason, legal professional privilege may not apply.

Again, there are cases in this respect. In 1972, in a case in Britain, *Alfred Crompton Amusement Machines Ltd v Commissioners of Customs and Excise*, it was pointed out unequivocally that the Government was also entitled to legal professional privilege, which is not only applicable to "a man". I notice that yesterday, in response to Mrs Selina CHOW, Mr James TO said that the cases quoted by her were cases involving "a man" and thus only "a man" was entitled to legal professional privilege. This gives me the impression that governments or government departments are not entitled to this privilege. However, I found out from certain cases that government departments, governments and companies, but not only individuals, are all entitled to legal professional privilege.

In the case cited by me earlier, Lord DENNING said in the conclusion that even for clients, departments or companies, or in-house lawyers (lawyers employed by the company concerned or internal lawyers of government departments), they are also entitled to legal professional privilege. That is what he said, and I quote, "They must uphold the same standards of honour and of etiquette. They are subject to the same duties to their client (those departments) and to the court. They must respect the same confidences. They and their clients have the same privileges. The communications between the legal advisers and their employer (who is their client) are the subject of legal professional privilege." I have studied a lot of cases. I believe, I remain really not convinced that the IPCC should be different from all other

departments, groups and organizations, and be conferred the power to request the complete disclosure of even communications and circulated documents between lawyers and clients for the sole purpose of enabling the IPCC to conduct investigation. I am not convinced.

On this ground, I oppose Mr James TO's amendment.

MR JAMES TO (in Cantonese): The speech I made yesterday was misunderstood. May I clarify it now? If not, when should I make such a clarification?

CHAIRMAN (in Cantonese): You can speak a number of times. You may clarify it now if you want.

MR JAMES TO (in Cantonese): I may perhaps speak now and clarify the case.

CHAIRMAN (in Cantonese): Alright.

MR JAMES TO (in Cantonese): Chairman, I would like to make one point only. Ms Miriam LAU said earlier that I had quoted the cases on "a man" as opposed to the Government. But it was quoted in context. I mean that when the Government is entitled to this privilege, it as the Government should take the initiative to relinquish this privilege under the law and under such circumstances for the sake of public interest, accountability and sound reasons. The privilege so relinquished by the Government is not transferred to outsiders but the IPCC. The IPCC is a statutory organization within the establishment, which is responsible for monitoring the Government. In broad terms, this monitoring organization is exercising part of the function of the Government. In such case, I think it should be stipulated in the law that it should relinquish the privilege. I am not saying that the privilege to which the Government is entitled under the common law principle is nullified under the common law in its capacity as a government. I do not mean that.

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

MS MARGARET NG (in Cantonese): Chairman, I am a member of the legal sector and I attach tremendous importance to legal professional privilege. This is the right of the client. From the discussion of the Bills Committee on this aspect to the discussion today, the messages from the authorities, and the speeches of the Secretary and those who support the Government, the most enraging thing is the complete hypocrisy. Members have cited a lot of cases to state righteously the importance of legal professional privilege. But first, there is distortion. At one time, they say that lawyers should not be forced to disclose the information, but at another, they say the client is not required to make the disclosure. The argument is most confusing.

Let us recap some history and see how the legal professional privilege we have been striving for was treated. When the Independent Commission Against Corruption (ICAC) or the police searched solicitors' firms or chambers of barristers and took away documents between solicitors or barristers and their clients, as well as items related to the instructions of the clients, did the authorities attach great importance to the legal professional privilege? No, not at all. At the time when Elsie LEUNG was the Secretary for Justice, we went to the Secretary for Justice's Office and asked her why did the police do so. We came to an obvious conclusion. The police would do whatever they considered necessary without even seeking legal advice in advance, but the Department of Justice had to make remedy afterwards.

Let us not dwell on that period. Dr YEUNG Sum may remember that when we talked about the legal protection provided for newspaper publishers, we requested that if certain information was collected in the search, the source of information should be protected. However, the Government said that discussion was not necessary, for it had to search and look at the information first. Let us focus on incidents that are more recent. Take interception as an example. The ordinance is related to interception — I forget the name of the ordinance, but it is related to covert surveillance. We also requested that no wiretapping should be allowed to be carried out at solicitors' firms. Microphones should not be placed there, for those places were venues where solicitors would often discuss the cases with their clients. If wiretapping was allowed to be carried out in those places, the solicitor concerned would be doing

a disservice to his client, while clients would dare not tell everything to their solicitors, for the law allowed the Government to do wiretapping. However, what answer did we get? First, there was no other alternative. For security reasons, the Government definitely had to weigh the pros and cons to strike a reasonable balance, so it must do wiretapping. The Government said that it would rather destroy the information after wiretapping. But would the information be used as intelligence before it was destroyed? The answer was in the affirmative, the Government could do so. If so, what kind of protection is accorded? Actually, there was no protection. Nevertheless, would the police limit their power to conduct wiretapping for this reason? The answer was in the negative. Neither had it acted so righteously as it did today and quoted some orthodox cases to prove its stand.

What did the authorities quote at the time? The Government said in response that the person concerned was entitled to legal professional privilege and it was correct that professional privilege was absolute. However, on the questions of when legal professional privilege was applicable and what was quoted at the time, the Government held that only a very limited scope of information and documents were protected by the privilege and other items were beyond the scope. Therefore, this legal professional privilege of an absolute nature should not be applicable to other aspects. As to whether an issue was within the scope of legal professional privilege, it would be left to the Government to decide. In this respect, we can compare what was said at that time and what has been said today.

Chairman, if the authorities said at the Bills Committee that while considering this an important principle, it attached importance to another principle, and after weighing the two principles, it decided to do that, I would not have been so furious. But the wordings it used today seem to suggest that Mr James TO, who is a solicitor, should not destroy this absolute right. This is the most fundamental right for upholding judicial impartiality. Chairman, in this Chamber, we have had enough hypocritical and disgusting speeches.

Chairman, we do not request that the IPCC be allowed to override legal professional privilege to demand solicitors to submit their advice. The spirit of our request is that the Commissioner of Police should enable the IPCC to fulfil its statutory functions and should not seek shelter in legal professional privilege. It means that the Commissioner of Police should not use the privilege as a shield

to make him invisible. Why do I say so? There is no question of legal professional privilege in the legislation as a whole initially. But why did the former Chairman of the IPCC, Ronny WONG, SC, raise this issue? He did so for his experience had repeatedly shown that when the IPCC requested the Commissioner of Police to provide information, the latter would use the privilege as a shield, saying that certain piece of information was legal advice protected by legal professional privilege. Under such circumstances, the Commissioner would just apologize and said he could do nothing, nor could he provide the information, because of that important principle. Nonetheless, he would not say that he was using the privilege as a shield and the IPCC could do nothing to compel him to provide the information. He did not say so but put forth this grandiose principle.

That is why Chairman Ronny WONG said that the arrangement had kept him hamstrung. Why? I already explained that yesterday. Let me present to Members the relevant framework again. He said that the law had given him the responsibility to make the findings. When a member of the public said that his complaint had not been properly dealt with by the CAPO, he had to decide who was wrong, the CAPO or the member of the public. He said that he must obtain the relevant information, but in the course of obtaining the information, shields were put up to prevent him from obtaining the information. Hence, he said that if he had to deal with those shields perennially, he could in no way fulfil the public service assigned to him under the law, and he thus made that point.

Chairman, has the issue on legal professional privilege been brought up within government departments? Surely. We are facing this problem every day. I have been the Chairman of the Panel on Administration of Justice and Legal Service for years and have come across cases on whether the Department of Justice should press charges against certain persons. We all know that in the past, whenever senior officials, illustrious persons in society or former Judges were involved in certain cases, the Department of Justice would seek external legal opinion.

More often than not, the Department of Justice will explain the case to Members to demonstrate that it will not shield individuals in special positions. It will also present and explain their legal opinion, which should be protected by legal professional privilege, to members of the Panel and tell us that is all they can say. Sometimes if we do not quite understand the case, we may ask them to

tell us more, but they will say they cannot disclose further information and we will usually accept it. However, it does not mean that they can use the privilege as a shield and give no explanation.

Therefore, had the Commissioner of Police taken the initiative to state that the information should be provided, I would not have claimed that he used the legal professional privilege as a shield. This incident would have been completely avoidable, had not the police hold their ground on not providing the information and using the privilege as a shield. Mr James TO and former Chairman of the IPCC, Ronny WONG, have to put forth such an amendment for the same reason.

Chairman, Members may look at the English text of the amendment, which is quite clear. The provision does not request the submission of the full version of the advice of the barristers or solicitors concerned for the IPCC to pick out points unfavourable to the Commissioner. The provision states that the definition adopted is narrow and clear, and it is stated that certain items are required. What does that provision state? Chairman, let me read out the English text of the amendment to subclause (3): "Notwithstanding any claim of legal professional privilege, the Commissioner shall provide the Council for the purposes of performing the Council's functions" I stop here. The provision states clearly that it is "for the purposes of performing the Council's functions". In other words, if the information requested is beyond this scope, the IPCC has no right to obtain such information. Moreover, the provision only makes reference to the condition "under section 7(1)(a), (b), (c) or (d)", which means it is not applicable across the board but only under specified circumstances. What should be provided? "..... with all documents between the Commissioner and his professional adviser in so far as the same are relevant to the handling or investigation of any reportable complaint." Therefore, the IPCC can only request the provision of information related to the investigation of reportable complaints but not other unrelated information.

In the Bills Committee, I asked if only facts were required. The Commissioner said that it was not only restricted to facts, for sometimes advice was also requested. What kind of advice is he referring to? For instance, when a decision on whether prosecution should be initiated in a certain case, he may be given the advice to press charges, and that advice *per se* is indeed a fact. Therefore, the scope is very narrow and clear. In other words, we only mean that the Commissioner of Police should not use legal professional privilege as a

shield. We are not forcing the solicitors concerned to disclose the professional legal advice they have given.

Hence, Chairman, the amendment is necessary. It is because of the difficulties behind and the need to improve the Bill that this amendment is proposed. Besides, it is not the purpose of the amendment to enable the IPCC to override barristers or solicitors providing advice by requiring them to disclose the information of their clients. There is no question of such an intention. Regrettably, we heard comments of this kind today.

Chairman, for people engaging in the legal service sector, impartiality is of the utmost importance. Hence, though I know for sure that this amendment will be negated, I think I must say a few words to give the matter its fair deal. This amendment is not proposed rashly, nor did the former Chairman of the IPCC bring forth such a proposal rashly. He was really at his wits' end. He had no choice but revealed the situation. The situation illustrates the attitude adopted by the police all along. The more we heard, the more we consider the IPCC has done a disservice to the public.

Thank you.

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

MR ALAN LEONG (in Cantonese): We are now facing a stark political reality: This amendment will not possibly be passed. However, I think it should be put down clearly in the record of this Council what is going on. The speech given by Ms Margaret NG just now is crystal clear. I will not repeat her points other than subscribing to all the comments she made wholesale.

However, Chairman, I would like to state that there are a lot of rights under the law. For instance, a suspect under criminal investigation has the right of silence. If he exercises the right of silence, the jury and the Judge in the Court, or the public, will surely judge the case according to his attitude. Ms Margaret NG has made it clear and hit the nail on the head. The former Chairman of the IPCC put forth such a proposal because the problems he encountered in practical operation had made him feel frustrated and helpless.

The former Chairman of the IPCC is a veteran Senior Counsel who is more experienced than me. He definitely will treat legal professional privilege with great caution. Chairman WONG needs no legal lecture or advice.

I think Ms Margaret NG has already highlighted the focus of the discussion on this issue. We are now requesting the client who has received legal advice — I may say it is surely the Commissioner of Police in this case — to relinquish his legal professional privilege. To put it simply, Chairman, we hope that the Commissioner will tell the IPCC everything. To give the public confidence in this monitoring system, the public must be confident that the IPCC has the power to obtain information they consider important and relevant.

Actually, there should be no secret between the IPCC and CAPO. It is only on this foundation that the people of Hong Kong will have confidence in system. Hence, this is the focus of the issue. Indeed, had the authorities understood this logic and paid more attention to inspiring public confidence, it would not have given a simple "no" reply to the proposal of the former IPCC Chairman or Mr James TO. I believe if the authorities have taken pragmatic measures to address their worries, they will be willing to consider it. For instance, for legal advice sought by the Commissioner of Police from the Department of Justice, particularly strategic information, they may state clearly that certain information must not be disclosed under all circumstances if they want to make the provision clearer. But regrettably, we are given a simple "no" reply today.

Under this circumstance, I think we must at least put the discussion on record, pointing out that the discussion should return to the basics. In other words, the Bill as a whole, particularly clause 27 Chairman, you may remember that when I spoke in the Second Reading debate on clause 27, I said that basically, the Commissioner of Police, with the consent of the Secretary for Security, might even refuse providing information on investigation of minor crimes like "pick-pocketing" or smoking in public area. Now, on the issue of legal professional privilege, he somehow tries to evade the issue. This practice can hardly inspire public confidence.

I only want to put this point on record. Thank you, Chairman.

MRS SELINA CHOW (in Cantonese): In fact, I only want to say I am glad that Mr James TO has proposed this amendment, though we do not support it. As for the reasons of not supporting it, Members have said much about it. In order not to waste Members' time, I will not repeat it.

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

However, I am glad to have this opportunity to put my views on record, as Mr Alan LEONG said, to let the public know that lawyers in this Council agree that this cardinal principle can be altered at anytime, and that they agree to infringing the cornerstone of law by way of legislation. Under this circumstance, I believe Members should look at the issue thoroughly. If it is said that this principle, no matter who the client concerned is or the solicitor concerned is, can be violated, I believe the public should open their eyes wide to see who considers that principle can be violated.

MR JAMES TO (in Cantonese): Deputy Chairman, there is no need for me to refute Mrs Selina CHOW's remarks, for Ms Margaret NG has made this point crystal clear earlier. She has stated in advance her viewpoint. I entirely agree with the arguments advanced by Ms Margaret NG earlier and I would like to adopt such arguments to refute Mrs Selina CHOW's remarks.

I simply want to state the position of the IPCC here in this Chamber. I do not know whether the IPCC will uphold this position under the leadership of the new Chairman, but this is at least once the position of the IPCC in history. I hope that by reading out the position of the IPCC presented to the Bills Committee, it will set the record straight.

Deputy Chairman, the IPCC considers that "Given the relationship between the IPCC and the Commissioner on issues related to the investigation of complaints against Police, the IPCC does not accept that the Commissioner can invoke his legal professional privilege which allows him not to provide the relevant information to the IPCC. The IPCC, as a monitoring organization responsible for monitoring the investigation work of CAPO, strongly believes that the IPCC should be allowed complete and unrestricted access to information related to complaints investigation. For only under this circumstance will the

IPCC be satisfied that the CAPO has conducted investigation and consider the allegations made in the complaints thoroughly and impartially. To maintain the impartiality of the police complaint system, it is not appropriate for the Commissioner to have the discretion of abandoning his legal professional privilege and only allow the IPCC to access to the relevant information when he considers appropriate. This arrangement, which allows him to selectively disclose to the IPCC legal advice in favour of the police, is considered in favour of the Commissioner and will undermine the credibility of the police complaint system. The IPCC thus insists that it should have complete and unrestricted access to information obtained by the CAPO during investigations in respect of all complaint investigation, and the authorities should make express provision in the Bill that the IPCC has complete access to the information."

The above proposal is the result of the loads of anger and frustrations experienced by the IPCC during the entire process. If today, this Council insists that the Commissioner should be granted the discretion in the legislation, so that he can provide the information according to his like or dislike, they come down the same line. So in the final analysis, the IPCC, as I said earlier, is controlled by the Commissioner. At present, the Commissioner of Police has the greatest power, for he overrides the IPCC.

MS MARGARET NG (in Cantonese): At first, when I heard the remarks made by Mrs Selina CHOW, I really thought highly of her, for her technique in making slanderous remarks is second to none. I too feel glad that all speeches we made today will be put on record.

We should not only refer to the speeches made today, but we should also check the debates in the past. If Members could look up all the speeches related to legal professional privilege, they would get a clear picture. Whenever we requested protection of the legal professional privilege of the public (the average citizen) or private organizations, it would be greeted by remarks stating why their privilege should not be protected or the original protection to which they were entitled was limited. However, when it comes to the protection of the right of police officers and government officials, they will make blatant attempts to support it, saying whatever they can even if it is wrong. All these have been put on record. I believe the public will make their judgment. I hope that next time I guarantee that these incidents will go on and on in this Council.

When we repeatedly request the protection of legal professional privilege, the same group of Members will query why the right of the other side is not protected.

Thank you, Deputy Chairman.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, Mr James TO's proposed new subclause (3) is a provision suggested by the IPCC to the Bills Committee earlier, which empowers the IPCC to request the provision of information protected by legal professional privilege by the police.

In my speech delivered during the debate on the resumption of the Second Reading of the Bill, I stated clearly the stance of the Government on this issue and I have heard the views expressed by Members earlier. Indeed, under the Basic Law, legal professional privilege is an inviolable principle, but there are certain exceptions under this principle and within a limited scope. I will look at the issue from this perspective and see whether such exceptions should be considered in the present legislative process.

I have given this some thought. Are the Hong Kong Police Force now abusing their power to act in a tyrannous manner? Are they bullying the public and doing wicked deeds by using the legal professional privilege as a shield as Mr James TO claimed? I have given this a second thought: Have the police made no progress in the past few years? Do members of the public hate them so much? No. If the Commissioner of Police invokes legal professional privilege to do wicked deeds, I too agree that he should be subject to regulation as suggested by Members for the wicked deeds done and the abuse of power made by taking advantage of the legal professional privilege. However, this is not the case.

If it is because there are several cases under adjudication It is now proved that the IPCC is doing its job, otherwise, there will not be conflicts between the IPCC and the Hong Kong Police Force. In the several cases concerned, the Commissioner of Police considered that he should not provide the legal advice he obtained to the IPCC. Should we destroy this sacrosanct principle by legislative means just because of those few cases? I think we must weigh the issue against this point. For once the law is passed, it will set a bad precedent. In future, under what circumstance should we legislate to strip someone of his legal professional privilege? As I weigh the case in my capacity as a member of the general public, I think that this sacrosanct principle should not be destroyed.

Therefore, Deputy Chairman, I call on Members not to support this amendment by Mr TO.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Deputy Chairman, had we not heard more of the logic of the arguments advanced by the Secretary in his earlier speech, which seemed to be impromptu, we may not be able to understand so clearly his line of thinking and the way he weighs the importance of different factors. Luckily, we heard him just now. Having heard that, we know there are thousands of complaints every year. Over the past few years, there were a number of police assault cases involving civil claims, which were the few cases involving the paying of the so-called "hush-money". The IPCC has made requests for the information related to these few cases during the past few years, but it was exactly because of the legal professional privilege that the information was not provided. In other words, those few cases are very important. We are not saying that there are several thousands of cases involving police assaults. The Secretary should never ever push the issue to the extreme and accuse me of saying all members of the Police Force abuse their power. I do not mean that.

I mean to say that the Government is not interested in identifying those police officers who have abused their power, and that it is trying to handle those few cases of power abuse, such as the police assault cases, with the approach of paying "hush-money". The authorities did not disclose all the information of

those cases to the public, but instead tried on the legal front to We are now talking about a statutory organization responsible for monitoring the abuse of power by the police, and the focus over the past few years has been the several compensation claims resulted from assault cases. These cases illustrate that the issue of legal professional privilege in this respect has to be dealt with.

I am not saying that there are dozens of assault cases. But, indeed, the Commissioner has in 99% of the cases provided Let me illustrate this with an example. If there are 50 cases, and the Commissioner has provided the information protected by legal professional privilege in respect of 49 of them, and withheld the information of one of them. If legislation is enacted only for that single case, the argument against making disproportionate response as claimed by the Secretary may be valid. But please bear in mind the situation now in question: There are four to five cases of this kind, where the information requested is not provided in any one of these cases. It is evident that those police officers who abused their power are taking advantage of the "hush-money" compensation system and using legal professional privilege as a shield. The several police officers, who defied every law and regulation and abused power, managed to take advantage of the "hush-money" system and use legal professional privilege as the shield, so that the Commissioner cannot disclose all the facts. I am not referring to disclosure to the public but to the monitoring organization. In broad terms, the organization is fulfilling the monitoring duties for the public. Besides, clause 37 of the Bill has also provided for confidentiality. So, what is more important under this system? Should the fundamental principle be abandoned solely because of these few cases? We have cited these few cases because of their importance and severity, aiming to illustrate how police officers may use legal professional privilege as shields.

Deputy Chairman, to set the record straight, I have to respond to the argument put forth by Ms Miriam LAU earlier on whether companies monitored by the Securities and Futures Commission (SFC) should be subject to the comparison drawn on the relationship between the Estate Agents Authority (EAA) and estate agents, that the monitoring authority may require them to provide information covered by legal professional privilege. Deputy Chairman, I have nothing but contempt for that argument. I have never put forth such an argument. This argument, which is conjured up, shows the insincerity and senselessness of the Member who advanced this. This senseless argument is then used to attack my proposal. It is irrational and ridiculous to use such a

senseless argument to support their stance. Let me put it simply. If a comparison is drawn between the subjects monitored by the SFC and the subjects now under discussion, the former is not accountable to the Government and the public. But the subject now under discussion is members of the Police Force, who should be accountable to the public. Therefore, securities companies and estate agents, who are subjects of the supervisory organizations, should not be put on a par with police officers. Since police officers have to face the public in the course of discharging their duties, the police should disclose certain information to the monitoring organization. These are two separate issues. Securities companies and estate agents are not providing public services. As for those who have to deliver public service, they have to shoulder much greater responsibility than others. I believe this line of reasoning is simple.

Deputy Chairman, some people said earlier that in the case of the CAPO — it should be the Government, sorry, it should be The Ombudsman — The Ombudsman has to deal with lots of departments, but there does not seem to be any provision in The Ombudsman Ordinance which requires other departments to provide information protected by legal professional privilege. I will respond to this with two points as follows:

First, in comparison with the Hong Kong Police Force, it is highly unlikely that the investigation of maladministration by various departments will involve access to information protected by legal professional privilege.

Second, to put it in another perspective, if you ask me, I think The Ombudsman If The Ombudsman must have access to more information protected by legal professional privilege in order to effect monitoring, and that The Ombudsman considers it necessary to have the power to access such information from the experience gained in the course of monitoring, this Council should indeed consider amending The Ombudsman Ordinance. Surely, we will not hastily propose such amendments. I do not know why, but so far, The Ombudsman does not seem to consider it necessary. His experience may be different from that of the Hong Kong Police Force. Actually, in the past few years, regarding the several cases involving the Hong Kong Police Force, which has caused much concern to the public because of the "hush-money" involved, no information has been provided by the Commissioner. I do not know, when there is no mandatory requirement on the provision of information, whether all departments will voluntarily relinquish their discretion and provide all the

information to The Ombudsman. The Ombudsman may not have encountered any difficulty in this respect. To look at the issue from another perspective, had the Hong Kong Police Force never refused providing such information protected by legal professional privilege, will the legislation for such a requirement be necessary? This may be a point of argument of the Secretary. However, the reality is that no information related to those few cases has been provided. The bad elements involved in those cases may remain behind the shields. With the Commissioner paying the "hush-money" to settle the cases, no one will know the truth.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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 SIN Chung-kai, Dr Joseph LEE and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

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

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr 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, 16 were present, four were in favour of the amendment and 12 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, nine were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 20 as amended.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment to clause 20 has been passed, I now put the question to you and that is: That the clause 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): Clause 23.

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, I move the amendments to the heading and subclauses (1) and (2) of clause 23 as set out in the paper circularized to Members.

This amendment replaces the Chinese version of "Council" ("警監會") by "監警會" and replaces the Chinese term of "reportable complaint" ("須具報投訴") by "須匯報投訴". I implore Members to endorse the amendment.

Proposed amendment

Clause 23 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Page 117 of the Script. Chairman, I move that clause 23(1) be further amended.

Chairman, clause 23 empowers IPCC members to attend an interview conducted by the Commissioner of Police at any time and without prior appointment (a surprise interview), that is, an interview for the collection of evidence by the CAPO; paragraph (b) is about observation of the process of the collection of evidence by the CAPO. In other words, IPCC members can conduct in situ monitoring of the whole process instead of just making reference to files.

However, as this part only specifies attending interviews and observing the collection of evidence, it seems that it has not covered all the procedures and parts of the investigation. Therefore, paragraph (c) is added in my amendment to avoid incompleteness lest there should be loopholes when only two provisions are laid down. So, the wording "attend to any part of an investigation conducted by the Commissioner in respect of a complaint" has been added. In other words, besides interviews and the collection of evidence, IPCC members can take part in many other procedures in the course of the Commissioner's investigation. We can see from clause 7(1) that the IPCC shall monitor the manner in which reportable complaints are handled by the Commissioner of Police. As a lot of possibilities may arise in the course of handling these complaints, I think that only laying down two provisions would be too restrictive.

Chairman, during our deliberations on the Bill, some officials asked whether even the input of the statements taken into computers would be monitored as that was also part of an investigation. There are certainly other possibilities, for example, should IPCC members be present to observe the process when a comparison was made between the statements taken to find out whether there were inconsistencies or which statement was more reliable. Is that what I meant? I can only say that, regardless of whether the whole process is impartial and appropriate, conceptually and nominally speaking, IPCC members can attend the whole process; that is what comprehensive monitoring is about.

Of course, regarding the examples I just cited, if an IPCC member thinks that it is important, he may really need to attend. Nevertheless, I believe that in most cases, if statements taken are just inputted into computers or two statements are compared, observations are not considered essential, so they will naturally not trouble themselves. Frankly speaking, they are also appointed by the Government and they should have a fair mind, that is, they should have stronger common sense and a stronger belief in fairness, and there are no reasons for them to do anything meaningless.

If the Government basically has no trust in IPCC members, I agree very much with Mr Alan LEONG's analysis, that is, the Government is taking precautions and imposing restrictions in all respects, keeping everything out of bounds; the Government evidently fears a lot about being excessively monitored. I can only say that the public can hardly trust such procedures. Thus, I have proposed this amendment to make up for the fact that paragraphs (a) and (b) of clause 23(1) fail to cover all investigation procedures, or enable the IPCC to conduct comprehensive monitoring and observation.

However, I must point out that, since the original clause 23 has to be passed by voting, I will also discuss the wording "without prior appointment" in the clause. Chairman, many Honourable colleagues mentioned yesterday that, regardless of whether we were talking about observers or IPCC members who had the power of observation, figures showed that they had apparently not conducted any surprise observations in the past two years.

At a Bills Committee meeting, we heard the IPCC Secretary give a possible reason, that is, before some observers or IPCC members went to some

police stations, for example, to observe how statements were taken, they might ask the police stations to reserve parking spaces for them to facilitate their attendance. Why did these observers reserve parking spaces? Of course, they did so in order to perform official duties. They would not reserve parking spaces for shopping in Mong Kok. They were going to monitor the interviews, but those were no longer surprise observations. That is why there were not any surprise observations of interviews in the past two years.

I am not sure if the IPCC Secretary is aware of that. Anyway, as the observers are appointed by the Secretary for Security under the present system, when the Bureau Director further appoints observers, he should consider their past performance. As an observer's work is to conduct observations, if he has never attended to observe an interview, or none of his observations are surprise observations, is he a competent observer? If an observer sacrifices the "surprise" nature of an observation for the sake of convenient parking, should he continue to be appointed by the Secretary for Security?

Chairman, I am a bit disappointed with the person being appointed, why? There is an accepted common practice regarding the observers appointed these few years, that is, they are mainly classified into two types: the first type is former IPCC members, and another type is the Chairmen and Vice Chairmen of District Fight Crime Committees. Those elected Chairmen and Vice Chairmen of District Fight Crime Committees or District Councils should have a basic understanding of society and the work concerned. Nevertheless, why is it that nobody conducted surprise inspections as observers in the past two years?

In this connection, an Honourable colleague has said that the Secretary for Security has not kept his "children" under close watch while I think that he has neglected his duty. If the Secretary has not designed a system to find out more about the work of observers, I think he has neglected his duty.

Let us take a look at the number of observations conducted, and let us leave aside surprise observations for the moment. Taking a look at the total number of observations as read out by an Honourable colleague yesterday, it actually only accounted for around one tenth of the interviews and the collection of evidence notified in advance. My idea is that, at present, 200 to 300 observations of interviews or collection of evidence are conducted; there are 70

to 80 observers, plus the 18 IPCC members referred to in clause 23 playing the role, therefore, each observer conducts around two to three observations each year on average, that is, two to three times in 12 months. Certainly, some may have never attended while some others may have attended eight times because that is just an average. As regards those who may have never attended, frankly, if they are appointed to the advisory committee but they do not attend meetings, would they still be appointed? Assuming that a meeting is held once every two months, six meetings will be held each year, and he has not attended all of the six meetings.

I do not want to talk about those who have attended but are so quiet that they have not even spoken and have always expressed agreement. Assuming that each observer conducts three and even four observations each year, and the advisory committee holds a meeting every two months, there will be six meetings a year; is an observer up to standard if he has attended three of the six meetings? I am not really sure. Furthermore, I am just talking about an average number; the average is only about a half, is the Secretary — of course, the amendment I am going to propose later is that observers will no longer be appointed by the Secretary, but it is based on other policy reasons. Nevertheless, as observers are appointed by the Secretary under the present system, should he design a system especially to remind members of the importance of surprise observations?

Also, I propose establishing a system for these observers to become full-time observers, or appointing people with more time to spare, for example, retirees who surely have more time. As Mr LAU Kong-wah has said, if those appointees are very busy, and who may be members of dozens of advisory committees, how can they conduct observations?

In fact, there are full-time observations. Let us imagine this. When a person conducts an observation, he must be a keen observer and highly intelligent so that he would notice extremely minor instances of unfair treatment. Take, for example, statement taking; an observer can only see a policeman taking a witness's statement but he has not got his files.

Why am I adding paragraph (c) in my amendment? Let us think about this. When a policeman is observed taking statement and asking: "Is that really what you saw?" That is a question he asked, but, why has he asked the

question? Superficially, there is no arcane truth; but if the statement made by the witness earlier on or the statements of other witnesses are referred to and compared with, they might tally to a large extent. He has asked this question probably because he wants the witness to show a tendency. It is doubtful if the evidence collected this way is impartial enough.

So, under the existing legislation, if an observer does not have other information, and he can only sit there observing how a policeman (from the CAPO) takes evidence from a witness, the conclusion will most probably be like this: on the surface, the policeman is cross-examining a witness, unless the policeman treats the witness very fiercely or regards him as an enemy, and queries whether the witness's statement is true, and even simply distorts what the witness has said. If the policeman makes such obvious moves, he is certainly not a CAPO officer with rich experience.

As a matter of fact, we should design a better system. If a surprise observation only means attending an interview without prior appointment, or a sudden attendance at the taking of statements, it is not good enough. What would be the best arrangement then? For example, when a CAPO officer is taking statements, under certain arrangements — the Independent Commission Against Corruption (ICAC) frequently does so, that is, a recorder is given to an undercover police officer or an ordinary witness on the street so that he will record the dialogues between money laundering parties or offenders. The ICAC does so very often and it collects evidence secretly. Actually, secret observations will be more terrific and vivid. Therefore, I think that if the IPCC Secretary can, under certain circumstances, put a recorder or video recorder in the pocket of the witness being interviewed — that has actually been done when producing such programmes as the News Magazine and Hong Kong Connection — to find out if the CAPO officer has taken statements impartially; we would then be better able to get the real picture. But these practices are not found under the current system, and I think we should work harder in respect of design with a view to showing the full picture.

Proposed amendment

Clause 23 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together in a joint debate. Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (represented by Secretary for Constitutional and Mainland Affairs) (in Cantonese): Madam Chairman, clause 23(1) empowers IPCC members to attend a scheduled or surprise interview conducted by the police or observe the collection of evidence undertaken by the police in respect of a reportable complaint.

When the police investigate a reportable complaint, they will take various procedures in light of the specific situation of individual complaints, for example, interviewing the complainant, the witnesses of the complainant, the complainees, the witnesses of the complainees, other police witnesses, independent witnesses and expert witnesses. The police will also conduct field inspections to find witnesses and evidence, to reconstruct the incidents giving rise to the complaints, to verify the statements of the parties to the complaints, and to inspect the actual environment of the sites. If the identity of the complainees is obviously controversial, or there is *prima facie* evidence to show that criminal proceedings are quite likely to be initiated against some members of the Police Force, the police will arrange for identification parades for the complainants to confirm the complainees.

Under the present arrangement, IPCC members and observers can conduct scheduled or surprise observations of the investigation procedures. The existing subclause (1)(a) already empowers IPCC members to attend the interviews between the police and the persons concerned in the course of investigation of the complaints; and subclause (1)(b) has comprehensively covered the field inspections and identification parades conducted in the course of investigation. We think that the existing provisions have given the IPCC sufficient powers to monitor and observe the procedures taken by the police to investigate reportable complaints so as to ensure that the complaints are handled fairly and impartially.

Mr James TO's amendment allows IPCC members to attend at any time and observe the investigation process of the police. The contents cover administrative or internal procedures including the police officers' writing of

investigation reports and the documents they referred to. We think that the arrangement is not helpful to the IPCC's investigation of complaints and is also impractical. Hence, we do not agree with Mr James TO's amendment, and we implore Members to oppose the amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, I have already mentioned the point raised by the Secretary just now, so I will not repeat it again. In fact, I have heard of such comments made by him at the meetings of the Bills Committee long ago.

However, I hope Honourable colleagues can think about this. Is it very frivolous and senseless if my amendment really covers that looking up of papers by colleagues of the CAPO can also be subject to observation? My amendment has included some situations which are extremely frivolous, whilst clause 23(1)(a) and (b) only provide for attending an interview and observing the collection of evidence, without covering other investigation steps. However, having compared the two, we still prefer leaving it to members of the IPCC to decide whether they should observe and attend other investigation procedures, even some frivolous things may be involved. Which choice is better even though both of them are wrong? Shall we prefer being wrong in allowing them to observe the looking up of papers, or giving them a wider scope of power so that they can have a more comprehensive power to conduct observations and monitoring? I hope Members can make a right choice between the two. By virtue of my past experience, the need for the CAPO to conduct an investigation is much greater than that to attend an interview and observe the collection of evidence.

Let me cite an example. I recall a case occurred in the Tsuen Wan Police Station 10-odd years ago in which the complainant was beaten in the station. As a lot of police officers were involved in the battery, the complainant could hardly recognize their faces after being heavily beaten, but he still had some idea about those who had punched him severely at the very beginning. When the complainant was asked by the CAPO who had beaten him — as we all know, there were many people in the CID report room. I of course do not know whether the

police dared to say after investigation that he might be beaten by someone else who had been arrested, that is to say, he was beaten by another suspect rather than being beaten by police officer. If this is really the case, it is too ridiculous. Of course, this is not the case — the complainant had to give some descriptions, including the hair style and clothing of those who had beaten him. In fact, regarding the facial identification conducted by the police or the files concerned, the IPCC members should be able to obtain such information.

The most extreme situation is that the CAPO had not provided the complainant with photos of all the police officers who were on duty at Tsuen Wan Police Station during those few days for identification. As I thought it had indeed no sincerity in conducting the investigation, I, at last, had no alternative but to guard the front and back doors of the Tsuen Wan Police Station with the colleagues of my office for a whole day. Accompanied by the complainant, we took a front photo of each police officer who came off duty or reported for their shifts, and asked the complainant immediately if the police officer in front of him was the one who had beaten him. For fear of the Commander of the Tsuen Wan Police Station thinking that I wanted to ambush his subordinates, in order to play safe, I gave him an explanation in writing in advance and asked him not to inform his subordinates, otherwise, they might pretend to be sick and be absent from duty. Those who were involved in the battery would of course be absent or even take a long leave, as they knew that I was determined to find out who had beaten the complainant. There was divine justice after all. At last, we identified two police officers.

I think the CAPO really has a lot of insufficiencies. Is it really the case, as mentioned by the Secretary just now, that internal examination of papers should not be observed and monitored? I find it questionable. We believe that investigation procedures do change constantly and involve many steps which we can hardly imagine. Therefore, I think it is not enough to have clause 23(1)(a) and (b) only. Even some frivolous things may be covered, I hope Honourable colleagues can still trust the IPCC and confer on it a wider scope of power for making sensible judgment. It is really insufficient if we restrict its power to what is stipulated in clause 23(1)(a) and (b) only.

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

MR LEUNG KWOK-HUNG (in Cantonese): I speak to express my trust in Mr James TO. I seldom attend meetings of Bills Committees as I know issues under discussion may not have any chance of achievement. I wish to express my gratitude to Mr TO for spending so much time to propose these amendments.

I met some off-duty police officers while eating something after the meeting yesterday. Although they did not pay much attention to these debates, some of them asked me not to assume that they would definitely have bad feelings for being monitored, as those talking to me were relatively

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, I have to tell you, we are now dealing with the amendment to

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

CHAIRMAN (in Cantonese): Do you know what it is about?

MR LEUNG KWOK-HUNG (in Cantonese): Of course, I know.

CHAIRMAN (in Cantonese): Then, please speak on the amendment.

MR LEUNG KWOK-HUNG (in Cantonese): Mr James TO proposes to expand the authority of the IPCC. Although I am late, I also noted the Secretary had criticized that this amendment is very frivolous, as the IPCC will be empowered to observe the looking up of documents by the police with such an excessive authority. It is very frivolous, isn't it? This is very frivolous indeed.

Mr James TO's amendment aims at expanding the IPCC's authority to cover these frivolous things. This is very simple logic. Wherever there are requirements, there will be restrictions. All law drafters know this logic. Acts which have not been stipulated may not be forbidden, but those which have

been stipulated as forbidden are forbidden. What Mr James TO is now doing is to strive for all the powers. This is the fact.

During the process of monitoring, the IPCC has enormous powers, but we should not forget about the origin. Before being instructed by the Chairman, I cited that story as some police officers had told me last night that they also hated to be scolded very much, and did not mind being investigated in case there was any impropriety. In fact, this Council once debated the legislation on Article 23 of the Basic Law — surprisingly, we are discussing clause 23 again — at that time, many people said, "Why were you so frightened if you had not betrayed your country? There would not be any problem even if a more stringent law was enacted. That sword would just keep on moving above your head but would never come down on you." There are two concepts here. Article 23 of the Basic Law carries a very great power, and our freedom is subject to great restriction. The existing provision aims at expanding the authority, that is expanding the IPCC's power to monitor and conduct observations, inspections and spot checks. In fact, it can enable the public to monitor an organization which has enormous powers but is not being monitored. Let us count them one by one, first of all, the Chief Executive appoints the Commissioner of Police, the Commissioner of Police

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, do you know the clause to which Mr James TO is moving an amendment now? Can you tell me?

MR LEUNG KWOK-HUNG (in Cantonese): Is it clause 23(1)(a)?

CHAIRMAN (in Cantonese): So, what is clause 23(1)(a) about?

MR LEUNG KWOK-HUNG (in Cantonese): It is about the IPCC's power to conduct spot checks and observations at any time.

CHAIRMAN (in Cantonese): Very good. Mr LEUNG Kwok-hung, you may speak on this amendment. *(Laughter)*

MR LEUNG KWOK-HUNG (in Cantonese): I see. The IPCC can attend an interview at any time. In fact, this is a very good method. We, Chinese people, also have nine-provincial procurators as well as the "Imperial Sword of Sanction" which can kill people at any time. Of course, this system is not so good as it may give rise to miscarriages of justice. Once nine-provincial procurators meted out the capital punishment, those without an "imperial warrant of amnesty" can never escape.

In fact, it seems that we are also including nine-provincial procurators and an "Imperial Sword of Sanction" in the investigation power for looking up of papers and having tea, which may probably occur. However, how come the IPCC, selected eventually after tremendous efforts — many Honourable Members in this Chamber have spoken on their behalf, and Mr Daniel LAM, the Vice Chairman, has also admitted that he has no time to read all the papers — will give up the power of monitoring such trivial acts as looking up of papers and serving of beverages. We should have confidence in the IPCC.

The amendment in front of us today seeks to give more power to the IPCC, so that it can monitor the police at any time during the course of an investigation conducted by the CAPO, just like God who is omnipresent and omnipotent. Is there any disadvantage in doing so?

In case privacy is involved, of course, the IPCC will not be so frivolous. But if privacy is really not involved, rather some very confidential information of the police is involved, the Commissioner of Police may also have the legal authority as an excuse, requesting that no observers should be appointed on that day as, for example, the Special Duties Unit has to arrest a felon. However, the Commissioner of Police has not done so and lodged a complaint afterwards. In fact, nothing has to be kept in secret. Regarding this question, I do not know what the opinions of colleagues are. But logically, the Secretary is right as it is impossible for power being not subject to any restriction.

However, overall speaking, as there is already the civic power — I have also mentioned the state apparatus. This state apparatus is accustomed to taking top-down orders, but those organizations which make such orders tend to engage in power abuse, favoritism and support *a la* a secret society. As such, is it wrong for us to seek a comprehensive monitoring power? I do not know what the voting result will be later, but I hope Members can show by their votes that

the Legislative Council supports the body monitoring the police to enjoy a comprehensive power to achieve its objectives.

Mr James TO is back now. We all know that the IPCC has no investigation power indeed. It can only observe how people conduct investigations. If a comprehensive investigation power has already been conferred on it, then it can be regarded as redundant. That is to say, it can call TANG King-shing to come out immediately and ask him where he went yesterday. However, it cannot do so. All it can do is to observe how people conduct the investigations. Therefore, its power is in fact very humble. It can only ask someone what they are doing, and request them to let it figure out whether they are devils, human-beings or ghosts.

Thanks a lot to Mr James TO as his voice is already hoarse. Secretary Stephen LAM has all along been very good at arguing and debating. I hope the Secretary can tell us the impact of expanding these powers on police operation. The IPCC can only investigate afterwards, rather than during the investigation or arrest of criminals by the police. Therefore, if the Secretary is willing to enlighten me, I will of course listen with respectful attention, and I also hope that he can convince me to vote for him.

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

(No Member indicated a wish to speak)

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

(No public officer indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division 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 SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, 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 James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, 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 CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, three were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 19 were present, nine were in favour of the amendment and nine 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.

CLERK (in Cantonese): Clause 23 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendments to clause 23, I now put the question to you and that is: That the clause 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): Clause 24.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to clause 24, as set out in the paper circularized to Members.

The amendment seeks to substitute "警監會" with "監警會", and to replace "須具報投訴" by "須匯報投訴". I implore Members to endorse it.

Proposed amendment

Clause 24 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Chairman, we have now come to page 120 of the Script. I move that clause 24 be further amended.

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

Deputy Chairman, this is the simplest amendment. Originally, it is stipulated in the clause that the Commissioner of Police should provide an explanation in relation to the disciplinary action concerned, in which the word "explanation" is used. But as I think the meaning of "explanation" is relatively narrow, I amend it as "explanation and justification", hoping that the meaning will be complete.

What I am most afraid of is the fact that the Police Force will interpret this provision in a very narrow sense. Therefore, I hope the meaning of this provision will be complete, so as to prevent the IPCC from being restricted by these wordings which are bound to be controversial. As such, the Commissioner of Police cannot refuse to provide information as a result.

Proposed amendment

Clause 24 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment jointly. Does any other Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, we think that clause 24 as currently drafted has fully reflected our policy intent. Therefore, we need not and should not include the reference to "justification" to that clause. I implore Members to object to Mr TO's amendment.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): I feel a little bit better after hearing this answer as I thought he would just be arguing that it has been covered already. However, if the Secretary said that the wordings have reflected the policy intent, I cannot help asking a question: Is it the Government's policy to not provide any explanation and justification in relation to the disciplinary action taken? If so, what are the reasons for that? It seems that this point was not mentioned before. I think the meaning of the provision will be complete by merely amending it to "explanation and justification". However, if the Government says that there is a hidden reason for providing an explanation only but not a justification, this reason should be very important, and we then realize that this is a very important amendment. Originally, I thought this amendment is not so important, but it is very important indeed. I hope the Secretary can explain in his response why he considers a justification in relation to the disciplinary action taken should not be provided as a matter of policy.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, as I mentioned in moving the amendment to clause 18 earlier on, disciplinary matters in respect of members of the Police Force are within the purview of the Commissioner of Police. The police will act in accordance with the relevant legislation and orders. The IPCC will not interfere with any decision made by the police in respect of disciplinary matters. The IPCC has reached a consensus with the police in this regard. In considering the disciplinary action to be taken against a member of the Police Force, the police will examine the case concerned thoroughly in order to decide an appropriate disciplinary action. When giving an "explanation" in respect of the disciplinary action taken or to be taken against a member of the Police Force, the police will certainly state the reasons. Thank you, Deputy Chairman.

MR JAMES TO (in Cantonese): Deputy Chairman, this makes it even more puzzling. Is it the Government's intention to put it on record that the word "explanation" in clause 24 of the Bill has in fact included the meaning of

justification mentioned by me? If so, in case the Commissioner of Police puts up any argument in future, the IPCC can at least rely on and quote this sentence made by the Secretary today, "That is not the case. When discussing the amendment with Mr James TO at that time, the Secretary advised that the Commissioner of Police should also provide a justification. He therefore objected to Mr TO's amendment as it was really unnecessary." In fact, a justification should be provided. Can the Secretary confirm this point? It is because the explanation given by the Secretary just now seems to be very vague.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I do not want to conjecture Mr TO's intention. I have made it very clear in my speech just now that when giving an explanation to the IPCC in respect of the disciplinary action taken or to be taken against a member of the Police Force, the police will certainly state the reasons.

MR JAMES TO (in Cantonese): Deputy Chairman, I wonder if I have caught the point. The Secretary said, "state the reasons". Very simple, the reasons are that no disciplinary action has been taken and the misconduct is not serious at all. These are the reasons. However, he may have to give us a more detailed account on these reasons to elaborate why the misconduct is not serious. He may have some examples to substantiate the cases concerned, or even some internal guidelines and principles to illustrate the usual practice of handling such so-called non-serious misconduct in the past. We do not want to make an in-depth study of the literal interpretation of explanation and justification. Deputy Chairman, if the Government really objects to the word "justification", it may even prove that this word has a very deep meaning, such that the Police Force have to provide further information.

Deputy Chairman, the Secretary has mentioned just now that disciplinary matters should be determined by the Commissioner of Police, and should not be interfered or queried by the IPCC. In fact, there was also a standing practice for the IPCC not doing so. Deputy Chairman, I have to make a point here. We notice in the existing provision that clause 24 aims at requiring the police to provide some information as well as explanation and justification. Is it regarded as a kind of interference? It is not the IPCC which decides what to do or instruct the Commissioner of Police what to do. I have not mentioned that it

is a kind of instruction and no instruction power is stipulated here. It only requires the Commissioner of Police to provide explanation and justification. Is it equivalent to interference?

If the so-called interference will be so serious, I think this confirms a point again, that is, the Commissioner of Police overrides the IPCC and possesses the supreme power.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I have already said what I wanted to say.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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 SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

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, Dr Joseph LEE, 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 Martin LEE, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr 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 CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, three were in favour of the amendment and 14 against it; while among the Members returned by geographical constituencies

through direct elections, 22 were present, 12 were in favour of the amendment and nine 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.

CLERK (in Cantonese): Clause 24 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed an amendment to clause 24, I now put the question to you and that is: That the clause 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): Clause 25.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the heading before clause 25 and the Chinese text of that clause, in order to delete "警監會" and substitute it with "監警會", as set out in the paper circularized to Members.

The amendments propose to delete the Chinese abbreviation of "警監會" and substitute it with "監警會", so as to tie in with the new name of the statutory "獨立監察警方處理投訴委員會". I implore Members to endorse them.

*Proposed amendment***Clause 25 (see Annex V)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Mr James TO and the Secretary for Security have given notice separately to move amendments to clause 25(a).

Members may now debate the original provision, the amendments Mr James TO and Secretary for Security to the clause jointly. I will call upon Mr James TO to speak first, to be followed by the Secretary for Security; but no amendments are to be moved at this stage.

MR JAMES TO (in Cantonese): Chairman, we have now come to clause 25 of the Bill, which is in fact about the IPCC being a monitoring body can require the Commissioner of Police to provide some statistics. Even for the provision of statistics, it is so surprising that the authorities have to put it in such a narrow

way when introducing the Blue Bill. Let me read it out so that Members can examine it. The provision stipulates that the IPCC can require the Commissioner of Police "to compile and submit to the IPCC statistics of the types of conduct of members of the police force that have led to reportable complaints (the Secretary has proposed to amend it as '須匯報' in the Chinese text)". What we are talking about are the types of conduct of members of the Police Force, but they should be those which have led to "reportable complaints".

I think if the IPCC wants to understand some statistics, it will of course wish to draw up some conclusions, such as there are several thousands of reportable complaints each year; some of these complaints are of the types which have led to reportable complaints; the number of cases which are substantiated each year; the number of cases which are false accusations; and the number of cases belonging to other categories. They will of course draw up such conclusions. However, this is not an exhaustive list of the information they may require.

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

For example, regarding clause 7(1) of the Bill (even I do not agree to it, it has been amended as currently drafted), they may have several functions of monitoring, including clause 7(1)(c) which aims to identify faults in any practice, and so on. In fact, this is entirely relevant to some conduct which may not lead to reportable complaints in general. If this is the case, understanding some conduct in the Police Force thoroughly can, in fact, help the IPCC in fully performing its functions, which include monitoring some reportable complaints.

Therefore, Deputy Chairman, my amendment seeks to simplify such a complicated provision mentioned just now on the provision of statistics, after being narrowed down technically, to "conduct relating to members of the police force". The meaning of "conduct relating to members of the police force" will be wider, such that the IPCC can fully understand certain conduct relating to members of the Police Force, and such conduct is related to the functions it performs. The Bill, as a whole, aims at performing the IPCC's functions, and this amendment can enable them to get hold of all information in order to understand the situation of the Police Force.

At the meetings of the Bills Committee — I repeat once again — the public officers argued with members word by word and clause by clause, so as to reduce the IPCC's power, restrict its power of obtaining information and restrict it from reading reports and attending certain interviews. They narrowed down the IPCC's power bit by bit and imposed restrictions and hurdles here and there. I cannot help thinking that even in the description of statistics, the authorities have intentionally narrowed it down. This is a detestable and circumspect move, or put it more directly, a damnable move. The authorities hope that the IPCC can adopt a wider scope everywhere. In respect of obtaining information, it is better for the IPCC to know nothing, whilst in respect of monitoring procedures, it is better for the IPCC to be unable to attend. What mentality is this?

The authorities have to argue even on the statistics. What I mean is not about whether a case is substantiated or not, nor do I want to embarrass anyone in respect of any case. What do the statistics imply? They simply imply that additional manpower will be required to deal with the IPCC and more statistics have to be compiled. However, the authorities still had to argue and refused to provide resources.

I call on the IPCC members, in case you face any argument put forth by the Government in such a narrow scope in accordance with clause 25(a) in future — as Mr James TO's amendment will not be passed — resulting that you cannot obtain some information or statistics, please let the public and the Legislative Council Members know. If I am still here, I will certainly help you in the Legislative Council by raising questions, no matter written or oral ones. Only if there is still a Member from the Democratic Party or the pan-democratic camp here, I believe we will certainly raise questions for you in the relevant panels of the Legislative Council as well, to see if the Government has the guts to refuse answering questions raised by the Legislative Council.

As mentioned by the Government, as the IPCC is already an organization at the front line to monitor the police for the public, which wants to get hold of more statistics, the authorities should not turn down its request, no matter they have the sincerity to provide such statistics or not. Also, they should not stipulate the provision in such a narrow way.

Of course, the Government may say clandestinely, "The legislation is stipulated in such a narrow way as we have to provide what is stated in it. This

is the statutory power. However, in case your request is wider than this scope, and as you are arguing so severely, we will provide what you want through an administrative measure. This can prevent you from requesting Members from the Democratic Party or the pan-democratic camp to reveal to the Legislative Council, stating that the IPCC has made such a request but has not been provided with what it wants, which is even more embarrassing."

"If you beg me, I can provide what you want through an administrative measure. However, it should be stipulated narrower in the law anyway." This is the mentality of the incumbent public officers. With such a mentality, our Commissioner of Police refuses to offer any convenience to the IPCC, the organization standing at the front line, and the public. There are restrictions and hurdles here and there. This is another example, showing that the Government has imposed restrictions even on obtaining information and statistics by the monitoring body.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendment to clause 25(a), similar to other provisions, to substitute the reference to "須具報投訴" with "須匯報投訴". I hope Members can give their support.

The power provided in this clause aims at assisting the IPCC to perform its functions under clause 7(1)(c), that is, to identify any fault or deficiency in any practice or procedure adopted by the Police Force that has led to or might lead to reportable complaints, and to make recommendations (as the IPCC considers appropriate) to the Commissioner of Police or the Chief Executive in respect of such practice or procedure, so that it can obtain the statistics concerned; and also empowering the IPCC to do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its statutory functions. Therefore, the IPCC can, under a reasonable situation, require the police in accordance with clause 7(2) to compile and submit to it statistics of the conduct of members of the Police Force that may lead to "reportable complaints", even such request is unrelated to any specific "reportable complaint".

In fact, this provision is to put on record the long-established arrangement for co-operation between the IPCC and the police which is currently in place. The IPCC has never informed us that they will be rejected by the police in

obtaining such statistics and give rise to any conflict. Therefore, I really do not understand why Mr James TO has mentioned just now that we have imposed restrictions here and there. This is not the truth. I hope Members can support our amendment.

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

MR JAMES TO (in Cantonese): What I mean by imposing restrictions here and there is that if any administrative measure is to be made in law, they will be very satisfied and pleased. I do not know what information the IPCC will require. Perhaps, it imposes restrictions everywhere on itself, and so, it will not require any information at all. And the police will of course provide information upon request. Even if I do not look at it from this angle and change an administrative arrangement into a statutory arrangement, we have to make it clear in law. If the Government is so mean that it objects to even the request of obtaining "statistics of the types of conduct of members of the police force", that is to say, the Government has thought twice about it and considers that "the provision is stipulated in such a wide scope as it is my intention for not providing it to you. I do not want to stipulate it in law as if I owe you anything. If you make a request, after the legislation is made, I can provide information to you beyond the scope of this provision. I have not said that it is not allowed. However, in respect of legal authority, I will restrict you." This is what I mean by imposing restrictions everywhere, which is a kind of restrictions in law.

In fact, does it have the guts to impose restrictions? I do not know. If the Government can appoint a group of IPCC members who all feel comfortable with the status quo and have great tolerance, there is of course no need to impose any restriction on administration, as they may not seek information which is very complicated and in-depth. However, the situation of imposing restrictions everywhere has been found in the provisions.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I have nothing to add.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Deputy Chairman, I move the amendment to clause 25(a), in order to extend "statistics" to cover the conduct of members of the Police Force.

Proposed amendment

Clause 25 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): Before I put to you the question on Mr James TO's amendment, I wish to remind Members that if the amendment is passed, the Secretary for Security may not move his amendment to clause 25(a).

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

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Yung-kan rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr WONG Yung-kan has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, 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 James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr

TAM Yiu-chung, Mr 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, 17 were present, two were in favour of the amendment and 15 against it; while among the Members returned by geographical constituencies through direct elections, 23 were present, 12 were in favour of the amendment and 10 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move that clause 25(a) be amended.

Proposed amendment

Clause 25 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 25 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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): Clause 26.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to the heading of clause 26 and the reference before paragraph (a) of subclause (1).

Members may now debate the original provision, the amendments of the Secretary for Security and Mr James TO to that clause jointly. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, clause 26 stipulated that to enable the IPCC to make such recommendations as the IPCC sees fit to the police, the IPCC may require the police to consult the IPCC on any

proposed new order or manual of the Police Force that relates to the handling or investigation of "reportable complaints"; or any significant amendment proposed to be made to any orders or manuals of the Police Force, in so far as the amendment relates to the handling or investigation of "reportable complaints".

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

We have accepted the views of the Bills Committee to delete the reference to "To enable the Council to make such recommendations as the Council sees fit to the Commissioner of Police", and stipulate that the Commissioner of Police should consult the IPCC on specific scope of matters. We think the clause as amended can bring out the legislative intent clearer. The heading of clause 26 will also be amended in consequence to this amendment.

I implore Members to support our amendment.

MR JAMES TO (in Cantonese): The Secretary's amendment is in fact raised by me at the Bills Committee. After drafting and scrutiny, it was, accepted by the Government eventually. Deputy Chairman, I will therefore agree to this amendment moved by the Security Bureau.

However, I wish to mention in passing that I have also submitted another amendment which is not approved. In fact, under such situation, all the orders and practices of the Police Force under the Government can be divided into two categories: one is about the handling of complaints, which is related to the CAPO; and the other one is related to many other orders.

Of course, those which are related to the handling of complaints by the police should entail consultation with the IPCC. This is very obvious. But originally, it is stipulated in a host of provisions that the police will conduct consultation only upon request by the IPCC. This is in fact a very poor way of drafting, and it is unreasonable to draft it in this way. However, after being given a reminder, the Secretary was also willing to rectify these shortcomings. However, as for many other orders, I think they should be Although the

amendment I proposed originally was not approved, I want to give a brief account here. I hope that even the Secretary does not stipulate it in law, he can think about it from this angle, that is, considering hundreds of thousands of other practices and orders of the Police Force. If the IPCC requires that the Commissioner should consult it under certain situations, I also find it appropriate.

Let me cite an example for illustration. In case the IPCC, after a certain period of time or having accumulated some experience, finds that a lot of cases are related to stop-checks of some suspects, that is checking their identity cards, as millions of such cases would happen each year, or the IPCC finds that a lot of complaints are related to the restrictions on demonstration area and peaceful petition, I think, with so much experience and cases being accumulated, the IPCC is in fact absolutely capable of, qualified and knowledgeable in making some good recommendations to the Commissioner of Police, so that he can make improvements accordingly. As for the orders relating to checking identity cards or arrangements for demonstrations, even it is not stipulated in law, in case the IPCC requires the Commissioner of Police to consult it, especially if any significant amendment is involved, such as in meeting the requirement stipulated in clause 7(1)(c) to see if which codes of practice or orders are absolutely appropriate and relevant, we still urge that such arrangements be made in this regard, even though this is outside the scope of the statutory provision.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Deputy Chairman, can I withdraw my amendment now? Because I will support the Secretary for Security's amendment. Our amendments are in fact identical.

DEPUTY CHAIRMAN (in Cantonese): If the Secretary for Security's amendment is passed, you may not move your amendment. As such, the result is the same.

MR JAMES TO (in Cantonese): I know, Deputy Chairman, but it seems that I am going to move another amendment the content of which is the same. When we submitted our amendments separately, we did not have sufficient communication as this was done just a couple of days before the deadline. I wonder if I can withdraw my amendment with your consent and no objection from other Members.

DEPUTY CHAIRMAN (in Cantonese): If there is no objection from other Members, it is alright for you to withdraw your amendment.

MR JAMES TO (in Cantonese): Yes. I think this will be better for the record.

DEPUTY CHAIRMAN (in Cantonese): Do you wish to withdraw your amendment now?

(The Clerk reminded Mr James TO that he had not moved his amendment yet)

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, as you have not moved your amendment yet, you can withdraw it.

MR JAMES TO (in Cantonese): Deputy Chairman, as such, I withdraw my amendment as stated.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): I do not wish to speak.

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendments to the heading of clause 26 and the reference before paragraph (a) of subclause (1).

Proposed amendment

Clause 26 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, and Mr TO has also withdrawn his amendment, we need not deal with Mr TO's amendment further.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendments to paragraphs (a) and (b) of subclause (1) of clause 26 in the Chinese text, as set out in the paper circularized to Members.

The amendments are to substitute "須具報投訴" with "須匯報投訴". I implore Members to endorse them.

Proposed amendment

Clause 26 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 26 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 27.

DEPUTY CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to clause 27.

Members may now debate the original provision, the Secretary for Security's and Mr James TO's amendments to the clause jointly. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, under section 4 of the Police Force Ordinance, the Commissioner of Police, subject to the orders and control of the Chief Executive, shall be charged with the supreme direction and administration of the Police Force. Therefore, with the establishment of the statutory IPCC, it is necessary for us to stipulate in clause 27 that notwithstanding section 4 of the Police Force Ordinance, the Commissioner of Police is still responsible for complying with the IPCC's requirements.

Section 10 of the Police Force Ordinance also stipulates that the duties of the Police Force shall include taking lawful measures to prevent and detect

crimes and offences, as well as apprehend all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists. Put simply, the Commissioner of Police is statutorily responsible for law and order issues and has the obligation to ensure the integrity of any crime investigation. Therefore, in complying with the IPCC's requirements, the Commissioner of Police, on the one hand, is committed to providing sufficient information to the IPCC, so as to facilitate the IPCC in the discharge of its functions to monitor the police in handling and investigating "reportable complaints"; and on the other, he also has the duty to ensure that disclosure of the information or materials to the IPCC would not prejudice any crime investigation or affect the Police Force in performing its statutory duties. Based on these statutory functions of the Police Force, it is necessary for us to stipulate in clause 27 that if compliance with the IPCC's requirements would likely prejudice the security of Hong Kong or the investigation of any crime, the Commissioner of Police need not comply with such requirements.

The IPCC and some members of the Bills Committee have expressed views on the scope of clause 27, which include: deleting clause 27 as a whole; replacing the term "any crime" by "indictable offence"; setting a time limit for non-compliance with the IPCC's requirements; substituting the Commissioner of Police with the Secretary for Security or the Secretary for Justice to determine whether compliance with the IPCC's requirements would likely prejudice the security of Hong Kong or the investigation of any crime; or including a protection mechanism in clause 27.

I have explained the necessity of clause 27 just now, and thus, it should not be deleted. Moreover, we consider that it may not be practicable to replace the term "any crime" by "indictable offence" or set a time limit for non-compliance with requirements. Regarding the scope of offences, in many cases, a crime which initially appears to be a non-indictable offence may turn out to be an indictable one upon detailed investigation. Therefore, there will be practical difficulties in replacing the term "any crime" by "indictable offence". Moreover, as the time required for investigating different crimes varies, we do not consider it appropriate to set a time limit in clause 27. As for the suggestion of substituting the reference to "the Commissioner of Police" with "the Secretary for Justice", in view of the Secretary for Justice's role as the legal adviser to the Government, and the fact that the determination of whether the disclosure of certain information to the IPCC may prejudice the security of Hong Kong or

crime investigation is an executive function, we do not consider it appropriate to involve him in this function.

Having considered the views of the IPCC and the Bills Committee, we propose to amend clause 27 to the effect that the Commissioner of Police must comply with any requirement made by the IPCC under the Bill unless the Secretary for Security certifies that compliance with the requirement would likely prejudice the security of Hong Kong or the investigation of any crime, and that a certificate signed by the Secretary for Security certifying such matters is conclusive evidence as to the matters so certified. The IPCC supports the amendment currently proposed by us, and further suggests that the certificate issued by the Secretary for Security should stipulate a validity period after which the Secretary for Security should review the matter, so as to consider whether the police can resume its compliance with the IPCC's requirements. We do not consider stipulation of such validity period in clause 27 necessary, as we anticipate that in practice, where the Commissioner of Police's compliance with the IPCC's requirements is critical to the IPCC's consideration of the case in question, the matter would naturally be under regular review so that the IPCC's examination of the case could be completed at the earliest opportunity.

The amendment also substitutes "警監會" with "監警會" in the heading of clause 27 in the Chinese text.

On the other hand, Mr James TO's amendment shifts the responsibility of considering the issuance of a certificate from the Secretary for Security to the Chief Executive, and provides that before considering whether a certificate should be issued or not, the balance between public interest involved in compliance with the requirement and whether such compliance may prejudice the security of Hong Kong or the investigation of any crime should be taken into account.

I wish to stress here that the police have not so far refused to comply with the IPCC's requirements on the ground that such provision would likely prejudice the security of Hong Kong or the investigation of any crime. With the establishment of the statutory IPCC, the Commissioner of Police will not lightly request the Secretary for Security to invoke clause 27, so as to refuse to comply with the IPCC's requirements. In the very rare circumstances, the Secretary for Security will, upon receipt of the request made by the Commissioner of

Police, duly assess the risk of the security of Hong Kong or crime investigation being prejudiced if the IPCC's requirements are complied with, having regard to the information available and the need of the IPCC in performing its statutory functions. And being the accountability official for the purview of security, it is appropriate for the Secretary for Security to consider whether the certificate should be issued or not.

We consider that our amendment has established an appropriate mechanism in clause 27, so as to ensure that the IPCC and the Commissioner of Police can perform their statutory functions properly. I implore Members to support the Government's amendment and object to Mr James TO's amendment.

MR JAMES TO (in Cantonese): Deputy Chairman, our discussion has now come to clause 27. What we are talking about is that the IPCC wants to obtain some information. As it is responsible for monitoring the CAPO, it of course has to obtain information in performing its functions. However, it has encountered some obstruction as the police refuse to provide information. The Commissioner of Police advises that, because of certain reasons, he refuses to provide information. In fact, I am now facing a dilemma. On the one hand, we design this statutory body to enable the IPCC to require the Commissioner to provide information. This is of course a matter of public interest. At the same time, we also have to handle some refusals. As mentioned by the Secretary just now, the Commissioner of Police has never declined such requests. However, what we are dealing with is the law, which should stipulate a resolution mechanism of handling problems in extreme situations.

We therefore ask, "What is the mechanism?" The police advise that in case provision of information affects the security of Hong Kong or the investigation of any crime, what can we do? Members can think about it. What we are discussing is a balancing exercise. In fact, we have conducted such exercises in many amendments to law in the past, and how should the provisions be written? Let me talk about the IPCC's views first. The authorities consider that it should be stipulated as the investigation of any crime. But this is really very "ridiculous". This is not a balance at all. Why? It is because the investigation of any crime will include investigation of those very minor or frivolous crimes. Please bear in mind that what our concern originally

may be abuses of power, false accusations or serious battery by the police. However, the investigation of some minor crimes will affect that of these crimes. As such, it is very simple. The subject may have committed another minor crime, but it should be related to the main case. The subject may then be charged. As the provision of information for the main case will affect the investigation of this minor crime, there is no need to provide information for the main case, which may be a serious battery or false accusation.

Moreover, as suggested by the Government, the Secretary can meddle in it. The question lies in what the crimes are. The IPCC considers that they should be some more serious crimes. If the case under investigation is related to the impolite behaviour of police officers, and the information required may affect the investigation of another robbery, after weighing the pros and cons, it is possible for the police not to provide information in respect of the robbery for the time being, and a certificate will then be issued. Indeed, the IPCC has really accumulated a lot of experience and will not handle these cases carelessly. They may wonder why the term "indictable offence" should be written in the provision. In fact, indictable offence is already of a very low level. Many frivolous crimes can also be charged as indictable offences, though the scope of conduct so covered can be wider. "Indictable offence" is only a simple factor in the balancing.

Having considered the IPCC's views, why did I still propose a more complicated formula to force the Chief Executive to consider allowing the IPCC to have comprehensive and sufficient information for monitoring? Because this is a matter of public interest. On the other hand, in view of the security of Hong Kong or any indictable offence, after weighing the comparative importance, the Chief Executive may issue a certificate, indicating that such information cannot be provided to the IPCC. My formula is therefore more detailed and comprehensive, which enables the decision-maker, be it the Chief Executive or anyone, to strike a balance and decide which side should be accorded priority after giving due regard to their conflicting interests. He should consider a number of questions in detail.

However, if the Secretary's formula is adopted, it is not necessary for him to consider this balance. What he has to do is to ask himself the question. According to the formula under clause 27(1), which is newly proposed, are they investigating some frivolous crimes? Would it be very likely that these

frivolous crimes under investigation will give rise to some prejudice? If so, he can issue a certificate. It is not necessary for him to bother about the serious situation of the other side, as this formula has not stated that he has to make such consideration. Of course, after taking a look at this simple formula, the Secretary can have a very complicated consideration in mind. This is his way of thinking in administration, rather than an approach stipulated in law that he has to follow and make necessary consideration to balance the conflicting interests of the two sides. Therefore, I think my formula is absolutely more detailed and satisfactory than the one currently proposed by the Secretary. With such balancing factor, it is more refined as well.

Moreover, why do I require that the certificate be issued by the Chief Executive instead of the Secretary for Security? It is because the Secretary for Security has a much closer and direct relationship with the Commissioner of Police. If I adopt the former Secretary's words, he should, of course, look after them and have the sense of brotherhood. He should go to the karaoke with them, singing the song "我是一個兵" and drinking passionately. Of course, this is the style of the former Secretary. Most unfortunately, from our daily observation, this Secretary for Security has a very close relationship with the Commissioner of Police, and is accountable for some of the work which is responsible by the latter.

Therefore, I can only say that the certificate should be issued by a more senior official. The most senior one is of course the Chief Executive. Certainly, during the discussion, I have considered that the certificate may be issued by the Secretary for Justice or the Chief Secretary for Administration (as there are some certificates in law, the so-called certificates of public interest, which are really issued by the Chief Secretary for Administration rather than the Secretary for Security). Regarding the Immigration Ordinance, as our Secretary has been the Director of Immigration before, he should know that under certain situations, some certificates are issued by the Chief Secretary for Administration.

After all, who should issue the certificate? First of all, I do not consider that it should only be issued by the Secretary for Security, as under this situation, it must be issued by an official of a higher level. Of course, I think it most desirable if the Chief Executive can issue the certificate and get involved personally. Why? As my amendment will not be passed, everyone in this organization will be appointed by the Chief Executive. According to the Police

Force Ordinance, the Chief Executive can in fact give orders to the Commissioner of Police, as he has such statutory power. On the contrary, the Secretary for Security has no power in law to instruct the Commissioner of Police to do anything. I find this improper, as in other places, under the leadership of a civilian, the minister should be held responsible directly, no matter he is the home affairs minister or with other similar titles. He should be able to control his defence force or the defence minister, and there is no reason for having such an abnormal system as that of Hong Kong — of course, what I mean is the colonial system, under which the then Governor of Hong Kong controlled the Commissioner of Police direct. Based on this reason, some people even find it unnecessary for the Commissioner of Police to give way to the Secretary for Security. From a legal point of view, the superior of the Commissioner of Police is the Chief Executive. Therefore, in my design, the certificate of public interest will be issued by the Chief Executive, meaning that even the IPCC appointed by him should not be allowed to obtain such information.

Another view put forth by the IPCC is the problem of validity. Under a certain situation, regarding the security of Hong Kong or the investigation of any crime, if a certificate was issued reasonably six months ago, after a period of time, is it necessary to review it? According to the reply given by the Secretary just now, "Let us make an administrative review. We will review it from time to time." This is the rule of man rather than the rule of law.

I still recall that a few years ago, which was also around the end of session, in discussing the committee which was responsible for surveillance and interception of communications and is currently chaired by "Justice WOO", we had really considered similar situations in the context of some of the amendments. If a certificate is issued under a certain situation for safeguarding the security of Hong Kong and investigating some crimes, resulting that information cannot be provided to others or others cannot be so informed, say, you have been subject to illegal interception of communications, and the provision of information is rejected as it may affect the actions being taken. But after a period of time, if there is no need to reject the provision of information on the ground of security or investigation, it should be stipulated in law in legal wordings that "Justice WOO" should inform him, or "Justice WOO" should instruct the Commissioner of Police that he should inform the person being affected. This is the rule of law. It is because we have stated in law that, even the certificate is issued on the ground of public interest, security or crime

investigation, after a certain period of time, its necessity should be subject to review. It is stipulated in law that he is responsible for reviewing it from time to time, rather than as what has been mentioned by the Secretary, "We may review it from time to time in administration." Of course, even if we cannot write this down in law now, I hope in amending the legislation next time, this provision can still be included. I hope, by that time, the Government will handle it in a more careful manner.

The Secretary has advised just now that they have never declined requests in any case. I think this is not the answer. We have to enact the legislation, rather than handling it by an administrative system. We should settle some very extreme situations which may probably occur. Where should this line be drawn? We should therefore make it clear even the formula is relatively complicated — in fact, this is not so complicated at all. Many ordinances carry stipulations in this way, and the Secretary should also know many of these formulae, including the ordinance on anti-terrorism. He also has to consider balancing the conflicting interests. As such, this is absolutely not a difficult exercise. We consider that a provision which is relatively discreet, stringent and clear should be stipulated, so that the decision-making authorities should, under some situations, consider thoroughly the principle of balancing conflicting interests, rather than taking the easy route to formulate some provisions which are very simple and easy to draft, and are not subject to any review in law after a period of time. And as for investigation of any simple crime, provided that it will give rise to prejudice, a certificate can be issued for not providing the information. This is not a good way of drafting the law and achieving a balance.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I have nothing to add.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move that the heading of clause 27 in the Chinese text be amended.

Proposed amendment

Clause 27 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendments.

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, I move the amendments to the numbering and subclause (1) of clause 27, and the addition of subclause (2) to that clause.

Proposed amendment

Clause 27 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendments to the numbering and subclauses (1) and (2) of clause 27.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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

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

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

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Dr Fernando CHEUNG, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 42 Members present, 28 were in favour of the amendment and 13 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendments to the numbering and subclauses (1) and (2) of clause 27, which are inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 27 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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): Clause 28.

MR JAMES TO (in Cantonese): Chairman, we have come to page 135 of the Script. I move the amendment to clause 28 and the addition of subclause (2) to that clause.

Clause 28 provides that the IPCC may make reports to the Chief Executive from time to time, but it does not provide that the Chief Executive has to respond to them. Earlier on, we also had debates on similar provisions. The concept is indeed very simple. We can anticipate that under many situations Why does the IPCC have to make reports to the Chief Executive? According to past experience — there were in fact just a few cases — because the Commissioner of Police and the IPCC had different opinions. I remember that one of the cases is the LEE Ming-kwai incident, or the so-called "Beethoven" incident. The IPCC considered the investigation result of the Police Force unacceptable. They had been arguing about it for a very long time but could hardly convince each other. As such, the IPCC considered it necessary to write to the Chief Executive to determine who was right and who was wrong.

Such situations are commonly found in history. They are neither annual reports nor reports to be submitted annually, which are totally different. To put it vulgarly, this is a kind of "talebearing", as the IPCC is appointed by the Chief

Executive, which is responsible for monitoring another subordinate — the Commissioner of Police, for him. If the IPCC thinks that there is abuse of power by the police and considers it inappropriate for the Commissioner of Police to deny that it is not the truth, what can it do?

To a certain extent, the Chief Executive is playing the role of an arbitrator. He has to solve the problems, that is, he has the power of making the final decision. However, at present, the provision provides that although the IPCC can submit reports to the Chief Executive, he can simply sit on them. During our discussion in the Bills Committee, the Government indicated that such situation would never occur. The Chief Executive has responded every time, and the reports should only be dealt with as part of administration. Why should the Chief Executive respond to them? From the legal point of view, even it is necessary for us to make the Chief Executive play the role of an arbitrator at present, he can still decide not to take up this role, that is, it may not be necessary for him to make any response in law. What I mean is making responses. The Chief Executive may not agree to the IPCC's conclusion that the Commissioner of Police has done something wrong. However, as he is the Chief Executive in law and playing the role of an arbitrator in this design in law, we cannot stipulate that he does not have any legal obligation to respond to the IPCC. Therefore, I think it is very strange here.

Of course, someone may argue that if the Chief Executive really has no sense of responsibility and refuses to respond, the IPCC should reveal it to the public. It is because according to clause 37, there is already However, I still have to say, as we have accepted the addition of clause 37(2A) by the Government, we may not be able to prove that disclosure is necessary for performing its duties. But the IPCC still has a final option, and that is, resignation *en masse*. As the Chief Executive is so irresponsible that he refuses to respond, why does the IPCC have to continue to work for him?

I find this situation undesirable. We should have a comprehensive system in the law. If the Chief Executive really has to play the role of an arbitrator, he should make responses in law. Moreover, it is not restricted legally that he should respond within a certain number of days. However, he should put his responsibility of making responses in law. This is not only my viewpoint, but also that of the IPCC. Of course, the IPCC will not want to act like the Chief Executive who refuses to make any response in terms of administration. However, the IPCC also considers that, if it is stipulated in law that the Chief Executive should make responses, the whole legal framework will be more

comprehensive. Therefore, I have proposed this amendment by adopting the recommendations made by the IPCC.

Proposed amendment

Clause 28 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendments jointly. Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr TO proposes to add subclause (2) to provide that the Chief Executive should respond to the report made to him by the IPCC. In actual operation, the Chief Executive, upon receiving any report from the IPCC, will consider the report in detail and examine whether any recommendations made in it should be accepted and whether any other follow-up action is required. It is an established practice that the Chief Executive or his authorized officer will respond to various kinds of reports made to him by statutory bodies. We therefore consider it unnecessary to add a legal provision to the Bill to require the Chief Executive to respond to the report made to him by the IPCC. For this reason, we do not support the amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Functional Constituencies:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, 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, 20 were present, two were in favour of the amendment and 18 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, 11 were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move clause 28 be amended, as set out in the paper circularized to Members.

The existing clause 28 empowers the IPCC to, from time to time, make such reports to the Chief Executive as it thinks necessary. This provision reflects the practice currently in place, which allows the IPCC to make appropriate reports to the Chief Executive as it thinks fit.

The amendment proposes to delete the phrase "from time to time", so as to provide expressly that the IPCC has the power to make reports to the Chief Executive as it thinks fit.

I implore Members to support and endorse the amendment.

Proposed amendment

Clause 28 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 28 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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): Clause 31.

CHAIRMAN (in Cantonese): Mr James TO, Mr CHEUNG Man-kwong (represented by Mr SIN Chung-kai) and Dr YEUNG Sum have given notice separately to move amendments to clause 31(1).

Members may now debate the original clause and the amendments by Mr James TO, Mr SIN Chung-kai and Dr YEUNG Sum jointly. I will call upon Mr James TO to speak first, to be followed by Mr SIN Chung-kai and Dr YEUNG Sum.

MR JAMES TO (in Cantonese): Chairman, a number of Members from the Democratic Party have proposed these amendments as we consider it better to appoint observers by various formulae, rather than adopting the existing system under which the appointment is made by the Secretary for Security. We hope to provide different options. Moreover, we want to show that in case some different and better options are raised but there are still people consider that this amendment should be negated, they have to be held responsible for this.

Chairman, according to my amendment, the IPCC will appoint observers on its own. Why do I have to propose this amendment? According to clause 32 of the Blue Bill, the function of an observer is to assist the IPCC to observe the manner in which the Commissioner of Police handles or investigates complaints. As implied by the title, an observer is responsible for assisting the IPCC in performing some of its functions. Let me cite a simple example. First of all, perhaps we just put aside the fact that Honourable colleagues of this Council employ staff for their offices. As such staff are responsible for assisting them, they should of course recruit them on their own. However, even for committees under the District Councils, they also recruit their own staff basically to help us to perform our duties, as these committees are tasked to help us to perform our duties in this Council. For example, Mr Abraham SHEK and I used to work as members of the Land Development Corporation (LDC), under which there were committees, such as the planning committee, personnel

committee, acquisition committee, rehousing committee, board of appeal, and so on. The staff of these committees were all recruited by the Board of the LDC, which would select candidates who possessed the expertise to assist us to perform our duties in law. Therefore, it is most appropriate for the IPCC to look for its staff.

However, one of the reasons cited by the Government in explaining why the staff of the IPCC should be recruited by the Secretary for Security instead of the IPCC itself is that the Secretary has a larger circle of acquaintances. Moreover, the Secretary for Home Affairs has a name list, on which all of them are community leaders, showing that he knows much more people than the IPCC. As there are only 18 people in the IPCC, how can they appoint so many community leaders to take up the job as observers? Even the IPCC is responsible for looking for suitable candidates, it will find it very hard, and how can it know who have such ability in our community?

However, by asking minutely who the incumbent observers are, we then discover that as an established practice currently in place, those appointed are ex-members of the IPCC, Chairmen of District Fight Crime Committees as well as Chairmen and Vice-chairmen of District Councils. If this is the case, it has nothing to do with the circle of acquaintances as there is a formula for making such appointments. As such, will there be any changes to this formula in future? In order to extend the pool of candidates, two other Honourable Members have also proposed their suggestions and will give us a detailed account later. These suggestions do incorporate the views given by the Secretary for Security at the Bills Committee.

Why I consider it inappropriate for the Secretary for Security to make such appointments? To be frank, the reason is that the IPCC members are appointed by the Chief Executive. When we are talking about how to assist the IPCC members to perform their duties, we should note the present situation that the Commissioner of Police has a very close relationship with the Secretary. In view of their close relationship, if the observers are appointed by the Secretary, I think the public may not rest assured about this. The public may worry that he may not want to appoint the most appropriate candidates to assist the IPCC to perform its monitoring duties.

In case the observers are appointed by the Chief Executive, as he can also appoint the IPCC members, we have no alternative but to trust him, right? It is

because even the IPCC members are also appointed by him. However, as the Secretary and the Commissioner of Police have a very close relationship in certain aspects, such as the progress of investigation, I think there should be some separation, rather than turning to the Secretary under any circumstances and asking him to look for someone to assist the IPCC to perform its duties. As such, we can allay the worries of the public about the Secretary failing to appoint the best candidates as he may not want the IPCC to perform its duties perfectly. Therefore, as the observers are under the IPCC, who are also responsible for assisting it, I think they should be appointed by the IPCC. In this way, the accountability will be clearer.

Why do I think that the accountability will be clearer in this way? Taking the situation in recent years as an example. We notice that the observers have not conducted any surprise inspections or supervision so far. Naturally the Secretary should be held responsible for this as he has been negligent in duty. However, when we asked why such situation had occurred during this process, they just put the blame on others. We really do not know who should be held responsible for this; who are responsible for informing others; what they have done; and how is their performance. It seems that the IPCC Secretariat knows much more, as it is responsible for informing them. However, at last, the IPCC Secretariat may not report it to the Secretary, which turns out to be such a mess.

However, if we simply look at it from the angle of responsibility, as the appointment is made by the Secretary, then such questions as whether someone will be appointed again or how the performance of a person is, should the Secretary establish a system to state clearly in case there is any problem, how the questioning should be conducted and who should be examined will not result in such confusion. If, frankly, the IPCC is fully responsible for making appointments. If the IPCC Secretariat is responsible for appointing the observers, the Secretariat has to inform the IPCC of their attendance naturally, stating how their performance is; whether they can be appointed again; and whether they should increase the frequency of conducting surprise inspections. If it is fully responsible by the IPCC, the system will be complete and direct, and will not give rise to a situation of putting blame on others. On the contrary, if there are different appointing authorities, there are bound to be problems and the accountability is not clear at all.

MR SIN CHUNG-KAI (in Cantonese): Chairman, in fact, the key point of our amendments is that nominations should be made by the Secretary for Security for appointment by the IPCC. Mr James TO has given a very detailed explanation just now. At present, the IPCC lacks investigation power, so it fails to prevent abuses of power by the police effectively during the internal investigations of complaints against the police conducted by the CAPO. Under such situation, the Observer Scheme is just a "better-than-nothing" proposal, which allows the IPCC to monitor the collection of evidence and interviews with witnesses conducted by the CAPO.

Regrettably, the appointment of these observers is not made by the IPCC. Rather, they are appointed by the Secretary for Security. Chairman, regarding the establishment, the CAPO is a department under the Security Bureau. We consider it unfair for the Security Bureau to make appointment of people who are responsible for monitoring a department under it. We therefore made a concession and suggested a "happy medium", that is, the Secretary for Security may nominate some candidates for the IPCC's selection. Honestly, this is a compromise, which is most appropriate indeed. Of course, during the nomination process, the Secretary should recommend candidates to the IPCC through different channels, and the appointment should then be made by the IPCC. In fact, the IPCC has no right of nomination, as such right rests in the hand of the Secretary for Security. If nominations are made by the Secretary and appointment made by the IPCC, at least, candidates who are not so appropriate or preferred by the IPCC will not be appointed. Secretary, please think about it. This is just a very humble amendment. Borrowing Mr Albert CHENG's phrase, it is very "lame" indeed.

DR YEUNG SUM (in Cantonese): Madam Chairman, I do not know how the interpreter will the word "lame".

Madam Chairman, I will move an amendment to the effect that the arrangement of appointing observers by the Secretary for Security should be changed, such that the IPCC may appoint observers upon recommendation by the Secretary for Security.

During the debate earlier on, many Honourable Members have pointed out that the current complaint mechanism against the police is in lack of credibility as

the public do not believe that complaints can be handled in a fair manner. The appointment of observers can be regarded as a way to enhance the transparency of the complaint mechanism against the police a little bit, so that the public can observe the process of interviewing witnesses. Originally, it is good to do so. But to our surprise, the Bill does not allow the IPCC to appoint observers itself. Rather, the appointment is to be made by the Secretary for Security who is being monitored. Secretary, don't you think that this arrangement unreasonable? The Secretary for Security finds someone to monitor the police. In fact, the head of the police is the Secretary for Security, and those who are responsible for monitoring the police are appointed by the Secretary for Security. It is really ridiculous. He should flush with shame even when mentioning it. I can neither believe nor accept this as a fair and impartial arrangement.

Madam Chairman, because of this reason, I propose to make a concession and suggest that observers should be appointed by the Chief Executive, rather than adopting the Secretary for Security's practice of "appointing observers for self-monitoring".

With these remarks, I seek to move the amendment.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, just now three Members suggested amendments calling for my power to be reduced and the appointment of observers in different manners.

Clause 32 specifies that the function of an observer is to assist the IPCC to observe the manner in which the police handle or investigate reportable complaints. In this regard, the authorities are duty-bound to ensure that an appropriate person is appointed as an observer. Meanwhile, in view of their extensive knowledge of members of the community who are likely to be suitable for appointment as observers, the authorities can ensure that the appointees are suitable candidates.

Having regard to an observer's function of assisting the IPCC to observe the manner in which the police investigate complaints, we consider that the existing arrangement specified in the Bill, that is, the appointment of IPCC members by the Chief Executive and the appointment of observers by the Secretary for Security, appropriate. I do not agree with Dr YEUNG Sum and the other two Members, who said that this practice may give rise to conflict of interest or other conflicts. Furthermore, this practice, which has been implemented for a long time, is still in use today. In view of all this, we do not agree to the amendments proposed by the three Members.

MR SIN CHUNG-KAI (in Cantonese): I will speak very briefly. Regarding the first question concerning whether the amendments seek to reduce the Secretary's power, although the amendments, to a certain extent, smack of slashing the Secretary's power, it was the Secretary for Security who said that he would ensure the candidates' suitability, and he would achieve this goal because, to put it simply, he would be responsible for nomination, and during the nomination process, he can already ensure that the candidates are suitable through the nomination. So, regarding the question of whether the Secretary's power will be slashed, perhaps we may say that his power would be slashed or become more balanced because we can at least ensure that IPCC can discharge their duties appropriately in the future instead of merely listening to the Secretary's indication, either explicitly or inexplicitly, of what they are supposed to monitor.

Therefore, the Secretary should really consider this matter in detail. Actually, the amendments are absolutely appropriate and mild.

CHAIRMAN (in Cantonese): Dr YEUNG Sum, do you wish to speak again?

DR YEUNG SUM (in Cantonese): Madam Chairman, just now the Secretary said that this had long been the practice and should therefore be continued. Furthermore, there have never been any serious problems. But the fact that this has long been the practice does not mean that this has to be the truth. As Hong Kong develops itself into an increasingly sophisticated civil society, there has been a rising demand among the public for monitoring of the Government. We may just look at the recent storms involving the Under Secretaries and Political

Assistants. I believe even the Chief Executive, Donald TSANG, has learnt a significant lesson. Therefore, the Secretary should strive to avoid suspicions and refrain from making the appointments personally. Insofar as his duties are concerned, this is actually a good thing. There will also be a certain impact on the Secretary himself.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): When we were considering the amendments, my assistant and I joked to each other and proposed allowing the Commissioner of Police (the Commissioner), rather than the Secretary, to appoint observers to observe his subordinates, in order that the absurdity of the system can be highlighted.

Of course, our proposal will definitely be shot down. It will achieve the same effect as what Mr Martin LEE told me to do at a meeting of the House Committee, "We should chant 'Long Live' three times. It would be wonderful if the Government does not respect the Legislative Council by refusing to attend our meetings." I really find this interesting. Why am I making such a remark? My assistant told me that he would draft my speech. Why is it most preferably for the Commissioner to appoint the observers? Because he definitely wants to eliminate the black sheep in the Police Force. My speech will go like this: It makes sense that the Commissioner would like to have some good observers to monitor his subordinates. Though it appears specious, this really makes sense. Does the Commissioner not wish to eliminate the black sheep? Does he not wish to keep them?

The reason is very simple. Can we make an objective third party believe that it would be most appropriate for the Commissioner to appoint these observers without giving rise to any misgivings or doubts? If we say that the Commissioner should not be allowed to make the appointments, why? The Secretary for Security, who works relatively close with the Commissioner, is also duty-bound to ensure that the Police Force are free of black sheep for he is also responsible for monitoring the performance of the Police Force. The reasons are therefore the same. But we still maintain that the segregation between the two is not enough. This is why I propose, given that the IPCC members are appointed by the Chief Executive, that the Chief Executive be allowed to appoint people to assist the IPCC or the IPCC shall appoint its own members. This would be the most radical solution. Should this solution be

adopted, no one would call into question the conflicts that would possibly arise because of such an exceedingly close working relationship.

We in the Democratic Party have therefore put forward a proposal which is effectively a very big compromise whereby the Secretary will recommend candidates for appointment by the IPCC. Under this arrangement, if a candidate recommended by the Secretary is considered to be far from satisfactory, the IPCC can refuse. This would give the IPCC an opportunity to consider the candidate first. However, under the existing system, even if the IPCC does not find a person appointed by the Secretary helpful, it will still be forced to take him simply because he is appointed by the Secretary.

Here I would like to make an appeal to IPCC members to take the initiative to recommend to the Secretary people considered by them to be helpful to see if the Secretary has the courage not to appoint these people but, instead, appoint other people considered by the IPCC to be unsuitable. If this is really the case, I hope IPCC members can come forth and tell us that the Secretary would not appoint candidates nominated by the IPCC, and instead, the IPCC is forced to accept those considered to be suitable by the Secretary. I think this will bring improvement. But, as far as I understand it, IPCC members have not taken the initiative to recommend observers proactively as it is not considered necessary to do so because of the existence of this practice. Even if this is really the case, we can still have this laid down clearly in law to prevent the Secretary from appointing people arbitrarily. When this norm is still in use, we may not necessarily have serious misgivings, but this norm does not necessarily have to be followed forever. Therefore, if it is to be specified clearly in law, we consider that we should not allow the Commissioner — and certainly not the Secretary — to be the appointing authority.

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

(No Member or public officer indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): Chairman, I move that clause 31(1) be amended to allow the IPCC to appoint observers.

Proposed amendment

Clause 31 (see Annex V)

CHAIRMAN (in Cantonese): Before I put the question to you on the amendment moved by Mr James TO, I would like to remind you that if the amendment is passed, Mr SIN Chung-kai and Dr YEUNG Sum may not move their amendments to clause 31(1).

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division 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:

Mr SIN Chung-kai, 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 WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, 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, 20 were present, three were in favour of the amendment and 17 against it; while among the Members returned by geographical constituencies through direct elections, 16 were present, nine were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Mr SIN Chung-kai, you may move your amendment.

MR SIN CHUNG-KAI (in Cantonese): Chairman, I move that clause 31(1) be amended.

Proposed amendment

Clause 31 (see Annex V)

CHAIRMAN (in Cantonese): Before I put the question to you on the amendment moved by Mr SIN Chung-kai, I would like to remind you that if the amendment is passed, Dr YEUNG Sum may not move his amendment to clause 31(1).

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr SIN Chung-kai be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CHAIRMAN (in Cantonese): Dr YEUNG Sum, you may move your amendment.

DR YEUNG SUM (in Cantonese): Chairman, I move that clause 31(1) be amended.

*Proposed amendment***Clause 31 (see Annex V)**

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

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CHAIRMAN (in Cantonese): The Secretary for Security has given notice to move an amendment to clause 31(2), and Mr James TO has also given notice to move an amendment to clause 31(2) and the addition of subclause (3) to that clause.

Members may now debate the original clause, the amendments proposed by the Secretary for Security and Mr James TO to the clause together in a joint debate. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO, but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, clause 31 specifies that a person who is a civil servant of the Government, the Secretary, the Legal Adviser or any other employee of the IPCC or who was a member of the Police Force is not eligible for appointment as an observer. We propose that the reference to a civil servant of the Government be amended and replaced

by a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department to specify that serving civil servants, including government employees and politically appointed officials employed on non-civil-service contract terms, will not be appointed as observers as well. This amendment is consistent with the amendment made to the provision concerning the appointment of IPCC members under clause 4.

Mr James TO's proposed amendment further specifies that an immediate family member of a member of the Police Force, including his spouse, child, parent, brother or sister, is also not eligible for appointment as an observer. As with the appointment of IPCC members, observers are appointed in their personal capacity. In making appointments, we will, having regard to the functions and nature of work of observers and the integrity, capability, experience, expertise, and commitment to public service of an individual, select a suitable observer according to the principle of meritocracy.

We will also take into account the candidates' background to ensure that anyone who might have an actual conflict of interest or be considered likely to have a conflict of interest in discharging his functions as an observer will not be appointed as an observer. Therefore, for the sake of ensuring impartiality and objectiveness, if we know that a certain person is an immediate family member, that is, a spouse, child, parent, brother or sister of a member of the Police Force, then such a person will not be appointed as an observer according to our policy.

Before appointment, we will request an invited person to declare whether he is an immediate family member of a member of the Police Force. Given that possible conflicts of interest can already be resolved properly by administrative means, we consider Mr James TO's amendment unnecessary. And so, I implore Honourable Members to support the Government's amendment.

MR JAMES TO (in Cantonese): Chairman, I wonder if I have heard the Secretary's speech wrong. He proposed amending subclause (2) such that the relevant public officers, including politically appointed officials such as the Secretary because of his actual interest or potential interest, should not be allowed to become observers. I wonder if I heard it wrong. If not, it was the Secretary who told us that he would be the most suitable person to make the appointments when we discussed who should be responsible for appointing

observers. Alas, I am now a few seconds late. Had I known earlier that I would hear such an argument, the Secretary might probably feel so ashamed that he would immediately sit down when this argument was brought up for discussion. These were his own words — unless he is going to withdraw his own words now, there is no way for the Secretary for Security, according to his own proposal, to appoint himself to be an observer. In view of IPCC members' actual and potential interest, the appointment of the Secretary himself as an observer will give rise to doubts, and so why would we consider it right for the Secretary to appoint these people?

But there is nothing I can do now, Chairman. Should I continue, you will say that I have violated the Rules of Procedure because this point has already been discussed. The Secretary is very smart in reading out this sentence at this very moment, which means that I must give my consent. According to the Secretary, all newly joined politically appointed officials, whether they are high- or low-ranking officials, and including the Secretary for Security, the Secretary for Food and Health, and even their humble subordinates who are responsible for cleaning, would have actual and potential interest. If this is the case, it is even more likely for the Secretary for Security to face the problems mentioned above, and so why can he still be allowed to make the appointments? Chairman, I am going to stop here because I cannot say too much.

Chairman, let me come back to my own amendment. Actually, I already pointed it out during the earlier discussion on IPCC membership that it is inadvisable to appoint an immediate family member of a member of the Police Force, including his spouse, child, parent, brother or sister, as an observer. It is simply because, as stated by the Secretary just now, these people have actual or potential conflict of interest. They should not be appointed because they are an immediate family member of a member of the Police Force. Why? Let me cite a simple example to illustrate my point. As all police officers are eligible for a quarter, a member of the Police Force who is to be dismissed would mean that he would lose his quarter and livelihood protection. There will definitely be a direct conflict of interest should an immediate family member of his, who is relying on him for maintenance, be required to observe or investigate whether he has abused his power. Therefore, this is obvious. Nevertheless, the Government has always believed that it can resort to administrative means to resolve anything considered by it to be right, though this is rule of man, not rule of law. But obviously, our Government has a special preference for rule of man, possession of powers, and having unclearly worded and ambiguous

legislation so that problems can be resolved by administrative means. Even if things can be stated in very clear and simple terms in law, the Government is reluctant to do so. This is the best description of our Government.

DR YEUNG SUM (in Cantonese): Madam Chairman, having heard Mr James TO's criticism of the Secretary, I would like to give the Secretary a fair deal. Actually, the Secretary is very fair for he said that people having a conflict of interest should not be an observer. He has finally acted out of his conscience. I wonder if Members were aware that just now the Secretary opposed our amendment to the provision on the appointment of observers by the Secretary with his eyes shut. But he is now saying that people having a conflict of interest should not assume such responsibility. He has finally made a Freudian slip.

I would like to tell Mr James TO that the Secretary is actually a good man, only that he was instructed by the Government to make such comments, and those "royalists" outside simply followed his words and cast their votes in accordance with the direction given by the "paparazzi" with their eyes shut. However, the Secretary finally could not stand it any longer and suddenly acted out of his conscience before us, saying that conflict of interest has to be avoided. Can Mr James TO not share what the Secretary said? Therefore, this point must be put on record: the Secretary considers that a person having a conflict of interest must not be an observer and, what is more, appoint observers — the Secretary should listen carefully that he should not appoint observers, and yet he has opted not to do so.

Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move that clause 31(2) be amended.

Proposed amendment

Clause 31 (see Annex V)

CHAIRMAN (in Cantonese): Before I put the question to you on the amendment moved by the Secretary for Security, I would like to remind you that if the amendment is passed, Mr James TO may not move his relevant amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr Raymond HO, Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted for the amendment.

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Dr Fernando CHEUNG, Mr Albert CHENG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 34 Members present, 22 were in favour of the amendment and 11 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 31(2), nor the addition of subclause (3) to that clause, which are inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 31 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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): Clause 32.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have separately given notice to move amendments to clause 32.

Members may now debate the original clause, the amendments proposed by the Secretary for Security and Mr James TO to the clause together in a joint debate. I will call upon the Secretary for Security to speak first, to be followed by Mr James TO, but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, my amendment seeks to replace "警監會" with "監警會" and "須具報投訴" with "須匯報投訴". I implore Honourable Members to pass the amendment.

It is already specified in the amended clause 7(1)(a) that one of the functions of the IPCC is to observe, monitor and review the handling and investigation of reportable complaints (須匯報投訴) by the police. On the other hand, one of the functions of an observer is to assist the IPCC in observing the manner in which reportable complaints (須匯報投訴) are handled or investigated by the police, and this function is already accurately reflected in the

existing clause 32, with the power required by an observer to discharge the function of observation having been clearly stated in clause 34, too. Therefore, we consider it unnecessary for Mr James TO to propose amending "observe" as "monitor through observation", and we will not support this amendment.

MR JAMES TO (in Cantonese): My amendment actually seeks to rectify the names only. This is because the duty of an observer is to assist the IPCC in discharging its monitoring duty as monitoring is one of the duties of the IPCC and an observer is to assist the IPCC in discharging one of its monitoring duties, that is, observation. Therefore, it cannot be said that an observer is to assist the IPCC in "observing"; we can only say that an observer is to assist the IPCC in "monitoring" through observation. The reason is that observation has no intrinsic value, and hence observation cannot be said to be a duty of the IPCC. What can the IPCC observe? Is observation the only function of the IPCC? No, the goal of the IPCC is to monitor, no matter how the monitoring is to be conducted.

Given that the IPCC has to carry out monitoring, and an observer is to assist the IPCC in performing monitoring through observation, the right names must be used. Of course, even if this amendment is not passed, the power of the IPCC will still not be reduced because observers can still carry out observation, but I find this problematic in logic. I hope these names can be removed from the statutes to prevent it from being made an object of ridicule.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, I have nothing to add.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move that clause 32 be amended.

Proposed amendment

Clause 32 (see Annex V)

CHAIRMAN (in Cantonese): Before I put the question to you on the amendment moved by the Secretary for Security, I would like to remind you that if the amendment is passed, Mr James TO may not move his amendment to clause 32.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Mr Albert HO, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr CHIM Pui-chung and Mr KWONG Chi-kin voted for the amendment.

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Dr Fernando CHEUNG, Miss TAM Heung-man and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 39 Members present, 26 were in favour of the amendment and 12 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the Secretary for Security's amendment has been passed, Mr James TO may not move his amendment to clause 32, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 32 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clause 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): Clause 34.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 34 be amended.

During the scrutiny of the Bill, members of the Bills Committee expressed concern about the handling of conflict of interest arising in the course of discharge of duties by IPCC members and observers.

Regarding the attendance of interviews and observation of collection of evidence by observers, it is already prescribed in clause 34(3) that if, during the interview or collection of evidence, it comes to the knowledge of the observer that he has an interest in the reportable complaint, he must disclose the nature of his interest, withdraw from the interview or observation of the collection of evidence and report the nature of his interest to the IPCC.

To address the Bills Committee's concern, we propose the addition of subclause (2A) to clearly state that if an observer has an interest, whether directly or indirectly, in a reportable complaint in respect of which an interview or collection of evidence is to be conducted, the observer must not attend the interview or observe the collection of evidence. We also propose to state in

subclause (3) that the subclause is applicable to situations where the observer has a direct or indirect interest.

The remaining amendments seek to replace "須具報投訴" with "須匯報投訴" and "警監會" with "監警會". The amendments are supported by the majority of members of the Bills Committee. I implore Honourable Members to pass the amendments.

Proposed amendment

Clause 34 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Page 152. Chairman, I move a further amendment to clause 34, to amend paragraph (a) of subclause (2). Chairman, under clause 34, an observer shall make a report after attending an interview to observe the collection of evidence. But how should he write the report? Our amendment aims precisely to address this issue. According to the original

clause, an observer must judge whether the investigation in question has been conducted partially or impartially. Such a vague description we will certainly say that it is the duty of an observer to observe whether an investigation has been conducted in an impartial manner and give comments on this. However, in order to make an observer pay extra attention and special emphasis, he must act according to what is proposed by me in subclause (2) by stating, in writing, should he see that the investigation has been conducted in a partial manner. Even though some Members may think that requiring an observer to comment on the impartiality or otherwise of an investigation and requiring him to report, in writing, should he see that an investigation has been conducted in an impartial manner are merely two different descriptions of the same matter. It is actually not the case.

Let us consider this carefully. There are dissimilarities at two different levels: First, the original provision requires that an observer must "state whether" the interview or collection of evidence has been conducted in an impartial manner, and that is it. Of course, paragraph (b) of subclause (2) reads: "an observer is required to state, where applicable, the details of the problems". But for greater clarity, I think that an observer should be required, at a second level, to focus his attention on grasping the relevant situation and, if partiality is detected, he must state it clearly in the report. This is what he is supposed to do, which is the first level.

Second, it is actually quite difficult to make it mandatory for an observer to judge the impartiality or otherwise of the investigation in question after observing the entire process because there are only two boxes he can tick, with one indicating "impartial" and the other "partial", and there is no other option indicating that the observer cannot ascertain the impartiality of the investigation, even though he is unable to detect irregularities indicating that the investigation has been conducted in a partial manner. Perhaps he can only say that he cannot detect anything partial, but at the same time he cannot make a categorical statement that the investigation has been conducted in an impartial manner.

What are the reasons? Actually, I did mention them just now. Insofar as an observer is concerned, whether he was conducting a scheduled or surprise visit to observe the investigation in question, he would only know that the CAPO was taking the statement of a certain witness and that the officer in question had asked the witness 50, 60 or 100 questions. But the point is: Has the witness

been led by these questions to tilt in a certain direction resulting in partiality? Apparently, it would not be easily recognizable. If he did not recognize it, he could only say that he did not find anything partial. This is what he could at most say. Unless an observer is able to grasp all the information behind a case by, for instance, having met four witnesses and he would be meeting the fifth one. Should a police officer from the CAPO intend to trick the fifth witness into tilting in a certain direction (for he has already seen the evidence given by the previous four witnesses), he could ask certain questions, but it would not be easy for the observer to notice what was wrong with the questions and, in the end, he could only indicate that he did not find anything partial.

However, if an observer believes that the statement taken is impartial, it means that he is, to a certain extent, confident and that he is very positive that the questions asked by the police officer in question throughout the entire process are not leading questions tilted in a certain direction. But the point is, it is simply impossible for any conclusion to be drawn by the Secretary, the Commissioner of Police or even a senior counsel adept at criminal litigations, not to mention an ordinary observer, without grasping the aforementioned information. I can only say that, according to my way, an observer should point it out should he find anything partial. But even if he does not find anything partial, it does not, in any way, mean that the investigation in question is impartial. It is only that he cannot find anything partial. However, if an observer is mandated to choose from one of the two boxes indicating partiality or impartiality, it would be tantamount to, in my opinion, forcing him to act against his own will. Should he indicate partiality, he would have to point out the area considered by him to be partial under clause 34(2)(b). This will make him extremely terrified because he would then have to state the particulars prescribed by clause 34(2)(b), but then he did not know what to do because he did not have full knowledge of the situation and, therefore, he would tend to judge the investigation in question to be impartial, as he would not be required to state the "partial" particulars should he choose "impartial".

The whole system has been so ingeniously designed that the designer can really be considered to be a master who could even take into account the psychological state of an observer, who would be forced to select the box indicating impartiality when he has no confidence in identifying anything partial. I consider this a masterpiece, or a work of art which seeks to harbour the entire system to prevent the problems from being uncovered. Mr Ronny WONG, Chairman of the IPCC, was right in saying that the entire system was so

ingeniously designed that even an observer's report had been deliberately designed in such a way that an observer could easily tilt towards one side. I can simply not help marvel at it. I hope the Government, the drafting department and the Security Bureau, which is responsible for giving directions, can behave in an equally smart manner in other areas for the well-being of the people. Under the present circumstances, however, even the subtle areas in the system are designed by a master in such a smart manner that the results will tilt towards one side in such an elusive manner. Their motive is indeed condemnable!

Proposed amendment

Clause 34 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendments together in a joint debate. Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr TO, I am not as smart as you are, so I cannot think of so many benefits as you do, but I can tell you that we absolutely do not have such an intention.

The existing clause 34(2) stipulates that, after attending the interview or having observed the collection of evidence, the observer must submit a report to the IPCC stating whether, in his opinion, the interview or collection of evidence has been conducted in a fair and impartial manner and where applicable, the particulars of any irregularities detected by the observer in respect of the interview or collection of evidence. This provision reflects the existing operation of the Observers Scheme.

To further perfect the observation arrangement, the police, in conjunction with the IPCC, will arrange some briefings for observers to familiarize them with how the IPCC handles and investigates complaints against police officers. We believe, through better understanding, observers can perform more

effectively their functions of observing the handling or investigation of reportable complaints by the police.

Mr TO proposes that paragraph (a) of subclause (2) be amended to require an observer to submit a report to the IPCC stating, where applicable, in his opinion, the manner in which the interview or collection of evidence has been conducted in an unfair and partial manner, meaning that an observer will be required to submit a report to the IPCC only when he is of the view that the interview or collection of evidence has not been conducted in a fair and impartial manner, but this is inconsistent with the original intent of our existing practice and the policy of appointing observers. As we consider our approach more desirable, we will not support Mr TO's amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Chairman, this is my further comment because, according to the response given by the Secretary just now, it would mean that there is no need to write a report should the approach proposed by me in paragraph (a) be adopted. May I ask the Secretary to look carefully, for my proposed paragraph (a) is intended to substitute your clause 34(2)(a). Therefore, the wordings before paragraph (a), that is, "the observer must submit a report to the Council stating", will still be retained. In other words, the observer must write a report, only that he is not only required to state only "impartial" or "partial", as stated by the Secretary just now, by selecting from the two boxes indicating "whether or not", but he must also state it clearly should he find anything partial and where it is applicable to do so. This is where the difference lies. It is not the case that the observer will not be required to write a report should my proposal be adopted. I have not deleted the wordings before paragraph (a) requiring that a report be written.

CHAIRMAN (in Cantonese): Does any other Member or public officer wish to speak again?

(No Member or public officer indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division 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:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr 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 and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, 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, 21 were present, two were in favour of the amendment and 19 against it; while among the Members returned by geographical constituencies through direct elections, 16 were present, nine were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CLERK (in Cantonese): Clause 34 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendment to clause 34, I now put the question to you and that is: That the clause 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): Clause 38.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the heading before clause 38 be amended.

The amendment seeks to replace "警監會" with "監警會". I implore Members to support and pass the amendment.

Proposed amendment

Clause 38 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Chairman, we have come to page 155.

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

Deputy Chairman, I move that clause 38(1) be amended. Clause 38 deals with the protection of IPCC members. According to the original clause, there is no need for an IPCC member who performs his functions in good faith to worry about being prosecuted. This is usually stated in the provisions of ordinances related to statutory bodies as protection.

My amendment seeks to enhance the protection for IPCC members. I hope Members can listen carefully, I seek to enhance their protection. From the preliminary response of the Secretary to the Bill, it appears to me that the Secretary opposes enhancing the protection for IPCC members. My formula is about how protection can be enhanced. According to the legal advice I have obtained, a person would not be considered as acting in good faith if there is negligence on his part, even if he has acted in good faith, because he would be held liable should there be any negligence on his part. In other words, it would be useless for a person to stress that he has acted in good faith and done his best should there be any negligence on his part, for he would still face prosecution.

Moreover, at the last meeting of the Bills Committee, members of the Bills Committee unanimously agreed, after the incident involving the leakage of confidential information by the IPCC, that the Government should be considered lucky for it could now refrain from doing anything by saying that the Government had nothing to do with this because a statutory body had already been set up. Even if a statutory body had not been set up, the Government would still ask the IPCC not to get the Government into trouble by saying, "It is none of my business even if you are being prosecuted." After all these struggles and hard work, Members should have heard what the Permanent Secretary said, "I will certainly take care of you no matter what happens to you. But if you lose any legal battles, you must not get my Secretary and Permanent Secretary into trouble."

This can actually be regarded as a way of passing the buck with the excuse that the IPCC has been set up. But the thing is the IPCC is not given adequate resources when it is in need of protection. In reply to a question raised by us

about what would be done should an IPCC member be prosecuted even though he had acted in accordance with the new formula, the new IPCC chairman, Mr JAT Sew-Tong, replied when he was invited to attend our meeting that, should the IPCC be given a budget of more than \$10 million and the amount of compensation still exceed the budget, the IPCC could only declare bankruptcy. But then, the IPCC would no longer exist. So what? But the victims would then be rendered helpless. Should the authorities resort to liquidation, the IPCC would end up having nothing, but then it would not do the victims any good. They would rather have the IPCC making repayments in instalment, as it would be allocated more than \$10 million annually! So, the debt can be repaid over a long period! But whether the budget is adequate is yet another matter.

When we consulted the Government how it would protect IPCC members and whether the IPCC would have adequate funds to pay for compensation should anything happen, the Government replied that "we would discuss with the IPCC when it had difficulty but we would absolutely not assume the responsibility of paying for compensation unconditionally for all statutory bodies." Although the Government's comments appeared to make sense, I could not help feeling aggrieved for IPCC members with the mere expression of "in good faith" after witnessing from the incident involving the leakage of confidential information the government officials' attitude in passing the buck. This explains why I propose the addition of "without gross negligence", in order that IPCC members would not be held liable for minor negligence had he acted in good faith. But he would still be held liable should there be gross negligence. For instance, IPCC members comprise many lawyers, with many of them being legal advisers or Legislative Council Members, and they should be extremely cautious. Should there be gross negligence on their part, they might be required to bear the responsibility, such that the victims would be able to redress their grievances and seek compensation. This protection is meant to raise the threshold for protecting IPCC members who have acted in good faith without gross negligence.

I have considered some questions. Would other people, that is, the victims, be affected by my proposed amendment? And for people whose interests would be affected by IPCC members in the course of discharging their duties, would they enjoy less protection as a result? This is bound to happen because of the confrontational nature of the two parties. However, after deliberations, I still consider it appropriate to do so. Actually, to take up the post of IPCC member is tantamount to fulfilling a public responsibility. It is

indeed imperative for us to handle the matter carefully should the protection be narrowed down further.

I have also referred to other provisions. In particular, those cases involving the Government being prosecuted remind me of the anti-terrorism legislation. According to the first draft of the anti-terrorism ordinance, no compensation would be made even if an injunction had been mistakenly imposed on someone's assets due to gross negligence on the part of the Government. The Government explained that as the information might be supplied by the Central Intelligence Agency, it must seize every minute and second to accomplish its anti-terrorism task, and so the information received must be processed instantly for the sake of curbing terrorist activities. So, how could the Government afford compensation should it be required to pay hundreds of millions of dollars in compensation for issuing an injunction order mistakenly?

Despite the fact that the objections expressed by Members from the pan-democracy camp might not produce any fruitful results, some Members with a business background voiced objection at that time when it came to balancing actual interests. They fiercely attacked the proposal on the ground that business people would definitely be involved should an injunction order be issued, thereby causing compensation to be made. In the end, the Government compromised and decided that compensation would not be required should an injunction order be issued out of negligence. However, compensation would be required should an injunction order be issued out of gross negligence. It was under such circumstances that an agreement was reached requiring the Government to pay compensation in the event of gross negligence. However, there would be no need for government officials to make compensation should the negligence involved was merely general in nature.

Deputy Chairman, when comparing these two clauses or other clauses, I thought to myself that there was no reason for me to allow government officials to treat themselves with such leniency that they would only be held liable for gross negligence, and yet they could be so harsh with others — for instance, IPCC members would definitely be required to make compensation and held legally liable for minor negligence even if they have acted out of good faith, and yet we have no idea if the Government would assume all responsibility. So, how can I allow government officials to treat themselves so leniently and enjoy better protection and, on the other hand, being extremely harsh with others? If the Government is trying to look for a scapegoat — the Government might be

required to assume all responsibility should the appointments be made as a matter of administration. But now, the Government seems to have allowed the Monkey King to pull out a thread of hair and turn it into the IPCC to play the monitoring role and take responsibility should anything happen, as well as taking responsibility on its own in the event of incidents involving negligence.

As this should not happen upon comparison of the two, I consider that protection for people discharging public duties should be enhanced. I therefore proposed my amendment for I found my proposal makes more sense upon balancing the two.

Proposed amendment

Clause 38 (see Annex V)

DEPUTY CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendment together.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, the existing clause 38(1) provides protection for the IPCC and such specified persons as IPCC members. Under this clause, any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under this Ordinance will not render the specified person liable to any civil proceedings.

Mr TO proposes to add the reference to "without gross negligence" to the clause. Under the existing Hong Kong laws, there is no reference to "gross negligence" in provisions exempting statutory bodies from certain legal

liabilities. Given that there is not yet a clear definition of the expression, the addition of such a reference to clause 38(1) might give rise to different interpretations. Meanwhile, this might also give rise to the problem of interpreting "gross negligence" and "non-gross negligence", thus rendering the provision ambiguous.

While I fully understand that we are obliged to provide IPCC members with adequate protection, we hope Members can understand that a balance must be struck carefully policy-wise. In protecting specified persons, such as the IPCC, to enable them to perform their functions fearlessly, we must also ensure that the rights reasonably enjoyed by other relevant persons would not be undermined by the relevant provision.

The scope of protection provided by the existing clause 38(1) is comparable to the protection enjoyed by members of other statutory bodies. I must emphasize that the existing clause 38(1) protects the IPCC from civil liabilities for any act done, or omitted to be done, in good faith and reasonably in performing its functions. Should the reference to "without gross negligence" be added to the clause, as proposed by Mr James TO, some IPCC members might enjoy exemption from such liabilities even if they have failed to act prudently and reasonably. As we consider this inappropriate, we will not support Mr James TO's amendment.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): Deputy Chairman, had it not for the incident involving the leakage of confidential information and our knowledge of how the Secretary, in handling this matter, passed the buck and put IPCC members, including its Chairman and Vice-Chairman, into a difficult position and how the Permanent Secretary for Security pleaded with IPCC members to exercise the utmost caution and not to implicate the Security Bureau, despite the intense grievances thus triggered, how could we have learned about the actual situation? This is because the IPCC Chairman, Vice-Chairman and many of its members approached us to air their grievances as they could not publicly express their views for various reasons, such as they were still involved in litigations with some members of the public and they had no wish to affect the people's legal

position. However, they have let us know how our Government, the Secretary for Security, the Permanent Secretary for Security and the Deputy Secretary for Security approached them.

Without this background, I would not have proposed this amendment. Simply put, there would still be problems in the event of minor negligence on the part of IPCC members even if they have acted reasonably and in good faith. In the end, the Secretary told us that the Government would take responsibility because of their statutory status, unless they acted in their own interest or leaked information indiscriminately. Provided that they discharge their public duties in good faith, and even if in the event of minor negligence, the Government would still assume responsibility to give them protection because they work for the Government without receiving any pay. Am I right? It is really an arduous task for them to examine thousands of dizzying reports on behalf of the Government for such a meagre travel allowance!

However, the incidents that occurred sometime ago have made me feel extremely frightened. After hearing what they said, I really feel sorry for them. Now that the IPCC has been appointed, the Government should at least give us policy support to make people appointed to other statutory bodies feel at ease, even if the Government will make no commitments. However, the Government has failed to do so. It does not matter. Had the Government not behaved in such a terrible manner, we would not have proposed this amendment. Why did I suggest enhancing their protection for no reason? Because I truly shared their suffering after listening to what they said. I should really decline the Government's offer should I be offered an appointment for I would then be subject to pressure from two sides. Things were even more ridiculous in the beginning. The IPCC was told to sort out all problems by itself should anything go wrong. Mr Ronny WONG, the IPCC Chairman, once publicly complained that there was a shortage of manpower in the IPCC. I still recalled their complaint at a two-day meeting chaired by Mr LAU Kong-wah and me that they could not cope, and they even confessed to the Panel on Security of the Legislative Council that the IPCC did not have adequate manpower to rectify the sequelae resulting from the incidents involving the leakage of confidential information at that time. It was revealed that the relevant persons would simply disappear should the IPCC face prosecution. What sort of a government is this? In what manner were public officers appointed? I have to put this on record. I think other appointees should really think twice about whether they should accept the appointments.

I certainly understand the reasons why some people talked about affinity differentiation. For people who are relatively impartial and objective, why should they still need to do this for the Government? Given their affinity with the Government, there is no way for them to refuse doing it because they are its brothers. Should his superior, chairman and the Government belong to the same political group, he must still tackle the thorny issues. Should anything happen, he can only negotiate with the Government again by way of bargaining, consultation because, once apportionment of political interest is involved, there is nothing he can do but bear and grin it.

Such being the case, an ordinary good man must be extra cautious. I am saying this not to discourage people who are committed to performing public service to serve the community. However, the Government will really behave in this manner. Under the leadership of the existing Government, it has really done all these things. As a Member of this Council, I cannot conceal the truth after I have learnt about it. This explains why I have no alternative but to propose an amendment to clause 38 to provide them with enhanced protection. Only in this way can they enjoy greater security and receive relatively commensurate protection.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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:

Mr SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr 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 and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU and Mr Alan LEONG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, 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, 21 were present, two were in favour of the amendment and 19

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

CLERK (in Cantonese): Clause 38 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendment to clause 38, I now put the question to you and that is: That the clause 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): Clause 2.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 2 be amended.

The amendment to clause 2 seeks to amend the definitions of "categorization", "classification", "Council", "non-reportable complaint", "reportable complaint", "Secretary", "Chairman", "appointed member", "committee", "Legal Adviser", "Vice-Chairman" and "request for review", and add the definition of "material" as well as new paragraph (3).

To amend the definitions of "categorization", "non-reportable complaint", "reportable complaint" and "request for review"

As I mentioned in moving the amendment to clause 12, a "reportable complaint" refers to a complaint lodged by a member of the public against certain conduct of a member of the Police Force and any practice or procedure adopted by the Police Force, with its scope spelt out in clause 10. While the handling and investigation of a "reportable complaint" is closely monitored by the IPCC, the CAPO is required to submit a detailed and comprehensive investigation report with respect to these complaints. The investigation of a report will not be deemed completed unless the findings and classification of complaints within the report are agreed by the IPCC.

A "non-reportable complaint" refers to a complaint outside the scope of clauses 9 and 10, such as a complaint not lodged by the complainant or his representative, an anonymous complaint, and so on. Although the CAPO is not required to submit a detailed investigation report to the IPCC in respect of these complaints, the IPCC will still be required to categorize these complaints according to the correctness of the monitoring of these complaints. Meanwhile, the police will take concrete actions to follow up the complaint cases according to the established mechanism.

On the recommendation of the Bills Committee, we propose to use layman terminology by replacing "須具報投訴" with "須匯報投訴" in the Chinese text, retaining "reportable complaint" in the English text, replacing "無須具報投訴" with "須知會投訴" in the Chinese text, and replacing "non-reportable complaint" with "notifiable complaint" in the English text, with a view to reflecting the different natures of the monitoring of these two categories of complaints by the IPCC. Hence, we will introduce necessary and technical amendments to the definitions of "須具報投訴" and "無須具報投訴".

To amend the definition of "classification"

Under the existing police complaints system, complaints will be "classified" according to the facts and findings of the investigation carried out by the police of "reportable complaints" with a view to reflecting the findings of the investigations in a succinct manner. The classification includes "substantiated", "substantiated other than reported", "not fully substantiated", "unsubstantiated",

"false", "no fault", "withdrawn", "not pursuable", "curtailed", "informally resolved", and so on.

For clarity's sake, the Bills Committee proposes that the common categories be listed in detail in the definition of "classification" in clause 2. We agree to the opinion of the Bills Committee and will therefore amend the definition of "classification". The definition will also retain "of such other description as agreed between the Council and the Commissioner" to enable the Council and the police to provide new category of complaints according to future needs.

To amend the definition of "Council"

As I mentioned in moving the amendments to clauses 1 and 3, "警監會" will, upon becoming a statutory body, change its Chinese name to "獨立監察警方處理投訴委員會". In the light of such change, the abbreviation of the existing "警監會" will also change to "監警會" accordingly. In this connection, all references to "警監會" in the definitions of "Council", "Secretary", "Chairman", "appointed member", "committee", "Legal Adviser" and "Vice-Chairman" will be changed to "監警會".

To amend the definition of "Secretary"

As I pointed out earlier, a full-time secretariat is now providing administrative and operational support to the IPCC, and the Secretary of the IPCC is also the person in charge of the secretariat. The Bills Committee is of the view that amending the post title of "Secretary" as "Secretary-General" can better reflect the functions of the post. We agree to the opinion of the Bills Committee, and so we will amend "Secretary" in clause 2 as "Secretary-General". Later, I will move consequential CSAs to other provisions containing references to "Secretary" in the Bill.

To add the definition of "material"

Both the previously passed clause 15(3) and the existing clause 20 provide that the IPCC may require the police to provide information and material with respect to "reportable complaints". The Bills Committee proposes to, with reference to the definition of "material" in the Organized and Serious Crimes Ordinance, add a similar definition to the Bill to provide clearly that "material"

includes any document or record in any form and any article or substance. We agree to adopt the recommendation of the Bills Committee and will, therefore, add the definition of "material" to clause 2.

To add subclause (3) to clause 2

Sections 7(1)(b), 18(1)(e) and 24 contain references to actions taken or to be taken by the police in respect of a member of the Police Force. For clarity's sake, we have adopted the recommendation of the Bills Committee to add a new subclause (3) to provide that reference to any actions taken or to be taken in respect of a member of the Police Force, as contained in the various sections mentioned by me just now, includes a decision that no action be taken against that member.

The amendment is supported by the Bills Committee. I implore Honourable Members to pass the amendment.

Proposed amendment

Clause 2 (see Annex V)

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

MR JAMES TO (in Cantonese): Chairman, while I was drafting these amendments, my assistant said to me smilingly, "James, the election is just around the corner. Even though you have yet to declare your candidacy, considering that you have made so much effort and attended so many meetings over the years, would you claim credit whenever the recommendation of the Bills Committee is accepted by the Secretary?" I supposed it would really be very boring if I should repeat the same words on every occasion. But my assistant warned me that no one would be aware of my contribution if I did not act in that way. Yes, no one would know it. But it does not really matter, for we are duty-bound to perform these tasks.

However, I note that there are many points in the amendment proposed by the Secretary the complaints against police officers being discussed are

actually different from other complaint mechanisms, for the complaints resemble a giant maze. I describe the complaints as a maze because it is like a patching game. We are now dealing with interpretation in clause 2. What are we talking about when we tell others that there are the so-called "notifiable complaints", "reportable complaints", and so on What is the point of classifying the complaints in this manner? It is because, for some complaint cases, a detailed report is required to be submitted to the IPCC, but for others, the IPCC is only required to be notified of what has happened. In the event that a complaint is classified as a "notifiable complaint", this would mean that the IPCC is only required to be notified of, but not monitor, the complaint.

So, what sorts of complaints should be classified as "notifiable complaints" or "reportable complaints"? To avoid misunderstanding among the public, I will now read it out: Sorry, the IPCC cannot monitor complaints not lodged by directly affected persons as well as anonymous complaints, even if the situation is confirmed and the impartiality of the investigation is not yet determined. The Commissioner of Police can act objectively according to the provisions to disallow the IPCC from carrying out monitoring simply on the grounds that he disagrees or he is of the opinion that the relevant complaints are frivolous. Even if a case involving a complaint lodged by a police officer against another police officer for serious non-compliance, not involving welfare matters, is substantiated or has not been investigated, and notwithstanding the fact that the impartiality of the investigation has yet been determined, the IPCC can still not monitor the complaint. Chairman, what I am doing is to do some patching work here and there in this maze. It is amazing that even the scope of work of the IPCC could have been narrowed to such an extent. And this Bill might even be passed by Members in an hour or two.

Chairman, another point I wish to make is that the so-called "classification", as you can see, actually means "making the final decision". This is really ridiculous. Is it a "classification" rather than a "conclusion"? Would members of the public see anything like this when they lodge complaints elsewhere, such as the Office of The Ombudsman and the ICAC Complaints Committee? One of the categories is called "not fully substantiated". I guess the IPCC and the Commissioner of Police may even come up with other categories in the future, such as "uncertain if the case is substantiated", "do not know if the case can be fully substantiated", "have doubt about the possibility of the case being fully substantiated", and so on. The ultimate purpose of creating

more categories is simply to lead us to conclude that there are relatively few "substantiated" cases. All in all, to play this game is to create a few more categories.

This reminds me of something very laughable. Sometimes, because of a shortage of honourable posts, many voluntary agencies would come up with such posts as the first vice-chairman, second vice-chairman, chairman of the previous term, chairman of the next term, chairman of the current term, and so on. In the end, everyone is chairman. Perhaps even more monitoring councils or advisory councils will be formed, too. Although it can be argued that there is a need to do so, why is there a need to come up with such a complicated classification? All complaints should have an outcome, but this is not what the IPCC seeks to achieve. In the end, no conclusion will be drawn; the complaints will only end up being put into different categories. Hence, even if a complaint is lodged, it will only be put into a certain category. Most importantly, there are many different categories, such as the category of "no fault", which means that a complaint, even if substantiated, is found to have no fault. In other words, even if a complaint might be substantiated, the police officer in question is still considered to have no fault. In brief, the complaints are handled in such a complicated manner just to ensure that the fewer cases of abuse of power by the police the better. At least, I cannot find another complaints mechanism in Hong Kong which could have made things so complicated.

I am making these remarks in response to the remarks made by Mr Ronny WONG, the IPCC Chairman, that is, the entire system is designed in such a way that every stage, from the investigators, the scope of the investigation, classification, the making of the final decision, the acquisition of information, and so on, are meticulously considered and regulated in such a detailed manner that everything becomes very "rigid" and are carefully guarded such that no one can step beyond the line. This is the existing system.

I would like to remind Members that clause 2, which is related to "classification", is indeed an eye-opener because something like this would not be stated in writing in the form of statutory provisions in the past. Such matters would only be published in annual reports, or we might be told by our acquaintances of the presence of such a maze. This game of making complaints is like a giant maze. In any case, every effort is made to bar people from making complaints and prove that the number of complaint cases is very small.

No one can tell what has been done in terms of disciplinary and follow-up actions. Even if one has lodged a complaint, he could only expect to receive a reply letter without any detailed information about the findings. Except for the classification and the reasons for such classification, he would absolutely not be informed of any supporting information, evidence and comparisons. This is the true face of the existing system.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 2 as amended.

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

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| CLERK (in Cantonese): New clause 1A | Commencement |
| New clause 33A | Prior notification of interview and collection of evidence |
| New clause 40A | Pre-existing legal claims. |

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the new clauses read out just now be read the Second time.

Clause 1A: Commencement

Clause 1A is a commencement provision. To ensure the smooth operation of the statutory IPCC in the future, we propose that a commencement provision be added to the Bill to enable the legislation to come into operation upon the IPCC's completion of the preparatory arrangements for the formal establishment of the IPCC as a statutory body.

Clause 33A: Prior notification of interview and collection of evidence

Clause 34 empowers an observer to attend an interview conducted by the police in respect of a "reportable complaint" and observe the collection of

evidence by the police in the investigation of a reportable complaint. According to the existing arrangement, if the interview or collection of evidence is to be conducted 48 hours later, the police will notify the IPCC in advance so that the IPCC can arrange for an observer to conduct an observation.

The Bills Committee is of the view that it should be stipulated in the Bill that the police, in so far as practicable, must notify the IPCC in advance of all interviews and collection of evidence to enable IPCC members and observers to more effectively observe the handling and investigation of "reportable complaints" by the police.

On the recommendation of the Bills Committee, we propose to add clause 33A to require the police, in so far as practicable, to notify the IPCC in advance of interviews and collection of evidence. Should the police fail to do so, for such reasons as there is an urgent need to conduct an interview or collect evidence within a very short period of time, the police must, as soon as practicable after the incident and in writing, notify the IPCC of the incident and explain the reasons for failing to give prior notification.

New clause 33A seeks to further improve the arrangement for notifying observers. This would help enhance the effectiveness of the Observers' Scheme to allow observers to attend and observe more interviews and collection of evidence so that the IPCC can perform its monitoring functions in a more comprehensive manner.

Clause 40A: Pre-existing legal claims

Regarding the incident involving the leakage of personal information by the IPCC, as reported in the newspapers in March 2006, some affected persons are pursuing claims for compensation from the IPCC. At the meetings of the Bills Committee, some members expressed concern about whether these cases would be affected by the Bill.

Clause 40(1) provides that "the enactment of this Ordinance does not affect the validity of anything done by, in relation to or on behalf of the former Council before the commencement date". By virtue of this provision, any legal effects targeting the litigations instituted against the existing IPCC will not be affected as a result of the IPCC becoming a statutory body. Clause 40(2) further provides that "anything done before the commencement date by, in relation to or on behalf

of the former Council pursuant to or in connection with its functions has effect as from that date as if done by, in relation to or on behalf of the Council". Therefore, any litigations instituted against the existing IPCC, if still in progress upon the establishment of the statutory IPCC, will continue to be instituted against the statutory IPCC.

As we do not object to the Bills Committee's proposal that provisions be made in this regard, we will propose the addition of clause 40A to provide that these claims, whether made through judicial or administrative proceedings, will not abate by reason of the commencement of the Bill.

All of these new clauses are supported by the Bills Committee. I implore Honourable Members to pass them.

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?

MR JAMES TO (in Cantonese): Chairman, the first point I would like to raise is commencement in clause 1A. Although the issue of resources was raised during recent meetings held by the Bills Committee, it seems that nothing has yet been achieved. We find it really strange that this matter has been lingering for months, with the IPCC calling for the creation of six additional members and the upgrading of the Secretary-General to a D2 or D3 post, and so on. Although these issues have been discussed for a long time, the Government still indicated on paper that the issues are still under consideration.

However, when confronted with the question regarding which government official was considering these issues, the Government was unable to reply because the proposal was supposed to be considered by a committee set up under the Financial Secretary, and yet the proposal had not yet reached that committee. This is what is written in the government document, "the proposal is still under consideration, and funding will be provided if considered reasonable". Look! This was the reply given to Honourable Members by the Bureau. But actually, the issues were not being considered by anyone. I think the Government had

better give us a reply like this, "In order to tie in with the Financial Secretary's annual allocation of resources, the matter has not yet been considered, but consideration will be given in due course." Yet, the Government chose to act otherwise by saying that the matter was being considered, even though it has not yet been given any active consideration.

Chairman, without adequate resources, it is simply undesirable to put this Bill into implementation. Why? Let us imagine this. According to the new legislation — I will definitely not call it "警監會" because otherwise all letter paper, seals and name cards would have to be printed anew, and additional expenses would definitely be incurred — the original logo could no longer be used because the newly set up body would be called IPCC. It can well be imagined that the logo bearing "警監會" might need to be replaced.

But the procedure involved, such as the code of practice, will be changed, and additional expenses will definitely be incurred. Owing to these changes, the procedure adopted by the police might even become more complicated. For instance, the documents presented by the Government might need to be completed according to a checklist stated below. In this connection, I must warn the Government not to expect Members of this Council to pass the Bill and let it take effect if adequate resources are not provided. Meanwhile, it is absolutely undesirable for us to act in such an indiscreet manner.

Chairman, you commented that the passage or otherwise of the Bill would actually mean nothing to me because we would still raise objection at the Third Reading of the Bill. In our opinion, the construction of such a giant maze is simply intended to confuse the masses and lull them, giving people the false impression that the Government has come up with a statutory body. While the word "statutory" seems to imply something very solemn and harsh, it could be used to stifle and paralyze the new organ. This is precisely the situation confronting us.

Chairman, instead of using the expression "48 hours later", the English expression "in so far as practicable" is used in clause 33A regarding the notification given to the IPCC or observers to conduct observations. Just now, the Secretary explained that "in so far as practicable" would mean "48 hours" here, even though "48 hours" was not stated in the law. I can imagine if "48 hours" is to be adopted in the future, some, if not all, cunning police officers from the CAPO would definitely take advantage of the 48-hour window and

resort to every trick to prevent observers from conducting observations. He might resort to a very simple trick by making an appointment with a complainant and asking him if he would be free the same day because he took the complaint very seriously and would like to take a statement as soon as possible. If the complainant happened to be free, the meeting would be completed promptly, and there would be no need for an observation to be conducted. Therefore, the statement-taking process of all anxious complainants would be conducted without observations because there was no way to notify the IPCC given that the taking of statement would be completed within 48 hours. However, it could be easily imagined, and this could even be stated in a report compiled by an officer from the CAPO, that a complainant could be blamed for notifying the IPCC 48 hours later. The officer might state that, as the complainant requested to have his statement taken on that day, and we, as an efficient organ, were able to accede to his request, so the statement was taken on the same day. He might even say something like this, "Sorry, there was no time for me to notify you, and so you were unable to conduct an observation."

Of course, it would not be possible for notification to be given by the hour in reality. But this is what I am thinking. I guess Members and the majority of administrative staff possess a state-of-the-art gadget called Blackberry. If you have an appointment with somebody, you will probably jot down on your log book or diary, unless the appointment is going to take place in an hour or 10 minutes, that you are going to meet someone in connection with a certain case. You will jot this down immediately. And if you have your own operating system, as all of you are computer users and there is a computer on the desk of each police officer, a lot of your business will be handled by computer unless you are out of office. Members can see that all statements are now recorded by computer, and appointments are also arranged with a computer. Any information about interviews can thus be keyed into the computer for storage in the central system for faster connection with the IPCC secretariat. Members may simply key in the relevant information should they wish to do anything. All the information could then be instantly revealed, whether a complaint lodged with the CAPO is originated from Kowloon, Hong Kong Island or the New Territories. If the Secretary-General manages to do this, they would have the means to notify the IPCC to arrange for observations to be conducted, even though I have no idea how much time will be required, even if the interviews are urgent.

Nevertheless, although the complainant might take the matter very seriously and the police managed to notify the IPCC, it would still not be easy to

find an observer to conduct the observation. As the matter has to be dealt with urgently, how come such a busy person is tasked with handling this job! In my opinion, it might be necessary to find some not-too-busy persons to work as observers or some persons to work as full-time observers. The existing system seems to have ruled out this possibility because the fees, namely honorarium and remuneration, are only nominal. If we are to look for people who are more capable of working as full-time observers, can we find them here? I am sceptical about this.

Furthermore, as pointed out by me earlier, the IPCC employees were originally paid and might work as full-time staff, but they must not be appointed as observers. I have originally conceived that the IPCC could recruit some paid observers for appointment by the Secretary. If we act in this manner originally, we intended to recruit some paid, dedicated observers through the IPCC for appointment by the Secretary. However, we are not allowed to do so. This system is specially designed for exploiting the 48-hour window — "Colleagues, for the purpose of abuse of power, you must act promptly and not to inform observers because we have only 48 hours to exploit the loophole." The Secretary might be puzzled why Mr TO could have such a complicated way of thinking. Even he could not have thought about this, and this is not what he thinks.

Right, the Secretary is not accustomed to contemplating monitoring issues. But we must consider what tricks can be employed and what ways be adopted to prevent the police from abusing power and the Government from going wrong. Otherwise, how can we establish a monitoring system? I can only say that the Government should thank Members for thinking up these opinions before striving to come up with a system that can prevent the occurrence of such incidents.

Lastly, Chairman, clause 40A deals with protection provided in respect of legal claims. Chairman, although the Government said that it hoped to preserve the protection, its formula would actually give rise to two problems. Of course, if you consult me, I would not object because it is always better to have something than nothing. But where does the problem lie?

The first problem concerns the preservation of the clause providing that the legal claims not to be affected are targeted at the former IPCC, not former IPCC members. There are indeed substantial differences between the former IPCC and former IPCC members because, as far as I know it, some former

IPCC members have been prosecuted. So, will the defence lawyers of former IPCC members take advantage of the new law and argue that former IPCC members should not be held responsible because of the changes to the existing system, given that the amendment is now written in this manner? I have no idea. But I am a bit worried if this is not explicitly stated.

The second problem concerns wordings. In terms of wordings, I think that the phrase "does not abate" compares less favourably than "shall not prejudice", which is clearer, and the phrase "shall not prejudice" can be expressed even more clearly by replacing it with "not in any way", that is to say, the existing proceedings will not in any way be affected by the enactment of this law. I think this is the fairest reference to both complainants and complainees. But there is nothing we can do now because this new provision was scrutinized at a very late stage of the meeting. All Members were in a rush to scrutinize the final amendments, and the task was indeed quite demanding.

In any case, I will not object to this clause because it is always better to have something than nothing. But I will regret it very much should there be any problems and should any proceedings against former IPCC members be affected by the new law.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not wish to speak again)

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 1A, 33A and 40A.

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

Proposed additions

New clause 1A (see Annex V)

New clause 33A (see Annex V)

New clause 40A (see Annex V)

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): Schedule 1.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to Schedule 1 to amend the heading and the cross-heading immediately after the heading, sections 1, 5 to 9, sections 11, 12, 13, 16, 18 to 22, 24 and 26, and to add sections 1A, 11A, 11B, 11C, 11D, 16A, 16B, 16C and 16D to Schedule 1, and to delete sections 10 and 14, and to amend subsections (3) to (6) of section 25 of Schedule 1, as set out in the paper circularized to Members.

Sections 1A and 1 of Schedule 1

According to the appointment arrangement generally applicable to the advisory and statutory bodies of the Government, the IPCC's Chairman, Vice-Chairman and other members will generally not sit on the same posts for more than six years.

During the scrutiny of the Bill, there were views that the stability of the term of office of the statutory IPCC members is very important so that the appointees can fully perform their monitoring role after familiarizing themselves with the functions of the IPCC. There are also views that a term of office should be longer than two years. However, other members also opined that the current arrangement under which each term of office was two years with the total term of office not exceeding six years was appropriate.

In making appointments and reappointments to the IPCC, we will consider the performance of individual members during their term of office, the need to maintain continuity of its operation, and the need to inject new blood so as to ensure a healthy turnover of members. In the appointment of members to the statutory IPCC in the future, these factors and the guideline that the total term of office not exceeding six years will continue to be adopted. Having considered the views of the Bills Committee, we propose the addition of section 1A to Schedule 1 so as to provide greater flexibility to the term of office of the IPCC Chairman by stipulating that each term will not exceed three years, and the

Chairman may be reappointed for one or more than one term which does not exceed three years.

Sections 7 and 12 of Schedule 1

Sections 1 and 12 of Schedule 1 provide the procedures of the IPCC in conducting its business. After considering the Bills Committee's views, we propose that the provision concerning the appointment of the time and place for the IPCC to meet in the absence of the Chairman in section 12 be moved to section 7 of Schedule 1 so that provisions concerning the IPCC meetings can be read together. The Bills Committee opines that the time and place for the IPCC to meet in the absence of the Chairman should be appointed by a Vice-Chairman. Having accepted the views of the Bills Committee, we propose to add subsection (3) to section 7 of Schedule 1 so that the IPCC may make its procedure on its own in this respect.

Sections 10, 11, 11A, 11B, 11C, 11D, 14, 16, 16A, 16B, 16C and 16D of Schedule 1

Given the concerns about how the IPCC will deal with conflict of interest of its members, the Bills Committee has proposed that provisions be laid down in the Bill so that if an IPCC member has an interest in a complaint, the member shall withdraw from the meeting during the discussion of the complaint. We have accepted the Bills Committee's suggestion and proposed to delete sections 10 and 11(6), and sections 14 and 16(6) of Schedule 1 and substitute with sections 11A to 11D, and sections 16A to 16D respectively so as to elaborate how the IPCC will deal with a situation where an IPCC member has an interest in a case.

The matters covered by sections 11A to 11D and sections 16A to 16D to be added to the Bill are consistent, with the only difference lying in the fact that sections 11A to 11D govern the conduct of meetings of the IPCC and sections 16A to 16D govern the committees, panels and sub-groups formed by the IPCC. Under these new sections, a member who has an interest in a complaint shall withdraw from the meeting during the discussion of the complaint. He must not vote on a resolution concerning the complaint and must not be counted for the purpose of forming a quorum. In the case of a written resolution, the member must return the papers and must not vote on the written resolution. Besides, if a

member of the IPCC has an interest in a matter which is not related to a complaint, under the new provision, it will be determined by a majority of the other members present at the meeting. The aforesaid amendments are supported by the Bills Committee.

Mr James TO has suggested that "interest" be specified in the Bill to include direct and indirect interest. In fact, "interest" in the original provision carries such meaning. Mr TO's proposal has been incorporated into our amendment to specify that interest includes direct and indirect interest.

Section 13 of Schedule 1

It is stipulated in section 13 of Schedule 1 that the IPCC may establish committees, panels or sub-groups to assist the IPCC in the performance of any of its statutory functions. We agree that these committees, panels or sub-groups be formed by members of the IPCC. In response to the Bills Committee's proposal, we add the reference "from amongst its members" to reflect our policy intent.

Other clauses

I move an amendment to other clauses so that the terms "警監會" and "秘書" (Secretary) are deleted and substituted with "監警會" and "秘書長" (Secretary-General) respectively.

All of these amendments are supported by the Bills Committee. I implore Members to endorse them.

Proposed amendments

Schedule 1 (see Annex V)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendments moved by Secretary for Security 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.

MR JAMES TO (in Cantonese): Chairman, I move that section 1 of Schedule 1 be further amended.

Chairman, section 1 is about the term of office of IPCC members. Considering that their term of office should be longer, I told the Government a two-year term is not good enough, it should be three years. Of course, if a person has all along been serving in the same position, he will be familiar with the working environment, thus working efficiently. Moreover, the Government can rest assured that he will not be disobedient. If someone does not listen to its words, this is a mutiny, from the perspective of the Government. The Government will then wonder why he is so eager to be at loggerheads with it. In the past, we could see that those working in statutory bodies who frequently applied for judicial review of government policies were bound to go down in misery. His term of office would soon come to an end or he would be subject to lots of constraints. In the last few months of his term when his reappointment was due for negotiation, the Administration seemed to have forgotten such things and he was treated as if he was invisible. In order to save his face, he would announce on his own initiative that he would not accept reappointment. Members in this Chamber who have taken up public offices will put on a knowing smile.

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

So, under such circumstances, I said if the international principle of appointment is applied — in fact, concerning the United Nations, particularly the statutory bodies, the Paris Principle will be observed — the appointee will be offered a fixed term as far as practicable so that he will not be in a constant worry about what he should do when he is in office. On this basis, I propose that the term of office be three years. Deputy Chairman, according to my amendment, the term of office of the Vice-Chairman will also be three years. Although my previous amendment was not passed, the arrangement that the two Vice-Chairmen be elected from among Legislative Council Members is desirable because the Vice-Chairmen who are elected through such a channel will not be subject to the influence of the Chief Executive. If these two Vice-Chairmen are more independent in the sense that they are elected from among the Legislative Council, empowered by the Legislative Council and the law, and offered a term of three years, they will certainly have greater confidence when performing their monitoring roles.

Unfortunately, all members will now be appointed by the Chief Executive. Such a practice has its merits though because according to its standing practice in the past, the Government would appoint Legislative Council Members to such positions. At any rate, it will be more appropriate if they are offered a longer term of office. Otherwise, if only the Chairman is offered a three-year term while the Vice-Chairmen and other members are offered a term of two years, an extreme situation may occur one day. On the first day of the third year of his term, the Chairman will find that all his team members have gone. I think this is bizarre. Of course, you may say that the Government can appoint members at different times during this two-year period. This will ensure continuity, right? However, if the term of office of the Vice-Chairmen and members can be changed to three years, a possibility will come up in my mind and that is, the whole team will enjoy a longer and stable term of office.

Of course, the Secretary just now maintained that the actual situation would not be like this and it would depend on the performance of the appointees. If the term of office is three years and his performance is not satisfactory in the first two years, the Government can refuse to reappoint him. But he can still stay for one more year. So it seems that the current arrangement can impose some constraints. I know that flexibility and a longer term of office are contradictory to each other. However, I still think that under the Paris Principle, which is an internationally renowned principle for appointing members of independent and statutory bodies, it will ensure that the members can enjoy a longer term of office. Given that they may not listen to or act in

accordance with the views of the Government, if they are offered the protection of a three-year term, they will feel secure and rest assured in the IPCC. Thus, they will continue to play their monitoring roles and get the job done.

Deputy Chairman, on the basis of this principle, I hope that not only the Chairman, but also the Vice-Chairmen and other members, will be offered a three-year term so that the Paris Principle can be applied as far as possible.

Proposed amendment

Schedule 1 (see Annex V)

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

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Deputy Chairman, Mr TO's amendment proposes to change the term of office of all IPCC members from not exceeding two years to not exceeding three years. As I said in moving an amendment to section 1 and the addition of section 1A to Schedule 1, we have to consider a number of factors, including the injection of new blood so as to ensure a healthy turnover of members, in the appointment and reappointment of IPCC members.

I very much agree to the factor of balance raised by Mr TO. But I think a two-year term is a better balance.

Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

MR JAMES TO (in Cantonese): The Paris Principle is adopted not only in Hong Kong. After a long discussion by all quarters, it was held that the appointment of members to these independent organizations should follow some desirable approach which should be complied with. These principles are not particularly applicable to the monitoring of the IPCC, the Agriculture, Fisheries, and Conservation Department, Hawker Control Team or the Equal Opportunities Commission. When these independent statutory bodies perform their statutory functions, it will be more appropriate if their members can have a longer term of office.

Of course, there are some other principles, including that the IPCC members should not be all appointed by the Chief Executive. This should of course be discussed separately. However, once a member is appointed by the Chief Executive with a longer term of office, in fact sometimes, we also understand that some people who are originally considered by the Government to be very obedient may launch a mutiny after making up their mind in the face of choices on the basis of some possibilities. They may refuse to listen to the Chief Executive's instructions. They may hold views different from that of the Government due to some desirable and undesirable justifications during a certain period of time. But they still enjoy the protection of a longer term of office. This explains why under this internationally recognized principle, the most basic factor that appointees should enjoy a longer term of office has been laid down.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes, after which the division will begin.

(THE CHAIRMAN resumed the Chair)

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 SIN Chung-kai and Dr Fernando CHEUNG voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, 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 voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, 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 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, 25 were present, three were in favour of the amendment and 22 against it; while among the Members returned by geographical constituencies through direct elections, 15 were present, seven 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 negated.

MR JAMES TO (in Cantonese): Chairman, I move that section 11 of Schedule 1 be further amended. To put it simply, serious cases cannot be endorsed by written resolution. This is the purpose of my amendment to section 11.

In their criticisms, several Members have also pointed out that no one knows that it is so foul if not exposed — to our surprise, the cases are handled in such a perfunctory manner. At least, the public also regard this as unreliable. To our surprise, the majority of cases, including those of a serious nature, are endorsed by written resolution. This is the present situation. If colleagues do not wish to see the continuous deterioration of such a situation, please support my amendment.

Of course, the Secretary will advise that the IPCC be given more flexibility. If the Secretary thinks that more flexibility should be given to the IPCC in the legislation so that all serious cases can be endorsed by written resolution, I have to say "sorry" for I consider such flexibility excessive. I will not allow such flexibility to go so far. But the Secretary still maintains that flexibility should be given in the legislation.

In my opinion, what make serious cases? In my opinion, only a few categories should be defined as such as far as practicable. If we can come up with a better idea in the future, we can make a further amendment to this.

However, I think this has largely integrated with because the IPCC has currently set up a Serious Complaints Committee which is basically using the same ruler for measurement. So, by using this ruler, I will not make any serious mistake because they also agree to this definition of serious case. However, even serious cases are endorsed by written resolution.

Serious cases refer to items (i) to (v) that I have added to subsection (5A), including allegations of criminal acts, assault (that is, beating up of people), fabrication of evidence, threat, unnecessary use of authority and unlawful use of authority by members of the Police Force. These are very serious cases and should not be endorsed by written resolution.

Chairman, I have also proposed item (b), which is about an allegation in a complaint or an item which has not been complained about but is related to the abovementioned five types of acts which should be investigated. These may be related to an assault, a breach of law or an act of framing up, which should be regarded as relatively complicated cases and should not be endorsed by circulation of papers.

Chairman, this is my proposal. If colleagues really hope that things can be handled seriously, they should support such restrictions. If some colleagues think that all cases can be endorsed by written resolution, please give me reasons. Also, please tell me whether such a big degree of flexibility should be allowed, including the endorsement of all serious cases by written resolution as I just said. If colleagues do not think that such a practice is acceptable, please support my amendment.

Proposed amendment

Schedule 1 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendment jointly. Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Chairman, I speak in support of Mr James TO's amendment.

I would be astonished if any Member should oppose this amendment. I think it is ridiculous that investigation reports on serious cases are not considered at meetings. As Mrs Selina CHOW has pointed out, matters must be considered at meetings. If a complainant considers that a case is of a serious nature but in the end the case is not substantiated, and upon asking how the result is arrived at, the complainant finds that the so-called investigation decision is made by circulation of notes among the members, it will be most ridiculous.

Chairman, as I have pointed out, Dr LUI Ming-wah, in the report submitted on behalf of the IPCC last week, mentioned that there were 2 509 complaints in 2007 involving 4 341 allegations in which 36 had been substantiated, representing less than 1% of the total number. In fact, how many people have been involved in the investigation? There are 18 members in the IPCC, together with the Secretariat, thus arriving at a total number of one plus 21. Yesterday and the day before yesterday I asked the Secretary how an investigation could be conducted. I have also put similar questions to the incumbent members of the IPCC who unanimously think that the problem can be solved by an increase in funding and resources. But if each and every case is to be investigated carefully, it is still not sure whether there is enough manpower to deal with the investigation workload even with a ten-fold increase in the funding and resources.

I have also looked up the statement of Chairman Ronny WONG on that day at the meeting. He said that it was very hard to finish reading the reports of the CAPO because of the difficulty in finding any flaws. Mr WONG added that all the negative factors would target at the complainants. Now most of the cases will be endorsed only by circulation of papers. In other words, the majority of cases were considered to be unfounded. Chairman, who holds the view that these cases are unfounded? The decision is mainly made by the Secretariat because all cases are scrutinized by the Secretariat before being circulated to the Chairman and Vice-Chairmen. I wonder how many people will have the time. Let me ask Members this question: If there are more than 4 000 cases, how many cases on average will each person read? Members can ask our Secretariat how many complaint cases they have handled. If the number is as many as 4 000, I am sure our Secretariat will be scared to death. How can such workload be handled?

So, Chairman, they handled the cases by circulation of papers. The amendment does not seek to prohibit circulation of papers. In fact, I think the

best way is to prohibit circulation of papers. Regarding this amendment, concessions have been made so that only serious cases will be considered at meetings. From the natural justice's point of view, why is it difficult to accept this proposal? I think the structure and arrangement themselves are unacceptable indeed. The Secretary has also admitted that although there are thousands of complaints, manpower is insufficient. As a result, neither surprise inspections nor interviews with witnesses were conducted last year. As the amendment gives me an impression that the relevant cases will be handled in a more serious manner, I support Mr James TO's amendment.

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

MRS SELINA CHOW (in Cantonese): Chairman, Ms Emily LAU was right in pointing out just now that in the resumption of the Second Reading, I said I hoped the IPCC would improve its future mode of operation. In fact, I also agree that if all cases are dealt with by circulation of papers, it may be unsatisfactory. Should members have any queries, a discussion together will be an effective way to resolve the issue.

However, the Liberal Party finds it difficult to support Mr James TO's amendment. First, how serious should a case be in order to be regarded as serious? Although he has tried to classify cases into serious and non-serious cases, we do not agree to such an approach because the same problem has already occurred to reportable cases. In view of that, why should cases be classified as serious and non-serious cases? If discussion is necessary, cases which have been dealt with by circulation of papers can also be put on the agenda. But we do not consider it necessary to lay down the definition in the provisions because it is not necessary to incorporate all provisions into the mode of operation from whatever perspectives. If it is stipulated that meetings must be held on the ground of the seriousness of the cases, we do not consider this the best approach.

But I also wish that the Secretary can express his views. Concerning the mode of operation in the future, we may point out the problems and I think this is a possible scenario. According to our observation, some IPCC members still have some doubts in some problems although they have made reference to papers circulated to them by groups. We thus encourage that meetings should be held so as to facilitate discussion. In doing so, the IPCC can give full play to its

team spirit and members can put their heads together to explore the problems from different perspectives. Such an approach will certainly be a progress compared to circulation of papers. Although I hope that the Secretary will adopt such a mode of operation, I do not consider it necessary to incorporate such an approach into the Bill.

Thank you, Chairman.

DR YEUNG SUM (in Cantonese): Madam Chairman, I really feel embarrassed for the royalists who, out of our expectation, openly support the Government's Bill. Even if serious cases may involve a serious mistake made by the police or jeopardize the fundamental interests of innocent people, such cases cannot be discussed at meetings and it is not necessary to stipulate that such cases should be discussed at meetings. James TO has not requested that all cases be discussed. He is also aware of the time constraint or limited resources he has only requested that meetings should be held for the discussion of serious cases. But the royalists dare to support the Government's proposal in front of the cameras. Will they not feel ashamed in opposing James TO's amendment? What explanation will they offer to the public in respect of the fact that it is not necessary to discuss serious cases at meetings? Can the issues be solved through circulation of papers and communication over the phone?

If the people can see on television our debate today concerning the setting up of an independent monitoring council to monitor the operation of the police, it will destroy the credibility of this council. The royalists who dare to support the Government are extremely audacious. If they support that it is not necessary to stipulate that serious cases be discussed at meetings, and problems can be solved by circulation of papers, what kind of society Hong Kong will be? What is the protection for the public? Even though an independent monitoring council has been set up, what are its actual functions? How can Members oppose Mr James TO's amendment and support the Government's original proposal?

In his response later, the Secretary may say that he has done his best. But he will maintain that it is not necessary to enact legislation on this. However, will it be better if it is so provided in the law? It is certainly much better if a relevant provision has been laid down in the law and it will be easier for the

Administration to explain why it is so. If the Secretary, at a residents' meeting, informs the people that serious cases will be dealt with by circulation of papers, I wonder what their reaction will be. Will the Government not feel ashamed to let the public hear such a claim and statement on television? Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, Mr James TO's amendment seeks to stipulate that cases falling within the special category of "reportable complaints" must be considered by the IPCC at meetings instead of by circulation of papers. Such a practice is tantamount to a mandatory requirement under which the IPCC will be deterred from making appropriate and flexible arrangements in the light of the actual need according to the circumstances of individual cases.

Just now, Mr TO said that the practice of considering a complaint case by circulation of papers was "hasty". I do not agree to that. The IPCC members have been working diligently in the past and currently. We should not use the word "hasty" to describe them.

In the present mode of operation of the IPCC, its members are divided into three sub-groups to share out the workload of examining the investigation reports on reportable complaints. Each sub-group comprises a Vice-Chairman and four to five members. The IPCC Secretariat circulates the investigation reports it has examined to the Vice-Chairman and members of the relevant sub-group for examination. After examination by the sub-groups, the IPCC Secretariat submits all the investigation reports, together with any comments from the sub-groups on the cases, to the IPCC Chairman for examination.

For the more serious complaints that are handled by the Serious Complaints Committee, the IPCC Secretariat circulates the examined investigation reports to members of the Serious Complaints Committee for examination and concurrently to all IPCC members for monitoring. After examination by the Serious Complaints Committee, the IPCC Secretariat submits

the investigation reports, together with any comments from the Committee or IPCC members on the cases, to the IPCC Chairman for further examination.

If the IPCC Chairman, the sub-groups or the Serious Complaints Committee consider it necessary for the investigation report on a particular complaint to be further discussed by the full IPCC, it will be discussed at the IPCC's in-house meetings. Such cases may be further discussed at the bimonthly joint IPCC/CAPO meetings as necessary.

These arrangements have been operating efficiently and effectively so that the IPCC can closely monitor whether the police have handled and investigated reportable complaints in a fair and impartial manner. Therefore, concerning the practice of giving the IPCC appropriate flexibility so that it can consider whether a certain matter be scrutinized at meetings or by circulation of papers, including the classification of an allegation or the investigation report of a reportable complaint, we consider it appropriate. And the IPCC has also agreed to such an arrangement. Under the existing sections 11(3), (4) and (5) of Schedule 1, such flexibility has precisely been preserved for the statutory IPCC and it is provided that as long as an IPCC member has requested that a particular matter be decided at meetings, the matter shall not be decided by circulation of papers.

The aforesaid operation and sections 11(3), (4) and (5) of Schedule 1 can ensure that each reportable complaint will be subject to multiple and serious examination by the IPCC, and the provision of appropriate flexibility to the effective operation of the IPCC. We therefore do not agree with Mr James TO's amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, some people just called my pager and said, "'Ah TO', you have been working too hard. Regardless of whether your amendment is passed or not, you only need to write on a leaflet: 'A Member supports that serious cases be examined by the IPCC by circulation of papers instead of at meetings'. You need not be so angry, what you have to do is to tell the public that some of your colleagues support that no meeting is to be held even for serious cases." The Secretary has even told us that it was not perfunctory even not to hold a meeting, and circulation of papers was a normal and routine way of dealing with the matter. Now this is what the Secretary meant. If colleagues oppose the amendment, they also mean that. What other

possible interpretations can there be? Would colleagues who oppose the amendment please tell me whether there is any other possibility. Mr WONG Kwok-hing has just entered the Chamber. Should I distribute leaflets in New Territories West telling the public that Mr WONG Kwok-hing supports that serious cases can be endorsed by circulation of papers instead of at meetings?

Chairman, the Government has put forward the Independent Police Complaints Council Bill in the hope that more cases can be endorsed by circulation of papers without too much detailed discussion. Given the avalanche of cases and that all members are too busy to spend time examining the reports, they can endorse all the reports by circulation as they have hired some staff who have no experience in criminal investigation but are smart enough to examine the reports for them in advance and point out some superficial technical requirements. This is what the Government wants to see most.

The Secretary pointed out earlier that this would tighten the IPCC's procedural flexibility to handle the cases according to individual circumstances. According to the Secretary, the individual circumstances are: Reports on assault or acts of framing up by the police should be circulated; reports on fabrication of evidence by members of the police force should be circulated; reports on intimidation by members of the police force should be circulated, and reports on illegal use of force by members of the police force should also be circulated. These are the individual circumstances referred to by the Secretary. What I have written down now are also individual circumstances which should be discussed at meetings. The Secretary thinks that if such a practice is considered perfunctory, it is unfair to them. I have to repeat it thrice: It is perfunctory! Perfunctory! Perfunctory! If serious cases can be dealt with by circulation of papers, what words can be used to describe such a practice other than perfunctory?

The Secretary told me that according to the past practice, only one member would suffice in convening a meeting and in the past most or more than 90% of the cases were dealt with by circulation of papers. This means that no member has requested holding any meeting in order to consider a case. If this is the current situation and we do not compel the IPCC to consider serious cases at meetings, will it hold a meeting on its initiative for such a purpose, Mr WONG Kwok-hing?

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

(No Member or public officer indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes after which the division will begin.

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

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

Functional Constituencies:

Dr David LI, Ms Margaret NG, Mr SIN Chung-kai and Dr Fernando CHEUNG voted for amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, 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 voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, 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, 25 were present, four were in favour of the amendment and 21 against it; while among the Members returned by geographical constituencies through direct elections, 20 were present, 11 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 negated.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to section 23 of Schedule 1.

Members may now debate the original provisions and the amendments of the Secretary for Security and Mr James TO jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to section 23 of Schedule 1, including the reference of "警監會" be amended to "監警會".

According to subsection (1) of section 23 of Schedule 1, as soon as practicable and in any case not later than six months after the end of a financial year of the IPCC, or such further period as the Chief Executive may allow, the IPCC must submit to the Chief Executive a yearly report. The fact that the Chief Executive may allow a longer period is to allow flexibility to deal with very rare and special circumstances. In case the IPCC cannot submit its yearly report as scheduled due to unforeseeable reasons, the situation can be dealt with in an appropriate manner. Mr James TO's amendment seeks to delete this flexible arrangement. In our opinion, his amendment may lead to substantive operational difficulty. We therefore oppose his amendment. But in response to the majority view of the Bills Committee, we will move an amendment to section 23 to stipulate that the IPCC is allowed to submit the yearly report later than six months after the end of a financial year only under reasonable circumstances. I implore Members to support my amendment.

Under subsection (2) of section 23 of Schedule 1, the IPCC must cause the yearly reports to be tabled before the Legislative Council as soon as practicable after receiving the Chief Executive's approval for tabling. This provision reflects the current practice. Mr TO has proposed that the reference "receiving the Chief Executive's approval" in the provision be deleted.

IPCC members are appointed by the Chief Executive. In our opinion, the stipulation in the Bill that the IPCC must cause the yearly reports to be submitted to the Chief Executive and tabled before the Legislative Council after receiving the Chief Executive's approval is a reasonable practice. In fact, the yearly reports of a number of statutory bodies are tabled before the Legislative Council by the Administration rather than the statutory bodies concerned. These organizations include The Ombudsman, Equal Opportunities Commission, Privacy Commissioner for Personal Data and Consumer Council. The arrangement stipulated in subsection (2) of section 1 of Schedule 1 is similar to the normal procedure applicable to other statutory bodies. I therefore implore Members to oppose Mr TO's amendment.

MR JAMES TO (in Cantonese): Chairman, as section 23 is related to the yearly reports to be submitted by the IPCC, let me talk about section 23(2) first. The contention about the provision is whether the yearly reports can be tabled before the Legislative Council only after receiving the Chief Executive's approval or whether the yearly reports can be tabled before the Legislative Council direct. We asked the Government why the Chief Executive's approval is necessary and were given a very wonderful reply — the Government said that there might be spelling mistakes in the reports. Chairman LAU Kong-wah should remember it clearly that the Government indeed gave such a statement in writing. There is a record on this and it is absolutely true. I believe we were all amazed by the statement that it should be read through by the Chief Executive for fear of wrong spellings. Is the Chief Executive a proof-reader? I really cannot continue with the scrutiny work. Of course, Secretary Stephen LAM may give us a better reply later. But I believe the Government's first reply may be true. I really cannot imagine why the Chief Executive's approval is necessary. What does the yearly report cover? According to section 23(1), the report covers the performance of the IPCC's functions, with a copy of the statement of accounts for the previous financial year and a copy of the auditor's report. What items will require the Chief Executive's approval? The answer is wrong spellings? Perhaps it is really so disappointing because the report covers exactly the contents of a normal report. Does the auditor wish to tamper with the report? Does he want to withdraw the report? Does he want to filter something from the report? The party concerned will not do so. So I find it hard to understand what will require the Chief Executive's approval. I really find this puzzling. I hope the Government can

The Government cannot say that such a provision has been laid down because there are similar provisions in other legislation. It cannot give us such a reply. If there are similar provisions in other legislation, what is the significance behind other legislation? I remember that I once asked Secretary Frederick MA a question about competition law several weeks ago — it is about my question why the justifications were not raised in the second consultation. He replied that as other countries had not put forward such justifications, they could not be regarded as competitive acts. This is not a reply. He should have told us the justifications for other countries not considering them competitive acts. Then he said that he had answered my question. Concerning the present question, the Government has not given any reply. Apart from the excuse of spelling mistakes, the government officials cannot think of any answer despite racking their brains. I hope the Government can give us a reply today.

Otherwise, the Chief Executive will be reduced to a proof-reader. Chairman, because of these reasons, I propose that the function of the Chief Executive as a proof-reader be abolished. The Chief Executive needs not be responsible for proof-reading but the IPCC ought to table the reports before the Legislative Council as scheduled.

Another amendment is related to section 23(1) concerning the requirement on the IPCC to submit its report as soon as practicable and in any case not later than six months after the end of a financial year. But it is stipulated that if a further period is allowed by the Chief Executive, the deadline for the IPCC to submit its report can be extended. I do not understand this because the first concept in the draft provision is "as soon as practicable" and the second concept is "be submitted not later than six months" in any case. In other words, if the report can be submitted in one month, it should be submitted in one month. If it can be submitted in two months, it should be submitted in two months. And in any case, the report should be submitted not later than six months. The wordings "in any case" mean that this is a deadline. But the Government said that some unforeseeable events might happen. Chairman, we have just returned from Sichuan. I will not say that a Magnitude 8 earthquake will occur in Hong Kong. But if an earthquake has really happened, not only the IPCC cannot submit its report, other organizations, regardless of their size, cannot submit their reports either. Why is it necessary to stipulate in the legislation that a further period be approved by the Chief Executive? If the Government insists on such a provision, it should give us a better justification.

As it is stipulated in the legislation that the report be submitted as soon as practicable and in any case not later than six months, the Government should not add that some unforeseeable events may happen. In that case, will it turn out that approval by the Chief Executive is necessary for everything? In other words, in all the laws of Hong Kong concerning the submission of reports, there should be provisions that the Chief Executive will allow a deferment in the submission of report in case of earthquakes and natural disasters. If such a provision is required in every piece of legislation, does it mean that all ordinances should be amended? Certainly not. If incidents of *force majeure* have occurred, who can conduct a review since the Courts have collapsed even though there is a demand for accountability? The Legislative Council does not exist either. What we are discussing are not such situations. So, as it is stipulated that the report be submitted in any case not later than six months, there should not be any elaboration on this.

Chairman, I am really very dismayed. Why do the government officials, in dealing with all matters including the submission of reports, still give a "discount" or make all kinds of bargaining? Why do they insist on administrative convenience, adding that difficulties will be encountered and convenience is necessary, thus justifying the circulation of papers and even the way in which reports are submitted? Frankly, Chairman, concerning section 23(1) I am now thinking — I am now thinking thoroughly — if the auditor is not responsible for the IPCC's statement of accounts, which is responsible by other auditing staff instead, things may not necessarily be within his control. So, if the accounts are in his hands, he should submit the report (we in the Legislative Council also have an auditor). If he is suddenly being sued, leading to the eventual liquidation of his firm and dismissal of his staff, just like the Oasis Hong Kong Airlines Limited which had to dismiss all its staff including cabin crew and ground staff due to liquidation, the party concerned is certainly unable to submit the auditor's report. If someone cannot submit the auditor's report and cannot fulfil his duty as a result of such a situation, he will not be held accountable. What he can do is to submit what he has.

Now let me assume the following scenario. If an approval can be granted by the Chief Executive, then when only parts A and B but not part C of a report can be submitted, parts A and B need not be submitted. This will be the situation. How can the Government draft the legislation in such a manner? If some matters are really out of control, the party concerned will not be regarded as having committed an offence. Otherwise, it will be necessary to stipulate in all ordinances what problems, what incidents of *force majeure* and natural disasters may occur, and under such circumstances, a failure to submit the report will not be regarded as an offence. It will not be so provided in the legislation because these are all implied.

Although our discussion has come to section 23, we are still arguing about such minor details. I really feel sorry for myself, the Government, and even our people because the Government has acted in such a way in order to lay down such a rule, make such a balance, and claim itself accountable.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security (represented by the Secretary for Constitutional and Mainland Affairs) shook his head to indicate that he did not need to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (represented by the Secretary for Constitutional and Mainland Affairs) (in Cantonese): Chairman, I move the amendments to Schedule 1 to amend the heading of section 23 and the Chinese text of subsections (1) and (2) in order to delete "警監會" and substitute with "監警會".

Proposed amendment

Schedule 1 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Mr James TO, you may move your amendment.

MR JAMES TO (in Cantonese): I move the amendment to section 23(1) of Schedule 1, that is, as I said just now, to delete "or such further period as the Chief Executive may allow". In other words, the deadline is not later than six months.

Proposed amendment

Schedule 1 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Mr James TO's amendment, I wish to remind Members that if the amendment is passed, the Secretary for Security may not move his amendment to section 23(1) of Schedule 1.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr SIN Chung-kai and Dr Fernando CHEUNG voted for amendment.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, 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, 25 were present, three were in favour of the amendment and 22 against it; while among the Members returned by geographical constituencies through direct elections, 17 were present, eight 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.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (represented by the Secretary for Constitutional and Mainland Affairs) (in Cantonese): Chairman, I move that section 23(1) of Schedule 1 be amended by adding "(as may be reasonable in the circumstances)" after "period" in the subsection.

Proposed amendment

Schedule 1 (see Annex V)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Chairman, I move that section 23(2) of Schedule 1 be amended, as I proposed just now, to relieve the Chief Executive of the burden of granting approval.

*Proposed amendment***Schedule 1 (see Annex V)**

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes after which the division will begin.

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

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

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Abraham SHEK, 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, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, 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, 25 were present, three were in favour of the amendment and 22 against it; while among the Members returned by geographical constituencies through direct elections, 17 were present, eight 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.

CHAIRMAN (in Cantonese): The Secretary for Security and Mr James TO have given notice separately to move amendments to section 25(1) of Schedule 1.

Members may now debate the original provision, and the amendments by the Secretary for Security and Mr James TO jointly. I now call upon the Secretary for Security to speak first, to be followed by Mr James TO; but no amendments are to be moved at this stage.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to section 25 of Schedule 1 so that "警監會" be changed to "監警會" and the "Secretary" of IPCC be retitled as "Secretary-General". I implore Members to pass the amendment.

Mr James TO's amendment seeks to restrict the IPCC from delegating its functions to its Secretary-General, Legal Adviser or any other employees. We think such a restriction is not conducive to the IPCC's operation.

Under the current practice, the IPCC Secretariat, after receiving the investigation report on a reportable complaint from the CAPO, will scrutinize it carefully first. It will, if necessary, request the CAPO to clarify some facts or discrepancies, answer questions or provide further information. Members of the IPCC are divided into three sub-groups responsible for examining the investigation reports on reportable complaints. Each sub-group comprises one Vice-Chairman and four to five members. The IPCC Secretariat circulates the investigation reports it has scrutinized, together with any clarification or supplementary information from the CAPO, to the Vice-Chairman and members of the relevant sub-group for examination. After examination by the sub-groups, the IPCC Secretariat submits all the investigation reports, together with any comments from the sub-groups on the cases, to the IPCC Chairman for further examination. Under the delegated functions of the IPCC, the IPCC Secretary-General is now responsible for scrutinizing "withdrawn" cases and "informal resolution" cases. The IPCC Secretariat will submit a bimonthly list of "informal resolution" cases that it has scrutinized to the IPCC for its monitoring. The IPCC Secretariat will take appropriate follow-up actions on questions and comments raised by the IPCC. If the IPCC Chairman and the sub-groups consider it necessary for the investigation report on a particular complaint to be further discussed by the full IPCC, it will be discussed at the IPCC's bimonthly in-house meetings. Such cases may be further discussed at the joint IPCC/CAPO meetings as necessary.

If after incorporation, the statutory IPCC cannot delegate its functions under the Bill to the Secretary-General, Legal Adviser or other employers, this will seriously affect the administrative support which has all along been provided to the IPCC members. For instance, if the staff of the IPCC Secretariat are not authorized under clause 20(1) to request the police to provide any information or material relating to a reportable complaint, or clarify any fact, discrepancy or decision relating to a reportable complaint, members of the IPCC will have to

deal with these matters on their own, thus increasing its workload and jeopardizing its monitoring effect. So, we think the original section 25 of Schedule 1 should be retained and implore Members to oppose Mr TO's amendment.

MR JAMES TO (in Cantonese): Chairman, we will certainly learn a bit more and even new things by listening to the speeches in this Chamber. Chairman, after listening to the Secretary's speech just now, I would like to ask the Secretary whether or not he has served in any statutory body. If he has, he should know that delegation of power and assistance by staff to exercise such power are two different concepts. The Secretary just now said that if the IPCC was barred from delegating its functions to the Secretary-General or staff, its 18 members would have to do everything, including the calling of files. And it could not allow the Secretary-General or any other person to scrutinize the reports. This shows that the Secretary basically does not know even what delegation of power is.

Chairman, what is meant by delegation of power? If you have hired a staff member to help you scrutinize the draft report and help you deal with some other duties, this does not mean that you have delegated the functions to him. Nor does it mean that after he has scrutinized the documents, you can save your effort in scrutiny. If he can sign to confirm whether the report is substantiated or not after scrutinizing it, this is a delegation of function. For example, as the IPCC has the responsibility to endorse the report, it cannot delegate its power to enable the Secretary-General and the Legal Adviser to endorse all the reports. This certainly does not work because the reports should be circulated, right? Regardless of whether the documents are true or fake, all should be circulated. The Secretary said just now that as powers could not be delegated, the Secretary-General could not scrutinize the report. The Secretary-General only helps the IPCC discharge its duties and provides assistance and no delegation of power is involved. Only when he can sign and endorse the report does it mean a delegation of power.

Chairman, why do I think that the functions and powers cannot be delegated to the Secretary-General, the Legal Adviser or other employees? It is very simple. For example, if there are 18 members in the IPCC, and under general circumstances, it is necessary to delegate power to 10 sub-group members — as in the discussion of the Bill concerning the West Kowloon Cultural District, there is an investment committee which will have to consider

how to invest the funds if the Government will inject \$21.6 billion — the Government may allocate tens of millions of dollars to the IPCC which may need to consider the setting up of a personnel committee responsible for the recruitment and dismissal of junior staff. If the staff member concerned belongs to the junior rank, then the matter will be handled by the personnel committee. The personnel committee may comprise of four or five people elected from among the 18 members. They will be delegated the power of recruitment and dismissal of staff. That is, in relation to the recruitment and dismissal of a junior staff member, the decision of these several members is made as if it is made by all 18 members. And only under such circumstances, this is called delegation of power.

Of course, they should be empowered to make delegation, otherwise, all the workload will be shouldered by the 18 members. In some situations, this may be necessary. For example, the investment committee and the remuneration committee are responsible for more important tasks. But regarding some relatively minor cases, it may be necessary to delegate the power to a sub-group. But I do not want to see that there is delegation of power in respect of important cases, and apart from delegation of power, cases will even be solved by circulation of papers. Now, the terrifying part is that power has been delegated to five members who will make a decision on a case by circulation of papers, and no meeting will be held to discuss the matter unless objection is raised by any one of these members. The current provision is intended to allow such an arrangement. Therefore, I think the delegation should be restricted to the 18 members rather than the staff. This is a proper balance. Although the staff can also assist the 18 members to perform their duties, this is not delegation of power. If the Secretary does not understand this point, I am willing to teach you.

Chairman, to put it bluntly, the Government very much hopes that the IPCC members will devolve power on the staff to handle the cases instead of bothering too much. Even if they want to deal with the cases on their own, they can form a number of sub-groups for delegation of power. When a sub-group comprising several members has been set up, they can handle the case in a sheer perfunctory manner by circulation of papers with full flexibility.

If the system we design will allow such flexibility and situation, is this not terrible? If so, the Government will allow the IPCC to delegate the core business of the whole operation to any of its employees — even the one responsible for the pantry — and regardless of the nature of the case, the

employee can endorse it. Such an approach will resemble delegating the task to jokers like LAM Chiu-wing in the programme "Headliner".

However, this is exactly our current situation. If a sub-group is delegated by the 18 members, I will be convinced because they are at least the appointed members of the IPCC. But such a delegation cannot include all employees, secretaries, and so on. No matter how ridiculous it may be, it should be stipulated that only the Secretary-General and Legal Adviser can be delegated with power. It is impossible to include all employees. If that is the case, can the staff responsible for serving tea be delegated with power? What power will be delegated to them? What is the need to have such flexibility? The Government has designed such a piece of legislation in order to allow an organization to adopt a lax approach in their work. Of course, the Government, in the bottom of its heart, basically wants to allow total delegation of power so that the members do not need to do anything. Is it ridiculous that we have allowed such a thing?

The Government even said that my proposal would seriously affect the operation of the IPCC. On hearing that, I was very worried that my proposal would seriously affect the operation of the IPCC. However, regarding the Secretary's proposal, they can scrutinize the reports without delegation of functions. After scrutinizing the reports, they can endorse and even make comments. These are not delegation of powers. They are not.

Chairman, I hope that Honourable colleagues will ponder it carefully. If someone in your party is well-versed in the law or has served in a statutory body, he will know it very clearly. I just said to Abraham SHEK — I do not often mention him. Having been a member of a statutory body for six years, I have come to realize that only non-contentious issues or simple matters can be endorsed by circulation of papers. For those relatively important matters with material impacts, they will not be endorsed by circulation of papers.

How can such power be delegated? How can power be delegated to any employee? Which organization will adopt such a practice? May I ask which organization will actually adopt such a practice? I really want to know. We will even form a select committee to investigate which Secretary has made the appointment and hold him accountable. Which government official will allow such an operation? Please tell me. We will hold him accountable if we can get more information.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security shook his head to indicate that he did not need to speak again)

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment to section 25(1) of Schedule 1.

Proposed amendment

Schedule 1 (see Annex V)

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, I wish to remind Members that if the amendment is passed, Mr James TO may not move his amendment to section 25(1) of Schedule 1.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes after which the division will begin.

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

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

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the amendment.

Mr Albert HO, Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr Ronny TONG and Mrs Anson CHAN voted against the amendment.

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

THE CHAIRMAN announced that there were 46 Members present, 31 were in favour of the amendment and 14 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Mr James TO may not move his amendment to section 25(1) of Schedule 1, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Schedule 1 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedule 1 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 raised their hands.

(No hands raised)

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

CLERK (in Cantonese): Schedule 2.

MR JAMES TO (in Cantonese): Chairman, I move the amendment to section 3 of Schedule 2 concerning the removal of observers. Earlier on, my amendment concerning the appointment of observers was not passed. But the Secretary has in fact made a joke. He said earlier that the observers should be appointed by him. But upon the completion of examination of the clause and before the next was examined, he said he himself could not be an observer either because of potential or genuine conflict of interest. This is also applicable to any civil servants or politically appointed officials. However, as this has been set out in the provision, the Secretary will be the authority for appointment of observers.

So, who should be the authority for removal of observers? I have considered it for a few seconds. Since it has been provided that the Secretary is the authority for appointment of observers, if an amendment is made such that the IPCC will become the authority for removal of observers, then there will be inconsistency in the authority for appointment and removal of the same post. I have considered whether or not to withdraw the amendment. After consideration, I think it should not be withdrawn because according to the Secretary's statement just now, both civil servants and accountable Bureau Directors will basically not be appointed as they are on the list banned from being appointed as observers. To adopt the Secretary's wordings, this is because they have genuine or potential conflict of interest. As the Secretary cannot appoint himself as an observer, he should be unable to appoint any other person. This is a joke in itself.

That being the case, the Secretary will be the authority for removal. But as the Secretary said, he himself has a potential interest. Why? If the Secretary removes a competent observer on the ground that the observer has done a good job in monitoring the police, this is ridiculous. Thus, although there will be inconsistency in the authority for appointment and removal of observers once the amendment is passed, the Government can move a motion in the next term of the Legislative Council to amend the authority for appointment. This is the logic instead of refusing to make amendment in this regard. Chairman, I move the amendment so that the authority for removal of observers will be the IPCC instead of the Secretary.

When scrutinizing section 3 of Schedule 2, we discussed the reasons for removal. As stipulated in the provision, the reason is "permanent incapacity", which has been clearly defined in other legislation. However, a hint has been thrown out in the provision by stipulating "or other sufficient cause". At that time, we asked whether the provision could be written in a clearer way. The Government said that it was impossible to give an exhaustive list of reasons. We then commented that the reason for removal could be fabricated. The Government denied such a possibility and told us to place trust in the Secretary. It is ironic that when examining my amendment which has been negated, the Secretary said that "or other sufficient cause" was too vague. This is how the Government has given itself a slap on the face. I think the reason put forward by the Secretary is too ambiguous. If the Administration can invoke such ambiguous wordings, then it can remove a competent observer on fabricated reasons.

So, in the end, I can only say that if the Secretary has potential or genuine conflict of interest and the provision is so vague, then we should let the IPCC since they assist the IPCC in performing its observation function, better protection can be provided if the IPCC is the authority for their removal.

Proposed amendment

Schedule 2 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendment jointly. Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, according to my understanding, Mr TO's amendment to section 3 of Schedule 2 and his amendment to clause 31 are cognate. In his amendment to clause 31, he proposed that the IPCC be the authority for appointment of observers. As a consequential arrangement, he has also proposed that the IPCC be the authority for removal of observers under section 3 of Schedule 2.

As Members have passed my amendment to clause 31, the arrangement that the Secretary for Security will be the authority for appointment of observers will be preserved. If an amendment is made to section 3 of Schedule 2 so that an authority other than the Secretary for Security will be responsible for removal, there will be inconsistency in the provisions. I therefore urge Members to oppose Mr TO's amendment.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not need to speak again)

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division 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 SIN Chung-kai and Dr Fernando CHEUNG voted for amendment.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mrs Anson CHAN voted for the amendment.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr Frederick FUNG, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, three were in favour of the amendment and 22 against it; while among the Members returned by geographical constituencies through direct elections, 18 were present, nine 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.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to section 4 of Schedule 1 as set out in the paper circularized to Members.

The amendment seeks to change "警監會" to "監警會". I urge Members to pass the amendment.

Proposed amendment

Schedule 2 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MR JAMES TO (in Cantonese): Chairman, we have come to page 173.

I move a further amendment to section 4 of Schedule 1. Chairman, this section provides for payment of fees and allowances to observers. The IPCC will make an estimate on such expenses for each observer so as to calculate the frequency of observations in the annual budget. To my understanding, the honorarium for each attendance is \$100-odd according to information submitted by the Government. Under the current practice, the total expenditure incurred for observers will be arrived at by estimating the total number of observations in the whole year which will then be multiplied by the fees for each attendance. This item has been clearly shown in the Financial Secretary's approval for the financial allocation and the final estimate submitted by the IPCC to the Legislative Council.

Why does the Secretary for Security insist on interfering with the matter so that even the fees to cover travel and other expenses are to be decided by him? Although I feel exhausted, Chairman, I hope Members can support me because the matter is not for the Secretary for Security to decide. If he takes a firm grasp of even such a minor issue, what kind of proposal it would be? If the Government really takes a firm grasp of such minor issues, it means that it does not trust anyone and it wants to control everything. This is the current practice of the Government. Then, how can the IPCC be an independent body?

Proposed amendment

Schedule 2 (see Annex V)

CHAIRMAN (in Cantonese): Members may now debate the original provision and the amendment jointly. Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, under section 4 of Schedule 2, the IPCC may pay the observers such fees and allowances as the Secretary for Security approves. As the Administration is the authority for appointment of observers, we think it is appropriate for the Administration (it is the Secretary for Security as stipulated in the Bill) to approve the payment of fees and allowances to observers. As the Secretary for Security is the authority for appointment of observers under clause 31 as passed, we think the arrangement that fees and allowances be paid to observers as the Secretary for Security approves under section 4 of Schedule 2 should be preserved so that provisions are consistent with each other. I therefore implore Member to oppose Mr TO's amendment.

CHAIRMAN (in Cantonese): Mr James TO, do you wish to speak again?

(Mr James TO shook his head to indicate that he did not need to speak again)

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

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment negatived.

CLERK (in Cantonese): Schedule 2 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the amendment to Schedule 2, I now put the question to you and that is: That Schedule 2 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the long title be amended as set out in the paper circularized to Members.

As I mentioned in moving the resumption of Second Reading debate and the amendment to clause 7, the most important function of the IPCC is to monitor the manner in which reportable complaints are handled and investigated by the police. After discussions with the Bills Committee, we proposed that the long title be expressed in more precise terms so as to highlight the monitoring function of the IPCC. We have therefore proposed to delete "of observing" in the long title. I implore Members to pass the amendment.

Proposed amendment

Long title (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by Secretary for Security be passed.

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

(No Member indicate a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bills: Third Reading.

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

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

Independent Police Complaints Council Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Independent Police Complaints Council Bill be read the Third time and do pass.

MR JAMES TO (in Cantonese): President, please let me make a concluding remark again. The former IPCC Chairman Mr Ronny WONG, who had served as Chairman for four years, once made a conclusion in a heavy tone at a Bills Committee meeting that the system was only for the protection of the police. In the face of so many cases, the CAPO aimed at completely overruling some cases so that the conclusions could no longer hold water. On the other hand, the IPCC members, in the face of an avalanche of cases, could only do their best to dig up some cases which might deal a severe blow to the conclusions of the CAPO in a bid to establish some cases.

President, I was shocked on hearing his statement. But after this scrutiny process — I have started to fight for the independence of the CAPO from the police since 1992 and can be regarded as an experienced Member with certain knowledge in this aspect — after hearing the Government's explanation and reading voluminous documents, President, I think it has really been an eye-opener for me.

After the Second Reading and the Committee stage, I can draw a conclusion now, that is, according to the draft so far, we will be having an IPCC

— according to my wordings — which will be hamstrung by the Commissioner of Police. What will this IPCC be like? It has the following characteristics: First, it does not have any power of investigation; second, it does not have any power to establish a case; third, it does not have any disciplinary power; four, it does not have any power to decide what cases should be reported by the Commissioner of Police; five, it cannot obtain sufficient information to discharge its monitoring function; six, it cannot determine how often the latest cases be submitted by the CAPO; seven, it is an organization whose members are entirely appointed by the Chief Executive under the principle of "affinity differentiation"; eight, it is an organization which will endorse serious cases concerning abuse of power by circulation of papers instead of discussing them at meetings; and nine, it will not be able to fully grasp the details of all cases. We are going to have such an IPCC.

President, I oppose the Third Reading of the Bill because it is not worthy of passage. What we are going to have is an organization which will fool the people, deceive the people and confuse the people. This statutory IPCC will look very serious, conscientious and meticulous, but it is nothing more than a deception to the public.

MR MARTIN LEE (in Cantonese): Madam President, my horizon is indeed broadened after listening to such an elaborate debate by James TO, although many of his amendments have been negated. This shows how persistent a Member can be when he has "put his heart and soul" into a particular task. While we have gone upstairs to take our meal, come back unhurriedly afterwards to cast our votes and made countless trips back and forth, he has stayed here throughout the whole process. I very much hope that there will be a task into which Members of the next Legislative Council will "put their hearts and souls", and this will suffice. It will indeed suffice if they can persist in a task within the term of four years.

Madam President, the fact that James TO has proposed so many amendments has made me wonder whether these amendments are really necessary. For some of the provisions, even I would not be so persistent, yet he has been persistent in amending them. Finally, we have come to realize that enacting this law is worse than not introducing it at all. On the surface, it seems to be an improvement, but in reality, the previous "toothless tiger" has now become the Government's "vase". How could members of the public believe

that they will "have a channel for redress" when they complain against the police in the future?

Actually, at the resumption of the Second Reading debate of the Bill, I already said that I would not advise my friends to lodge a complaint because there is no point making any complaint when it will only mean airing the grievances on a one-on-one basis. It will only bring disappointment and make one more frustrated.

Madam President, as a matter of fact, we in the Legislative Council have the power to conduct investigations into public allegations against the police, but we have never invoked this power over the years. I have confirmed with the Legal Adviser that we have only informed the public on the Internet that we will not exercise this power. Such a power conferred on us by the Basic Law is not subject to any restriction. The Basic Law stipulates that we may invoke the Legislative Council (Powers and Privileges) Ordinance when necessary to require the relevant public officer to come before this Council so that an investigation can be carried out.

As the Government has now proposed this "vase", which is a "vase" serving no purpose at all, I very much hope that Members of the next Legislative Council — not necessarily including me — can think clearly whether they do not need to invoke this power. I am not advising Members to exercise this power whenever a complaint is received, and Members may also consider resorting to many other mechanisms. Actually, some panels of this Council also conduct investigations into matters of a material nature. For example, the relevant panel did conduct an investigation, which was of course not thorough enough, into the case in which CHAN Hau-man was "given a hard time" by the police for displaying the national flag of Tibet.

Therefore, I hope Members of the next Legislative Council will give the Government a very clear warning that it should not expect that it can get by just fine if it continues to use this approach to dismiss the justified complaints of the public. I hope the Legislative Council will give the people of Hong Kong a clear message that if the Government does not handle the complaints, we will.

Thank you, Madam President.

MS MARGARET NG (in Cantonese): President, I wish to make a short speech. First of all, I would like to pay tribute to Mr James TO. President, like Mr Martin LEE, I also think not all the amendments proposed by Mr James TO are necessary. We even think some of them are not quite perfect, but we consider them important on the whole.

President, first of all, I have explained at the resumption of the Second Reading debate of the Bill why we oppose the Bill and why we oppose turning the IPCC into a statutory body from a non-statutory one. The reason is very simple. Because this independent statutory body established under the Bill is unable to achieve what it is supposed to achieve under the law. The lengthy argument presented by Mr James TO has actually revealed its inadequacies one by one and enabled us to know what the IPCC can and cannot achieve in the future.

President, I know many people may ask whether Mr James TO is much too stubborn. I myself do not have a very good reputation in this regard as people may also think I am stubborn, too. However, I firmly believe persistence is the prerequisite for exercising monitoring. If we do not persist, we will not be able to monitor the Government. President, I know this is also one of the reasons why the Civic Party will vote against it. Therefore, I think the spirit of persistence should be maintained. Thank you, President.

President, perhaps I should also personally pay tribute to you because I know, President, you may not totally agree that every single amendment proposed by Mr James TO is very important and essential. However, President, as Members have the right to propose amendments for the purpose of discharging their duties, you just act in the spirit of the Legislative Council and in accordance with established procedures disregarding the amount of time required. This is a fine convention and it can demonstrate to the people of Hong Kong that no matter how individual Members behave, the Legislative Council has its own spirit and its own constitutional duty and status.

Thank you, President.

MR LAU KONG-WAH (in Cantonese): President, as Chairman of the Bills Committee, I have to say a few words before the Third Reading of the Bill. I think we have spent more than 80 hours examining this Bill, and based on my

calculation, we have spent about 23 hours during these few days on its examination, which add up to more than 100 hours in total. With the 100 hours spent on the examination and the effort made by various Members, including Mr James TO — there is one thing for which I admire him, that is, he is full of energy. Despite the extended debate, he has been speaking as loudly as a trumpet. Although I may not agree with all his amendments, I have to report to you, President. During our scrutiny process, many Members have expressed their views. When I do a counting, I find that the Government has taken on board some 50 recommendations. However, it does not mean that Members' views will surely be taken on board by the Government. As this is a Council of 60 people instead of one, sometimes it is necessary to strike a balance among the viewpoints of different parties.

I personally think the present Bill today is worth supporting. I have mentioned that the Bill basically seeks to give the IPCC a statutory status, an independent Secretariat, and also the power to conduct review and exercise monitoring, which are three very important aspects. Dr Fernando CHEUNG also responded to this point of mine yesterday, and he could not but agree that this is an improvement. I think the Bill is worth supporting as long as there is improvement. Of course, things may not always be so ideal as we hope, but I think we should not deny the previous effort of the IPCC members, we should not deny the previous quality performance of the Complaints Against Police Office (CAPO), we should not deny the effort made by the team of civil servants responsible for drafting the Bill, and we should not deny the effort made by Members of the Bills Committee.

President, Mr James TO has all along been quoting the remarks of the former IPCC Chairman, which seem to be heartrending. However, it appears that he has neglected the remarks made by the incumbent IPCC Chairman. At that time, many Members of the Bills Committee had left the meeting and were unable to listen to the last few comments made by this incumbent Chairman, who had put it so well that I jotted it down word by word. I would like to read out his remarks before the Third Reading because I think they reflect my thoughts or the thoughts of most people in society. I will skip the first paragraph, and he went on to say: "I just hope that if the public and the Government have any expectation of the independent organization responsible for monitoring police complaints and are of the view that it can be established, and if society has reached a consensus that setting up an independent organization is better than

setting up a non-independent organization, more proactive efforts can be put into this task." In English, it is "Don't let the perfect be the enemy of the good." This is our expectation, and I believe this is also the expectation of the public.

DR YEUNG SUM (in Cantonese): While the incumbent Chairman referred to by Mr LAU Kong-wah has only been in office for one month, Mr Ronny WONG, SC, had undertaken that office for four years. His heartrending remarks and harsh criticisms are basically clear to all through Mr James TO's speech. After one and a half days of debate, basically the Democratic Party will definitely vote against this Bill. I would like to tell Mr LAU Kong-wah that the future IPCC, which will only exist nominally and be ineffectual, will, relatively speaking, protect the police more than the innocent public and thus does not deserve support. Thank you, Madam President.

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

DR FERNANDO CHEUNG (in Cantonese): President, my speech will also be very brief. Although I mentioned yesterday that there was some improvement in the Bill itself, I believe the public have expectations. We of course hope the IPCC (or to be retitled as 監警會 in Chinese upon the enactment of the legislation) will have a statutory status, and that is why we must establish it by way of legislation in order to subject its functions and powers to regulation, thereby giving the public peace of mind, trusting that it is an independent organization. I believe our most important concern during the legislative process was that we hoped material changes would be effected through this legislation. Unfortunately, however, in the present Bill, although the Secretariat is provided with a mechanism for independent operation, various restrictions are imposed, some of which are on very simple matters. For instance, the terms of appointment of the Secretary-General to the IPCC or the legal adviser have to be approved by the Chief Executive, which makes genuine and material independence impossible for the IPCC. The IPCC is even not conferred with power of investigation, or power to establish cases and impose sanctions mentioned by us just now.

We hold that as we have decided to introduce a piece of legislation, it should be able to achieve material progress and improvement. If not, we are

afraid that when the Bill is passed, the public will be misled into thinking that the future IPCC will really be independent. Such being the case, we think we had better not enact this law at all.

DR LUI MING-WAH (in Cantonese): As an incumbent Vice-Chairman of the IPCC, I would also like to say a few words. After a lengthy debate, I am very glad to see that the Bill is finally poised for passage. What do I mean? First, if the Bill was passed without thorough discussion, for example, if it was passed as amended by all the amendments proposed by the Government, is it desirable? It is not necessarily desirable. If all the amendments proposed by Mr James TO were taken on board, is it desirable? It is not necessarily desirable and not necessarily undesirable. However, it is better for the Bill to be passed with the support of the majority of Members after debate than conforming to the ideas of a single individual. This is the first point. The change of the IPCC from a subordinate agency to an independent organization is in itself a great improvement, which will provide much operational convenience to the IPCC in future.

The second point is I admire the persistence of Mr James TO very much. Some Members have said just now that it is indeed a good thing if every Member be so persistent with bills. Although it means much labour for us, (*Laughter*) having to walk up and down the stairs, I still have to commend Mr James TO for this spirit.

Thirdly, I have to commend the spirit of government officials. Although the debate was very lengthy, the Secretary was present throughout the whole time. His capability to remain seated is comparable to that of our President.

In sum, I am glad to see this outcome, that the Bill is going to be passed. Thank you, President.

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

MS EMILY LAU (in Cantonese): President, I am not too glad to see this outcome of the Bill. Although this outcome has not necessarily defeated all our objectives, as the Secretary himself put it, it fails to meet the standard set out in

the relevant international human rights convention, which states that it is hoped that investigations into police complaints will be conducted under an independent mechanism the recommendations of which are binding on the authorities. The Secretary himself said that this is not provided for. Therefore, we will have one more issue to bring up at the next meeting of the United Nations Commission on Human Rights.

The authorities are impenetrably thickheaded. The Secretary said that although this is not provided for, public complaints against the police can be handled properly under the Government's two-tier framework. I have to thank Mr James TO for proposing the various amendments which have exposed the inadequacies of the existing system to those people who are prepared to look at and listen to the situation for themselves. Members mentioned just now that there were over 4 000 complaints. As there are only 18 members and one plus 21 staff, how can this small number of staff handle these complaints? Besides, most complaints are handled by circulation of papers. For Members present who had lodged complaints against the police which were subsequently found unsubstantiated, now that you have discovered that no discussion had been held at all, would you think natural justice has been administered? What kind of a complaint handling approach is this? Is the Hong Kong Special Administrative Region (SAR) Government shoddy to such an extent?

Just now, someone read out the remark of the incumbent Chairman, of course it has to be read out. Although I have read out Chairman Ronny WONG's remarks for so many times, I have to cite them again for the last time. He said that throughout his chairmanship for such a long time, he was most displeased with the fact that the approach adopted had made the substantiation of complaints impossible. He said complaints would only be substantiated when evidence cast in iron was available. He said they had to put in tremendous hard efforts, but how much time do they have to do so? When the reports were only circulated without even being discussed at a meeting, how could they work hard on them? If this is the case, the IPCC is actually partly to blame. Why did they not work hard on them? Why did they just circulate the reports? He said members had different training and backgrounds. However, they must have a strong spirit of contribution to enable the effective operation of the mechanism. He said evidence would only be obtained by digging into the reports. Why did they have to dig into the reports? He said throughout his chairmanship for so many years, he was most displeased with the fact that the CAPO prepared their reports from their own perspective, and he expressed it in English: "..... to

ensure that they get an unsubstantiated classification", that is, the outcome is that the complaint is unsubstantiated. Therefore, he said: "..... all the odds are stacked against the complainant". Are people blatantly lying when they maintain, after listening to this remark, that complaints will be handled properly under this system?

Therefore, President, even if this Bill is really passed today, I will not tell members of the public visiting my office that their complaints against the police will be handled properly in future because I think the situation will continue to worsen. I reckon they will continue to circulate the reports and the observers will continue not to make surprise inspections and not to interview witnesses because they are too busy. How can they get the work done in this way? We have to pass the Bill today, yet we do not know the budget of the new IPCC. It is only said that the position of Secretary-General to the IPCC will be upgraded from D2 to D3, but in the mind of the Government, especially in the mind of the Secretary who earns a monthly salary of \$300,000, D3 is just nothing. Will they really hold high opinions of a person at the rank of D3? When there are loopholes in every aspect ranging from the system, the legal framework, the actual resources and establishment and the approaches adopted, how can I recommend this system to the people of Hong Kong and the international community?

President, I oppose its Third Reading.

PRESIDENT (in Cantonese): Under normal circumstances, no debate is held at the Third Reading but I have allowed many Members to voice their feelings here. However, I hope Members will keep their speeches short because there are still many outstanding items on the agenda. Now, let us see whether there is any other Member who wishes to voice his or her feelings.

MR ALBERT CHAN (in Cantonese): President, at the resumption of the Second Reading debate of the Bill, I said if "警監會", that is the abbreviation for the IPCC in Chinese, is not pronounced very accurately, it will actually become "警'奸'會", with "奸" meaning "wicked" as in "wicked people", because it is a case of wicked people acting in collusion with each other. The fact that many amendments are not passed has precisely made the IPCC a "警'奸'會", a council of "wicked" people, after the Third Reading, because this phenomenon will definitely prevail.

As instructed by the President, I will keep my speech as short as possible. I have to point out that this law which will be enacted after being read for the Third time is a piece of legislation with "three contraventions", that is, it is a piece of legislation which has contravened international human right conventions, the requests of Hong Kong people and the principle of fairness and impartiality. If the Government continues to connive at, shield and condone the conduct of police officers which constitutes breaches, offences and even exploitation of the public's rights upon the passage of the Bill, Hong Kong will obviously be taken gradually onto the path towards a police state. As people in authority will have to secure the protection and support of the law-enforcement agency, they will definitely connive at its abuse of power. This is the sorrow of Hong Kong.

Besides, if this situation continues, the institution of the Hong Kong Police Force will become much worse than that of the public security authorities of the Mainland. While there is continuous improvement in the public security authorities of the Mainland, including the gradual improvement in their institution and uniform, there is not any improvement in the institution of Hong Kong at all. We feel sorry for police officers who have achieved good performance because although they think there is no need to hide the truth, our Government still inclines to provide the black sheep with protection in the institution. This is definitely a disastrous and regrettable decision. Therefore, President, I oppose the Third Reading of the Bill.

MR ALAN LEONG (in Cantonese): President, the remarks made by the former Chairman of the IPCC, Mr Ronny WONG, SC, have been repeatedly cited during this 23-hour debate. Apparently, this person who was once in charge of the system to monitor police complaints left office out of disappointment. We are very glad that now a new Chairman is willing to take charge of the IPCC with the spirit of "if not me, then who would tread the realm of Hades". I hope the authorities will not cause the new Chairman to leave out of disappointment in the same way the former Chairman did.

Frankly speaking, President, if I were part of the authorities, I would have taken the remarks made by Chairman Ronny WONG at that meeting of the Bills Committee as a wakeup call, and actually it can be regarded as a warning. President, what kind of warning is it? It is a warning that the *modus operandi*

of advisory and statutory bodies proven in the past is on the verge of collapse. That is why a warning has been sounded. I hope the authorities will always be mindful of this warning in the implementation of this Bill which, I believe, will be passed by this Council today.

Although today the public and the Legislative Council are unable to monitor the IPCC's power to obtain information or the Commissioner of Police concerning the protection of legal professional privilege, or to subject the authorities' granting of legal protection to the future IPCC to public judgment in implementing this legislation, I very much hope that the authorities will, in implementing this legislation, provide the IPCC with adequate support through concrete actions so as to enhance public confidence.

However, President, it is regrettable that as this legislation imposes restrictions on the request for information and creates constant uncertainties about the IPCC's appeals to public judgment, which will give rise to concerns about possible breaches of the law, and puts the persistence and perseverance of the police above the IPCC law, I beg your forgiveness for my not being able to support it. Thank you, President.

MR LEUNG KWOK-HUNG (in Cantonese): President, I mentioned at the resumption of the Second Reading debate of the Bill that I had met the new Chairman of the IPCC on a number of occasions, one of which was when he acted as the Government's legal representative in a litigation. Of course, the person is one thing and the functions or powers of the organization are another. With this existing approach, in which changes are effected by way of legislation, the IPCC will really be subject to legislative regulation, being left with no alternative to turn to. In the expression commonly used in the Mainland, the Bill seeks to make the IPCC "wear shoes too small for its feet". When its "feet" are put into shoes one size smaller than they should, how can it walk? It will not be able to walk at all.

Therefore, the present problem is if the IPCC Chairman shares the Government's ideology and is pro-government, he can take up this office without any difficulty because there is already a legal framework which allows him not to take any action. However, the situation will be different if, unfortunately, he does not share the Government's ideology and has not established any

relationship with the Government — this is Ronny WONG. However, this legislation is "all-encompassing". Previously, there were grey areas and ambiguities, and when Chairman Ronny WONG came before this Council to give an account of his work, he was grief-stricken and sorrowful when he was told that many different actions were not allowed. Now, after a debate of a few days, a piece of legislation will be passed to establish a framework so that no one will complain anymore in future. That is, there will not be a person known as Ronny WONG, TONG Sew-jat or JAT Sew-tong to complain because at that time people will say: "Is he a fool? Did he study the law on the IPCC? The IPCC is actually unable to achieve anything, why did he join it?" This is exactly where the crux of the matter lies.

Therefore, as I see it, President, the situation now is like *Painted Skin* in *Liaozhai Zhiyi* in which the female ghost has to find something on which to paint her face beautifully. This act is harmful, and no one is aware that there are ill intentions behind it. Not knowing that there are needles under the skin of the face, one will get one's hand hurt on touching it. In this regard, friends who have participated in the scrutiny of the Bill should actually know the entire process. I think they should vote against this Bill, and the areas of disagreement are evident. I find Mr LUI Ming-wah very interesting in that he expressed gratitude for everything and also for everyone present.

First, I have to indicate clearly that — President, I can now voice my feeling — I will definitely not express gratitude. If I have to represent the people, I will be unable to express gratitude in relation to this Bill because in the four offices of mine, there is one in which a cabinet is designated for storing documents on complaints against the police, all of which were unsubstantiated. Besides, President, I have another view. I am the one in this Council who has had the most dealings with the police, which is also the subject of most of my complaints. However, almost all of such complaints were unsubstantiated, with the only exception of my complaint against the blunder of LEE Ming-kwai in the "Beethoven" incident.

Honourable Members, this is what happened on me. I think during the scrutiny process, I could see that what was insisted on by the Government would make it impossible for me to complain against the police in the future. This is my heartfelt remark. If Honourable colleagues think that passing this law today is better than none, I would like to advise colleagues to think twice about it. Honourable colleagues have to understand that it will bring about far-reaching

implications if we rubber-stamp it today. If we think the present Bill is able to provide for a legal framework which will subject the police complaints mechanism to the scrutiny of the IPCC, this is not true. First, it has no power of investigation; second, besides having no power of investigation, many of its other powers are also subject to great restrictions.

I would like to express my gratitude to the President for allowing me to voice my feelings, and I call on all Members of this Council not to endorse the Third Reading of the Bill. If the Bill is read the Third time, I hope members of the public will come forward to express their views after the Third Reading, in the hope that their views will turn the tide amid this unfavourable situation and bring about amendments to this law in the next Legislative Council. Thank you, President.

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

MR FREDERICK FUNG (in Cantonese): President, this is the first time I speak on this Bill. I have not spoken throughout the whole process because, in the first place, I think as I did not participate in the discussion of the Bills Committee, I am unable to express my views on every single detail as thoroughly as Mr James TO did. Secondly, as I would only like to express my views on the primary object of the Bill, it is more appropriate to speak now than at the resumption of the Second Reading debate.

Personally, I also agree that this Bill is imperfect, incomplete and inadequate, and it is particularly inadequate with regard to powers. However, comparing the future IPCC and the present IPCC, we still maintain that the future IPCC is better than the present IPCC. That being the case, how should we make a choice? Very often, we hope that a piece of legislation is already complete and perfect, able to achieve our objectives when it is introduced, but things often do not happen as we may expect, especially when we are not in power in the administration and our camp is not the ruling camp.

Very often, in order to fight for a cause — if Members have had the opportunity of listening to my radio interview, they would find that I had commented that in putting up a request to the Government, one would be very infuriated, and possibly reaching the point of vomiting blood. Some proposals

put forward by us were not formally taken on board by the Government until a decade later. In my experience, while we proposed setting up the Estate Management Advisory Committee in the 1980s, it was not established until the 1990s. Even when we put up our request concerning the Comprehensive Social Security Assistance (CSSA), holding the view that the CSSA payment should be reverted to its former level in 2002-2003, the Government did not approve of it. Although the CSSA payment was subsequently increased, it was only increased to offset the effects of inflation and in accordance with established practice instead of acceding to our expectation. However, we also voted for this at the meeting of the Finance Committee because we thought it was an improvement to the situation then. Regarding the "fruit grant", while we requested an increase to \$3,000, the Government has not agreed with it so far and only provided \$3,000 on a one-off basis, and we also accepted it.

Therefore, I think there are three possible approaches to deal with this issue: the first one is that we accept all proposals, including the values underlying them, made by the Government; the second one is we totally disagree with the Government's proposals because they are too far from our ideal, and thus we will not make any concession and will not accept any of them; and the third one is what I call gaining ground step by step. As I am not able to take a big step forward, I will move on even though it is only a small step, and I will not stay put afterwards. I very much appreciate Mr James TO's effort for more than a decade, and I will continue to give my support to James TO for maintaining his pursuit after the passage of this Bill. Even though it is moving forward step by step, and every step is only a small one, I will keep moving on.

If the platform established under this Bill is passed — the platform is that at least we can give the IPCC a statutory status and provide the IPCC with an independent Secretariat, this platform will be better than the present one — I will maintain this pursuit on the basis of this platform. I think this comes under the third possible alternative. We in the Hong Kong Association for Democracy and People's Livelihood (ADPL) choose the third possible alternative although this meets neither our ideal nor our objective, or it is even not in line with our values. Although this platform is only an empty shell and a rung which is not yet sturdy and secure, it is better than the present IPCC, and so I would still like to have this platform. Given this platform, I will have an opportunity to make it sturdy, and I will have an opportunity to build the second rung, the third rung, and so on, until our objective is achieved.

It is like our pursuit of universal suffrage. We began our pursuit of universal suffrage in 1988, but it was not successful; then we requested that it be implemented in 1990, and it was not successful; we then requested its implementation in 1997, and it was not successful; we then requested that it be implemented in 2000, and it was not successful; we requested its implementation in 2008, and it was not successful; we then requested that it be implemented in 2012, and we have been maintaining our pursuit all along. Although there were only elections of the functional constituencies initially in the 1980s, there were subsequently Members returned by geographical constituencies through direct elections, and now half of the seats are returned by geographical constituencies through direct elections, and our pursuit of universal suffrage continues. Actually, from our history, Members can see that our pursuit with the non-apologists of the establishment of the Government and the Government requires plenty of time, days, effort and a long stretch of time. It seems that the more important the subject, the harder it is to achieve it in one go. However, although it cannot be achieved in one go, I still think we have to gain ground step by step.

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

DR JOSEPH LEE (in Cantonese): President, I did not speak at the resumption of the Second Reading debate and the examination of the various Committee stage amendments (CSAs). Actually I did not intend to voice my feelings during the present Third Reading. First of all, I have to declare my interest as a Vice-Chairman of the IPCC, Member of the Legislative Council and Member of the Bills Committee. I dare not say that I am well-versed in this Bill but during the past year or so since my appointment as Vice-Chairman of the IPCC, I have had some experience with how the CAPO handled complaints and whether or not its handling was effective. I believe a few Members present also have such experience.

Other Members without such experience may have lots of ideals, aspirations and visions for this Bill, thinking that it should be amended to a better form. Of course, there is something about the Government with which I am not satisfied. For example, at the initial discussion on the Bill, why was the IPCC not represented at the meetings of the Bills Committee while the CAPO was represented by a Superintendent of Police who addressed the meeting? Does it

mean that the Government would like the CAPO to inform Members how the IPCC or the future IPCC should operate? After I had expressed this opinion, the IPCC members began to attend and address the meetings.

Regarding scrutinizing the operation of the IPCC, at the meetings of the Bills Committee and during so many hours of debate over the past few days, I have heard many Honourable colleagues query what these some 20 people and the some 10 people have been doing and whether they have the capability of performing their tasks. I dare not say they have the capability to perform their tasks, neither do I dare say that they can perform their tasks effectively. However, in my experience of more than one year, I would like to tell Honourable colleagues that work has been tough for them. They have really exhausted themselves in monitoring whether the CAPO is doing a good job.

Of course, the limitation in power, that is, the inadequacies in power, have given them a sense of frustration and helplessness. For example, they are unable to obtain information, or to a certain extent fortunately I was not present on that occasion, that is, the occasion mentioned by Mr Alan LEONG. After the leakage of confidential information, the Government even said "irresponsibly" that: "this has nothing to do with me, all of you should just go to jail." Of course, not much improvement has been made in this respect in the present amendment exercise, as a member of the IPCC, I dare not say whether or not this is an improvement, but at least this is a safeguard for friends in the IPCC. Upon the retitling, we can really tell people bold and loud that we act with statutory power.

Of course, there is some limitation, that is, inadequacies, as mentioned by Mr Alan LEONG and other Honourable colleagues, and we may be unable to obtain some information as the Government will refuse to provide it in any case. To put it more vulgarly, regarding the Government, "there is nothing much we can do about it, except to storm off in exasperation". As the Secretary of Department put it, sometimes there may really be situations in which they may waver and be caught in between, not knowing what to do. After the enactment of this law, these situations will still occur but that does not mean this Bill should not be passed. I heard friends present saying that the IPCC should not have existed at all because it should have power of investigation. I do not wish to argue on this point because this was something which happened long time ago, as Mr TO said, it probably took place more than a decade ago. The Government has never had any vision or thought of turning the IPCC into an organization with power of investigation, if it had, the CAPO would not have existed, or else

there would be duplication of work. However, this is not the subject of our present discussion. I only want to say that after listening for so long, I feel a bit helpless.

Finally, I think it is necessary for me to support the Third Reading of the Bill. I supported the resumption of the Second Reading, and regarding many CSAs, I would support those of the Government and oppose those of James TO because on certain issues, I disagree with his concepts and principles. However, regarding the need for the IPCC to have power, I support Mr TO, and I appreciate the persistence displayed by Mr TO in handling this matter.

After listening to the debate, I would like to make a simple conclusion. Actually, the IPCC needs this law to protect its members so that they will have greater power and more peace of mind in performing their duties. Although I agree that there are inadequacies in this piece of legislation which warrant improvement, here in this Chamber we should not portray the IPCC members and staff of its Secretariat very negatively, very incapable. Nor should we tell the people of Hong Kong that the IPCC is a very poor organization. This is absolutely not the case. Without the IPCC, I believe there will often be no one to monitor the outcome arrived at by the CAPO regarding complaints lodged by the people of Hong Kong.

Probably many Members may disagree with my views, but I have to take the risk of being regarded as pro-government to support the Second and Third Readings. I would like to tell Members that after wrestling for so many years, the IPCC precisely needs the enactment of this law to protect its work so that it will have statutory power and be able to protect the public. When members of the public think their complaints against the police do not receive fair handling, and when all complaints handled by the police will be monitored by the IPCC, this statutory monitoring power will be able to protect the public.

President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): President, I would like to take the opportunity of being in this Chamber to thank all Legislative Council Members for their utmost efforts in scrutinizing the Bill in the past few months, and their excellent debates in this Chamber in the past couple of days. Here I would like to express my particular gratitude to you, President. You are dedicated, you play your role as President well and you have worked with consummate efficiency.

In the past 20 hours or so, my views might be quite different from that of many Members. I particularly appreciate Mr James TO's perseverance in the past decade. Very often, our views clashed with each other like the clash between the Mars and the Earth. But I still very much respect Mr James TO. I can say that he is an opponent I highly respect.

Besides, I have to thank Mr LAU Kong-wah, Chairman of the Bills Committee. He has presided over dozens of hours of meeting of the Bills Committee. Here, I can tell Members and all Hong Kong people that after the passage of the Bill, we will exert our best to ensure the sound operation of the statutory IPCC in future. We in the Security Bureau will make every effort to provide support in terms of both policy and resources. Of course, we have put in place established procedures for application for resources, which should be lodged in accordance with the Government's procedures for resource allocation.

During the debate, many Members have maintained that it would be better if this Bill did not pass and the former IPCC would also be better than the future IPCC. I very much agree with Dr Joseph LEE's view that at this moment, the people aspire that the law be enacted so as to bestow on the current IPCC a statutory status.

In fact, as I have mentioned time and again, the Hong Kong Police Force are a team of excellent people. Most of the police officers are very professional and law-abiding. Only a small fraction of them may use power in an improper way or violate the law. Here, I have to reiterate that we will not tolerate the existence of any black sheep.

Mr Martin LEE is also a Member I highly respect. He will attend our meeting in the Chamber until tonight or tomorrow. I wish him every happiness after leaving the Chamber. He is fair and impartial. He once said that our

Police Force were excellent and most police officers were law-abiding. I fully agree with Mr LEE on this. However, he mentioned one point in his final speech just now which I beg to differ. He seemed to have mentioned the national flag of Tibet. Here I must reiterate that Tibet is an inalienable part of China, a part of China. Thus, there is no such thing as the national flag of Tibet.

Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Independent Police Complaints Council Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO 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.

Dr Raymond HO, Dr David LI, Dr LUI Ming-wah, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the motion.

Mrs Anson CHAN abstained.

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

THE PRESIDENT announced that there were 47 Members present, 30 were in favour of the motion, 15 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): The Independent Police Complaints Council Bill.

MOTIONS

PRESIDENT (in Cantonese): Motions. Two proposed resolutions under the Interpretation and General Clauses Ordinance to amend the Building (Planning) (Amendment) Regulation 2008.

PRESIDENT (in Cantonese): The Secretary for Development and Mr Tommy CHEUNG have given notice to each move a motion to amend the above Regulation.

Council now proceeds to a joint debate on the two motions.

I will call upon the Secretary for Development to speak and move her motion first, to be followed by Mr Tommy CHEUNG; but he may not move his motion at this stage.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed to amend the Building (Planning) (Amendment) Regulation 2008 (the Amendment Regulation).

First of all, on behalf of the Secretary for Labour and Welfare and the relevant departments, I would like to express our gratitude to the Honourable Emily LAU, together with the Subcommittee under her chairmanship, who has conducted a number of meetings to discuss the Amendment Regulation and tendered invaluable advice. The Subcommittee has also invited relevant stakeholders to express their views. Having carefully considered comments from various parties, the Administration has proposed to make further amendments to the Amendment Regulation.

The purpose of the Amendment Regulation is to enhance the design requirements governing the provision of facilities to allow access to and the use of buildings and the associated facilities by persons with disability to tie in with the revised design requirements set out in the Design Manual: Barrier Free Access 2008.

The Administration conducted a review of the Design Manual: Barrier Free Access 1997 with a view to enhancing the design requirements of the facilities provided for the disabled taking into account of the expectation of the community and advancement in building technology. Having conducted extensive consultation and considered the views from the relevant parties, the Design Manual: Barrier Free Access 2008 was finalized in late 2007. The new Design Manual introduces a series of new requirements, such as the provision of

access to backstage facilities of auditoriums for persons with disability; introduction of detailed requirements on the number, size and signage of parking spaces; improvement of directional signage; and specification of minimum illumination levels for corridor, stair and lift lobby for persons with visual impairment, and so on.

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

The Amendment Regulation seeks to amend the Third Schedule to the relevant regulations for implementation of the revised design requirements set out in the Design Manual: Barrier Free Access 2008 and to define the extent of the application of these design requirements in different types of buildings.

The Subcommittee has made a number of comments on the Amendment Regulation. Having considered Members' comments, the Administration now proposes to make the following amendments to clarify the requirements under the Amendment Regulation:

- (a) Under section 5 of the Amendment Regulation, sections 4(1) and 4(2) of Part 2 of the new Third Schedule specify the number of wheelchair spaces to be provided in auditoriums with fixed seats. The revised provision will clearly state that where an auditorium has less than 800 fixed seats at spectator level, no less than four wheelchair spaces shall be provided at the spectator level. Where the premises has more than 800 fixed seats at spectator level, no less than two wheelchair spaces shall be provided for every 400 fixed seats or any part thereof;
- (b) Hotels, hostels and guesthouses are premises for accommodation, hence should be deemed as domestic buildings or the domestic part of composite buildings. Although it is stated under section 7 of the new Third Schedule that all hotels, hostels and guesthouses shall provide accessible guestrooms, Part 4 of the new Third Schedule provides that only the common areas of domestic buildings or domestic part of composite buildings shall provide access and facilities for the use of the disabled. In order to make it clear that hotels, hostels and guesthouses shall comply with section 7 of the new Third Schedule to provide accessible guestrooms, we propose

amending Part 4 of the new Third Schedule by specifying that the premises required to be designed with facilities to allow access to and the use of such premises by persons with disability include the accessible guestrooms in hotels, hostels and guesthouses;

- (c) Similarly, Division 12 of Part 2 of the new Third Schedule seeks to specify the relevant design requirements for bathrooms and shower compartments in the accessible guestrooms of hotels, hostels and guesthouses. To set out clearly the extent of application of Division 12, we propose including a provision in Division 12 stating that the Division applies only to accessible guestrooms in hotels, hostels and guesthouses to tie in with relevant requirements contained in the Design Manual: Barrier Free Access 2008; and
- (d) We propose to make some technical amendments to the wordings of section 86 of the new Third Schedule.

The relevant amendments are supported by the Subcommittee. I hope Members would support the motion.

I beg to move the above motion. Thank you, Deputy President.

The Secretary for Development moved the following motion:

"RESOLVED that the Building (Planning) (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 124 of 2008 and laid on the table of the Legislative Council on 21 May 2008, be amended, in section 5, in the new Third Schedule –

- (a) in Part 2, by repealing section 4(1) and (2) and substituting –

"(1) On any premises with an auditorium with not more than 800 fixed seats at spectator level, not less than 4 wheelchair spaces shall be provided at spectator level.

(2) On any premises with an auditorium with more than 800 fixed seats at spectator level, not less than 2 wheelchair spaces shall be provided at spectator level for every 400 fixed seats or any part thereof.";

- (b) in Part 2, by repealing "**Division 12 – Bathrooms and Shower Compartments**" and substituting –

**"Division 12 – Bathrooms and Shower
Compartments in Accessible
Guest Rooms**

55A. Application: Division 12, Part 2

This Division applies to bathrooms and shower compartments in accessible guest rooms required under section 7.";

- (c) in Part 2, in section 86, in the Table –
- (i) in the Chinese text, by repealing "觸覺地面平面" wherever it appears and substituting "觸覺平面地圖";
 - (ii) in the English text, in item 6, by repealing "workship" and substituting "workshop";
- (d) in Part 4 –
- (i) in item 1, in the second column, by adding –

"(*d*) All guest rooms required under section 7.";
 - (ii) in item 3, in the second column, by adding –

"(*e*) All guest rooms required under section 7."."

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

MR TOMMY CHEUNG (in Cantonese): Deputy President, there have been provisions under the Building (Planning) Regulations governing the provision of facilities in buildings to allow barrier-free access for persons with disabilities as early as since 1984. The Design Manual — Barrier Free Access 1997 (DM 1997) issued in 1997 based on some of these provisions to provide guidelines in

relation to buildings are still in use. The present legislative amendment exercise seeks to amend the DM 1997 issued in 1997.

I would like to point out that regulations for food premises in this legislation have actually been in existence in the original legislation as early as since 1984. Back then, food premises were also put under the regulation of the codes for non-domestic buildings and were subject to the mandatory requirement of installing barrier-free access and ramps to raised platforms for persons with disabilities. However, a few industries, including the cinema, hotel and carpark industries, were exempted and were only required to provide limited facilities. This categorization was followed when the DM 1997 was issued in 1997.

I am not sure whether the industries were consulted on this categorization in 1984 or 1997 because back then there was no representative of the catering industry in this Chamber. All I know is that the Buildings Department (BD) had not enforced the relevant requirements until 18 April 2006 when the Food and Environmental Hygiene Department (FEHD) advised all of a sudden without prior notice that a new licensing measure would be implemented in the light of the report of the Team Clean in 2003. Food premises have to meet the barrier-free requirements set out in the DM 1997 before the BD can issue a "notice of no objection", which will allow the FEHD to process applications for licence or transfer of licence. Besides, building plans submitted for approval have to comply with the requirements set out in the DM 1997.

This is the cause of many existing problems. Food premises whose licences were issued before 18 April 2006 may find only at the transfer of licence that the design of their shops do not comply with the requirements set out in the DM 1997, and some licence holders of food premises may be unable to transfer their licences as a result.

The industry considers it unfair for the BD to require them to undertake the responsibility all of a sudden when the relevant requirements had not been enforced for years. However, the BD argued on the pretext that the issuance of the "notice of no objection" does not imply that there was no breach of law on the part of the food premises. This explanation is indeed preposterous. Is it not the case that the so-called "notice of no objection" is issued only when the premises are found to be not in breach of law after inspection, so that the FEHD can then proceed to process the licence application?

The authorities have also indicated that granting exemption to food premises is a retrograde step and is unfair to persons with disabilities. However, I find that there are many lenient amendments in the Amendment Regulation — not that I do not support these amendments — for example, regarding the increase in the choices of gradient of ramps from the original 1:12 to 1:10 or 1:8, why have the authorities not pointed out that this is a retrograde step?

In the final analysis, the Regulation should change with time and in the light of the needs of society. The fact that the authorities have not enforced the Regulation for more the two decades has misled food premises into thinking that no problem has existed at all, but now the authorities are enforcing it stringently all of a sudden. Given the difficulty in complying with the Regulation and considering that the business environment of small food premises will be seriously hampered, the catering industry hopes that a solution balancing the interests of all the stakeholders can be sought. However, the authorities have advised that they have no intention to relax the Regulation as it has been in existence for a long time, just that food premises have failed to comply with it over the years. Is this actually reasonable?

To the catering industry, it is most perplexing that the authorities would exempt cinemas, hotels and carpark from meeting the full requirements of providing barrier-free access while requiring full mandatory compliance on the part of food premises.

Under this Amendment Regulation, if enacted, only not less than four wheelchair spaces, that is, 1%, are required to be provided in premises with an auditorium with not more than 400 fixed seats, and only not less than two wheelchair spaces will be required to be provided for every 400 fixed seats or any part thereof. In other words, even if the number of seats amounts to 800, there will only be six wheelchair spaces, the ratio of which is not more than 1.5% only.

Regarding carpark, even with the new changes, one accessible parking space will be provided for persons with disabilities in every 50 parking spaces, and only one additional accessible parking space will be provided for every additional 100 parking spaces, with the maximum number of accessible parking spaces being six when the number of parking spaces reaches 450 or above. Actually, the ratio will not exceed 2%.

Similarly, two accessible guest rooms are required to be provided for every 100 guestrooms or part thereof in every hotel, hostel or guesthouse, and thus the ratio will not exceed 2% either.

However, being required to achieve 100% compliance, the catering industry wonders whether this requirement can be handled flexibly. Even though the catering industry is willing to ensure that there will be adequate accessible seats for persons with disabilities, the authorities still do not allow such flexibility, insisting that a permanent ramp has to be installed for so long as there is unlevelled floor. Is this not somewhat discriminatory?

Actually, Deputy President, the industry has only made a very humble request this time and asked for two amendments. First, the authorities should allow food premises to provide barrier-free access, that is, pathway which is easily accessible, to only 70% of the business area and allow 30% of the area to be installed with fittings and designs of landings and raised platforms as alternatives to installing ramps. All of us know how difficult it is to operate food premises. While Hong Kong claims itself as a food paradise, the sale of fresh chickens as well as geese, ducks, quails and pigeons will soon be banned. When there is no attraction whatsoever, how should they operate?

Deputy President, another request of the industry is whether they can be allowed to use some removable ramps instead of installing fixed ramps to landings not higher than this measuring ruler. Members may ask about the difference between the two. The difference is when no person with disabilities needs to reach for these low landings — that is, landings with a height of not more than 300 mm — there is no need to install these ramps. Of course, when persons with disabilities visit the place and have to access these landings, we can place those installations known as removable ramps there, as a substitution for permanent concrete ramps.

The industry and I exercised great caution in drafting the amendments. To avoid uncertainties concerning the definition of business area, we adopted the definition of "usable floor space" referred to in the principal legislation, namely, the Building (Planning) Regulation, which means that places such as kitchens and space occupied by air-conditioning system, which are not open to customers, will be excluded.

It is not too much for food premises to ask for an exemption of 30% of the floor space. Actually, it is only a very humble request. I think as persons with disabilities only account for less than 70% of the population of Hong Kong, there should be enough seats for them at food premises, and this is still in line with the principle of providing them with fair treatment. Besides, when food premises can provide barrier-free access to at least 70% of the floor space, they have actually done more than cinemas, hotels and car parks with only 2% of their facilities designed for use by persons with disabilities.

As for removable ramps, it is stated clearly in my amendment that their design should follow strictly the requirements for permanent ramps set out in the DM 1997, and the only difference is that one is removable while the other is not. Therefore, it should not give rise to any safety concern.

Regarding the authorities' enforcement concerns, the industry does not agree with them. It is because the FEHD may include this as a licence condition and institute prosecution against licence holders who are found during food premises inspections to have failed to provide removable ramps.

Unlike overseas countries, Hong Kong is a place where people compete for the scarce supply of land. Among the over 10 000 food premises, most of them are small to medium operations with an area of only a few hundred square feet. Besides, as space is limited and the layouts vary greatly, it is inevitable that a couple of steps will be built. When a shop may only provide some ten dining tables, the installation of a permanent ramp will take up the space of about one to two dining tables, which may account for a very significant proportion of the business area, and thus business will be reduced substantially. Besides, while such installation may be affordable to food premises run by large consortia, small and medium-sized food premises may bear the brunt, given the high rentals in Hong Kong and the extremely high operation costs of food premises.

The authorities advised that no special exemption is granted to food premises all over the world, but it was found out later that when the relevant legislation was introduced back then, reference was only made to five countries, that is, all they were talking about were only Japan, Australia, the United Kingdom, the United States of America and Norway. When asked whether special exemption was available to food premises elsewhere in the world, the authorities indicated that they had no idea. However, I know this Government

of Hong Kong Special Administrative Region (SAR) very well. As it often provides information selectively, I have queries about what it said. Nevertheless, I do not have adequate time to find out whether exemption is provided in other places, and I will follow this up later.

I hope Members will understand that it is not that the catering industry does not welcome persons with disabilities' patronage, nor is the industry unwilling to meet their requests fully. The point is decoration and design have become increasingly important for the catering industry in recent years as a means to attract customers, and the supply of land is scarce in Hong Kong. When variety is called for in decoration, and in order to utilize space optimally, raised platforms or steps have come in handy because they can easily create interlocking tiers and a sense of depth from a design of layered structure.

Take the Landmark Café as an example. As all of us could see, before renovation, there was a slightly raised platform in the middle while the space adjacent to the windows, which was the best location, was not raised, allowing barrier-free access for persons with disabilities to the relevant seating area, the view from which was definitely better than that of the seating area in the raised section in the middle. However, this design could no longer be adopted after what happened on 18 April 2006. Thus, renovation is now in progress and it seems that the works will soon complete.

Actually, the catering industry is very sincere about working out solutions with persons with disabilities, and the Hong Kong Catering Industry Association, of which I am the Chairman, has been meeting with the relevant government departments and rehabilitation organizations over the past one year and a half to seek their opinions.

In March this year, under the arrangement of the Economic Analysis and Business Facilitation Unit, the industry met with the representatives of 14 rehabilitation organizations. During the meeting, we also discussed whether or not 100% barrier-free access was necessary. Actually, I came to know only from what they told me that the existing DM 1997 does not state clearly that 100% barrier-free access is required. They also pointed out that the main idea was to provide fair treatment to persons with disabilities based on the principle of equality. Members can take a look at the minutes of the meeting held on that day if they so wish.

I would like to stress that even rehabilitation organizations have diverse views. It depends on whether the authorities are willing to take on board more enlightened views and explain to organizations with relatively strong views the difficulties involved.

I can say that this is not only a problem of the catering industry. Like food premises, many retail outlets are unable to provide 100% barrier-free access, just that as they are not required to obtain a licence, they can keep away from monitoring by the authorities.

I do not mean to drag these industries into troubles, but I would like the authorities to know clearly that Hong Kong is densely-populated, and unlike overseas countries, we do not have the conditions to adopt barrier-free architectural designs. We have to be absolutely clear that the adoption of barrier-free architectural designs, such as installing zigzag ramps as substitution for staircases, is bound to be directly related to land resources and operational costs, and is actually unaffordable to small and medium-sized restaurants and retail outlets in Hong Kong.

The authorities advised that if the addition of a ramp or the removal of a mezzanine floor would involve "unjustifiable hardship", the relevant person may apply for exemption with the Advisory Committee on Barrier Free Access. However, what is "unjustifiable hardship"? Will the removal of a mezzanine floor, bringing about the loss of half the business area and half the amount of business be regarded as hardship? The transfer of food business by some small and medium-sized restaurants, which is originally profitable, will become a deficit business because of the need to carry out works to comply with the requirements set out in the DM 1997. Will this be regarded as unjustifiable hardship?

With the numerous restrictions imposed by the authorities, business for the catering industry has become very difficult in recent years. Besides, it is said recently that fresh chickens will not be supplied, and as imported meat and everything else are expensive and sewage charges will be increased, the pressure to increase prices is becoming greater than ever. In order to retain customers, food premises hope that they can carry out renovation and build raised platforms to create a stronger layering effect, yet this is not allowed. How can our reputation of being a Gourmet Paradise be maintained? Actually, the catering industry has unfortunately become a very disadvantaged group. They just hope

that Members can lend them a helping hand and speak for them in support of this amendment.

The spirit of this legislation is to ensure that persons with disabilities can receive fair treatment. The catering industry absolutely agrees with and supports this idea, but we hope Members can make one point clear. Does upholding the spirit of this legislation necessarily mean providing barrier-free access to all seats?

The catering industry only hopes that, with these two amendments proposed by us, some flexibility can be added to this legislation, so as to ensure that the catering industry will comply with the requirement of providing adequate seats for persons with disabilities on the principle of equality and at the same time some "leeway" will be left for the industry, in order to strike a balance between the rights of persons with disabilities and the business environment of the catering industry. I very much hope that Members will support my amendments.

Deputy President, my remarks above are made on behalf of the industry and does not reflect the position of the Liberal Party. Thank you, Deputy President.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, to begin with, the Secretary for Development, other government colleagues and I are immensely grateful to Ms Emily LAU, Chairman of the Subcommittee on Building (Planning) (Amendment) Regulation 2008 (the Subcommittee), and other Subcommittee members for supporting the Building (Planning) (Amendment) Regulation 2008 (the Amendment Regulation). We are also grateful to them for offering so much constructive advice on the Amendment Regulation. I shall first speak on the background and consultation process relating to the policy of barrier-free access and the review of the Design Manual: Barrier Free Access 1997 (the Design Manual 1997). I shall also state the Administration's opposition to Mr Tommy CHEUNG's amendment.

It has been a long-established policy objective of the Government to provide barrier-free facilities to persons with disabilities. This is also a shared vision of the international community, and the aim is to make sure that like able-bodied persons, persons with disabilities can enjoy barrier-free access to different premises and make use of the facilities therein on the basis of equality.

It is hoped that they can thus be assisted in living an independent life, participating fully in various social activities and integrating into society. To sum up, the establishment of a barrier-free environment forms the basis on which persons with disabilities can integrate into society. Such an environment is essential to the building of a harmonious and caring society characterized by the integration of all.

With a view to establishing a barrier-free environment, section 25 of the Disability Discrimination Ordinance provides that a person with disability shall enjoy the right as any other persons in entering any premises and using the facilities there. Section 84 of this Ordinance also provides that a public authority which has the power to approve building works shall not, in respect of those works, approve building plans, whether for a new building or for the alterations or additions to an existing building unless it is satisfied that such access as is reasonable in the circumstances to the building or premises will be provided for persons with disability.

On the provision of appropriate access and facilities for persons with disabilities, the Buildings Department already issued the Design Manual 1984 as early as in 1985 to provide the construction industry with the necessary guidelines. In response to advances in construction technologies, the Buildings Department also updated the relevant requirements in 1997.

In parallel with the advances in construction technologies, the public awareness of the needs of persons with disabilities has also been deepening. For this reason, the Government conducted a review of the Design Manual 1997 in 2001, with a view to further improving the relevant design requirements to meet the rising expectations of society.

In 2002, the Buildings Department also commissioned a consultant to conduct a review on this issue. In the course of writing up its report, the consultant made reference to various international standards and the experience of other countries, including Britain, the United States, Australia, Japan and Norway. The consultant also took full account of Hong Kong's actual situation and consulted the relevant persons and organizations concerned. It put forward the proposed amendments only after carefully balancing the needs of users and the impacts on the affected industries.

In a bid to gauge the views of stakeholders and the affected industries, the Buildings Department also conducted a series of extensive public consultation

exercises during the period of review. One of these exercises lasted six months from January to June in 2006. Members of the public were invited to give their views on amending the Design Manual 1997. During this period, two public consultation sessions were also held, and the participation of all the 18 District Councils and stakeholders was invited. Besides, from 2004 to 2008, the Government also consulted various organizations, including the Building Subcommittee under the Land and Building Advisory Committee, the Elderly Commission, the Rehabilitation Advisory Committee and its Subcommittee on Access. Members of all these organizations were in strong support of the proposed amendments. In addition, before finalizing the Design Manual 2008, we also organized two briefings for stakeholders, including the construction industry and organizations for persons with disabilities.

Furthermore, between the 2005 and 2007 legislative sessions, the Government further consulted the Panel on Welfare Services on four occasions, and Members of the Panel on Development were also invited to attend the meetings. The Panel on Welfare Services was in full support of the proposed amendments to the Design Manual 1997, and Members even requested the Administration to introduce the required legislative amendments as expeditiously as possible. At the request of the Panel on Welfare Services, the finalized version of the Design Manual 2008 was submitted to Members in November 2007. The legislative amendment exercise has since been in full swing.

In order to ensure the effective enforcement of the Design Manual, all the mandatory design requirements set out in the Design Manual 1997 are already included in the existing Building (Planning) Regulations. To tie in with the amendments introduced in the Design Manual 2008, the Building (Planning) Regulations will be amended correspondingly. All such amendments are incorporated into the Amendment Regulation and submitted to the Legislative Council for perusal on 21 May this year.

Deputy President, the Amendment Regulation represents the final consensus forged after the comprehensive review launched in 2002 and the extensive consultation of stakeholders. Mr Tommy CHEUNG's amendment to the Amendment Regulation is in effect a request for exempting part of the usable floor space of restaurants from the provision of ramps for persons with disabilities and other needy persons to cope with changes in level. While we appreciate the operational difficulties faced by the catering industry, his amendment will entail substantial amendments to the present requirements on the provision of ramps, and will run counter to the direction of providing a

barrier-free environment. The Government can hardly accept his amendment. As a matter of fact, Mr CHEUNG's amendment will result in far-reaching impacts.

After listening to the views of Members, I shall reply to Mr CHEUNG's amendment in greater detail.

Deputy President, I so submit. Thank you.

MS EMILY LAU (in Cantonese): Deputy President, in the capacity of Chairman of the Subcommittee on Building (Planning) (Amendment) Regulation 2008 (the Subcommittee), I report the deliberations of the Subcommittee.

The Building (Planning) (Amendment) Regulation 2008 (the Amendment Regulation) seeks to enhance the design requirements governing the provision of facilities for access to and the use of buildings and their facilities by persons with disabilities to tie in with the revised design requirements set out in the Design Manual — Barrier Free Access 2008 (DM 2008).

The Subcommittee held a total of six meetings, including one meeting to receive views from organizations and the public. The Subcommittee and deputations generally support the introduction of the Amendment Regulation.

Some members have expressed concern that for some buildings, only limited facilities can be provided for persons with disabilities due to physical constraints, thereby making it difficult for the owners to comply fully with the obligatory design requirements. The Administration has advised that applications for variation of the requirements will be considered by the Building Authority (BA) on a case-by-case basis. At the same time, the BA has established the Advisory Committee on Barrier Free Access to give advice on the relevant applications for variation of the requirements.

Some members consider that there is inconsistency in the application of the requirements in different types of buildings. In this connection, the authorities have advised that the requirements for limited provisions only in some types of buildings/premises are the result of a reasonable balance of the accessibility by persons with disabilities and the special circumstances of the buildings/premises including special functional and design requirements.

The Subcommittee has deliberated various design requirements in detail. In response to Members' views, the authorities will propose certain amendments to clarify the relevant requirements in the Amendment Regulation. The Subcommittee has no objection to these amendments.

Regarding the extent of application of the Amendment Regulation, most members take the view that buildings belonging to the Government or certain public authorities should not be exempted from the provisions of the Buildings Ordinance (BO). However, members have noted that an amendment will have to be made to section 41 of the BO before the provisions of the BO could apply to buildings belonging to the Government. The Administration has advised that this is beyond the scope of the Amendment Regulation.

Although the Administration has pointed out that by virtue of section 84 of the Disability Discrimination Ordinance, a public authority shall not approve building plans unless the public authority is satisfied that reasonable access to the building will be provided for persons with disabilities, most members have strongly urged the Administration to formulate a concrete plan for amending the BO with a view to extending its application to government buildings. The authorities have stressed that the Government fully observes the requirements in the DM 1997, and will continue to comply with the standards stipulated in the Amendment Regulation and make reference to the Best Practice Section of the DM 2008 as far as practicable in the design and construction of new government buildings and refurbishment of existing government buildings.

The Subcommittee has noted that the original intention of the Administration is to commence the Amendment Regulation in October this year. As the scrutiny period of the Amendment Regulation has been extended to this meeting, that is, 9 July, by a resolution at the Council, the Commencement Notice will be tabled in the first Council meeting in the 2008-2009 session. However, while members consider that the Amendment Regulation should come into force as early as possible, they agree that it will be for Members of the Fourth Legislative Council to decide whether a subcommittee should be formed to study the Commencement Notice after it is tabled in the Legislative Council.

The Subcommittee has expressed dissatisfaction that although the Administration had begun to review and amend the DM 1997 in 2001 — both Secretaries also said so just now — the Amendment Regulation was introduced into the Legislative Council only on 16 May this year. Members are strongly of

the view that the introduction of the Amendment Regulation has been long overdue. The undesirable arrangement of tabling the Commencement Notice for scrutiny by the Legislative Council in the next session could have been avoided if the Amendment Regulation was gazetted on an earlier date.

Deputy President, I also have to point out that the "four plus three" approach of the "negative vetting procedure" currently adopted by the Government has made Members furious. In the first place, this will result in a very tight timeframe. Besides, these issues are actually very complicated. While the Government had spent a decade on discussing them, we were only given a few weeks to do so. How unreasonable it is! Deputy President, we will speak more on this in the valedictory motion debate.

Besides, Deputy President, some trade deputations have pointed out, as mentioned by Mr Tommy CHEUNG just now, that as a result of the high rentals, the food business industry is operating at extremely high costs. As the provision of permanent ramps in food premises will take up some floor area which can otherwise be used as dining area, they have suggested relaxing the relevant requirement. The Subcommittee has noted that Mr Tommy CHEUNG will propose an amendment in this regard and it has listened to his proposal in detail. Members understand that the food business industry is facing high rentals and operational difficulties. However, members have noted that the requirement on the provision of ramps not only applies to food business but also applies generally to other non-domestic premises such as shopping complexes, department stores, indoor markets, hospitals, and so on, as well as the common area of the domestic parts of a building. Besides, these obligatory requirements were introduced under the BO for the first time in 1984. Most members take the view that fresh consultation with the stakeholders is required if amendments to the Amendment Regulation which will lead to substantive changes to the design requirements are proposed. However, as this will unduly delay the enactment of the Amendment Regulation, most members are not in favour of proposing substantive changes to the requirements in the Amendment Regulation without further consulting the parties concerned.

Deputy President, I am going to talk about some of my views. We strongly regret that the Government is not required to comply with the law. Although we did not have the power to amend the principal legislation during our scrutiny of the Amendment Regulation, since both Secretaries are present, I hope they can understand that the public will not accept the absence of express provisions clearly stating that the Government should be subject to the relevant

regulation. At the meeting of the Public Works Subcommittee under the Finance Committee, I also raised the question of whether or not it should be stated clearly in each and every paper submitted to the Public Works Subcommittee that all capital works projects conducted by the authorities should meet the various requirements on the provision of barrier-free access. The authorities advised that it was not necessary. Deputy President, subsequently, a paper provided by the authorities in late June states that the authorities will actually act in full compliance with all these requirements. The paper states that it is the Government's policy to provide barrier-free access to public facilities — so Members know who it is — and when providing barrier-free access to government buildings, the Architectural Services Department has to comply with the standards provided for in the BO and its subsidiary legislation. Therefore, while the Government indicates that it has to comply with these requirements, the legislation does not state expressly that compliance by the Government is required, and therefore, non-compliance with the legislation by the Government will not lead to any consequence. Both Secretaries can tell us later why there are such things.

(THE PRESIDENT resumed the Chair)

What is more interesting, President, is that the paper further states that the Government will do better than what it is required to do. It is, of course, wonderful if the Government can really do better than required under the existing legislation, and we will give it a big applause. However, I think the most fundamental requirement is that the authorities should also abide by the law. Therefore, I do not know when the Secretary will introduce a bill to show us that the BO also applies to the authorities.

Besides, concerning Mr Tommy CHEUNG's amendment, we have received letters from 12 organizations, and I suppose all Members have received them, pleading us to oppose Mr Tommy CHEUNG's amendment. They have pointed out that ever since the beginning of the discussion of the Design Manual — Barrier Free Access, over 10 local rehabilitation organizations have been unanimously insisting on not granting any exemption. Besides, this is set out clearly in the DM 1984 and DM 1997. They have indicated that they will not accept Mr Tommy CHEUNG's amendment as it seeks to allow the installation of removable ramps, which will pose a serious threat to the safety of wheelchair

users moving up and down the ramps and cause confusion in law enforcement. Besides, the installation and removal of these ramps may cause inconvenience to other customers. Therefore, they have pointed out that no one will benefit from it in the long run. They are of the view that the current practice is designed not only for persons with disabilities because the physically weak and feeble, the elderly, pregnant women and families with young children may also like to use these facilities.

Therefore, President, I am very disappointed with the Government because this is actually a very complicated issue and of course, these facilities are also long-awaited by many people. However, the Amendment Regulation was not gazetted until mid-May and the Legislative Council was only allowed to scrutinize it like a pretty kettle of fish within a very short time. Some people said we had better not implement it, yet this would disappoint organizations and society. However, if we have to implement it, we have to do so in such a tight timeframe. I think both Secretaries understand the schedule of the Legislative Council very well. The Chairman of the House Committee had requested the Government to expeditiously introduce the legislation and regulations long time ago, but it did not do so, leaving us waiting helplessly.

It is clear that the date of our final meeting is 9 July, but the Government did not gazette the Amendment Regulation until mid-May. Now, even if the Amendment Regulation is passed, it will not come into operation pending the commencement of the next Legislative Council. I do not know who will be elected into the next Legislative Council, and I believe Dr Fernando CHEUNG is also very concerned. However, we are unable to stop the next Legislative Council from scrutinizing the Amendment Regulation again because this is what it should do, but no one can tell the outcome of their scrutiny. What kind of approach is it? While the Government had spent almost a decade on the scrutiny, it only introduced such a complicated Amendment Regulation during the last few weeks before the end of this term of the Legislative Council. I really find this very regrettable.

I also understand the plight of food premises very well, but I hope they will also understand that no one is trying to put them out of business. If they wish to build some relatively high landings, as Mr Tommy CHEUNG has said, they should find ways to provide ramps. I believe they can still run their business well even if the landings are not so high. I hope food premises can also understand that the requirement of providing barrier-free access is imposed

not only for persons with disabilities, but also to meet the needs of more and more people, especially when the population is ageing. I hope food premises and the industry can understand such needs instead of thinking that the Legislative Council does not understand their plight. I hope the Amendment Regulation will come into operation as soon as possible so that Hong Kong will take a step towards a barrier-free society.

I so submit.

MR WONG KWOK-HING (in Cantonese): I support the Regulation and the amendments proposed by the Government but disagree with the amendments proposed by Mr Tommy CHEUNG. Today, I can see that 14 organizations — instead of 12 organizations as mentioned by Ms Emily LAU; she has probably made a mistake in the counting, it should be 14 organizations — have provided a joint submission urging us to support the Government's amendments and disagree with Mr Tommy CHEUNG's amendments. I share the organizations' views because persons with disabilities need to have access to public places, such as shopping malls and food premises, independently and freely, which is their right and dignity. I think the society nowadays is open and advanced, and this request made by persons with disabilities is absolutely reasonable, not superfluous.

Regarding the amendment proposed by Mr Tommy CHEUNG, I think according to the Government's interpretation and the joint submission of the 14 organizations, it is a kind of "backwalking" proposal. "Backwalking" is originally an exercise which is good to health, but if the Design Manual issued as early as in 1984 and 1997 are reversed and a regressive proposal is introduced, then such a "backwalking" proposal is not a healthy proposal and it will also cause considerable inconvenience to persons with disabilities. In the light of this principle, we do not support Mr Tommy CHEUNG's "backwalking" proposal. This is the first point I would like to make.

Secondly, I also wish to point out that as far as the Building (Planning) (Amendment) Regulation 2008 is concerned, it is vitally important that the Government should take the lead to carry out effective actions to enable the provision of barrier-free access for persons with disabilities. Actually, the Government has neither done enough nor taken effective steps in this regard. Therefore, I hope the Government can set an example and take the lead to

expeditiously conduct inspections to various public places over the territory to find out whether or not barrier-free access can be provided.

In this connection, I always receive many complaints from persons with disabilities. For example, no wheelchair ramp is provided for persons with disabilities at the taxi and minibus stands and the drop-off area for ordinary goods vehicle in the Tsing Yi Airport Railway (AR) Station, and after passengers have got off the bus at the bus terminus at the Tsing Yi AR Station, no ramp is available for wheelchair users. I always provide on-street services and conduct on-street activities there and once a person with disabilities took me to that location and said to me: "Look, when a ramp is not provided, how should I get on and off the bus sitting in a wheelchair?" With this example, I would like to point out that the Government should expeditiously meet the design requirements in the design of public facilities to avoid lagging behind the requirements laid down by the Government itself, or else the Government will be unable to win the trust of the public.

Recently, I attended the banquet of Vice President XI Jinping. As I had to push the wheelchair of Vice Chairman Alice MAK — she was in a wheelchair as she had broken her leg and fractured both bones while hurrying to meet with a member of the public, and she had seven screws inserted to hold her bones in position — I could totally feel the importance of barrier-free access when I was pushing her to the banquet. It happened that we got off at that taxi stand at the Tsing Yi AR Station and intended to proceed to the platform. However, we could not find any place with a ramp. Finally, I had to use a great deal of strength to lift the wheelchair onto the pedestrian walkway. This shows that barrier-free access is very important. Therefore, with this speech, I would like to call on the Government to expeditiously conduct inspection to each and every street and pedestrian walkway to see if all of them are installed with ramps, and whether ramps are provided at all drop-off points of taxis and buses to enable wheelchair users to get on and off the vehicle without any barrier.

One would only realize the difficulties after having experienced them. After the experience of pushing a wheelchair, I know that difficulties really exist. When persons with disabilities cannot find anyone to push their wheelchairs and help them, how can they go about by themselves? Therefore, here I would like to call on the Government to expeditiously take the lead to conduct a comprehensive review to find out, and preferably inform us in writing after the meeting, the existing number of platforms provided with barrier-free access and

the number of those to which the relevant works have not been completed over the territory and the time required to complete such works. I hope the Government can provide us with a timeframe.

Madam President, I fully support the Building (Planning) (Amendment) Regulation 2008 and the DM 2008. I understand that operators of food premises are facing many difficulties at present, but I believe this requirement will not cause any difficulty to food premises currently in operation. It is because I have listened attentively to the briefing of the authorities which advised that new buildings and alteration or addition of existing buildings have to comply with the relevant requirements, while owners of buildings which are not new and to which no alteration or addition is carried out will not be given a hard time. Is it the case? I hope the Government can take this opportunity to make a clarification later.

Undoubtedly, if existing food premises also have to comply with the requirements, they may face difficulties. However, I believe this requirement is not a new one but was introduced as early as in 1984, as it is set out in the DM 1997 that the relevant design has to be adopted — I can see Prof LAU nodding, which means I have not got it wrong, right? Actually, the existing food premises should have designed their premises according to the specified design requirements. Therefore, I think they should comply with the requirements to be passed today when they adopt a new design in the future. At the same time, I hope the Government can be more understanding when implementing the requirements. As the Government said, the Building Authority will consider the application on a case-by-case basis, and I also hope it will be more understanding in the process so that the legislation will not only help persons with disabilities but also protect the business of the industry and be able to strike a balance between the two to avoid causing any nuisance to the public.

Madam President, I so submit. Thank you.

DR YEUNG SUM (in Cantonese): President, on behalf of the Democratic Party, I speak in support of the Building (Planning) (Amendment) Regulation 2008 (Amendment Regulation) and the Design Manual — Barrier Free Access 2008 (DM 2008) and in opposition to the resolution moved by Mr Tommy CHEUNG concerning the application for exemption from the Amendment Regulation.

Citing the request for ramps made by 14 organizations for the disabled in order to provide barrier-free access, Honourable colleagues pointed out just now that this requirement is already set out in the DM 1984 and the DM 1997. However, why are so many buildings still in breach of the Design Manual — Barrier Free Access? Actually, the main reason is the Design Manual — Barrier Free Access is not very useful because it is only a guideline on design without any legal effect. Therefore, at a meeting held by the Panel on Welfare Services to gauge the views of organizations, many Honourable colleagues called for the compilation of a new Design Manual — Barrier Free Access, and this was how the DM 2008 came about. However, a manual is a manual after all, and it is just a kind of guideline. Therefore, it is vitally important to introduce amendments to the Buildings Ordinance. Now, the Government has ultimately introduced the Building (Planning) (Amendment) Regulation 2008 and so, the Democratic Party will fully support it, but this amendment exercise is indeed a belated one.

The Disability Discrimination Ordinance passed by us places strong emphases on barrier-free access and equal opportunities for persons with disabilities. However, these few principles have not been fully implemented so far. Therefore, this legislation introduced by the Government is indeed belated. Besides, as the negative vetting procedure is adopted, even if it is passed, it will take some time before it can be implemented, which I think is very regrettable. However, as the Government has introduced the Amendment Regulation into the Legislative Council after all, and I hope it can be passed without any complication. At least, this can be taken as a minimal response to the request made by persons with disabilities.

President, I have listened to the views of organizations at the meeting of the Panel on Welfare Services, and I can still remember a few scenes vividly. For example, the spastics and persons in a wheelchair strongly requested the installation of automatic doors at the entrance of buildings, and they also have difficulties and are afraid of using the escalator. President, Honourable colleagues, we learn that when persons in a wheelchair have to use the lift, they often have to use the service lifts. Instead of being allowed to use the lifts at the main entrance, they have to use the service lifts at the back. Persons in a wheelchair are actually unable to get into the washroom, and even if they can, they will be unable to turn around inside. Besides, for the visually impaired, the lighting in public housing estates is often problematic. When they have to go to the bus terminus or the taxi stand to take a ride or go to the shopping mall to have a meal, there are staircases everywhere, which makes it impossible for

them to use all these facilities, let alone providing them with barrier-free access and expecting the Government to take the lead to promote barrier-free access to encourage persons with disabilities to integrate into society. Actually, this is our basic duty, and this is their fundamental human right. They should have equal opportunity to integrate into our society, but we are still unable to achieve this so far. I am really very ashamed. Despite being such a civilized and developed society, Hong Kong is still treating persons with disabilities so unfavourably up till now, ignoring their fundamental human rights, not to mention providing them with barrier-free access.

I very much hope that after the passage of this Amendment Regulation, the Government, the two Secretaries and the Architectural Services Department can have a clear picture of the issue. As they are our gatekeepers, I urge them to perform the gatekeeping role effectively and examine if buildings have fully complied with the requirements of barrier-free access, which should also apply to bus terminuses, taxi stands, shopping malls and food premises.

Actually, I also understand clearly that the catering industry is facing a very difficult situation. As the representative of the catering industry, Mr Tommy CHEUNG often fights for the rights and benefits of the industry. Through him, we also come to understand the difficulties faced by the catering industry. Despite these difficulties, we cannot and should not ignore the fundamental human rights of persons with disabilities. It will be the disgrace of our society if we do.

If the implementation of the requirements on the installation of ramps or the prohibition of raised platforms will pose difficulties for the catering industry, I hope the Government will further liaise with them to understand their situation and find out if there is any means to prevent significant hindrance to their operation. However, the bottom line is that the fundamental rights of persons with disabilities should not be compromised. In order to take into account the industry's operational difficulties, the authorities might as well conduct discussions with them, but the approach to be adopted in addressing their difficulties must not be established on the basis of compromising persons with disabilities' right to barrier-free access.

This is a fundamental human right and an obligation of a civilized society, and the Government should even take the lead to perform it. I urge the two Secretaries to properly perform the gatekeeping role for us with regard to all public services and public facilities. The authorities should do their own part

first, reflect upon themselves and set a good example. I think only in this way will the passage of this Amendment Regulation be really meaningful. I wish to stress again that we have actually treated persons with disabilities unfavourably for a long time. In fact, I feel uncomfortable speaking on this issue, which is not at all honourable. However, it is after all very well to have the opportunity to vote for the passage of this Regulation. I hope the two Secretaries will adequately and effectively perform their role in gatekeeping so that we can tell the others outside the territory or persons with disabilities in future that Hong Kong is a barrier-free society, and that they will not be treated unfavourably at all when going in and out of buildings or using public facilities. However, I think it will take quite some time before this day approaches.

I wish to stress again that the Democratic Party does not agree with the amendments proposed by Mr Tommy CHEUNG and hopes that the Government can further liaise with the catering industry. However, I have to stress again that we should not compromise persons with disabilities' fundamental rights because of the industry's difficulties or else persons with disabilities may take various legal actions and seek judicial reviews. I hope today is only a starting point, though being a late start and progressing at a very slow pace. Yet, it is a start after all. I hope both Secretaries will carry out effective gatekeeping after the passage of the Regulation as an answer to the request of the public. As Members, we should also exercise all due diligence to perform our monitoring function. Thank you, President.

DR FERNANDO CHEUNG (in Cantonese): President, I have had plenty of experience of the situation mentioned by Dr YEUNG Sum just now. I am not sure whether I have to declare my interest because I am also a parent of a person with disabilities. Therefore, I also hope that I can benefit from the newly established Design Manual (DM), that is, the DM based on the requirements provided for in the Buildings Ordinance (BO). However, I believe this will benefit not only me or persons with disabilities. Actually, universal designs are the focus of all designs and building environment in town planning nowadays, Prof Patrick LAU should know this very well. We are talking about facilities for use by people of different categories and abilities in society, instead of just certain groups of people. Therefore, these designs should benefit all instead of just persons with disabilities. This is the significance of the DM under the Building (Planning) (Amendment) Regulation 2008.

President, the amendments to the DM are indeed belated. Despite acknowledging the need to amend the 1997 version in 2001, the Government did not commence the relevant work until 2002. Just think about it, it is now 2008, I believe the DM will not come into operation until the end of 2008. Therefore, I am very anxious about this. I think the relevant amendments are indeed belated and the scrutiny should have commenced in the last term of the Legislative Council. I joined the Legislative Council Panel on Welfare Services in 2004 and participated in the relevant discussion on at least four occasions. At the discussions, be they held by the Panel or at other meetings, there were representatives from government departments and different industries. Not only were such discussions thorough but many compromises were made by different parties. The current amendments are only technical amendments made by the Government which seek to enhance the clarity of the wording of the provisions. As different parties had basically completed the discussion on the details more than one year ago, I have not proposed any other amendment today. If I had, it would mean that we were still dissatisfied with many details. However, after a process of thorough consideration and as the discussion had been completed and a consensus reached, every one followed the general practice to facilitate the passage of the relevant legislation expeditiously. However, not only did the Government fail to gazette it until as long as one year later, but we still have to go through this process of amendments, which is indeed a bit regrettable to me. In any case, however, I may be able to take some comfort in the effort made over the past four years if we can pass the Government's amendments and oppose Mr Tommy CHEUNG's amendments today.

Besides being belated, the Regulation is not binding on the Government, which is put above the law, as mentioned just now by Ms Emily LAU, Chairman of the Subcommittee. Although the Government has repeatedly claimed that its buildings will definitely meet the requirements set out in the DM, as a matter of fact, if no regulations are laid down in the law, it is very difficult for the general public to institute any proceedings against the Government even if it fails to comply with the relevant regulations. In other words, the route to take legal actions has been blocked. The Subcommittee is very clear about this point and hopes the Government can make relevant amendments in the next term so as to put the Government under the regulation of the BO.

Besides, we have also reached a consensus, that is, there will be two sections in the DM: one on the so-called mandatory requirements of which compliance is obligatory while another is on the best practice, that is, the most desirable practice. This best practice can be achieved by most of the designs or

constructions by the industry, just that it is merely set out as an exemplar, not for obligatory compliance. Organizations for the disabled or even many professional bodies, including the Hong Kong Occupational Therapy Association, have clearly recommended that all buildings should regard this best practice as the minimum standard. Here, I hope the Government will take this issue into consideration in reviewing the DM in the future.

President, the present amendment exercise has indeed brought about great improvement to the entire legislation. We hope that after the enactment of the legislation, we will be allowed access to buildings to be built in the future through the front door of the shopping mall in an upright manner instead of having to get in through the back door or take the service lifts. However, President, even if this legislation can be passed smoothly and even if no Member will express any views on it in the next term, only buildings to be completed after the enactment of the legislation will be subject to regulation, while the old practice will basically apply to buildings completed before the enactment of the legislation. Therefore, barriers in existing buildings will still cause tremendous difficulties. Here, I hope the Government can allocate more resources for law enforcement and resource provision so as to bring about a more barrier-free society.

As we can see, many existing public facilities are not yet barrier free, and the Government has undertaken to make gradual improvement to them. We also hope the Government can make such improvement expeditiously because these barriers, especially those in respect of basic cultural and sports facilities, will still create difficulties. From the previous East Asian Games and the imminent Olympic equestrian event and the Paralympics, we can see that the Government has been committed to improving these facilities. However, we should not improve these facilities for the sake of these national or even international celebration events, and such improvement should not be made for the eyes of the world. They have to be made for the people of Hong Kong. Therefore, if this legislation is passed, I hope the Government will formulate a concrete timetable and plan to improve various public facilities.

As for private facilities, the fact that many existing buildings are not subject to the legislation has given rise to many difficulties. I think it is necessary for the Government to consider setting up a fund to help private buildings improve their facilities so that they may become barrier free and meet the requirements set out in this DM. Besides, we can see that various countries over the world have given an undertaking to the United Nations for signing an

International Convention of Rights of Persons with Disabilities to be introduced in the future. The initial signing-up process by various countries has been completed but these countries still have to endorse this international convention through formal legislative procedures or their own procedures. I believe China will soon complete this process, and when China has done so, I hope Hong Kong will follow suit. When Hong Kong is to comply with the International Convention of Rights of Persons with Disabilities, we must never allow any regression in the existing legislation.

One of the two major amendments proposed by Mr Tommy CHEUNG seeks to allow food premises to provide persons with disabilities with barrier-free access to 70% instead of 100% of the business area. President, I wish to share my personal experience in this regard. One day, I was dining out with my daughter and the whole family. Upon our arrival at the restaurant, we saw that a table was available, but as there was a barrier, we were unable to gain access to it. While seats in the barrier-free section were all taken, that table was the only one available. While we were standing there, not knowing what to do, the customers sitting at the table closest to us saw me, and they probably recognized me. Then, their whole family kindly stood up at once and indicated that they would move to the vacant table to vacate their table for us, which made me feel embarrassed. Not knowing why they had to move just when they had started their dinner, one of the children seemed dissatisfied and asked his father why they had to move to another table. We felt lucky being able to take that table, but this incident has somehow been preying on our mind. Why should our dinner bring an unpleasant experience to another family which had to move to another table? Actually, this was not a pleasant experience to me either. I think it is not surprising at all for people to have such an experience. If Mr Tommy CHEUNG's amendment is passed, how can we really allow persons with disabilities to have an equal opportunity to engage in consumption, dine out and patronize the industry to which Mr Tommy CHEUNG belongs? To be frank, if our designs can really be totally barrier free, they will not only be helpful to persons with disabilities. As baby strollers are also very popular nowadays and the elderly may also need to use some walking aids, the failure to provide barrier-free access will also cause great difficulties to these people. Even pregnant women may benefit from the universal designs. What disadvantages will there be for all restaurants over the territory to achieve this?

The second amendment seeks to allow the installation of removable ramps instead of permanent ramps for raised platforms not exceeding 300 mm in height. As 300 mm approximately equals one foot, if the installation of

permanent ramps is not required for such raised platforms, we can imagine what will happen. As chairs and tables will be placed all over the place where the ramps should be installed inside the restaurants, when I notice a vacant table on the raised platform and push my daughter in a wheelchair to it, people sitting at the couple of tables nearby will have to get up from their seats to allow the staff of the restaurant to install the ramp there so that I can push my daughter in a wheelchair to dine there. Just image how bad and embarrassed I would feel during the process. The ramps mentioned by Mr Tommy CHEUNG will take up the space of almost one to two tables and are not small in size at all, with their width being 1 500 mm and the ratio of their length being 1:12. From where will these ramps be taken out?

Therefore, I think Mr Tommy CHEUNG's amendment is not very practicable because the real consequence is that under this situation, I will not patronize that restaurant any more, nor will I ask the staff of the restaurant to install the ramp. In that case, persons with disabilities will still be unable to access these places. Very often, the problem we face is that ramps are indeed not available at existing facilities. A simple case in point is that when Members attend some award presentation events, those who are wheelchair-bound can only stay at the auditorium as they are unable to go up the stage. I think Members will not feel comfortable as a result. Why should they not receive fair treatment? As the existing DM has developed to the present stage, and this is no new requirement but a continuation of the so-called effective measure introduced in 1984, how can we allow any regression in it? Therefore, I hope all Honourable colleagues will consider it seriously.

Finally, I wish to point out that it is the social environment which has created the actual barrier. As we can see, British scientist Stephen William HAWKING is definitely a person with serious disabilities, with only a few of his muscles functioning in his body and his basic daily activities requiring assistance from others. However, I believe no one will doubt that HAWKING is a titan of science. Is he a person with disabilities or a titan of science? It depends on whether the social environment has created any barrier to him. If the society can provide barrier-free opportunities for all people to allow them to give full play to their potential, then he is not a person with disabilities.

President, I so submit. Thank you.

MR LEE CHEUK-YAN (in Cantonese): President, I agree with Dr Fernando CHEUNG that this amendment today is something like a belated spring, or simply a spring that has yet to arrive, because the legislation has not yet come into force. It is a belated piece of legislation for the obvious reason that 11 years have passed since 1997. And, discussions already started as early as 2001, but the amended version was not submitted until 2008. I do not know why the discussions should take so long. I also think that there is something wrong with the Government's setting of priorities. Maybe, all is because of Donald TSANG's concept of "progressive development", which places all emphasis on the speed of economic development and economic advances. But why should they progress at such a snail's pace when it comes to the building of a caring, kind and barrier-free society upholding justice and giving good treatment to its disadvantaged members? I hope all the Secretaries concerned can give special attention to all these areas. I made this appeal particularly to Mrs LAM because she used to be the Director of Social Welfare. Although she is now in a different post, I still hope that she can remember all her dealings with the vulnerable in the past and all her efforts of building barrier-free communities. At present, some government buildings are not yet brought under the ambit of regulation. I know the Government will certainly claim that it will follow up the situation. But why is it that many such laws are not applicable to the Government? This is also the case with labour laws (Secretary Matthew CHEUNG is here now). Labour laws are not applicable to the Government. The situation is exactly the same. Many laws in Hong Kong are not applicable to the Government. Some people raise the point that even in a feudal society, monarchs were subject to the same laws applied to their subjects. That being the case, why is it that in the present-day society of Hong Kong, the Government can enjoy such exemption? Therefore, first, I hope the Government can adjust its concept of "progressive development" and give more consideration to the needs of the vulnerable. I also hope that the Government can pay more attention to the progressive development of a caring and just society, rather than being one-sided and giving sole consideration to economic development.

Second, President, I must raise objection to Tommy CHEUNG's amendment. His amendment actually aims to achieve two objectives: first, to ensure that restaurants do not have to make themselves totally barrier-free; just 70% will suffice. This is actually very absurd. He compares restaurants with car parks, hotels and cinemas. The analogy is wrong here because in car parks, fixed spaces are provided to persons with disabilities. As Members are aware, parking spaces that are nearest to lift lobbies are reserved for persons with

disabilities. No one will park their cars there because they know that doing so is the same as taking advantage of persons with disabilities. Many Hong Kong people will abide by this rule, knowing that these parking spaces are for use by persons with disabilities exclusively. However, restaurants will not do something like this. People will certainly find it very absurd if restaurants follow the example of reserving parking spaces for persons with disabilities. How can there be any restaurants that are so selfless as to reserve some tables for persons with disabilities? Let us not talk about a ratio of 3:7. Just 5% will already be very good. However, Members all know that this is not our request. We only ask for barrier-free access for persons with disabilities.

The *Bible* says, "Do justice and love kindness." "To love kindness" means that one must not look down on others from above, and that fairness can be possible only when one puts oneself in others' shoes and consider the situation with others' conditions in mind. I hope Members can also consider the circumstances of persons with disabilities and realize that to them, barrier-free access is a matter of rights and dignity, something that can enable them to integrate into society. This is far more important than anything else. When we try to strike a balance, we must consider the needs of all.

Maybe, Tommy CHEUNG is too devoted to his role as the representative of the catering industry. As a result, he often overlooks the kindness that should be shown by mankind. I hope the catering industry will not think only about its own circumstances. I also hope that not all in the industry have the same opinions as Tommy CHEUNG, and that they can really consider the needs of persons with disabilities.

As for the second objective of Tommy CHEUNG's amendment, he says that where a change in level in the usable floor space does not exceed 300 mm in height, a removable ramp may be substituted for a ramp. This proposal is operationally impossible. If such a removable ramp is really installed, then whenever there is a customer with disabilities, restaurant staff must yell "excuse me". And, some other customers must be asked to give way in order that the removable ramp can be brought out for installation. I believe that the customer with disabilities will certainly feel very apologetic for disturbing other customers. I do not think that a restaurant will really do so. Instead, I think that the customer with disabilities will simply leave in disappointment. This proposal is therefore impracticable.

Tommy CHEUNG asked why floor area should be reserved for persons with disabilities. I do not know whether Prof Patrick LAU will agree with him that only 70% of the usable floor space should be made barrier free for persons with disabilities, so that a layering effect can be created. Should we ignore the feelings of persons with disabilities simply for the sake of creating a layering effect in restaurants? Honestly speaking, a layered design can still be barrier free. Some clever devices can be installed to ensure barrier-free access. For example, changes in level can be in the form of a slowly rising platform with a fountain at the bottom. This will be wonderful. I therefore believe that even barrier-free architectural designs can create a layering effect. But I heard Tommy CHEUNG say that barrier-free access should be sacrificed for the sake of a layering effect. I do not think that we should do something like this. Therefore, I hope Members can oppose his amendment. I have also obtained the support of 14 organizations. I also heard Tommy CHEUNG say something rather absurd: those organizations for persons with disabilities that are more enlightened are all in support of his proposal. He used the word "enlightened" to describe such organizations. Does he mean that the dozen or so organizations that support me are all "unenlightened", whereas those organizations which support him are enlightened? He did not actually use the word "unenlightened" to describe the organizations which do not support him. He only said that they held strong views. But still, how can he say that only those organizations in his support are enlightened? I can actually argue that the more enlightened sector of the catering industry will support the idea of barrier-free access. I am just following his line of reasoning. I therefore strongly hope that the catering industry can understand that our society should continue to make progress and become more and more civilized.

Thank you, President.

MS MIRIAM LAU (in Cantonese): Madam President, Mr Tommy CHEUNG has put forward the opinions of the catering industry on its behalf, and he has proposed an amendment to the Regulation. I must of course also express some views on the Regulation and the two amendments on behalf of the Liberal Party.

In recent years, the provision of barrier-free facilities for persons with disabilities has received strong support in society. Everybody wants to do better and provide persons with disabilities with barrier-free access to facilities. The transport sector, with which I am familiar, has been making strenuous

efforts for more than a decade to provide persons with disabilities with a barrier-free transport system. We are in strong support of barrier-free access to different facilities, and the general public are also supportive of this general direction. But more than 20 years have passed since the enactment of the Building (Planning) Regulations in 1984. What is more, the provisions of the Regulation and its policy objective are not for the instant provision of barrier-free access. We naturally hope that this can be achieved. But we must not forget that it is not at all easy to make immediate alterations to many existing facilities. For this reason, under the Building (Planning) Regulations mentioned just now, compliance is restricted to new buildings and existing buildings undergoing alterations and additions, and only such buildings are required to comply with the Design Manual: Access for the Disabled 1984 and the Design Manual 1997. The aim is to make the best efforts to facilitate the use of the relevant facilities by persons with disabilities. Although it may not necessarily be possible to achieve this objective instantly, the general direction and policy are still for the provision of a barrier-free environment for persons with disabilities. The Liberal Party is in strong support of this.

Mr Tommy CHEUNG has voiced the views of the catering industry, explaining the background and financial concerns in great detail. According to him, the request of the catering industry is just very modest. Honestly speaking, I do not think there are any grounds to substantiate the allegation that the catering sector has completely ignored the needs of persons with disabilities. The catering sector has always tried to cater for their needs, but consideration must also be given to the circumstances faced by the industry. For this reason, he hopes that exemption can be granted, so that the requirement is not applied to 100% of the usable floor space. He hopes that a certain proportion, say, 30%, of the usable floor space, can be exempted, and that instead of permanent ramps, removal ramps can be accepted. Mr Tommy CHEUNG thinks that the request of the catering industry is very modest. But I must say that however modest this request for exemption is, it still runs counter to the Regulation supported by the public and the Liberal Party, which aims to provide a barrier-free environment to persons with disabilities as much as possible. We in the Liberal Party, therefore, cannot support Mr Tommy CHEUNG's amendment.

However, I still hope to say a few words for the catering industry. I have jotted down Mr Tommy CHEUNG's points one by one. I think the Government must explore how it is going to respond to these points. To begin

with, Mr Tommy CHEUNG criticizes that since the enactment of the Regulations in 1984, the Government has never explored how best it can assist the industry in complying with the requirements. But then, in 2006, it suddenly started to enforce the legislation sternly, requiring the catering industry to comply with the requirements. As I have mentioned, in many cases, the facilities concerned are no longer new, and they were completed a very long time ago. It is therefore not necessarily so easy to alter them right away. The Government has the duty to assist the industry, hold discussions with it and consult its opinions. The industry should be assisted in complying with the requirements through discussions and negotiations. This is the first point. There has been no change for some two decades, so what are the reasons for the sudden change? Ms Emily LAU has also said that after so many years of inaction, the Government put forward the Building (Planning) (Amendment) Regulation all of a sudden in May, criticizing that things must not be done in such a hasty manner. If there is really a policy direction, then the requirements should be implemented step by step. This will certainly be more effective than simply chiding and criticizing others when they fail to comply. The latter approach will certainly create hard feelings on both sides and will not be so effective.

Tommy CHEUNG's second point is about some unfair practices. I was not a member of the Subcommittee, but I have read the Subcommittee's report. As also mentioned by Ms Emily LAU, Chairman of the Subcommittee, ramps and other related facilities are also provided in many shopping centres and even in department stores, indoor markets and hospitals. That being the case, why do restaurant operators dare to ask for exemption? According to Mr Tommy CHEUNG, the same requirements are not applied to many other places such as cinemas. He says that different requirements are applied to different places, and he questions why the requirements for restaurants are especially harsh. Restaurants are of course not the same as shopping centres because many of them are just small and medium enterprises, or small commercial organizations, operating in very difficult conditions. Therefore, we must not think that restaurants are necessarily able to comply with the same requirements applied to department stores and shopping centres. I do not think that the Government should hold such an attitude either. In case the industry encounters any difficulties, the Government should explore how it can offer its assistance. If the industry thinks that there is any unfairness, the Government should offer an explanation. The reason is that if the industry thinks that there is any unfairness

and feels unhappy, it will find it very difficult to co-operate with the Government.

The third point is about the fact that at present, the Building Authority may consider making certain changes under some special circumstances, such as a failure to comply with certain requirements, so as to assist the organization or facility concerned in meeting the requirements. I have mentioned that in many cases, the usable floor space of a restaurant is just some 100 sq ft to 200 sq ft, and this is just big enough for four or five tables. In that case, it will be very difficult to construct any permanent ramps. Therefore, can the Building Authority consider the possibility of making allowance for some minor changes, rather than always requiring full compliance, as long as such changes are reasonable and the needs of persons with disabilities can be met as much as possible? This is the only way to bring forth a win-win situation, under which restaurants can continue to operate while persons with disabilities can also have access to facilities.

I also note Prof Patrick LAU's point that apart from restaurants, certain existing facilities, such as schools, old residential blocks and other buildings may also find it hard to comply with the requirements. The Government must be flexible in such cases because very often, things will work out only after repeated consultations and with mutual co-operation.

Having listened to the three points raised by Mr Tommy CHEUNG, the Government should really find out how it can understand the views of the industry and try as much as possible to assist them in complying with the requirements. Whenever there is any unfairness, the Government must offer an explanation. Being reasonable is the most important thing. Everybody must be fair, and all must work with one heart before anything can be done.

Madam President, the Liberal Party repeats that we support the Government's Amendment Regulation and the amendment it proposes today. But we cannot support Mr Tommy CHEUNG's amendment.

PROF PATRICK LAU (in Cantonese): President, I must first express my thanks to Ms Emily LAU, Chairman of the Subcommittee on Building (Planning) (Amendment) Regulation (the Subcommittee). She and all of us on the Subcommittee completed the scrutiny of and endorsed the Building (Planning)

(Amendment) Regulation (the Amendment Regulation) within a very short time. I do not know whether I can say that Ms Emily LAU has acted like pro-establishment Members this time around, President. To the surprise of all, she managed to complete the scrutiny of the Amendment Regulation within such a short time. In the past, the amendment of regulations invariably took a very long time. Many people were invited to meetings to offer explanations and give their advice, so as to enable Members to gain a thorough understanding of the issues concerned. This explains why questions like the ones I heard just now would never arise.

To begin with, I must explain that under the Regulation, a Design Manual was already formulated as early as 1984. And, in the case of new buildings, the requirements set out in the Design Manual 1997 are adopted. Therefore, buildings constructed after 1997 should pose no accessibility problems to persons with disabilities, and architects are also very familiar with the requirements. The problem we frequently encounter is the delay in plan approval. For this reason, the setting out of clear specifications and guidelines in the new Design Manual can in fact facilitate the work of architects. This is the view I must put forward on behalf of architects.

Ms Emily LAU questioned why the Amendment Regulation was submitted to the Legislative Council at so late a time. Since I am involved in the work of the policy working group of the Buildings Department, I wish to express apology on their behalf. The working group is quite like the Legislative Council in this regard. Its work must involve the participation of many people, so there are many different views and opinions. Some Members have questioned why government buildings are not brought under the ambit of the Amendment Regulation. This is actually not the case in reality. The Secretary may perhaps give a reply to this point later. As a matter of fact, the Architectural Services Department and the Housing Department also participated in the formulation of the Design Manual. The main difficulty we faced stemmed from the fact that Hong Kong is quite an old city. I am not saying that it is backward. I am just saying that changes are required in many areas. Therefore, during the process, we found that it was impossible to meet many of the requirements. And, in this connection, there are special reasons for the exemption of government buildings from the Buildings Ordinance.

With regard to building designs, I think it is most important to ensure that government buildings can comply with the requirements in the Design Manual

relating to persons with disabilities, because this is the only way to ensure their barrier-free access to facilities. This is the most important point. Therefore, I think the situation is not like what has been described. There are special reasons, and the Secretary can offer an explanation.

I wish to point out that the Design Manual is not simply meant for persons with physical disabilities or wheelchair-users. It is also meant for persons with other kinds of disabilities, such as persons with visual and hearing impairments, or persons with yet other forms of disabilities. This is clear evidence of Hong Kong's intention of becoming a world-class city in the provision of barrier-free access. This is a very important point.

The problem is that Hong Kong is not a city with a flat topography, but one featuring mountainous terrain. It is therefore impossible to comply with the requirements of the Design Manual in many cases. President, I can even say that even the designs of this Chamber may not necessarily comply with the requirements of the Design Manual. Therefore, we must redouble our efforts in this regard. Architects may of course render their assistance, but there is still the question of how we can do a better job.

Dr Fernando CHEUNG was right in pointing out that there is the Best Practice Section in the Design Manual, which tells people how to improve the provisions leading to better and more convenient access and sets out some recommended design requirements. But there is also the Mandatory Section, which sets out some minimum standards that must be met. I think there is no problem with all this, which is why I support the Amendment Regulation very strongly. This is the first point.

As for Mr Tommy CHEUNG's amendment, I must express my sympathy. As an architect, I naturally hope that I can be given unrestricted freedom in building designs. But while hoping for such freedom, we must also adopt a people-based approach because we are no artists after all. For a very long time, I have struggled hard to strike a balance. Just now, Mr Tommy CHEUNG mentioned the construction of steps for artistic purposes. But Mr LEE Cheuk-yan instead proposed the installation of lifts. Should we support their ideas?

I think that we may consider these practices. The reason is that according to the Design Manual, the Buildings Department is empowered to approve the

new plans to ensure their compliance with the relevant requirements. In actual practice, the policy working group under the Buildings Department will provide assistance in overcoming all compliance difficulties related to new building plans. I think this practice can lead to greater flexibility because there are many persons with disabilities in the policy working group. They know fully well whether the requirements can really cater for the needs of persons with visual impairment, for example. This is very important.

We have attached very great importance to practical effects. Even in the case of ramp gradient, we in the policy working group still spent a very long time on ascertaining the suitability of a certain gradient for wheelchair operation before making amendments. I am of the view that the gradient of ramps should be as gentle as possible, and we have given this a lot of thoughts.

With regard to illumination, President, before making any final decision, the policy working group — not the Subcommittee but the policy working group on actual policy formulation — actually spent a very long time on this issue, inviting persons with visual impairment to comment on the adequacy of illumination. Therefore, I hope Ms Emily LAU can realize that very often, when we are in a hurry to complete a task, we may fail to notice many of the efforts made in the process. If Members care to read the Design Manual, they will know that its compilation must have taken a very long time.

For this reason, I am of the view that apart from facilitating the work of architects, this Design Manual can also enable persons with disabilities to know how building designs can help them. In this way, persons with disabilities can fully utilize the buildings concerned.

Next, I want to say a few words on what an advanced society is supposed to do. It is a fact that in Hong Kong, many buildings cannot comply with the requirements set out in the Design Manual. The reason is that such buildings were completed a long time ago. Even if we make alterations, we may not necessarily be able to satisfy the requirements of the Design Manual. However, we must still comply with the requirements as much as possible, because the Design Manual was formulated with input from persons with disabilities, architects and designers. The only remaining problem is how it can be enforced.

Secretary, all is just a question of resources. In the campus of The University of Hong Kong on the hill, for example, how can it be possible to provide barrier-free access? This may require many additional facilities, thus resulting in the problem of resource allocation. Before we can make all those buildings with old designs comply with the requirements, we may need to equip them with many more lifts and ancillary facilities. I am of the view that sometimes, we must increase the allocation of resources before we can make the entire city comply with the requirements.

This Amendment Regulation is applicable to buildings only, President. But Members should know only too well that all efforts are bound to be in vain if barrier-free access is provided only in buildings, not the entire city, because persons with disabilities will still be unable to get around. Can the wheelchair-bound get around in Wellington Street? Members all know that the street is full of stone steps. And, how about Lan Kwai Fong? Therefore, we must consider the situation holistically. It is not enough to alter the facilities of buildings only if we want to turn our city into a barrier-free city. Instead, we must consider ways of making the whole city accessible to persons with disabilities. In many metropolises, huge resources have been invested in making the necessary improvements. I hope that Hong Kong can also make more efforts in this respect, so that it can become a genuine world city that provides barrier-free access to persons with disabilities.

Thank you, President.

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

MR ALBERT CHAN (in Cantonese): President, I was not a member of the Subcommittee, but I still want to offer some advice on this Amendment Regulation for the Government's consideration.

Over all these years in the Legislative Council, I have put forward lots of advice and asked many questions on the provision of barrier-free access. I especially hope that all buses can be equipped with low floors as soon as possible, and that the provision of barrier-free access can be made mandatory in all public venues, including the premises of the Government and the MTR

Corporation Limited (MTRCL). However, up to now, the MTRCL has still failed to make many of its premises totally barrier-free. Many station entrances and exits are not yet fitted with any access for persons with disabilities and wheelchair-users. The profit earned by the MTRCL amounts to billions a year, and its speed of developing shopping centres is so high, but it has been progressing at a snail's pace in the provision of barrier-free facilities. This is grossly unacceptable.

I hope Mr Abraham SHEK will not negate my point on behalf of the MTRCL again. I suppose he will not do so this time because when it comes to protecting the interests of the vulnerable, he will certainly put their needs above all financial considerations.

Actually, I think we can force the MTRCL to provide barrier-free access simply by fine-tuning the enforcement of the relevant regulations. In the case of new development projects in the future, we can certainly force it to do so. The only important thing is that we must not allow any "loopholes" in the new railway development projects and the construction of new railway stations. We must stop its outrageous acts and prevent it from placing financial gains above the needs of persons with disabilities. Since the MTRCL is making continuous attempts to increase the number of shops in its stations, we may stipulate in the legislation that regardless of the number of additional shops and the sizes of such shops, the MTRCL must be stopped from leasing a shop if persons with disabilities are unable to enter the shop for one reason or another. The reason is very simple. Since the MTRCL can make profits out of this, it must provide barrier-free access in all station premises.

I have been arguing with the MTRCL for more than three years over the facilities that should be provided at a certain location in Lai King Station where an elderly wheelchair-user must go past everyday. I think almost every resident of Lai King Estate must have helped this elderly person go up and down the staircase on his wheelchair. I once inspected the location together with Mrs Miranda LEUNG of the MTRCL, and according to my observation, it is in fact very easy to construct a ramp there for persons with disabilities. However, the MTRCL has still refused to do so up to this moment.

I intend to arrange a visit to the location for the two Secretaries when they have time. I am sure that when they see the location, they will also be very angry. The MTRCL has refused to provide such a simple and inexpensive

facility, and residents must bring the elderly wheelchair-user up the staircase every morning, going up three to four steps first and then 12 more steps. This is actually a very minor problem, but the MTRCL has repeatedly refused to do anything on an unacceptable excuse.

I hope that by doing something with the relevant legislation — I do not know whether this is a possible solution — we can force the MTRCL to do so. I must tell the Secretary that in many MTR Stations, such as Tsuen Wan Station and Lai King Station And, Lai King Station is even an interchange station for the Airport Express. The present premises of Lai King Station were not constructed in the 1980s. They were constructed when this station was redeveloped as an interchange station for the Airport Express in the 1990s. But it is also marked by the same problem. So, we need not mention other stations. At present, many stations constructed in the past are inaccessible to wheelchair-users. Tsuen Wan Station is a typical example, because it is extremely difficult for wheelchair-users to go from the ground level to the upper level of the Station. The MTRCL will surely say that persons with disabilities can first enter the Station through a certain entrance and then request MTRCL staff to help them go upstairs by lift. In this way, the MTRCL will say, persons with disabilities will be able to get to the required platforms. But the whole journey is so twisty that it may take as long as half an hour for a person with disabilities to get to the required platform.

The Highways Department has been doing a good job because it is working on a territory-wide plan to install lifts for persons with disabilities at many locations. Lifts have already been installed at many locations, especially those in busy districts. I hope Mr Abraham SHEK can appeal to the conscience of this "monstrous" organization, urging it not to focus only on financial considerations and turn itself into a "slave" of money. I hope he can urge it not to turn a blind eye to the needs of the disadvantaged. The several Secretaries concerned will certainly do immense good to the vulnerable if they can make some fine-tuning in enforcement after the passage of the legislation.

Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, I was in my office just now watching the television broadcast of the debate. I have returned to the Chamber now. To begin with, for fear of getting into any trouble, the Government will always resort to this or that excuse in the course of enacting legislation, just to make sure that it can stay outside the ambit of the law. This is also the case with the enactment of this piece of legislation. Mr Albert CHAN, who also belongs to the League of Social Democrats, has talked about the MTRCL. Honestly, I also have mixed feelings, because just a year ago, also in this Chamber, we were racing against time to scrutinize the rail merger legislation. At that time, I opposed the merger.

Sometimes, I really think that Mr Tommy CHEUNG may not necessarily be wrong. Those large corporations are so very rich and they make so much money Let me cite an example first. In Taipei, as far as I could observe, there are platform screen doors at every railway station. The Taipei City Government also boasts of its achievements, claiming that the railway system of the city is the best and the safest in the world. Once when I was looking around in a railway station there, someone asked me, "Where are you from? Why are you so engrossed in the things here?" I replied, "I am from Hong Kong." At that time, I was a bit ashamed. Financially, the Taipei Government is on the verge of bankruptcy. It must rely on borrowing for meeting 40% of its expenditure. But still, they manage to install platform screen doors at all stations of its Rapid Transit System. In contrast, we are unable to do so. The MTRCL claims that this is impossible in some cases due to platform configurations. But then, after some time, like a person talking in his sleep, it says that platform screen doors are very expensive, and it must consider the interest of small shareholders. Are they actually saying that they want to increase fares? It also says that with a fare increase of 10 cents, it will be possible to install platform screen doors. All these are very bad examples.

With regard to small restaurants, I heard Members say that to ensure the overall interests of society, restaurants should not be granted any exemption. Even the Liberal Party does not support Mr Tommy CHEUNG's amendment. After considering the arguments of both sides, I must say that maybe, the Government has really connived at the acts of large corporations, permitting them to blatantly refuse to do certain things. And, government buildings do not have to meet the requirements either. Requiring others to do something that one does not want to do is hardly acceptable, right? Admittedly, there is nothing wrong with refusing to grant exemption to restaurants. But I also think that restaurant operators must tell the Government if they truly cannot meet the

requirements. But who should be blamed for such a situation? The Government again. After enacting the legislation in 1984, the Government did not enforce it. It has never enforced the legislation. We often say that some actions are belated. For example, the legislative exercise should actually start in 1984. If the enactment of legislation was completed in 1987, then all buildings constructed in 1987 must comply with the requirements. Eleven years have passed since 1987. Therefore, because of the Government's belated enforcement, many buildings since constructed What I mean is that the earlier the legislation is enacted, the earlier all buildings are required to comply with the requirements because there are a Design Manual, all sorts of regulations and even the legislation itself. But the Government has not enforced the legislation until recently. Therefore, the longer is the delay in enforcement, the greater will be the number of buildings where alterations are impossible, as described by Prof Patrick LAU. This is how the problem has come about. This is really a very strange Government. It always waits until a kettle of water boils, with steam bursting out. But then it also fears that the steam may scorch its hands. So, it tries to remove the lid in the hope that the steam will not scald its hands.

I therefore think that the present situation is just like just like what is discussed in a book on justice which I have read. The author of this book is John RAWLS. According to him, there are several fundamental moral forces in a society. One is the force of justice. Is there any force of justice in our society? Is such a force present in our Government? The answer seems to be in the affirmative. The second force enables people to give expression to their outlooks on life. Such a force is also present in our Government. However, we have failed to restrain ourselves when it comes to the enactment of legislation. What do I mean by this? What I mean is that it all boils down to the question of money. In other words, some large corporations and the Government find it very troublesome to comply with the law; they think that compliance will make them suffer losses. For this reason, the legislation is simply not enforced. According to RAWLS, if the force of justice is present in a person and if he also has an outlook on life which he wants to realize, he will start to re-set his priorities. What this means is that with such nobler values, he will alter his choice between his aspirations and material benefits. By the same token, if the two moral forces mentioned above are present in a society, or in a certain government, that particular society or government will not attach too much importance to money. Rather, the emphasis will be placed on the realization of values, ideals and the ability required for such realization.

At present, Hong Kong is very wealthy, and the Government is also very rich; it is "flooded by cash". I have heard that the Chief Executive's popularity rating has plummeted, so he has found it necessary to hand out money. In other words, he must hand out money when his popularity rating drops. This is really a great problem. Our Government is recognized as the model of all in society — whether it is elected, it is still recognized the model. But when it commits errors, rather than Tommy CHEUNG has asked whether the catering industry can be granted exemption. When we condemn such a request, can we realize that the two moral forces present in the Government should really induce it to make some "sacrifices" in order to "benefit others"? Benefit whom? Not me, of course. It should benefit persons with disabilities. Benefiting persons with disabilities can serve the purpose of educating society. Doing so can show that the Government is very caring. This is better than asking TSANG Tak-sing to talk about nationalistic education every day. All will be fine if the Government can simply set an example. By setting an example, the Government can tell people that we will never allow persons with disabilities to face any barrier, that we will offer material assistance to those who suffer losses as a result of complying with the law, such as those small restaurants mentioned by Tommy CHEUNG, and that since we are all very kind and caring, we will offer them assistance. The Government only needs to do this. But we are not doing anything like this. Instead, the Government wants exemption for itself all the time. We have discussed many issues today, Oh, you want me to shut up, right? It wanted exemption from the legislation on racial discrimination and everything. But fortunately, Abraham SHEK did not show up for voting, so its request for exemption was voted down.

To cut a long story short, let me tell Members a story I once read. I can remember that I have actually told this story many times in the Chamber. Plato thought that there were four types of people in this world. Slaves, who belonged to one of these four types of people, were of course considered the most problematic. Plato thought that slaves had only themselves to blame for all their miseries. But then, one day, the trading vessel on which he was travelling sank, and he was captured and made a slave. Thereupon, he was no more the King of Philosophy. Later, he escaped from servitude and returned to Athens. But his attitude changed completely. He realized that even the King of Philosophy might be reduced to a slave, and a slave might become the King of Philosophy.

I have in mind a very bold proposal. The three Secretaries of Department How many policy bureaux are there now? I should be talking about the three Secretaries of Department and the 12 Bureau Directors. If all of them can travel on wheelchair from their homes to the Central Government Offices every day for one whole week, they will realize all the hardship. What is more, when they eat, they must also do so on wheelchair, as described by Dr Fernando CHEUNG. They will realize that even though there are chairs and tables, they are not unable to use them. Then, they will appreciate the hardship. When they experience something similar to Plato's encounter, they will personally realize the gravity of the problem. I think they will also take the MTR, but I do not think that they will do so very often. If they do this every day, they will see Plato's wisdom.

President, I know Abraham SHEK does not want me to say so much. Therefore, I will just stop talking. I hope the Government can consider what it has been doing so far.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, this meeting has run on for more than 40 hours, spanning four days. It will be held for the fifth day tomorrow. I hope it will not be necessary to hold the meeting for the sixth day.

Madam President, I suppose Members are all very tired by now. But I still feel impelled to say a few words because I am a member of the Legislative Council Panel on Welfare Services, and I have also been participating in the work of the working group relating to persons with disabilities. Besides, since persons with disabilities have written a letter to Members of the Legislative Council, I also want to say something on their behalf.

First, I must express my support for the Government's amendment. The reason for my support is similar to our objective in 1995. At that time, society was fighting for the enactment of legislation on sexual equality, the protection of persons with disabilities and family status discrimination. I can remember very well that I took part in an activity held at the Star Ferry Pier. At that time, all of us held a basket. I can still remember all those Members who took part (They are no longer on this Council now). All of us took part in an activity called "Strawberry". "Strawberry" was used as an imagery standing for a passionate, cheerful heart and a life of freedom for all. Pictures of the activity

are still vivid in my mind. I am still keeping the apron that I wore in the activity at my home now, because the apron gives the wonderful message that all people living in Hong Kong — men, women, persons with disabilities, housewives and housewives who need to work — must be made to live happily.

The legislation on ethnic minorities has undergone Third Reading, and we are now discussing the legislation on persons with disabilities. We have been discussing this issue for a very long time, and we all hope that it can come into force as soon as possible. This explains why we strongly welcome this resolution put forward by the Government today. Dr Fernando CHEUNG and I both know Many organizations have come to us, expressing the view that the Government's progress in this matter has been very slow. We all know that in order to enable all in society to live happily regardless of their individual circumstances, there must be a kind of balance in society as a whole. In this connection, some people have told me over the past few days, "Miss CHAN, we must make many different kinds of changes as a result of the legislation on racial discrimination." Many people have said so. I must emphasize that this is just the Government's tactics to scare people. Why should we be so scared? The reason is that if we study the provisions on direct and indirect discrimination in clause 4 carefully, we will see that the situation is not quite like what the Government has been describing. What I mean is that it is not quite like the Government's description in the early days of promotion. Over the past two days, the Government has already changed its tone. What we see now is actually quite similar to the situation at the time when the legislation on sexual equality and persons with disabilities were passed. At that time, many people were fearful and worried. But in the whole process Well, frankly speaking, what we have really achieved is still far below our goal. I must not deviate so far from the topic here, or else the President will certainly stare at me. I want to speak just because I am overwhelmed by all sorts of feelings.

The catering and hotel industries think that they will need to incur more expenditure as a result. I will not deny that their operating costs will increase. But I also hope they can appreciate that if they can do so, everybody will be very happy. We must realize that it is most important to provide persons with disabilities with various facilities at different places. Madam President, whenever I talk about this topic, I will think of my mother, who must be looking at me up in Heavens. Because of blood vessel rupture, my mother must spend the last seven years in her life on wheelchair. We must bring her wheelchair up and down the kerbs of pavements all the time — Members all know that the

kerbs of pavements along our roads do not allow the access of wheelchairs. There are problems with my knees because I did not know the proper method of pulling a wheelchair, so my knees were hurt when I pulled my mother's wheelchair up and down pavement kerbs. Very often, we may grumble when we see that in Japan and other countries, wheelchair-users can move into and out of various places very conveniently. I do share the grievances here.

Personally, I can certainly realize that the commercial sector may have to incur a bit more expenditure and experience some difficulties. But I suppose they will find it worthwhile to do so despite the small increases in costs when they see that their efforts can bring some slight changes in society — I am not talking about any drastic changes; I only mean the provision of barrier-free access. Naturally, some will say, "Miss CHAN, you've got a point, but don't forget that we are just very small business." I know what they mean. I totally understand what they mean. But still, everybody must show their concern and seek to strike a balance when faced with the aspirations in society. Therefore, I must say that I can totally understand the points and position expressed in the letters which some organizations presented to us earlier today. This actually reminds me of one case — I cannot remember which Member worked with me to follow up this case. In a certain building, a person with disabilities was rendered unable to go out because there were many staircases in the building. Every time when he wanted to go out, a wooden plank must be put on the staircases along the way. As a result, he simply refrained from going out altogether. He was very young, and the case was handled not very long ago, just in the past one or two years.

There is no doubt that some additional costs must be incurred, and there may also be various difficulties. But as I have pointed out, we already launched a campaign to bring about more smiling faces in society in 1995. I therefore think that it is worthwhile for us to do so. Therefore, I hope my friends in the commercial sector who are listening to me (including Mr Tommy CHEUNG) I can fully appreciate their concerns. But I also think that since we have already come to the present stage, they should really render their support.

Madam President, I shall stop speaking very soon. I will not be so "long-winded" as usual. Basically, on such a topic, I can speak up to the time limit of 15 minutes. But I am not going to do so. Members are all a bit tired by now. With these remarks, I support the Government's amendment.

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

(No Member indicated a wish to speak)

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Madam President, I am very grateful to Members for putting forward so much valuable and specific advice on the policy of barrier-free access and the review and amendment of the Design Manual: Barrier Free Access. I shall now reply in detail to Mr Tommy CHEUNG's amendment.

Madam President, section 14 of the Building (Planning) (Amendment) Regulations 2008 provides that ramps shall be provided at all changes in level in the common areas of non-residential and residential premises if they are not served by an accessible lift or accessible lifting mechanism accommodating the specific requirements of persons with disabilities. The purpose is to ensure that with the requirement on accessibility, persons with disabilities can enjoy barrier-free access to various premises and use the facilities there like all other members of the public. This requirement is meant for the convenience of not only persons with disabilities but also other persons in need. As pointed out by Dr Fernando CHEUNG just now, a universal design should also be able to benefit the elderly, pregnant women and persons and families carrying a pram.

Mr Tommy CHEUNG's amendment to the Amendment Regulation, as I pointed out when I first spoke in this debate, is in effect a request for exempting certain usable floor space of a restaurant from providing a ramp at all changes in level for the convenience of persons with disabilities or other persons in need. Madam President, for the reasons I am going to explain below, it is very difficult for the Government to accept Mr CHEUNG's amendment.

To begin with, the requirement on providing ramps, as I have pointed out, was already incorporated into the Building (Planning) Regulations as early as 1985. This Regulation has all along been applicable to all non-residential premises (including restaurants). The Amendment Regulation does not seek to introduce any additional requirements — there are no additional requirements, I must emphasize. In other words, the Amendment Regulation only retains the existing requirement on providing ramps.

As a matter of fact, the aim of the Amendment Regulation is just to improve the relevant design requirements in response to advances in construction technologies, improvements of people's living quality and rising public expectations, with a view to further assisting persons with disabilities in their social integration. Mr Tommy CHEUNG's amendment proposes to relax the existing regulation applicable to restaurants. This runs counter to the aim of the Amendment Regulation. The proposal also amounts to a significant regression in the provision of barrier-free access for persons with disabilities, which is not consistent with the general direction of promoting the well being of persons with disabilities.

What is more, the requirement on the provision of ramps will apply not only to restaurants but also other non-residential premises in general (such as shopping centres, department stores, indoor markets and hospitals) and the common areas of residential premises. For reasons of equity, we do not think that there are sufficient justifications for introducing any general relaxation of this 20-year-old legal requirement for restaurants only.

In addition, in accordance with the existing control mechanism, the Amendment Regulation will only apply to new buildings and alterations or additions of existing buildings. Just now, Mr WONG Kwok-hing requested us to clarify this point. It must be emphasized that this is actually a very important point. In case a person can provide sufficient evidence that he is faced with unreasonable difficulties, he may apply to the Building Authority for altering the requirements or for exemptions. In this connection, the Building Authority has established an advisory committee named the Advisory Committee on Barrier Free Access to provide him with advice on the unique circumstances of each case. Members of this advisory committee are professionals, persons with disabilities, representatives of relevant government departments and members of the public. The figures for the past three years show that 72% of the applications were accepted. This is a very high percentage.

Since there is already a time-honoured mechanism for granting exemption to cases characterized by unreasonable difficulties, we do not think that there are sufficient justifications for introducing any general relaxation of the requirement on ramps for restaurants.

As I pointed out at the beginning of this debate, the Amendment Regulation represents the greatest consensus reached after the comprehensive

review in 2002 and the extensive consultation of stakeholders. Mr CHEUNG's amendment amounts to a substantial alteration of the existing requirement on the provision of ramps. The impacts will be far-reaching.

With regard to Mr CHEUNG's proposal on replacing fixed ramps by movable ramps, our view is the same as that expressed by several Members just now. If there is sufficient space for the provision of a movable ramp in a restaurant, we cannot understand why a fixed ramp cannot be built. The concern of persons with disabilities is that if restaurants are permitted to install a movable ramp only when a need arises, the restaurant may well use the space thus vacated for other uses (such as the provision of tables for customers). This will defeat the original intent of providing ramps for ensuring the barrier-free access of persons with disabilities and other users in need.

For the reasons discussed above, it is very difficult for us to agree to Mr Tommy CHEUNG's amendment. But I must emphasize once again that we do understand the difficulties faced by the catering industry. And, I also wish to respond to two points. First, some Members have questioned why it has taken us several years to issue the new Design Manual. They wonder whether we have sought to put up delay. This is certainly not the case. As analysed by several Members just now, the proposals we have put forward are extremely complex. Prof Patrick LAU has also mentioned this, and we had to commission a consultant to consult the industries. And, we had to consult the Legislative Council four times in total. It has not been easy to reach the present consensus. As soon as this new Government assumed office, we immediately decided to put forward the proposals this spring. Therefore, Members were able to receive the proposals in spring this year. We have not put up any delay.

The second point I want to respond to is about Ms Miriam LAU's view that we must explain to Mr Tommy CHEUNG why such a requirement should be imposed on restaurants. Ms Miriam LAU also urged us to explain why the requirements for cinemas, car parks and hotels are more lenient, not as harsh as those for restaurants. She also wanted us to explain whether this is fair. The actual situation is not quite like this. The actual situation is that as also mentioned by some Members just now, seats in cinemas are all fixed, with a very specific function. Since the sightlines of cinema audience must not be blocked, all seats must serve a specific function. But such a need is not found in

restaurants, as it purely has to do with the design and there is neither a functional need nor a requirement on numbers. In practice, there is room for flexibility. For this reason, the two cases are different.

I must also emphasize that in the case of parking spaces, for example, we actually require the designation of larger and more convenient parking spaces for persons with disabilities. The requirement is therefore even harsher.

Madam President, in the hope of expeditiously implementing the requirements set out in the Design Manual 2008, so that the development of barrier-free access can be further promoted, I sincerely call upon Members to fully support the expeditious implementation of the Amendment Regulation and the relevant technical and textual amendments moved by the Government.

Madam President, I so submit. Thank you.

MR TOMMY CHEUNG (in Cantonese): President, what I want to say is very simple. I only want to say a few words on the Government's sophistry. And, personally, I am also very dissatisfied with the fact that the Government has only sought to regulate others, instead of also bringing itself under regulation. We have discussed whether an amendment can be moved in this regard, but we have been barred from doing so for the reason that we are not permitted to amend the principal legislation.

Besides, I must also point out that the Secretary only talked about the case of car parks but did not mention hotels. In the case of the hotel industry, a hotel with 100 rooms must make two rooms suitable for persons with disabilities. But these two rooms are not exclusively reserved for persons with disabilities. Any time when all the other rooms in the hotel are booked, the two rooms mentioned above can be rented to any ordinary guests. I therefore think that disregarding whether the Government has resorted to sophistry or whatever Some Members have tried to find some excuses for the Government, arguing that car parks are also required to reserve spaces for persons with disabilities. But the percentage is just 1%. Yes, hotels are required to make 2% of their rooms suitable for persons with disabilities, but these rooms can also be rented to ordinary guests. This is where the problem lies.

Anyway, President, I still support this Amendment Regulation totally. And, it is not true to say that the catering industry does not want to render its support. It only hopes that restaurants can be given some flexibility in the business environment. Thank you, President.

PRESIDENT (in Cantonese): I now call upon the Secretary for Development to reply.

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, Secretary Matthew CHEUNG has already given his reply to the questions and opinions put forward by Members today. As a matter of fact, the drafting of the Building (Planning) (Amendment) Regulation 2008 (the Amendment Regulation) is guided mainly by the rehabilitation policy, which falls within the portfolio of the Labour and Welfare Bureau under the charge of Secretary Matthew CHEUNG. However, as Mr LEE Cheuk-yan also knows, I was the Director of Social Welfare for more than three years, so my interactions with persons with disabilities did give me a very deep understanding of their problems. If persons with disabilities are to integrate into society, it is most important to provide them with barrier-free access.

For this reason, the Development Bureau and the Buildings Department under it will provide Secretary Matthew CHEUNG with maximum co-operation and support for the promotion of the rehabilitation policy. Following the passage of the Amendment Regulation, we will, as requested by Dr YEUNG Sum, strive to be a good gatekeeper. Apart from striving to be a good gatekeeper, we will also redouble our efforts of enforcement. I can remember what Dr Fernando CHEUNG once told me, and I am indeed very glad to hear that he also appreciates our need for resource support in the course of enforcement. The passage of the Amendment Regulation today — if it can indeed be passed — will come just at the right time because the annual resource bidding exercise will soon start. I hope that we can receive the support and understanding of Members when the time comes.

I only want to focus on responding to several Members' questions on why government buildings must be exempt from complying with this new Design Manual on barrier-free access, which is marked by a goal that merits our support. I must clarify that we have never meant to fight for any exemption,

nor have we ever tried to evade our responsibility. Actually, as Members can observe from the papers submitted by us, the only reason is the structure of the principal legislation, the existing Buildings Ordinance. Of course, I must add that the structure of the Buildings Ordinance is attributable to a specific historical background and other reasons.

Under the existing Buildings Ordinance (Cap. 123), buildings belonging to the Government and subject to the Housing Ordinance, buildings upon any land vested in the Hong Kong Housing Authority (HA) shall be exempt from the provisions of the Buildings Ordinance. But this does not mean that government buildings are unable to fulfil the requirements of the Buildings Ordinance. As a matter of fact, the buildings constructed by the Government or the HA must be subject to the supervision of the relevant government departments (including the Architectural Services Department and the Housing Department) in regard to safety and design standards. And, the safety standards and basic requirements set out in the Buildings Ordinance and its subsidiary legislation must also be complied with.

Some Members, such as Ms Emily LAU, have questioned whether it is possible to amend the principal legislation. But I hope Members can appreciate that any hasty attempts to amend an ordinance with such a long history will surely encounter many complex legal, financial resource and personnel problems. At every stage of development, I invariably told Members very honestly that in regard to legislative amendment, the policy bureaux and even the departments under them did not have too much power and room. I therefore hope that Members can appreciate our need for setting priorities.

In the case of the Buildings Ordinance, as the President may remember, our focus in the past one year was the amendment of the Buildings Ordinance to improve building safety. We also received Members' support for launching the regulation of minor works projects. In the next financial year, we will focus on amending the Buildings Ordinance to implement the mandatory schemes on building inspection and window inspection strongly supported by Members.

Regarding the provision of barrier-free access in buildings, we already have a time-tested Design Manual. As rightly pointed out by Prof Patrick LAU just now, architects in Hong Kong have rendered their enthusiastic support for the updating of the Design Manual. That being the case, should we still switch our limited resources to the work of legislative amendment, the need for which

may not be the most urgent? I hope Member can understand this point. I must reassure Members that although buildings belonging to the Government are exempt from the provisions of the Buildings Ordinance, they will still fulfil building safety standards and the requirements of all subsidiary legislation (including those on barrier-free access). No government officials will decide what to do and what not to do according to their likes or dislikes.

In this connection, the Buildings Department has established a monitoring mechanism and an inspection group to ensure that new government buildings can all fulfil the relevant standards and requirements set out in the Buildings Ordinance and its subsidiary legislation. The alterations and additions of existing government buildings are of course also covered. Similarly, the HA has also put in place a supervision mechanism, whereby it must submit its building plans to the Independent Checking Unit of the Housing Department, with a view to ensuring that all building plans can meet the same standards adopted by the Building Authority in approving private building plans. I can therefore assure Members that government buildings can all meet the required standards. And, I even hope that as mentioned by Mr WONG Kwok-hing, we can set a good example and take the lead.

Madam President, I do not have anything to add. I sincerely call upon Members to support the motion moved by the Government.

Thank you, Madam President.

PRESIDENT (in Cantonese): Before I put to you the question on the Secretary for Development's motion, I wish to remind you that Mr Tommy CHEUNG may move his motion irrespective of whether the motion is passed or not.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Development be passed. Will those in favour please raised their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Mr Tommy CHEUNG, you may move your motion.

MR TOMMY CHEUNG (in Cantonese): President, I move that the motion as printed on the Agenda be passed.

Mr Tommy CHEUNG moved the following motion:

"RESOLVED that the Building (Planning) (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 124 of 2008 and laid on the table of the Legislative Council on 21 May 2008, be amended, in section 5, in the new Third Schedule, in Part 2, by repealing section 14 and substituting –

"14. **Ramps to be provided**

(1) Ramps shall be provided at all changes in level other than those served by an accessible lift or accessible lifting mechanism accommodating the specific requirements of persons with a disability.

(2) Without prejudice to the generality of subsection (1), in respect of a restaurant –

(a) ramps shall be provided at all changes in level in the usable floor space only if the total horizontal area of such changes in level exceeds 30% of the usable floor space; or

(b) a removable ramp may be substituted for a ramp to be provided at all changes in level in the usable floor space only if such changes in level do not exceed 300 mm in height.

(3) If a removable ramp is used as a substitute under subsection (2)(b), the requirements under sections 15, 16, 17, 18 and 19 for a ramp shall be applicable to the removable ramp, as if the removable ramp were a ramp." "

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): I now put the question to you and that is: That the motion moved by Mr Tommy CHEUNG 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)

PRESIDENT (in Cantonese): I think the question is not agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion negatived.

PRESIDENT (in Cantonese): Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008.

I now call upon the Secretary for Development to speak and move her motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR DEVELOPMENT (in Cantonese): Madam President, I rise to move the motion on the Agenda to amend the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008 (the Amendment Regulation).

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

Together with the Secretary for the Environment and the relevant departments, I would like to express our gratitude to the Honourable CHOY So-yuk, together with the Subcommittee under her chairmanship, who has completed scrutinizing the Amendment Regulation within a short time frame and tendered invaluable advice.

The Amendment Regulation seeks to amend the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations to impose a mandatory requirement for provision of a refuse storage and material recovery room on every floor of new domestic buildings and the domestic part of new composite buildings from 1 December 2008. The new requirement aims at providing sufficient space on every floor to facilitate separation of waste at source for recycling. It will also help to prevent potential fire hazards and hygiene problems posed by improper placing of refuse storage and waste separation facilities in lift lobbies, corridors and staircases of buildings.

Some stakeholders pointed out that the mandatory requirement for provision of a refuse storage and material recovery room on every floor of new domestic buildings and the domestic part of new composite buildings might cause hardship to some small developments. To address their concerns, it is proposed that buildings meeting specific conditions may be exempted from such mandatory requirement.

At the Subcommittee meetings, Members agreed to the exemption of hotels, guest-houses and boarding-houses, but expressed different views on the exemption of hostels and dormitories from the proposed mandatory requirement.

Some Members considered that in order to encourage waste recovery, hostels and dormitories should not be exempted from the new requirement.

Having considered Members' comments and obtained consent from the Subcommittee, the Administration proposes to remove "hostel or dormitory" from the new section 3A(5) of the Amendment Regulation so as to include them under the control of the Amendment Regulation.

The Subcommittee has discussed and is in support of the proposed amendment. I hope Members would support the motion. I beg to move the above motion. Thank you, Deputy President.

The Secretary for Development moved the following motion:

"RESOLVED that the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 125 of 2008 and laid on the table of the Legislative Council on 21 May 2008, be amended, in section 3, in the new regulation 3A(5), by repealing ", boarding house, hostel or dormitory" and substituting "or boarding house"."

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

MISS CHOY SO-YUK (in Cantonese): Deputy President, in my capacity as the Chairman of the Subcommittee on Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008 (hereinafter referred to as the Subcommittee), I now report on the major deliberations of the Subcommittee.

The object of the Amendment Regulation is to make it mandatory for all domestic buildings or the domestic parts of composite buildings to provide a refuse storage and material recovery room on every floor, so as to make it more convenient for residents to separate domestic waste at source and expand the range of materials collected for recycling.

The Subcommittee held two meetings with the Government and has listened to the views of representatives of various groups.

The Subcommittee is in support of the relevant proposals and urges the Administration to formulate an effective and comprehensive strategy on providing the required software and hardware facilities, with a view to achieving more significant waste reduction result in Hong Kong.

The Subcommittee has examined the size of a refuse storage and material recovery room to see whether it is sufficient for placing waste separation facilities. The Administration advises that the minimum dimensions of a refuse storage and material recovery room are 1.5 m x 1.5 m, which should be sufficient for accommodating the required facilities. The Administration advises that it would monitor the situation, and, where necessary, introduce necessary amendments. The Administration further advises that in enforcing the requirement on the minimum dimensions, it would take into account the site constraint, and where justified, accept a variation to the said dimensions. The Administration will liaise with the relevant industries to provide guidelines on the compliance with the said requirements.

The Subcommittee notes that the Building Authority would not exempt the floor space for refuse storage and material recovery rooms from site coverage calculations under the Buildings Ordinance. Considering the building height restrictions recently imposed under the Town Planning Ordinance, some members of the Subcommittee are concerned that if the area taken up by the required refuse storage and material recovery rooms would not be offset by exemption from site coverage calculation, the requirement may significantly reduce the "efficiency ratio" of the units of small developments and cause hardship to small developers.

The Administration advises that it has considered the practical difficulties encountered by the industry, and for this reason, the Amendment Regulation already provides that buildings of certain descriptions would be exempted from the mandatory requirement for the provision of a refuse storage and material recovery room on every floor, one example being a domestic building or composite building on a site of an area of not more than 500 sq m. The Administration is of the view that such exemption can provide the industry with more flexibility in the planning and design of small-scale domestic property developments.

Notwithstanding, the Administration agrees to review in conjunction with the relevant industries the problems which the requirement might pose to small developments presently not exempted in due course after the commencement of the Amendment Regulation. And if it is concluded in the review that without exemption from site coverage calculation, the required refuse storage and material recovery rooms would pose problems to the planning and design of certain types of development, the Building Authority may consider granting exemption through administrative measures as necessary. To ensure equity, the Subcommittee notes that it is already the Administration's practice to provide details on precedent successful applications for exemption under section 42 of the Buildings Ordinance for the industry's reference.

The Subcommittee notes that for buildings belonging to the Government and public housing produced by the Housing Authority, building plans are not required to be submitted to the Building Authority for approval. However, these buildings would be designed in compliance with the requirements of the Regulations under the Buildings Ordinance including any new Regulations once they have come into operation.

The Subcommittee has also examined the justifications for excluding any part of a building that is designed for use as a hostel or dormitory from the mandatory requirement for the provision of a refuse storage and material recovery room on every floor.

The Administration advises that in Hong Kong, hostel and dormitory are buildings which provide lodging predominately for university students, nurses and elderly people. Virtually all existing hostels and dormitories for university students and nurses have a communal pantry or kitchen on every floor, which is a suitable and convenient place to accommodate refuse bins and waste recycling facilities. For new hostels and dormitories, it is anticipated that similar communal pantry or kitchen would be provided on each floor, in line with the existing design pattern. As such, waste recycling facilities could be conveniently accommodated in these common areas. Hence, the Administration originally proposes under the new section 3A(5) of the Amendment Regulation that a building which is designed for use as hostel or dormitory be exempted from the mandatory requirement to provide refuse storage and material recovery rooms.

The Subcommittee has expressed different views on the exemption of hostel and dormitory from the mandatory requirement. Some members hold a strong view that hostel and dormitory should not be exempt from the mandatory requirement as having a separate refuse storage and material recovery room on every floor of these types of building would encourage waste recovery.

Having considered members' comments and the policy intention of introducing the mandatory requirement for the provision of refuse storage and material recovery room on every floor, the Administration agrees to remove "hostel or dormitory" from the new section 3A(5) of the Amendment Regulation. The Subcommittee welcomes this proposal.

Lastly, on behalf of the Subcommittee, I welcome the Amendment Regulation and the relevant amendments.

Deputy President, I now wish to say a few words on this amendment on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The DAB also welcomes the Amendment Regulation and the relevant amendments because we have been advocating the implementation of the relevant proposals for a very long time.

Deputy President, I must first make a declaration of interest because I am the Chairman of the subcommittee on waste reduction under the Environment and Conservation Fund. In this subcommittee, we encourage buildings to implement the source separation of waste. This was the proposal raised by the Government several years ago as a means of replacing my proposal of separating dry and wet waste. Thinking that it was more difficult to implement the separation of dry and wet waste, the Government decided to implement waste separation at source. At that time, many private housing estates, such as Taikoo Shing, voluntarily implemented source separation of waste on every floor. The Government was of the view that this should be encouraged. Naturally, we also welcomed the Government's measure because we would support and encourage all actions to implement waste separation.

However, in the course of implementation, we realized that many owners' corporations actually could not do what they wished to do because there was no room in their buildings for residents to separate their waste. We observed that many owners' corporations wanted to implement waste separation, but due to the lack of space, they must do it on the ground floors of buildings. In some cases,

waste separation must even be done in a venue away from the housing estate concerned. This was highly unsatisfactory. We therefore think that this Amendment Regulation can serve to encourage more private residential buildings to implement waste separation. But since people, or building management, are going to decide how waste is to be separated — the separation of paper and cans, or the separation of different kinds of clothes, for example — the situation may not be so satisfactory. Actually, the measure can be more thorough-going.

I think the most thorough-going measure will be the separation of dry and wet waste, and the further separation of different kinds of dry waste. In this way, all waste can be separated more properly. Since the Government does not want to implement this measure for the time being, I will not force it to do so. But I still think that in the future, the separation of more kinds of waste should be implemented, rather than asking people to make their own decisions.

With regard to this Amendment Regulation, I find that there is one inadequacy. The inadequacy is that there is no regulation for existing buildings. At meetings of the Subcommittee, we requested the Government to actively consider the possibility of requiring existing buildings to provide such facilities as far as possible when they undergo major repairs, and we understand that not every building can do so. We also requested the Government to actively consider whether it is possible to insert this requirement in the Amendment Regulation. I suppose there are bound to be many exemptions and we do understand why exemption should be granted, because it is not our intention to make things difficult for owners' corporations by forcing them to implement this measure. But we still hope that some requirements can also be formulated for existing buildings.

Deputy President, there is still one more point, a point which I have mentioned. I think the "1.5 m x 1.5 m" requirement for recovery rooms is a bit rigid, as also mentioned by some in the industry. The Government claims that it will apply flexibility. But it must be pointed out that once this requirement is written into the Amendment Regulation, all must then comply with it. The Amendment Regulation provides that the size must be 1.5 m x 1.5 m. This means that when someone fails to meet this requirement, and if the recovery room is a bit larger, say, 3 m x 1.5 m, he will still break the law. The Government may well say that it will consider a case on the basis of actual circumstances. But I think the Government should consider the idea of re-expressing the "1.5 m x 1.5 m" requirement as, say, "no less than

2.35 sq m", which is roughly the same as 1.5 m x 1.5 m. In other words, the requirement should be expressed as no less than a certain area, so that property developers can have greater flexibility in planning. And, they will not have to request the Administration to give them special treatment after they have contravened the law.

In conclusion, Deputy President, I am very grateful to the Government for agreeing to exclude hostels and dormitories from exemption under the Amendment Regulation. We agree that many communal pantries are being used for waste separation. But we do not think that pantries should be used for the purpose. If, one day, hostel operators say that they do not want to use pantries for the purpose, where can waste separation be done? Some hostel operators may even tell us that there are no pantries in their hostels, and they may ask us what they are supposed to do in that case. Where can they conduct waste separation? Therefore, a clear requirement should be set out. For example, all hostels and dormitories must be required to provide a refuse chute. There is certainly a need for such a requirement.

Deputy President, we are grateful to the Government for putting forth the amendments. The DAB welcomes and supports this Amendment Regulation. Thank you.

MS AUDREY EU (in Cantonese): Deputy President, on behalf of the Civic Party, I rise to speak in support of and welcome this Amendment Regulation.

Just two days ago, we discussed the issues of waste disposal and product eco-responsibility in this Chamber. Actually, the Amendment Regulation today is also related to these issues, because it requires the provision of refuse storage and material recovery chambers and refuse chutes in buildings. Deputy President, I think this is an important segment of our environmental efforts. Building designs are an important segment of Hong Kong's environmental efforts. In order to take forward environmental protection in Hong Kong, building design has a very important role to play. Actually, the provision of refuse storage and material recovery chambers and refuse chutes under discussion today is only a small part of all the required efforts. We hope that their provision is just one of the steps to be taken, and that the Government will continue to make many more efforts.

I believe that no Members will object to the Amendment Regulation and it will certainly be passed today. The only contentious issue, Deputy President, is the exemption or otherwise of hostels and dormitories, which was discussed in the meetings of the Subcommittee. Following lengthy discussions, the Government finally accepted the Subcommittee's proposal on excluding them from the scope of exemption. The Civic Party supports this move.

Why did the Government propose to grant exemption to hostels and dormitories at the very beginning? It explains that most hostels were constructed by the Government and they would not be put under the ambit of the Amendment Regulation. As for private hostels, such as hostels for university students, the Government says that they are already equipped with pantries or kitchens, which can be used for accommodating trash cans and waste collection facilities. However, Deputy President, we do not agree to this argument. People generally think that pantries or kitchens must be quite spacious. But this is often not the case in reality. Some pantries in university hostels, such as the St John's Hall of The University of Hong Kong, can accommodate just several people at any one time. There is basically no spare space for any recovery facilities. Living in a hostel is just like living at home, in the sense that it is often necessary to dispose of huge amounts of litter. This is especially the case with university students, who have piles of lecture notes to deal with. Like a person moving away from an apartment, university students must discard many things when they leave their hostels. There is thus an absolute need for waste recovery facilities. Most university students nowadays are quite well-off. If university hostels with existing waste separation facilities are exempted and if there are no such facilities on every floor of these hostels, then we are afraid that many university students will refuse to support waste recovery for reasons of inconvenience. For this reason, university hostels should be equipped with waste recovery facilities. And, it must be added that the need for such facilities there is in fact very great.

Even if there is sufficient space for recovery facilities in an existing pantry, we still do not think that the Amendment Regulation should grant any exemption to it. The Amendment Regulation is applicable only to new buildings. If there is indeed a very large pantry in a new building, the pantry can of course be used for storing the required facilities. But if there is going to be a small recovery room only, there should be all the more reason for us to bring it under the ambit of the Amendment Regulation. And, we also do not think that there should be any exemption.

Deputy President, for all the reasons mentioned above, we support the amendment moved by the Government. It is hoped that as I have mentioned, this will only be the first step, a small step. We hope that the Government can make many more efforts to promote green building designs. Thank you, Deputy President.

MR SIN CHUNG-KAI (in Cantonese): Deputy President, on behalf of the Democratic Party, I rise to speak in support of the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) (Amendment) Regulation 2008.

In the information submitted to the Legislative Council, the Government pointed out that the domestic waste recovery rate was just 23% in 2007. Admittedly, the actual recovery rate might have been higher than the figure provided by the Environmental Protection Department because many materials in some recovery facilities, especially those in public housing estates, might have been taken away by elderly scavengers. But even when all those materials taken away by scavengers are counted, the domestic waste recovery rate in Hong Kong will still be on the low side. According to the Government, a total of 140 000 tons of waste were collected by the three-colour collection bins placed in different locations all over Hong Kong in 2004. This is just equal to the amount of waste generated in Hong Kong in one and a half days. The Government has been actively promoting the programme of source separation of domestic waste in recent years. But since the majority of domestic buildings in Hong Kong do not have a refuse storage and material recovery room on every floor, there is a resultant lack of space for placing waste separation and recovery facilities. Recovery bins are often placed on ground floors or in lift lobbies, thus indirectly lowering residents' enthusiasm of pitching in. The reason is that the relevant facilities are often far away from homes, or at least away from residential units.

I also wish to talk about public housing estates, which are outside the ambit of the Amendment Regulation. At present, more than one third (or, precisely, more than 40%) of Hong Kong's population are living in public housing estates. I know that public housing estates are basically outside the ambit of the Buildings Ordinance, and the participants in the voluntary domestic waste source separation programme are mostly private housing estates, rather than public housing estates. The Democratic Party urges the Government to provide refuse storage and material recovery chambers and refuse chutes in all new public housing estates.

I am also a member of the Housing Authority (HA), but my term of office is coming to an end very soon. I will be a member of the HA for just a few months more. I think that all future building plans submitted by the Government in the future should include such facilities. The Housing Department (HD) has said that it will do so. But I still hope the relevant Policy Bureau can take on a steering role, so as to raise the recovery rate in public housing estates. I also hope that after the passage of the Amendment Regulation, the HA will provide such facilities in new public housing estates as soon as possible.

Regarding the problems mentioned by Miss CHOY So-yuk just now, I think the HD must make follow-up efforts because in existing public housing estates, there should be sufficient space and it is also possible to provide the required facilities. There will be such facilities in new buildings, but they should also be provided in old buildings. I believe that there should be sufficient space in the public housing estates under the HD for such facilities. I believe that it is possible to do so in at least some of these housing estates. The Secretary should steer the relevant work or the two Secretaries can both do so. Secretary Eva CHENG should take on a steering role. She should be in the Ante-Chamber now, and she may be able to hear what I am saying. She should be able to steer the work of the HA, urging it to consider the possibility of providing such facilities in public housing estates following the passage of the Amendment Regulation. Indeed, this will bring benefits to a lot more people, thus producing more optimal results.

Deputy President, with regard to the amendment moved by the Government in response to the view put forward by Miss CHOY So-yuk in the Subcommittee She is of the view that new government hostels and university hostels should not be exempt from the provision of refuse storage and material recovery chambers. We support her viewpoint, both in principle and in practice. I am very glad that the Government has accepted her proposal.

Lastly, I think the Government must make sustained efforts to enhance waste recovery. Actually, a couple of days ago, the Secretary also mentioned in a motion debate that in the final analysis, the tackling of the waste recovery problem must start with generating demands for recyclable waste. In this regard, it will be useful to establish recycling parks and more flea markets. The reason is that with the presence of flea markets, people will be induced to sell used products, thus encouraging waste recovery. If the Secretary has any spare

time, he may go to Ap Liu Street. There, he will find many used products that are much sought after by people. This is also a form of waste recovery. The opening of several more flea markets is also a way to reduce waste or refuse.

With these remarks, I support the Amendment Regulation.

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

(No Member indicated a wish to speak)

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President and Honourable Members, first of all, on behalf of the Environment Bureau, I must once again thank Miss CHOY So-yuk and other Members for their scrutiny of this motion, which has made it possible for us to draw up in a short time this Amendment Regulation put before Members today.

I should perhaps say a few words on the importance of this Amendment Regulation. To begin with, in January 2005, the Environmental Protection Department launched the territory-wide Programme on Source Separation of Domestic Waste, in the hope of inducing residents to participate in the source separation of waste. The greatest problem faced by the Programme is that many residential buildings in Hong Kong may not be designed with any material recovery chambers and refuse chutes, thus affecting the efficacy of waste recovery.

Although refuse storage and material recovery rooms are already exempt from site coverage calculation under the Buildings Ordinance amended in 2000, only 10% of the new buildings constructed after the commencement of the Ordinance adopt such a design. We therefore think that it is necessary to introduce an amendment to make the provision of a refuse storage and material recovery room on every floor a mandatory requirement for new domestic buildings and the domestic part of new composite buildings, with a view to enhancing waste recovery and reducing the generation of waste.

Some Members wonder how we can encourage existing buildings to participate in waste recovery if they are exempt from the new requirement. Actually, from past discussions, Members should know that the Government already has a plan to encourage source separation of waste in existing buildings.

Three-colour waste recovery bins are placed on the upper floors or ground levels of different housing estates. We can actually make more efforts by providing subsidy or co-operating with residents' organizations. Besides, some housing estates have applied for funding from the Environment and Conservation Fund for the installation of source separation bins and the alteration of various facilities. Similar programmes are also carried out in public housing estates, and I am more than happy to relay such views to the relevant authorities.

Mr SIN Chung-kai has asked whether the buildings under the Housing Department will also be subject to this Amendment Regulation. As a matter of fact, under section 14 of the Buildings Ordinance, although all government buildings are exempt from the provisions of the Buildings Ordinance, the Housing Department will provide a refuse storage and material recovery chamber on every floor of new public housing blocks in accordance with the technical guidelines on public housing development projects. Besides, in the course of developing and designing government quarters, the Architectural Services Department will formulate appropriate measures to fulfil the internal guidelines of departments and the requirements of the Buildings Ordinance.

Some Members have pointed out that the Subcommittee has proposed to remove hostels and dormitories from the list of exemption. We have accepted this proposal as well. Therefore, we have actually incorporated most of the proposals put forward by Members. For this reason, I hope Members will support this amendment.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now call upon the Secretary for Development to reply. This debate will come to a close after the Secretary for Development has replied.

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, the Secretary for the Environment has already replied to Members' views. I have nothing to add. I sincerely call upon Members to support the motion.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Development be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY PRESIDENT (in Cantonese): Proposed resolution under the Dutiable Commodities Ordinance.

I now call upon the Secretary for Transport and Housing to speak and move her motion.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, I move that the resolution under my name, as set out in the Agenda, be passed. The resolution aims to reduce the duty rate on diesel of Euro V standard (Euro V diesel) to zero in accordance with the Dutiable Commodities Ordinance.

(THE PRESIDENT resumed the Chair)

The Government has all along been very concerned about the impact of inflation and the surge of oil prices on the transport sector. The Financial Secretary announced a series of measures with a view to relieving the

inflationary pressure earlier this year. The Chief Executive has also stated clearly that the Government will consider all feasible and effective measures to alleviate the pressure from inflation. The proposal made in the resolution is one of such relief measures.

As announced by the Chief Executive in last year's policy address, the duty rate for Euro V diesel was adjusted to a concessionary duty rate of \$0.56 per litre. The rate, which took effect on 1 December 2007, was planned to be valid for two years. A pledge was also made in the policy address to review the arrangement before making Euro V diesel the statutory standard in 2009. Due to the recent surge in global oil prices and the fact that fuel cost accounts for a substantial part of their operating cost, the transport sector is facing great operating difficulties. Therefore, we have decided to bring forward the review.

After careful and comprehensive consideration of various factors, including the impact of high oil prices on the industry and on inflation, the fact that freight transport is indispensable to our economic development, as well as the views from Members of the Legislative Council and various sectors of the community, the Government proposes to amend the Dutiable Commodities Ordinance to waive the duty for Euro V diesel. There are concerns that this arrangement would set a precedent for the Government to subsidize individual sectors. I wish to emphasize that the present proposal is very different from government subsidies. In fact, the Government has taken the principle of fairness into account when making the decision. At present, the Government has waived fuel duties for industrial diesel; foreign-going vessels, ferries at sea; and franchised buses, LPG taxis and minibuses on land, as well as commercial air carriers. We do not intend to be biased towards or subsidize individual sectors. On the contrary, the proposal will waive the duty for Euro V diesel for all commercial means of transport on land in order to treat everyone equally without discrimination. I wish to reiterate that the Government will not provide fuel subsidy as doing so would be against the principles of free market and fairness to which Hong Kong has long subscribed. This would also impose a heavy burden on public finance and taxpayers, resulting in far-reaching implications.

Madam President, notwithstanding that the duty on diesel provides a stable source of revenue and comprises less than 5% of the retail price, the Government hopes to help alleviate the pressure of rising oil prices on the industry as far as

possible. We have conducted a pragmatic review of the situation and our proposal has been made against a unique global environment. I hope Members would support this resolution for the benefit of the transport sector and the whole community.

Thank you, Madam President.

The Secretary for Transport and Housing moved the following motion:

"RESOLVED that the Dutiable Commodities Ordinance (Cap. 109) be amended, in Part III of Schedule 1 –

- (a) in paragraph 1B(a), by repealing "30 November 2009" and substituting "13 July 2008";
- (b) by repealing paragraph 1B(b) and substituting –
" (b) from 14 July 2008, at \$0 per litre. " . "

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

MR WONG KWOK-HING (in Cantonese): Madam President, the proposed resolution under the Dutiable Commodities Ordinance finally comes out today after repeated calls. Though I welcome this resolution, the extent of the reduction in fuel duties is far too small. We all know that the continuous surge in international oil prices in the past months has had an increasing impact on the business of the transport sector. As early as on 28 May this year when Miss CHAN Yuen-han raised a question on fuel duties at the Council meeting, the international oil price rose to over US\$120 per litre. Many drivers did complain to us about this. Later on 18 June when this Council proposed a motion debate on fuel duties, the international oil price exceeded US\$130. Today, the oil price has risen to more than US\$140, which means that there has been an increase of over US\$20 in less than two months' time. Therefore, even if the authorities waive the diesel duty of \$0.56 per litre, the adverse impact of the soaring oil prices on the transport sector cannot be counteracted.

Madam President, it is estimated that the waiving of the duty on Euro V diesel will benefit 130 000 vehicles, of which each driver can save \$600 to \$700 a month. However, the morning sun never lasts a day. Not long after the Government's announcement about this measure, oil companies immediately announced to increase the diesel price by \$0.38 per litre. As a result, most of the benefits from the waiving of the duty will go to the wallets of the oil companies. Madam President, now most of the trucks in mainland China and Hong Kong are using ultra low sulphur diesel (ULSD). However, instead of waiving the ULSD duty, the authorities only maintain its rate at \$1.1 per litre. Actually, this duty rate has been frozen since 2000 and will remain the same up to the end of this year. In view of this, why does the Government not practically abolish this duty to support the development of the cross-boundary transport sector?

In fact, the retail price of diesel has already increased by 24% since early this year, and the proportion of fuel cost in the operating cost of the transport sector has risen from 12% to 30% over the past two years. Even if the diesel duty is waived, the benefits for the transport sector will still be very limited. In the motion debate last month, the Administration clearly expressed its unwillingness to provide the sector with more benefits such as fuel subsidy. Many members of the transport sector, who were greatly disappointed at this, queried if the authorities had tried its best to control the behaviour of the "oil demons" who are quick in increasing the prices but slow in reducing them. In fact, this kind of behaviour has long been denounced, and the oil companies are also suspected of collusive pricing. But it seems that the authorities are not able to do anything to deal with the situation, or perhaps they are unwilling to deal with it. As a matter of fact, the Government should change its high land price policy on the tendering of petrol filling station sites and lease the sites to oil companies at reasonable rents. Given that the process of tendering will push up the land prices, oil prices have inevitably been on the high side. In the end, the land costs of the petrol filling stations will be passed onto the transport sector, especially professional drivers on the front line, and eventually to the consumers.

Actually, a consultant was commissioned by the Government in 2006 to conduct a study on monopoly in the auto-fuel market. In the Study Report of the Auto-fuel Retail Market, a comparison of petrol prices in October 2005 was made between Hong Kong and other 12 cities. The result showed that the retail price of petrol in Hong Kong was the second highest among the 13 cities. It also showed that Hong Kong's duty rates ranked fifth at that time while the share

of land cost in each litre of petrol was the highest. For the oil companies in Hong Kong, the gross margin per litre of petrol was also the highest, whereas the margin after land cost ranked third. All these facts proved that the retail price of diesel in the market has actually shared part of the oil companies' high expenditure on the tendering of petrol filling station sites. They also reflected that those "oil demons" was in a way controlling the market and engaging in collusive pricing.

Madam President, apart from the recent complaints from the transport sector due to the high oil prices, the fishermen also face operating difficulties as the fuel prices have increased more than seven times over the past eight years. Although the fuel duties for fishing boats are already waived, as their fuel consumption is so huge that each boat has to consume 2 000 litres of diesel every day, the fuel cost of a fishing boat accounts for 80% to 90% of its total operating cost. As a result, the burden of the fishermen has become heavier and heavier in the midst of the continuous surge in oil prices. In fact, they have requested a special subsidy on fuel cost from the Government for several times, with a view to alleviating their operating difficulties. Some time ago, hundreds of fishing boats launched a rally in Victoria Harbour, but the Government's response is neither substantive nor effective. Recently when I visited some market stalls, the seafood stall owners told me sadly that the seafood prices were increasing day by day whereas the supplies were decreasing, and therefore the public had to pay a lot for marine fishes. Hence, we can see that oil prices are affecting different aspects of life and nibbling the fruit of hard work of the public in different ways.

Madam President, in the motion debate on reducing fuel duties last month, I cited several examples in foreign countries to illustrate the impact of oil prices. In recent months, there has been new development in the situation of different countries. On 2 July, up to 100 Indian truck drivers participated in a strike at a suburban terminal in Mumbai, protesting that the Indian government has raised the fuel prices twice this year with a total increase of 17%. In Britain, following the protest in late May, more than 800 drivers drove their trucks to the streets of London to request the government to either give them a tax refund or reduce fuel duties. I remember that in the motion debate last month, I proposed the provision of fuel subsidy in my amendment and cited the lessons learnt by foreign countries to illustrate my point. Then the Government responded that fuel subsidy was against the principle of a free market economy, and that the countries with this measure had gradually reduced or cancelled their subsidies.

However, I do not see this scenario in the examples of Korea and Chile. In Korea, the cost of imported oil has increased to US\$43.3 billion this year with a significant increase of 61%, whereas the total amount of imported oil has dropped 1.2% to 433.8 million barrels. In view of this, Korea allocated in June 10.5 trillion Korean won, which equals to HK\$78.078 billion, to alleviate the impact of high oil prices on low-income earners and private businesses. As for the example of Chile, it established a Fuel Price Stability Fund in August 2005 with a sum of US\$10 million as seed money. This fund sets out an adjustment scope based on the reference prices of fuel provided by the National Energy Commission of Chile. When the fuel price exceeds the reference price by 5%, the Fund will release funds to ease the surge. When the fuel price is 5% lower than the reference price, the Fund will recoup money by imposing taxes on consumers. The Ministry of Finance of Chile has so far made two emergency equity injections totalling US\$1.2 billion into the Fund.

The examples of the two countries that I have just cited clearly show that governments do have the responsibility and ability to reduce the public's burden brought by the soaring fuel prices. Recently the Chief Executive, Mr Donald TSANG, has paid two visits to the districts to take a look at the people's daily life. During his visits, many elderly people and members of the public complained to him about the surge in oil prices and the price hikes in various kinds of commodities. I hope that the Chief Executive, when attending the last Question and Answer Session at the Council meeting next week, can really propose some relief measures to help reduce the burden of the general public, especially the transport sector, at this difficult time of soaring prices for oil and all kinds of commodities. Please do not wait until October to propose these measures in the policy address. Otherwise, it would seem that the Government is too slow in responding to the urgent needs of the public.

Finally, Madam President, I would like to remind the Government that in June this year, the Logistics and Transport Industry Committee of the Hong Kong Federation of Trade Unions requested the Government to waive the fuel duties and implement the measure of fuel subsidy for one year. A review after the one year period was also recommended. According to the Committee's proposal, Hong Kong should follow the practice on the Mainland that 0.2% of the Gross Domestic Product (GDP) ought to be allocated for fuel subsidy. Basing on last year's GDP of up to \$1.6162 trillion and an annual auto-fuel consumption rate of about 1.5 billion litres, it is estimated that each year the Government has to spend about HK\$4 billion on fuel subsidy, which only accounts for 3.5% of last year's fiscal surplus. Though this sum of

HK\$4 billion is public money, if used appropriately, it will help the transport sector as well as the general public, to ease their difficulties and burden brought by the surge in oil prices and this, I think, is meaningful. In fact, there is such a need. If the proposed measures can be implemented, the expenditure of the transport sector on fuel can be significantly reduced by 30%. Hence, I hope that the Government, instead of using the excuse that this is a market issue and the Government will not intervene in the market, will seriously consider this proposal. Otherwise, the public will continue to be agonized by the "oil demons".

Madam President, I have to add that the transport sector, especially professional drivers of the liquefied petroleum gas (LPG) light buses and taxis, strongly requested the Government to increase the number of dedicated LPG filling stations. Even the Bureau admitted that there had been no increase in the number of these stations in the past few years. Since there has been no increase, then what about an increase in the future? However, no answer was given, and even worse, the request was refused. Fortunately, Madam President, when attending the Question and Answer Session at the Council meeting recently, the Chief Executive promised in public that he would consider increasing the number of LPG filling stations. This piece of news has immediately brought new hopes to the much frustrated transport industry for more LPG filling stations.

As the Chief Executive has already made this announcement, I believe that both the Bureau and the Department cannot find any reason to go against his will. Therefore, I hope that the Secretary, in response to the Chief Executive's public announcement, will tell us the number of LPG filling stations to be increased in the future and the timetable for implementing this measure when giving us a reply.

I strongly hope that the Secretary who comes to this Council meeting today, apart from seeking our support for her resolution, will give a comprehensive and concrete response to the transport sector as well as the Hong Kong citizens, who are now agonized by the prevailing price surge caused by the high oil prices. It is also hoped that more measures can be proposed to alleviate the plights of the people.

Thank you, Madam President.

MS AUDREY EU (in Cantonese): President, more than 30 years ago, there was also a global oil crisis, which seriously affected the economy and people's livelihood. To deal with the situation, the government led by MacLehose at that time was determined enough to take various measures, which included adopting summer time in winter so as to make the best use of daylight and save energy. Finally, Hong Kong did get through the crisis.

Today, the surge in oil prices once again strikes a big blow to the economy and people's livelihood. So far, however, the Government has not worked out any comprehensive strategy to cope with the crisis, but just made reflexive moves in response to the public's requests. Under the political pressure, the Government, feeling like being threatened by thousands of enemies, decides to waive the duty on Euro V diesel. Better than nothing though, this measure will not have much effect on alleviating the difficulties faced by the public. Of course, we also hope that other measures such as the enactment of a fair competition law, development of clean energy, promotion of energy saving, and measures for a fairer, greener and more stable fuel market can be taken by the Government.

Among all, professional drivers are the first to bear the brunt of the surge in oil prices. They launched a street protest last month, and after that, on 19 June, the Legislative Council called on the Government to waive the auto-diesel duty. On 23 June, the Government informed the Panel on Economic Services of the Legislative Council that it decided to reduce the duty rate on Euro V diesel to \$0.56 per litre across the board. In the debate, on behalf of the Civic Party, Ronny TONG said in his speech that he had great reservations about this issue. He said that oil companies would make use of all reasons to transfer the benefits of duty reduction to their own pockets one week later.

Ronny TONG was wrong. It was not one week, but two days more. In other words, his prediction proved to be true nine days later as Caltex announced on 28 June that the diesel price would increase by \$0.38 to \$12.14 per litre, while other oil companies such as Shell announced the same increase of \$0.38 the next day. Before the Government is ready to introduce the legislative amendment by proposing a motion to this Council for a full exemption of the duty, 68% of the reduction has been offset. The original reduction of \$0.56 per litre, after several deductions, has diminished to \$0.18. The transport sector previously estimated that the reduction would benefit the owners and drivers of 130 000 diesel vehicles. For a truck driver who needs to fill his truck with

2 500 litres of diesel each month, he can originally save \$1,400 a month on fuel. However, now he can only save \$450. Therefore, such a stop-gap measure taken by the Government, though can be seen as a quick response to the needs of the public, is actually not a real solution to the problem.

There is no doubt that the surge in oil prices is determined by many external factors. For example, the United States, as the world's biggest energy consumer, is still not ready to change the lifestyle of high energy consumption. Moreover, the economic emergence of China and India also leads to their continuous demand for fuel. Other factors include the speculation over oil prices, the uncertain political situation in Iran, the weakness of the US dollar and the United States monetary authorities' indecisiveness in the increase in interest rate. On the whole, all these are out of Hong Kong's control.

However, oligopoly does exist in Hong Kong's auto-fuel market, where we cannot see any competition. That is why oil prices in Hong Kong are higher, compared with those in the neighbouring countries, and this is a fact that all the people in Hong Kong are well aware of. According to the Study Report of the Auto-fuel Retail Market compiled by a government-commissioned consultant in 2006, 90% of the auto-fuel in the local market comes from the parent company of the three main suppliers, which are Shell, Exxon Mobil and Caltex. Due to the lack of competition, it is easy to create a breeding ground for collusive behaviour. The Government must face the structural problem of unfairness and oligopoly in the fuel market squarely. It has to bring in fair competition to reform the Hong Kong fuel market so that a foundation for fair competition can be built to prevent the oil companies from profiteering and to ensure that the public can be benefited.

Although the effectiveness of the waiving of the Euro V diesel duty has diminished to a large extent, the Civic Party still supports today's resolution. In fact, the policy of imposing duties on different kinds of diesel actually aims to reflect the environmental cost through different duty rates and thus encourage users to use the most environment-friendly Euro V diesel instead of ULSD. But since December last year, only Euro V diesel has been available in the market. So now there is actually no need to use duties as a way to promote environmental protection, nor is there any justification for collecting the Euro V diesel duty.

However, regarding other suggestions made by the public such as fuel subsidy or petrol duty reduction, the Civic Party has reservations about them

because these measures will convey wrong messages and stimulate the increase in private vehicles. From the perspective of non-professional drivers, the Government, instead of reducing fuel duties, should rather make reference to the measures in foreign countries such as co-ordinating with railway companies to explore the possibility of providing park-and-ride concessions to encourage car owners to use public transport. For instance, for those living in Hong Lok Yuen of Tai Po and working in Central, can the Government encourage them to change their habit and not to drive directly to Central? Instead, they can firstly drive to Tai Po Market and then take the MTR. Can the Government help them reduce fuel expenses through the provision of park-and-ride concessions? Besides, can it promote the practice of carpooling? For example, residents of the same housing estate can go to the same working place by the same car and share the fuel cost among themselves. It is an environmentally friendly practice, isn't it? Hence, during this difficult time, the Government should introduce more creative measures to ease people's burden, and at the same time, consider more environmentally friendly policies.

Let us take mainland China as an example. Now, it plans to build an electric vehicle charging network in 2009. Another example is Britain, where there are a lot of juice points, which are recharging points, in the Westminster Council. You only have to park beside these meter-like recharging points and get plugged in, your vehicle will be recharged, that is, to be filled with "juice". The SAR Government should make reference to these measures for exploring the use of alternative energy. For example, it may consider discussing with the Mainland on the development of wind power, which is recommended by many environmental protection groups and worth exploring. Moreover, the SAR Government should actively explore the use of solar energy and renewable energy with a view to reducing Hong Kong people's reliance on oil. This can ensure that the livelihood of Hong Kong people will not be seriously and directly affected by the change in oil prices. On the other hand, it can also encourage us to adopt an environmentally friendly lifestyle.

Hence, President, we in the Civic Party support this resolution and hope that the Government will actively work on other arrangements to ensure that improvement can be made in addressing issues like oil prices or environmental protection. Thank you, President.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I do not know if Ronny TONG has the park-and-ride habit since he lives in a remote area. I have not been driving recently. Instead I have been going to Mong Kok or Prince Edward Station to take the MTR. I drive less because the oil cost and tunnel tolls are extremely high. I have all along been supporting the fair competition law, but my opinions are slightly different from those of Audrey EU. I support the fair competition law and this is full support. But it does not mean that with the fair competition law, we can deal with all the oil companies. I do not quite agree with this; nor do I feel optimistic about it. The reason is simple. All oil companies have been doing business in countries with a fair competition law for so long, and I believe that they are so used to fighting this war. But at least, it is still better to have this law than not having it, so I support its enactment. However, we cannot expect that after the enactment of this law, we will be able to deal with the oil companies.

WONG Kwok-hing has just mentioned about the behaviour of oil companies of being quick in increasing the prices but slow in reducing them. But I believe that this scenario, which was at the very first time pointed out by Fred LI, will not happen again. But I believe that in the coming few years, oil companies will only raise but never reduce the oil prices. Hence, there will not be the scenario of prices being increased quickly but reduced slowly, as the oil prices will only keep on rising. Now the price of a barrel of crude oil is \$147, and it may rise to \$170 at the end of the year. Next year, it may possibly rise to \$200 and the surge will go on and on. If we set a precedent for filling this "hole" with subsidy, I believe that the \$4 billion subsidy for this year mentioned by WONG Kwok-hing will increase to \$8 billion or even \$10 billion next year. Is the Government able to take the burden of filling this "hole" with subsidy? The examples of Chile and South Korea cited by WONG Kwok-hing can only be used to prove a contrary point of view: more than 190 countries do not offer subsidies. According to the news reports, the National Development and Reform Commission of China said that it would rationalize the provision of fuel subsidy in due course. It means that the fuel subsidy will be cancelled in due course.

As a matter of fact, we all have to admit that we cannot resort to ostrichism. The problem of oil prices is a global issue. Since Hong Kong is just a small place, we cannot possibly find a real solution. Honestly the most effective way to tackle the problem at root is to let the whole community bear the cost. To make it simple, just let them raise the prices if they have to. As an

individual economy, Hong Kong is not able to resist the trend. At the same time, the transport sector should pass its burden onto the consumers, who should eventually bear all the consequences. That said, the Government should also take some measures. I agree to WONG Kwok-hing's proposal that the Government should explore the possibility of increasing the number of LPG filling stations since there are always long queues at these stations. Firstly, there is a huge demand for these stations. If taxi or light bus drivers have to wait for a long time to fill their gas tanks, this is simply a waste of productivity. In view of this, the Government needs to consider how to increase the gas supply. Secondly, as the cost of a filling station is very high, is it necessary to consider increasing the actual number of stations?

Furthermore, the Government may also consider taking other measures such as the introduction of hybrid cars, though I do not know if it is feasible for the market. Is there any room for the provision of some duty concessions by the Government? This will help protect the environment and reduce the demand for petrol. Can the Government provide duty concessions such as a concession on the first registration tax? Can the Government do more to encourage vehicle owners to use this kind of cars? Since our discussion today is mainly on diesel duty and the Government has clearly said that it would not introduce any measures on petrol duty, then can vehicle owners change to use hybrid cars?

Madam President, having discussed the matter for such a long time, we have fully realized the difficulties faced by the transport sector. Regarding the reduction of the duty rate on Euro V diesel to zero, the Democratic Party would like to show its support. In fact, I believe that the Government will differentiate various kinds of diesel by way of regulations or laws through administrative measures in the future. Simply speaking, any kind of diesel introduced before Euro V, IV or III may not be allowed in Hong Kong in the future.

On the other hand, I actually hope that the Secretary will have more communication with Guangdong Province so as to ask the Guangdong Provincial Government to raise its standard because the fuel on the Mainland is of lower quality. When the drivers of the logistics companies in Hong Kong deliver goods to the Mainland, they usually refill their vehicles before returning to Hong Kong, though sometimes they are not able to do so. But if they can, they usually refill their vehicles before returning to Hong Kong. As a result, Hong Kong's environment has been polluted. In fact, both the environment and the

financial burden have to be considered. Air pollution, especially in urban areas, is rather serious in Hong Kong, and among all, roadside air pollution is especially severe. Therefore, clean diesel is beneficial to the health of the public. We should not walk backwards to use Euro IV diesel or any diesel of even older standards. The transport sector should also care about the health of Hong Kong citizens. We should not breathe in too much nitrogen oxides and sulphur dioxide which are hazardous to health.

With these remarks, I support this resolution and commend the Government's quick response this time.

MS MIRIAM LAU (in Cantonese): Madam President, the Liberal Party supports the passage of this resolution to completely waive the duty on Euro V diesel (sulphur-free diesel).

To me, diesel duty is a topic that has been discussed for more than 10 years. In 1996, I requested for the very first time to freeze the diesel duty rate but without success. At that time, the Council still used the name of "立法局" in Chinese and our colleagues thought that how daring Miriam LAU was for trying to change the Government's tax policy and thus refused to support me. As a result, my first motion was not passed. But I already warned the Government that there should not be a "routine" increase in fuel duty rates every year. I kept on warning the Government, but in 1997 and 1998, it still routinely raised the fuel duty rates in accordance with the inflation rate. After my repeated warnings, however, Members of this Council were touched. As a result, for two consecutive years, I had successfully frozen the diesel duty rate, which remained at \$2.89 per litre in 1997 and 1998. In June 1998, when there was the financial turmoil, the Government took special alleviation measures to ease people's burden and thus reduced the diesel duty rate from \$2.89 to \$2 per litre. Later in 2000, the Government offered a concessionary duty rate of \$1.11 per litre for ULSD to attract motorists to use this diesel, and afterwards I repeatedly requested the Government to extend the concessionary period. Last year, the Government further reduced the duty rate on sulphur-free diesel to \$0.56 to attract motorists to use this diesel.

In fact, since 2000, I have repeatedly requested the Government to conduct a comprehensive review on the diesel duty rate to see how much room we have for reduction or exemption. I made this request several times a year, again and again. However, the Government never listened to me and completely ignored

my requests. It had just extended the duty concession for ULSD eight times and disappointed the transport sector year after year. In response to the Government's continuous refusal to reduce the diesel duty rate and its ongoing attempt to avoid the issue about the adverse impact of high diesel prices on the transport and logistics industries, an important issue concerning the economy and people's livelihood, I do not remember how many times I have used the words "helpless" and "disappointed" to describe my feeling.

In the past, the Government's insistence on refusing to reduce or waive the diesel duty, according to my observation, was due to two illusions. The first was that the Government considered the reduction or exemption of the diesel duty as subsidy. As for the second illusion, it was the belief that it would be unfair to other industries if the diesel duty for the transport sector was reduced or exempted. Actually, what I do not understand is: why did the Government think that it was fair to require the transport sector only to pay the diesel duty? Why would it be unfair to other industries if the transport sector is just offered the same treatment, that is, the same exemption or duty rate that other industries are enjoying? How can the reduction or exemption of the diesel duty be seen as a subsidy for the transport sector? Why must the transport sector pay the diesel duty? I really do not understand.

The Government had its own justifications whereas the transport sector also had its grounds. For the grounds held by the sector, there is no need for me to repeat again. In fact, I have repeated them for so many times over the past 10 years. In order to break the illusions of the Government, the transport sector has made a lot of effort to discuss the matter with the Government, Secretaries, Under Secretaries — there was no Under Secretaries at that time — and Permanent Secretaries. They have held countless meetings, over and over again. After more than 10 years, I must say that I am very, very happy to see that the Government has finally made a compromise. It agrees that the fuel cost accounts for a rather large proportion in the operating cost of the transport sector and the waiving of the diesel duty helps alleviate the operating difficulties faced by the industry. I am so delighted to see this because after more than a decade of discussion, finally, the Government begins to have a slight change in its attitude.

In addition, I would like to reiterate that most of the public transport carriers which use diesel are now waived from the diesel duty whereas the industrial and commercial diesel has always been duty free. Therefore, the Government's measure to completely exempt the duty on sulphur-free diesel,

which allows the transport sector to enjoy duty-free diesel, is absolutely not subsidizing any individual industry. Instead, it shows that the Government has finally got rid of its illusions by, treating all members of the transport sector equally and at the same time, offering the transport sector the same benefit that the industrial and commercial sector is enjoying.

Although the Government waives the duty on sulphur-free diesel today, the discussion on diesel, instead of coming to an end, actually has a new start.

The Government's complete waiving of the duty on sulphur-free diesel will help alleviate the pressure on the transport sector brought by the surge in oil prices. However, some members of the industry doubted if sulphur-free diesel will have adverse effects on the parts of the vehicles of older Euro models. It is also worried that the energy efficiency of this diesel is lower than that of ULSD. Regarding this point, actually I have tried to look for some information but failed to find any. In fact, the only thing that I want to tell the Government is that oil companies have also expressed their views, especially on Euro V diesel, which certainly contains less sulphur in terms of environmental benefits but at the same time might emit more carbon dioxide. Whether this is true or not, it is worth studying. Besides, I have noticed that two engineers have given their opinions on energy efficiency. One of them thinks that the use of sulphur-free diesel has a negative impact in terms of environmental benefits. However, another one says that there is no impact. In fact, what is the real situation? Of course, a small potato like Miriam LAU is not able to find out the truth. But I hope that the Government will make use of its huge mechanism to study this. There are also many experts in the Environmental Protection Department. Can they really conduct a study to see if sulphur-free diesel will affect the environmental benefits? It is hoped that the Government will find out some accurate information on this so that recommendations can be made to the transport sector.

Actually, sulphur-free diesel is more expensive than ULSD. If the energy efficiency of sulphur-free diesel is lower than that of ULSD, or in other words, if members of the transport sector need to use 1 litre of ULSD for driving 1 km but 1.1 or 1.2 litre of sulphur-free diesel for the same distance, it means that they are not just using an expensive diesel, but also paying more as both the price and the consumption amount of sulphur-free diesel is higher. Moreover, compared to ULSD, more sulphur-free diesel has to be used for the same distance and thus more pollutants might be emitted. So it is not good for the environment, or at least not better than using ULSD. In view of this, it is worth

putting the Government's resources on studying whether the energy efficiency of sulphur-free diesel is lower in order to assure the transport industry of the benefits of using the diesel. If the answer is no, the industry's worries will be eliminated. I think that the Government should take their queries seriously. If any assistance from the transport sector, such as participation in some tests, is needed for conducting the study, I believe that they will be more than willing to work with the Government to find out the truth. If what the transport sector complains about is found to be true, then the Government has to reconsider if it should adjust its policy on energy and environmental protection, and to see if there is a need to require oil companies to supply ULSD at petrol filling stations. It is because with the introduction of sulphur-free diesel, now there is no more supply of ULSD. If the energy efficiency of sulphur-free diesel is lower, then should we provide the transport sector with the choice to use ULSD? Perhaps this should be left to the Government for consideration. If the transport sector can use ULSD, it would certainly hope that there will be duty-free ULSD.

Furthermore, over the past 10 years, I have been paying much attention to the trend of the import and retail prices of diesel. I have found that regardless of the diesel duty rate, no matter it is \$2.89 or \$1.11 or \$0.56 per litre, and regardless of the import price, which was once \$1 per litre and now is \$7, the diesel price after tax in Hong Kong is almost the highest in Asia. I hope that the Government will study seriously the fact that after the deduction of the diesel duty, the difference between import and retail prices has been maintaining at the level of about \$3 for years. The oil companies explain that this \$3-odd price difference includes operating cost, publicity and promotion cost as well as discounts for users, and that after deducting all these expenses, they can only make very small profits. However, since the price difference is as big as \$3 per litre, it has become a price control buffer for oil companies. Whether the import price of diesel is low or high, oil companies can have a stable income of about \$3. As for the amount that they later allocate for publicity and promotion or discounts, it is always a secret to outsiders. Moreover, whether the diesel is duty-free or not, oil companies can make use of the price difference of about \$3 to prove that they have already returned all the benefits from the duty concessions to the public so as to prevent them from complaining again. In fact, the transport sector and the public will never know whether the oil companies have misappropriated the money gained from the Government's reduction or exemption of duties, or if they have reaped benefits by increasing the price quickly and reducing it slowly. Since there is always a \$3-odd price difference, which is a big buffer, no one knows how much the oil companies

have spent on publicity and promotion or discounts for users. In view of this, I think that the first thing we have to do is to increase the transparency of the operation of oil companies so as to let the transport sector and the public know the actual situation, and believe that the benefits from the current duty concessions offered by the Government, instead of going to the pockets of the oil companies, are given to them.

In fact, facing the continuous surge in oil prices, the Chief Executive, when visiting the districts last week, said that the Government would study the possibility of increasing the transparency of the price setting mechanism of oil companies and identify ways to make room for the adjustment of retail prices at petrol filling stations. I hope that the Government will complete the study as soon as possible to make sure that the transport sector does not have to wait for another ten years.

Madam President, I so submit and support the motion.

MR ALBERT CHAN (in Cantonese): President, as Ms Miriam LAU just said, she was not sure why the Government did not bother too much though the sector had been fighting for more than 10 years. It was simply because she used the wrong strategies. That the transport sector managed to block off Garden Road has forced the Government to lower the fuel duty. History and facts tell us that the Government would turn a deaf ear to the people if they do not put up resistance or if resistance is not upgraded to a substantive social movement having values and significance. So, putting up resistance is the real way.

Actually, I have said in this Chamber for many years that, superficially, the blacks' fight for their interests in the United States was promoted by Martin Luther KING but it was the Black Power Movement which actually forced the United States Government to give the blacks genuinely equal rights.

President, it is of course impossible for us to oppose this motion proposed by the Government because it is extremely important to the transport sector. However, the proposal to exempt diesel duty basically reflects another unfair phenomenon, that is, high petrol duty. I believe all those who need to fill up their vehicles would know that petrol duty takes up half of the price they paid for petrol. That is extremely unfair to consumers.

Also, the diesel duty waiver this time reflects that the Government is slapping itself in the face. Over the years, the Government has continuously stressed that Hong Kong has a narrow tax base, and it has tried to broaden by various means. Nevertheless, the Government has already reduced estate duty and then wine duty earlier on under the leadership of Henry TANG. It is now going to reduce diesel duty, and our tax base will become narrower and narrower. The Government simply concocts excuses to justify its actions: when necessary, it will propose the introduction of a sales tax to broaden the tax base. If it is going to reduce tax, it can reduce any kind of tax. I do not see a philosophy in the Government's integrity or principles of governance. It very often takes one step at a time and increases or reduces tax as it likes, and worse still, it is self-contradictory. Its governance is a mess and its philosophy of fiscal management has no foundation, which precisely reflects a crisis of governance. Of course, this diesel duty exemption will not have considerable effects on the Government's overall fiscal situation but the message being put across warrants vigilance by the Government.

President, in fact, two weeks ago, I already requested the Secretary to ask the Government to conduct a comprehensive review and study on the oil price crisis — I was asking the whole government but not only the Transport and Housing Bureau to do so. It is because the message brought by the crisis will not only affect the transport sector or one or two industries but the whole economy of Hong Kong. It is a very important warning to the future economic development and livelihood in Hong Kong, and the alarm has already been sounded. If the Government still acts like it is "squeezing out toothpaste" or takes one step at a time, that would absolutely be a mistake. This shows that the whole ruling echelon has still failed to understand the severity of the crisis.

President, I wish to urge the Government again to in respect of high oil prices, SIN Chung-kai has just said that investment companies or international financial institutions have projected that oil prices will rise to US\$150 or US\$170 and even US\$200 per barrel, who seems to be dropping hints for those people, so that they can raise oil prices. For sure, I do not want that to happen, but, in view of the impacts of continuously or constantly high oil prices on the overall economy, especially the petrol-related industries, if the Government does not conduct a study or make an adjustment, or formulate related measures, the resultant chain reactions and knock-on effects may create risks for our economy as a whole. It would be similar to the case of the

financial crisis in 1998 when there was social instability as a result of a property market slump or the negative equity asset problem.

The transport sector is definitely the first hard hit by oil prices. Actually, quite many industries have been affected. For instance, I have recently contacted the owner of a laundry shop. He is at a loss, not knowing what to do and whether he should continue his business. He has just invested more than \$2 million on the machinery, and there is also the tenancy problem. If he continues to operate the shop, he fears that oil prices will stay high he does not have any profits at present and he is like being put "on saline drip"; he has just spent \$2 million on machinery replacement; if operation is suspended overnight, he will lose everything. However, he thinks that his shop can hardly stay in business and the prospect is bleak, and he does not have any confidence. Although he has finally decided continue with his business, he is under enormous psychological pressure. Thus, the impacts of oil prices on various trades and industries actually, on this issue, the representative of the industrial sector but not me should be speaking. As regards which industries would be affected, they should know better than I do.

As a matter of fact, owing to the rapid and unreasonable increase in oil prices, many industries are facing a crisis, and many factories may have to close down one after another; some factory owners have even been forced to abscond. I trust that the chain reactions may be analogous to the negative equity asset problem arising from the financial crisis in 1998.

I hope the Government can listen to me but I believe it would not listen to me, President, and it is just a routine for me to make these remarks here. Nonetheless, what I have said very often comes true. For example, what I forewarned in my criticisms in 1998 really happened later on. The Government will not listen now but I may return to this Chamber in the next term, and I would say again a few years later that I already reminded the Government years ago but it would not listen and it kept repeating what it had done. Similarly, Mr TUNG would not listen to what I reminded him to do and so, he eventually had to step down due to leg pain, President.

Furthermore, President, immediate measures are certainly important ways to deal with the oil price. For instance, I do not think reducing fish raft fees payable by fishermen is very helpful, for that is just nominal or negligible kind of assistance given as a gesture, which is not very practical. Hence, the

Administration must come up with effective measures to enable the sustained operation and development of the fisheries and other industries in a meaningful way.

On the other hand, what Ms Audrey EU has said actually includes some of my suggestions. Besides giving support, reducing the use of fuel is also important. To this end, the use of renewable energy is one of the ways. I have just mentioned to the Development Bureau that the work of the Transport and Housing Bureau in this connection can be taken into consideration. For example, when we travel to Taiwan or the Mainland, we see that all buildings of three to four storeys are using solar energy hot water heaters. In fact, the same can be done in all small houses in Hong Kong. The Government can stipulate that all new small houses being built must have solar energy heat generation devices installed on the rooftops. This is actually very simple and it has been adopted throughout Southeast Asia but not in Hong Kong. A heater only costs some \$10,000 but the Government must first make this stipulation to require them to do so and force them to use these heaters, or else they simply will not do so.

In addition, many other things can be done. For instance, it can prohibit some advertising signs from switching on the lights at night as it is unreasonable for them to be illuminated after 11 pm. In Mong Kok, we really cannot tell day from night, and it is sometimes brighter at night than in daytime. Thus, the Government can consider taking a series of measures to reduce overall energy consumption. And, the Government can specify, for example, that a private car carrying a driver and one passenger only cannot enter the Central District, and it must carry three to four persons. We can think of a diversity of measures.

In fact, many foreign places have continuously implemented these measures but it seems that class interests override overall interests in the Government's eyes. When some measures are implemented, they may have particularly serious impacts on some classes, especially the large consortia, and therefore, even the Government dares not propose such measures.

However, if things continue this way, considerable energy will be consumed in Hong Kong. Just take a look at the very ridiculous situation at night time in Hong Kong. Almost all commercial buildings are lit up and neon light advertising signs are all over the place, which is actually a waste of resources. To save energy, we should first reduce resource wastage, and then

formulate strategies to help industries in difficulty, including the transport sector and the industries, face up to the challenges. Challenges already exist, but if the Government still sits by doing nothing, it will be too late for it to regret when the economic crisis arising from high oil prices gets out of hand. In that case, all Hong Kong people, especially the toiling masses, would be victimized. Hence, if the Government still fails to take actions in response, that will absolutely be a dereliction of duty on its part.

Certainly, I am just telling the Secretary for Transport and Housing about all this today, and it is actually not enough. The Chief Secretary for Administration should attend this meeting today, and during the meeting with the Chief Executive on Wednesday, the Chief Executive should be urged to do so; otherwise, the Chief Executive would not know whether his stepping down would be due to headache or leg pain. Thank you, President.

MR LAU KONG-WAH (in Cantonese): It can be said that this resolution today is a decision made by the Government in response to a request unanimously made by the Legislative Council for reducing and even fully exempting the diesel duty. Of course, this decision of the Government is supported by the industry. In fact, I have said during the last motion debate that this is not only a problem for the industry. As it will affect the costs of transportation, it will also indirectly affect the public. Therefore, I think that this resolution today will be welcomed by the industry and also the public.

When we had a motion debate two weeks ago, the oil price was around US\$136 per barrel but it has already risen to US\$147 per barrel today, which means that it has increased by US\$10 within a short period of two weeks. We already considered that the oil price was quite high at that time, but it is even higher now. Today, members of the industry and the public already feel that the price of every commodity type keeps increasing day after day. Rising oil prices and the inflationary pressure have really dealt a blow to the grassroots and the industry.

In my opinion, this measure of the Government can help the industry. Some friends have asked us how much help can \$0.5 per litre offer. It actually helps little, as the Government has said at the very beginning. However, let us do some calculation from the perspective of the industry. If the burden can be relieved by \$1,000 or more each month, the money hence saved will help all

their families. So, I think the Government has readily accepted good advice this time and what it has done is very satisfactory.

Mr SIN Chung-kai has just said that it is actually outdated to monitor oil companies being quick in raising prices but slow in reducing them. I do not think so. There have been price fluctuations even in the period between now and a fortnight ago. When there are price fluctuations, have oil companies reaped any benefit? Have they been quick in raising prices but slow in reducing them? Have they raised prices more often than they reduced them? The Government is obliged to monitor the situation. As regards oil prices in the future, nobody knows what would happen; yet, I think that the point just made by Mr WONG Kwok-hing about monitoring oil companies is very important.

Before proposing the motion, I have discussed the subject matter of the motion debate with our Chairman, Mr TAM Yiu-chung. I proposed at that time that we should discuss the issue of disaster relief. But when it was later found that oil prices were raising sharply, which gave rise to seething public discontent, we decided to propose this motion on reducing fuel duties. Our proposal on reducing the duties on fuels had two parts, President, as you may recall. The first part was about diesel duty, and the second part was about petrol duty. We asked the Government not to care only about drivers in the industry who work to support their families to the neglect of private car drivers. The motion was unanimously passed then. As far as I remember, while I proposed the motion, Ms Miriam LAU's amendment was also passed. I also said that it was appropriate for her amendment to be passed, especially when I heard her talking today about the bitter experiences in the past decade. She finally sees that it has happened.

Nonetheless, I do not quite agree with the remarks just made by Mr Albert CHAN. He said that Miriam LAU's strategy was wrong and that is why she has not succeeded even after fighting for it for 10 years. According to Mr Albert CHAN, this time, the most important point is that some vehicles have blocked off Garden Road and paralyzed traffic in Central. Hence, he concluded that resistance must come before success. I would like to tell Mr Albert CHAN that in saying so, he has actually incited radical actions that should not take place in society. Of course, I know that the League of Social Democrats and Mr Albert CHAN have adopted radical approaches all along, but if these radical activities would affect the public or run counter to the public interest, they should

not take place and they should not be encouraged. Thus, I really hope that Mr Albert CHAN would think twice about encouraging these activities.

President, let me come back to petrol duty. I felt very disappointed just now because while the Secretary is to discuss diesel duty today, she has suddenly talked about petrol duty. She also conveyed to us a rather unpleasant piece of news. It seems that she wants to declare again today that the petrol duty cannot be reduced. I fully understand that diesel duty is certainly different from petrol duty, but a very important point is the grounds on which the Government has said so. I just heard from the Secretary that reducing the petrol duty will upset our free economy. If so, it will really be a big problem. If we propose a motion which will upset our free economy, we will be guilty of the most heinous crimes to be sure. However, I would like to ask the Secretary what a free economy is. A free economy does not impose duties, and the freest economy in the world does not impose duties. Duties are not imposed on a large number of import and export goods in Hong Kong and this is why Hong Kong is the freest port, but a duty is imposed on petrol only.

Nowadays, the middle-class private car drivers basically pay more than \$11 for a litre of petrol, and there is the petrol duty of \$6 per litre. For these people who pay more taxes and enjoy fewer benefits, the Government refused to lower the petrol duty two weeks ago, and it reiterates this position today. I think the Government would make these people very disappointed. Since the last motion debate, some people have told me when I am walking on the street or taking the lifts that I should continue to fight for a reduction in the petrol duty. This may be a source of the grievances of the middle class. So, when Mr Ronny TONG told the media yesterday that the middle class already had quite a lot of preferential treatments and did not need too much care, I was very surprised. I was not sure if he meant to say that a petrol duty reduction was not needed. He said that the middle class had been given quite a lot of preferential treatments, but I am not sure what he meant. Many from the middle class have told us that they basically can enjoy very few welfare benefits.

Thus, I really hope that the Secretary I often praise the Secretary for working efficiently, and she is efficient this time. The Government has given a response within 10 days from the time the motion was proposed — Miriam LAU has fought for 10 years; in fact, I basically do not have much ability and I have only grasped the opportunity and as such, I can get a response from the Secretary within 10 days after I proposed the motion. The Secretary worked thrifty when

dealing with railway construction. Insofar as the petrol duty is concerned, she cannot be indifferent to the discontents and grievances of the middle class, and her reason that the free economy would be upset cannot hold water. If she thinks that reducing the petrol duty will upset the free economy, reducing the diesel duty will similarly upset the free economy. Why is there a double standard?

Moreover, as I have often said, the Secretary's argument is that lorries and nanny vans are actually commercial vehicles used for making a living, and the duties imposed on them should be reduced. In my opinion, the middle class who drive a long distance to work in private cars also need a duty concession; they are also driving their cars to earn a living and their cars can also be considered as commercial vehicles. Why are subsidies not given to these cars used also for making a living? It is reasonable for us to urge the Government to reduce the duty by half; even if it cannot be reduced by half, I believe all of us would find it very satisfactory if it would be reduced by one fourth. If it would not be reduced even by a cent, I do not think it would be acceptable to us. Hence, I earnestly hope that the Secretary would think twice.

There will soon be another chance because the Chief Executive's Question and Answer Session will be held next Wednesday. The Chief Executive has stated in advance that he would like to respond to the point that the public are facing difficulties in their living in his policy address in October. Nevertheless, President, as prices have surged and oil prices have risen, the lower class, the grassroots and the middle class are actually facing the same pressure felt by all of us. Under such circumstances, would the Chief Executive respond to this issue in the Question and Answer Session next Wednesday? The DAB has made 12 proposals, one of which is to reduce the duties on petrol by half. We would like to bring up this proposal again.

As a matter of fact, the whole world is facing financial, food shortage and oil price problems. The present situation particularly shows that these are global problems involving uncertainties and unpredictable factors, and so, Hong Kong just cannot be spared.

Some Honourable colleagues in this Council brought up a lot of political issues in the past month, but the DAB was engrossed in studying how to improve people's livelihood. We think that improving people's livelihood is the most important "political" issue. On this issue which is a way to improve people's

livelihood, I really hope the Chief Executive would give an early response rather than giving a response in his policy address in October. I also hope that, today, the Secretary though this is a discussion on diesel duty, she has changed the subject to petrol duty and so, I would also like to ask her to think twice on the petrol duty issue, and to discuss with the Chief Executive to find out if a response can be given earlier. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam President, I would like to thank Honourable Members for speaking on the motion and for their support for exempting the duty for Euro V diesel.

In the speeches they made a while ago, and at the meetings of the Panel on Economic Development earlier on and in the motion debate just now, quite a number of Honourable Members have expressed their views and the views of the industry and the public. They are especially concerned about whether the exemption will really benefit the industry and the public, whether the Government would consider introducing other measures under the pressure of surging oil prices, as well as how the Government could properly monitor fuel pricing. In making their proposals, Honourable Members aimed at finding a way to help ease the inflationary pressure faced by the transport sector and the general public, which is in line with the Government's view. In fact, the Government has precisely considered the impact of high oil prices on the transport sector and the community as a whole, the inflationary pressure and some objective factors before proposing the exemption of the duty for Euro V diesel.

I am going to respond briefly to the concerns expressed by Honourable Members.

Ms Miriam LAU and many Honourable Members have asked if the waived duty will be reflected in the retail price of Euro V diesel. In waiving the duty for Euro V diesel, the Environment Bureau has had meetings with oil companies and requested them in writing to reflect fully in the oil prices the rate of duty concession. Various oil companies have promised that the duty concessions will be fully reflected in the oil prices. Last time when the duty for Euro V diesel was reduced in Hong Kong, the price was reduced from \$1.1 per litre to \$0.56 per litre. Similarly, the oil companies fully reflected in the oil prices the rate of duty concession.

A Member has just asked if this decision is made under pressure. For example, Mr Albert CHAN has said that resistance is justified. I totally disagree with him, and we have also noticed that some Honourable Members do not agree with him. I believe most Hong Kong people will not agree with him. They will not identify with such acts of a small group of people that ignore public interests. Actually, the media have reminded us not to yield to these "bad boys". But, when we considered the issue carefully, we thought about whether we should disregard the reasons behind this decision just because a small group of people had expressed their views in an inappropriate manner. We should not do so, and we should not decide not to reduce diesel duty because we disagree with the way they put up resistance. We should not do so or come to this view. The Government has always maintained communication with the industry and extensively listened to their views. I have met with some 20 representatives of the transport and logistics industries, and we had rational and constructive discussions. So, this waiver of the duty for Euro V diesel is made after the Government has taken into consideration the pressure of high oil prices on inflation and other factors.

Some Honourable Members have criticized that this is just a stopgap measure which cannot address the problem at root. I would like to point out that Hong Kong is a very small place and an externally-oriented economy, and it seems to be not too practical to ask the Government to reverse the general economic situation by administrative measures. As I have just said, this time, we have considered the issue on the principle of fairness. At present, fuel duty is not imposed on vessels (such as ferries), franchised buses and even aeroplanes. Thus, we think that the exemption of fuel duties on all commercial modes of transport would provide equal treatment to all without discrimination.

As regards petrol duty, Mr LAU Kong-wah might have misunderstood what I said earlier. Actually, I did not talk about petrol duty at the outset, and I only said that the Government would not provide fuel subsidy. If we provide fuel subsidy, we would go against the principles of a free economy and fairness to which Hong Kong has long subscribed, and also create a heavy burden on public finance and taxpayers, resulting in far-reaching implications. Since he has referred to petrol duty, I must give a response. We think that petrol duty is a difficult issue for consideration. As we all know, Hong Kong is a small place and it is densely populated, and we have always tried our best to provide a sound public transport network to meet the transport needs of the general public. Thus, most members of the community agree that private cars are not a basic necessity for living and so, the imposition of petrol duty is unrelated to free economy. In our view, apart from financial considerations, this policy is implemented as it can help control the increase in vehicle numbers and traffic congestion.

At present, the number of private cars has constantly increased. As at the end of May this year, the total number of private cars amounted to some 379 000, 4.5% more than the same period last year. Another figure for reference is that in the first six months of the year, the total number of newly registered private cars has increased by 28% over the same period last year. The two figures tell us that despite high oil prices, the number of private cars has increased but not decreased. Another figure is that the quantity of petrol consumption in the first four months of the year is still 1.4% higher than that in the same period last year. In the past year, petrol prices increased by 25%, and Hong Kong people apparently still continued to use private cars. There is hardly any reason to waive the duty from a transport perspective. We think that the principle that "people with the means pay more" should be applied to petrol duty for private cars.

Mr WONG Kwok-hing has asked why the Government does not also lower the duty for ultra-low sulphur diesel (ULSD). Although he has made the proposal from the perspective of the transport sector, we think from the angle of environmental protection that it is not suitable to reduce the duty for ULSD. When compared with ULSD, Euro V diesel can reduce the emission of sulphur dioxide by 80% and particulates by 5%. Euro V diesel can also be used by all diesel vehicles, that is, no alteration is required and so, it should not give rise to maintenance problems. From information given by the Environmental

Protection Department, there is no evidence showing that using Euro V diesel will lead to an obvious increase in oil consumption by vehicles, or will intensify vehicle wear and tear due to poor lubrication. However, I also heard Ms Miriam LAU query earlier if there is any problem in terms of energy efficiency. I trust that the Environment Bureau will be ready to continue to maintain communication with the transport sector. If the sector has any studies or data in this respect, I believe the Environment Bureau will also be ready to take them into consideration.

A number of Honourable Members have asked earlier if the Government has effectively monitored the situation to prevent oil companies from being quick in raising prices but slow in reducing them. I wish to say that the auto-fuel retail prices in Hong Kong have always been determined by individual oil companies in the light of international oil prices, principles of commercial operation and their operating costs. The Environment Bureau has always closely monitored the local auto-fuel retail prices and paid attention to whether the price movements are generally in line with the movements of international oil prices. There have been fluctuations in international oil prices in recent months, and as Members have noticed, there have been significant international oil price increases such as the increases in the Brent Crude oil price and Singapore auto-fuel FOB prices, and the prices have reached record highs. From December 2007 onwards (that is, since the introduction of Euro V diesel to Hong Kong), our monitoring reveals that the trend movements of local Euro V diesel retail prices are more or less the same as those of Singapore auto-fuel FOB prices, which demonstrates that the trend movements of local diesel retail prices have not become unreasonable following the introduction of Euro V diesel.

However, a Member asked earlier if the reduction in the duty will be offset very soon. I would like to say that it may not be suitable to think that the reduction will be offset when considering the duty exemption. It is because oil prices are determined on the basis of the trend movements of international oil prices, and oil prices will not be frozen or reduced because of any administrative measures taken or requests made by Hong Kong. Import and export prices are factors that are relatively independent so I think that such expectation is rather impractical. Regarding the operation of a free market economy, the Government will not determine the retail price of fuel but we will endeavour to ensure fuel supply, maintain market openness and eliminate the obstacles to market entry, with a view to increasing transparency and promoting competition.

An Honourable Member has mentioned that there may be anti-competitive acts such as collusive pricing. I have also said earlier on that the Environment Bureau has always closely monitored the local auto-fuel retail prices, paying attention to whether the tendency of the price generally changes along with the international oil price movements. The Bureau has maintained contacts with oil companies and reminded them that they should expeditiously respond and adjust their retail prices downward when there is room for a price reduction.

Ms Audrey EU and Mr SIN Chung-kai have talked about the introduction of a cross-sector competition law. The Government is working on this law to ensure more effective implementation of the existing competition policy and provide a level playing field to the business sector. To enable the public to clearly understand the possible areas involved and the impact of the proposed legislation, the Commerce and Economic Development Bureau published a consultation document in early May, setting out in detail the provisions of the bill. It is our target to introduce the bill into the Legislative Council in the year 2008-2009, and certain progress has already been made.

An Honourable Member has also asked if we have plans to increase the number of dedicated LPG filling stations. I wish to point out that in the past few years, the Government had been looking for the relevant sites but it was a bit difficult to find suitable sites for use as LPG filling stations. At present, there are 58 LPG filling stations and 426 LPG filling guns in Hong Kong, including 12 dedicated LPG filling stations and 46 non-dedicated LPG filling stations. They can sufficiently meet the demand of the entire fleet of taxis and minibuses for LPG filling services. Nevertheless, to expand our LPG filling network and make LPG filling more convenient for LPG vehicles, the Government has implemented a policy since June 2000 to specify that if a site for a petrol filling station in a Land Sales Programme meets the safety standards, the station must provide LPG filling services. It is projected that a non-dedicated LPG filling station will be completed in the Yuen Long district in 2008. Furthermore, we are planning the provision of a non-dedicated LPG filling station in the Yuen Long district and another one in the Kwai Chung district, and both stations are expected to be completed in the year 2009-2010.

Madam President, I have just briefly responded to Honourable Members' views on this motion. This motion is actually a measure for easing the impact of inflation. As the Chief Executive has said earlier on, when he prepares the policy address this year, he will pay particular attention to the livelihood of the grassroots and the effects of inflation on them, with a view to introducing

specific measures to ease the burden created by rising prices on the whole community.

Madam President, I so submit. I am grateful to Honourable Members for their support of the motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Transport and Housing be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): The time now is just past 10 pm. There is still one outstanding motion with legislative effect and after that, only the "Valedictory Motion" will remain. I guess we can finish all motions with legislative effect by around 11.30 pm. Therefore, I propose that the debate on the "Valedictory Motion" shall start tomorrow morning, so that the debate can be completed without interruption.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' Motions. Proposed resolution under the Interpretation and General Clauses Ordinance to repeal the Food Business (Amendment) Regulation 2008.

I now call upon Mr Albert CHAN to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR ALBERT CHAN (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, in fact, this motion is very simple. The key word which is really the overall principle is to "repeal", in the same way as the Central Authorities abolished the Legislative Council and established the Provisional Legislative Council in 1997. What we want to repeal is the Food Business (Amendment) Regulation 2008 introduced by the Government into the Legislative Council on 2 July, which is referred to in simple terms as the measure of "daily rest night" to ban overnight stocking of live chickens.

President, in fact, this concept of "daily rest night" is nothing new. In our great Motherland, it has been practised in many provinces and municipalities for many years. In fact, five years ago, Mr WONG Yung-kan and I also proposed it to the Government in this Council because at that time, there was the problem of the avian flu. However, in the past five years, the Government was sound asleep and did not examine and deal with the problem in any particular way. Some years ago, in conjunction with the trade, I submitted a whole volume of proposals to the Government on how markets should be designed, how the "daily rest night" should be implemented and how chickens should be transported to the chicken room on being delivered to markets, and so on. In addition, the design of chicken rooms is such that they are completely separated from the stalls, including complete human-chicken segregation in the design of vehicle access, vehicle bays and the sale of chickens. However, the Government did not pay any heed at all.

It was not until recently, when the avian flu virus was found on testing in the chicken droppings at the chicken stalls in several markets, that panic was suddenly aroused. Consequently, the Government allocated \$1.1 billion and introduced the measure of "daily rest night". In fact, I strongly object to the allocation of \$1.1 billion because this is a waste of public funds. Many Members have fallen into the trap set up by the Government and into the Government's ruse. They were intimidated by the Government's scaring tactic, so everyone is now doing the bidding of the Government. In fact, the whole tactic is the same as the manipulation of the fear resulting from the 911 incident by George W. BUSH, who sowed in the Congress and among the American

public the fear that Iraq was in possession of weapons of mass destruction, thus paving the way for the invasion of Iraq.

Many experts have come to the Legislative Council to level the charge and criticism that, firstly, so far — I hope the Secretary can clarify this — the avian flu virus has not been found in a single licensed chicken farm in Hong Kong, nor is there any evidence to indicate that the chickens shipped to Hong Kong by licensed chickens farms or those delivered to market stalls are infected by the avian flu virus. The great majority of the members in the trade or people with a good understanding of this problem believe that the chickens which the Government found to have been infected by the virus were smuggled chickens. Due to the inadequate efforts of the Government in clamping down on smuggled chickens, the Government shifted the blame to chicken stalls in a bid to get rid of them in one sweep. The greatest aspiration of Secretary Dr York CHOW over the years is to banish all problems that may lead to an outbreak of avian flu, so we have to foot this bill of \$1.1 billion.

Of course, this \$1.1 billion is very helpful to a lot of friends operating chicken stalls because in the past few years, operating a chicken stall has actually been an insipid pursuit and they are just on life support. We all know about this, that is, they are in a bind no matter if they continue to do business or not. If they do not continue to do business, they will be out of work and do not know what to do. In fact, an overwhelming majority of them plan to wind up their business after a year or two and will no longer continue with their business operation. For this reason, the financial assistance provided by the Government has to some extent enabled them to wind up their business earlier and to this group of people who have been in the trade for two or three decades, this is nothing bad.

However, if we analyse this matter purely from a policy perspective, this is absolutely a mistake because earlier on, they have already received a sum of compensation. Moreover, at present, their operation is absolutely difficult. For this reason, I believe that conceptually, tactically and in terms of the overall complementary measures, this course of action is completely wrong. In fact, the ultimate aim of "daily rest night" and the allocation of \$1.1 billion to recover the licences is to gradually get rid of and eradicate all chicken stalls selling live chickens in Hong Kong.

Just now, in the Ante-Chamber, some Honourable colleagues told me they would oppose this motion because if this motion was passed, there would no

longer be daily supply of fresh chickens because it was only with the "daily rest night" measure that the chickens sold would be fresh every day. I can tell Honourable colleagues clearly that after \$1.1 billion is allocated to implement the "daily rest night" measure, chicken stalls will gradually disappear from markets in Hong Kong. Unless the Government agrees to reserve a certain percentage of stalls as chicken stalls, chicken stalls will no longer be found in some markets. However, the Government has never made such an undertaking. Whether chicken stalls will be able to survive will depend on whether the existing chicken stall operators will accept the compensation and end their business operation. The bottom-line of the Government is to retain 50% of them but in some markets, it is possible all of them will go. Mr Tommy CHEUNG said the rate would be 90% but earlier on, the Government said that even a rate of as low as 50% would be acceptable. I call on the Secretary to clarify whether it will be 85% or 90%. Sometimes, the Government is prevaricating just like a yoyo, and one just does not know what it wants.

The biggest problem is: What if there are no more chicken stalls? The Government has to make undertakings and state clearly the arrangements for making live chickens available in the future. It should give us a clear and definite picture instead of attaining the Secretary's personal and subjective wish under a situation of fear, uncertainty and confusion. Do Members know what will happen to the public in the future? In the future, after the licences of chicken stalls in markets are returned, not a single chicken stall will be found in some districts, so how will the situation be like? Can Members answer this question? Can Members who supported the allocation of \$1.1 billion and the "daily rest night" measure on the last occasion tell me whether or not the Food and Environmental Hygiene Department will issue licences again if there are no chicken stalls in markets in the future, so that chicken stalls can continue to do business in markets? The Government has never made such an undertaking. If the Government is willing to make such an undertaking, I hope the Secretary can say how many chicken stalls can be retained in markets in the future so long as the requirements of the Secretary can be satisfied.

Without live chickens, in the future, there will be many problems because the Chinese attach great importance to culinary art. This is a very important tradition. Without fresh ducks, geese or quails, I wonder if I can describe the catering industry as being gradually castrated, Mr Tommy CHEUNG? This will make the reputation of Hong Kong as a gourmet paradise go down gradually into a trough, just like the popularity of Donald TSANG.

The situation is very dire. At present, many Hong Kong people say that fresh food can no longer be found in Hong Kong and they would rather go back to the Mainland for dining. In the future, even overseas visitors would not choose to come to Hong Kong. Instead, they would visit the Mainland for the fresh food there. Therefore, not only will this chain reaction have an impact on the economy and the catering industry, the daily life of Hong Kong people will also be affected. For example, I joked with my friends that traditionally, the Chinese would make a pact by chopping off the head of a chicken and letting its blood but in future, it would not be possible for one to become sworn brothers because without any live chicken, it would not be possible to chop off its head, nor can one draw any fresh blood from a chicken to make a pact. In that event, it may be necessary to chop off one's own finger in order to let some blood.

In their daily life, many members of the public like to offer fresh chickens as sacrifices to gods or ancestors, believing that it is disrespectful to the gods to do the worshipping with frozen chickens, but these customs and habits may fade out gradually. To me, without fresh ducks and geese, I will no longer be interested in eating at places known for their ducks and geese because I think the food will not be tasty any more. Of course, some friends may say that being alive is more important than culinary art but if this is so, we should not eat cows since they may have mad cow's disease and we should not eat pigs since pigs may get foot and mouth disease, should we? Since vegetables have pesticides on them, we should not eat vegetables. Sometimes, counterfeit canned food can be found, so we should not even eat canned food, should we? To go to the extreme, since the Secretary is so hygienic and since AIDS can kill, let us ban sexual intercourse then! Can we do so?

Insofar as a lot of policies are concerned, it is necessary to produce concrete evidence and make things clear from the outset. However, up to now, this is not the case. The Secretary still cannot produce evidence to prove that the avian flu virus has been found in licensed chicken farms. Therefore, this decision made under fear is definitely a wrong one. If the licences are to be recovered and "daily rest night" is to be implemented, we should propose a comprehensive set of plans and arrangements to clearly outline the entire *modus operandi* for the future, so that everyone can have an idea.

For this reason, I find it very regrettable that many Members support this move taken by the Government. In particular, many of them talk about public opinion but the public support the "daily rest night" measure only because they

are misguided and apprehensive due to the fear generated by the Government. How many of them know that up to now, the Government has been unable to find the avian flu virus in any of the licensed chicken farms? In view of this, since the Government uses the mass media to disseminate such a message, in fact, it is possible to take legal action against the Government, is it not, Mr Tommy CHEUNG? The Government created panic by spreading fear and inaccurate information. In fact, this is against the law and we can try to sue the Government.

President, I hope Members will wake up. If we let the Government do as it likes, this is the same as the claim by Mrs Regina IP back then that 1.67 million people would come to Hong Kong. At that time, she said that if we let mainland people born of Hong Kong parents to come here, 1.67 million people would flock to the territory. The tactic and approach are the same. If Members still do not rouse themselves, they are just making an extremely foolish decision on being hoodwinked again.

Mr Albert CHAN moved the following motion:

"RESOLVED that the Food Business (Amendment) Regulation 2008, published in the Gazette as Legal Notice No. 185 of 2008 and laid on the table of the Legislative Council on 2 July 2008, be repealed."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Albert CHAN be passed.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I am sorry, Mr TAM, please let me speak first.

Madam President, to further improve immunization management at the retail level so as to more effectively reduce the risk of the avian flu, we gazetted on 27 June the amendments to the Food Business Regulation, to put into effect the new measure of "no overnight stocking of live poultry". On the same day, we explained to the Panel on Food Safety and Environmental Hygiene of the Legislative Council the details of the amendments. We subsequently tabled the Food Business (Amendment) Regulation 2008 (the Amendment Regulation) in

the Legislative Council on 2 July for the new measure to take effect on the same date.

We disagree with Mr Albert CHAN's resolution to repeal the Amendment Regulation. I would like to take this opportunity to explain again the specific legal requirements of the Amendment Regulation, and the rationale and urgency for the Government to enact the legislation.

Specifically, the Amendment Regulation provides that a permittee (that is, tenants of live poultry stalls in public markets and licensees of fresh provision shops) must slaughter any live poultry remaining in their stalls/shops by 8 pm every day. Also, live poultry will not be allowed at such premises between 8 pm and 5 am the next day. Offenders are liable to a fine at level 5 (that is, a fine of \$50,000) and six months' imprisonment.

Taking into account the fact that the business hours of public markets are from 6 am to 8 pm, to provide convenience to live poultry stall operators in implementing of the measure of "no overnight stocking of live poultry", we specified that all remaining live poultry in stalls should be culled before 8 pm every day (that is, before the end of the business hours of the market stalls). Also, as retailers would need time to transport live poultry to the stalls and make preparations before the commencement of business hours, we allow the keeping of live poultry in stalls from 5 am onwards every day (that is, one hour before the commencement of daily business hours).

In early June, the avian flu virus was found in four environment samples collected from local retail markets, which showed that there was an urgent need to enhance preventive measures. Resolute measures should be taken at all levels within the live chicken supply chain, especially at the retail level, in order to more effectively curb the spread of the avian flu virus in Hong Kong and reduce the risks of infection among the public.

After a careful review of the measures taken before 2 July and listening to the views of government experts and local academics, we find it necessary to ban "overnight stocking of live poultry" at retail outlets, which is also supported by scientific justifications.

In fact, due to limited space for the sale and storage of live chickens at the retail outlets, live chickens are tightly packed in close proximity. If some

chickens have been infected by the avian flu virus, the manure they excreted will carry the virus, and other chickens will be rapidly infected. The manure excreted by these chickens will also increase the amount of virus load in the environment, thereby increasing the risk of human infection of avian flu.

With the implementation of the measure of "no overnight stocking of live poultry" at retail outlets, all live chickens remaining in the retail stalls at 8 pm each day must be slaughtered, and chicken cages and slaughtering instruments will be thoroughly cleansed and disinfected. The measure has the following merits:

- (a) breaking the infection cycle of the avian flu virus. As the chickens have to be slaughtered within a maximum of 15 hours, even if some chickens are infected by the virus, there will be less chance for the virus to be excreted from the infected chickens, thereby infecting other chickens. This measure will help substantially reduce the amount of avian flu virus load in the environment, prevent the accumulation of virus at the retail outlets, and effectively reduce the chances of cross-infection among chickens, thus greatly enhancing the efforts to arrest the spread of the virus and reduce the risk of human infection;
- (b) giving less incentive for live chicken smuggling. Since live chickens cannot be stocked at the retail outlets, the business risks of live chicken smuggling will become considerably higher; and
- (c) making it easier for the enforcement departments to combat live chicken smuggling, as they can effectively check the numbers of chickens bought by the vendors as shown on the receipts against the numbers of live chickens kept in the chicken stalls.

I hope Honourable Members would understand that facing the risk of avian flu, the Government and the industry have few choices. Not making any changes or just taking measures to make minor amendments or additions cannot effectively reduce the threat of avian flu and respond to public expectations.

We think that it is unsuitable to allow the retail outlets to resume the sale of live poultry before improvement measures have been taken in prevention and

management. Thus, we need to simultaneously implement the measure of "no overnight stocking of live poultry" before the resumption of the sale of live poultry on 2 July. We have made our best efforts to meet with the industry and listen to their views when time permits, and to explain this measure to the relevant Legislative Council Panels. I hope Honourable Members would understand that for the reason of public health, there is a pressing need for the Government to implement the measure of "no overnight stocking of live poultry" immediately.

The measure of "no overnight stocking of live poultry" has been implemented at the retail outlets since 2 July and the operation has been smooth. These few days, the numbers of chickens that remained unsold at the retail outlets accounted for around 1.7% of the total numbers of chickens for sale each day. It shows that this measure evidently works. When this measure was discussed in June, most members of the trade thought that they could hardly adapt to it. Having considered the situation of the industry, we have introduced a buyout package to live poultry retailers who accepted the option of permanent cessation of business. Only when a majority of retailers (for example, about 85%) have chosen to withdraw from the live poultry industry will we provide the buyout package to the retail sector and other sectors, including the poultry farmers, wholesalers, transporters and affected workers in the industry. If the Legislative Council repeals the Amendment Regulation today, the retail outlets are not required to comply with the requirement of "no overnight stocking of live poultry", and the Government will not introduce the buyout package to the industry. If we withdraw the proposal, the industry must assess and bear the risks of continuous business operation by itself, and the community as a whole will continue to face the risk of avian flu as they did in the past.

Finally, I wish to reiterate that it is the most important task of the Government to safeguard people's health and public hygiene. We cannot be slack in avian flu prevention. We must remain vigilant at all times and ensure effective preventive measures. Implementing the measure of "no overnight stocking of live poultry" fulfils the Government's responsibility for safeguarding public health. Therefore, I hope Honourable Members would oppose Mr Albert CHAN's motion to repeal the Amendment Regulation.

Thank you, Madam President.

MR TAM YIU-CHUNG (in Cantonese): I think all of us are very sleepy, so our voice has become much flatter. (*Laughter*)

Today, I wish to talk about the DAB's position on the policy of the "daily rest night", which the Secretary refers to as "no overnight stocking of live chickens". However, it seems that "daily rest night" can be enunciated more easily and "no overnight stocking" is rather like a tongue-twister. Of course, later on, Mr WONG Yung-kan will talk about this again because he is an expert in this area.

Ever since last month when the H5N1 virus was found in the samples of chicken droppings taken from chicken stalls in public markets, Hong Kong is facing the greatest threat from the avian flu since 2003. Soon afterwards, the SAR Government displayed greater alertness than in the past and in less than a month, it restricted the importation and sale of live chickens. It then introduced the "no overnight stocking of live chickens" policy and offered compensation to the trade for winding up business, with a view to solving as soon as possible the problem relating to live chickens, which has beset us for many years.

In recent days, when I visited local communities, many local residents told me that they hoped in the future, live chickens would still be sold in Hong Kong. The DAB has also conducted surveys on this issue and found that more than half of the respondents did not want the live chicken retail trade to be banned, so the DAB hopes that under the premise of protecting public health, the live chicken retail trade can still be preserved.

The resolution proposed by Mr Albert CHAN today is intended to overturn the policy of "no overnight stocking of live chickens", which is now being implemented. Although it will enable the trade to revert to its business mode before the sales ban, how can the risk of infected poultry spreading the virus be reduced? How can we clamp down effectively on the scourge of the smuggle of poultry into the market? How can the operation of the live chicken retail trade be maintained under the premise of protecting public health?

I have made enquiries with retailers. They found that since the implementation of the policy of "no overnight stocking of live chickens" on 2 July, this policy was more agreeable than they had imagined. In the first few days, business was better but of course, subsequently, business was quieter.

However, they found that they dared not procure too much stock for fear that if business suddenly declined, there would be some stock left. As a result, they may have to do less business and could call it a day early. However, they found that it may not be necessary to do business all the way until 8 pm. If they reduced the price by \$5 or \$10 when it was about time, many people in the neighbourhood would patronize them. Therefore, they found this measure of "no overnight stocking of live chickens" feasible and acceptable.

Of course, on the whole, chicken vendors still believe that the prospect of the trade is grim. For this reason, some chicken vendors are prepared to wind up their businesses and switch to other trades after receiving a one-off compensation. Therefore, the DAB considers that from the viewpoint of the overall interests of society, it seems there is no better approach than the present policy of banning overnight stocking of live chickens, so one can say that there is no other alternative. I hope that by drawing from experience all the time, the details of implementation can be reviewed and adjustments made to the operational arrangements.

In addition, many chicken vendors reflected to us that the view that the success of Macao in implementing the measure of "no overnight stocking of live chickens" is attributable to the joint efforts of many parties. In response to the requests of retailers, the live chicken wholesale market in Macao can provide new stock from time to time, so as to reduce the risk of retailers in procuring new stock. However, the live chicken wholesale market in Hong Kong only permits the purchase of stocks in the morning and even if retailers can sell all their live chickens in the morning, they cannot replenish their stock in the afternoon. In view of this, the trade hopes that the Government can take better corresponding measures to enable retailers to replenish their stock, so as to enhance the operational flexibility of the trade.

In addition, in Macao, keeping chickens overnight is allowed under unstable weather conditions (for example, when the black rainstorm warning or typhoon signal No. 3 or above is in force). The DAB believes that it is reasonable for the trade to make such requests. Can the Government consider if this arrangement is feasible? The "no overnight stocking of live chickens" arrangement is, after all, something new in Hong Kong and changes have to be made to the production plans of chicken farmers, the import estimates of wholesalers, the vehicle deployment of transport companies and the retailers'

estimate of the stock to be procured, the buying habit of the public and the method of supervision by the Government, so all parties are learning the ropes in the hope of identifying the best operational and supervisory approach. For this reason, the DAB hopes that the Government can have more discussions with the trade on the details of implementation, so as to launch measures conducive to business operation, so that the trade can continue to operate in reasonable conditions.

The Government is now discussing with the trade the compensation proposal for winding up business. I believe that for some time in the future, many live chicken farmers, wholesalers and retailers in Hong Kong will choose to wind up their businesses. According to the Government, over 80% of the operators will choose to wind up their businesses. The Government expects that if the Finance Committee endorses the relevant papers, it will be possible to implement the relevant proposal. As regards the remaining members of the trade who wish to continue with their operation, the DAB believes that the Government must provide support to them. The main reason is that public demand for live chickens still exists and those members of the trade who are willing to continue with their businesses are very devoted to their trade and are also willing to continue to stand on their own feet to make ends meet. For this reason, after most of the chicken vendors have chosen to wind up their businesses, there is room for the Government to improve the surroundings of the remaining chicken stalls, so that they will not be so crowded. It will also be possible to rearrange the locations of chicken stalls to make improvements to the spacing of chicken stalls and the ventilation facilities.

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

Here, I hope the Secretary will consider installing air-conditioning in all markets because nowadays, without air-conditioning, markets will not be able to adapt to the expectations of the community. This is nothing extravagant, rather, this is a basic requirement. In addition, other vendors are concerned that if live chickens are no longer available for sale, fewer people will visit markets and their business will also be affected. In view of this, if improvements can be made to chicken stalls by improving the ventilation facilities and installing air-conditioning facilities in markets, I think that on the whole, this will be beneficial. At the same time, concerning the integration of

sizeable chickens farms with retail outlets, I think that even if the Government does not promote this trend, such a situation will still occur in the future and these businesses will still join hands to operate in a one-stop approach, so as to strengthen the tracking of the sale of live chickens and create a brand-name effect. For this reason, changes may occur in this regard. The DAB hopes that the Government and the entire live chicken trade can be mutually understanding and accommodating. The Government has to understand the operational difficulties of the trade and provide assistance whenever possible. The trade should also take into consideration public sentiments and actively negotiate with the Government, in order to work for a consensus and resolve the present dispute.

With these remarks, I oppose the resolution.

MR VINCENT FANG (in Cantonese): Deputy President, over 80% of chicken retailers, half of the wholesalers and the majority of poultry transportation drivers told me that having operated their businesses thus far, they are feeling very downcast and they are prepared to return their operation licences to the Government, get the money and quit the trade. However, I still support the motion moved by Mr Albert CHAN to repeal Legal Notice No. 185 of 2008, that is, to repeal the measure of "daily rest night" at retail outlets or "no overnight stocking of live chickens".

I support overturning this provision made by a negative vetting process because I take issue with what the Government has done on this occasion in seizing this opportunity to put an end to the live poultry trade for good using the "daily rest night" tactic.

The measure of "daily rest night" for chickens stalls came about because on the eve of the Dragon Boat Festival, the Government tested for and found the avian flu virus in the chicken excreta collected from the chicken stalls in the markets under the management of the Food and Environmental Hygiene Department (FEHD) and subsequently, the avian flu virus was also found in three other markets under the management of the FEHD. However, what is the source of the virus? So far, this has not been found out. Up to now, not a single dead chicken infected by the avian flu virus could be found and even in the wholesale market and in local and mainland licensed chicken farms, none could be found. Consequently, the Government pointed its finger at smuggled

chickens and even blamed the trade for being reluctant to report such instances, so it was reaping what it had sown.

Whose responsibility is it to intercept poultry smuggling? When Members blamed the Customs and Excise Department for not doing a proper job in interception, the Government asked an infectious disease expert, Professor YUEN Kwok-yung, to come to the defence by saying that the virus had probably mutated, thus rendering the vaccines ineffective. This struck fear into the public again, who are worried that there would be an onslaught of the avian flu virus soon. However, if the vaccines are really ineffective, it cannot be explained why only the virus in the markets of the FEHD has mutated but this kind of virus has not been found in local and mainland chicken farms. Therefore, the claim that the virus has mutated does not hold water.

In view of the fact that the three-week observation period as prescribed by the World Health Organization would end soon and if a second case was not detected, the sale of live chickens could resume. In addition, with the remark made by the trade that if the Government did not permit the resumption of business, it would not rule out applying for a judicial review, in order to seize this opportunity to ban the sale of live poultry completely, the authorities came up with this "unrivalled shrewd ploy" by exploiting the approaching end of the term of the Legislative Council and taking a two-pronged approach. On the one hand, through the negative vetting process, the proposal of "daily rest night" was introduced for live chicken retailers, to be effective from the day of resumption of business; on the other, it proposed to offer favourable terms to the retail trade in exchange for the return of licences, so an operator has to either accept the "daily rest night" proposal or take the money and quit the trade.

If the trades downstream wind up their business, those upstream will naturally go out of existence. Even though the next Legislative Council may vote against the "daily rest night" measure, that will happen only three months later. By then, the entire live poultry supply chain would perhaps no longer exist.

The ploy adopted by the Government this time around is really shrewd. It attacked and defeated the four major trades in the supply chain individually. The aim is to focus on assaulting the retail trade downstream by offering a sum equivalent to four to six times the *ex gratia* payment offered for the voluntary return of the licences in 2004-2005, so as to attract members of the trade to return their licences. However, with regard to the farms upstream and the

wholesale and transport trades in mid-stream, the terms offered are quite harsh. Anyone smart enough will see that without the trades downstream, it will be impossible for the mid-stream and upstream trades to survive. Those people in the middle of the supply chain do not have any bargaining power at all.

Deputy President, in fact, members of the trade who are willing to return their licences do not covet the compensation offered. They only had no alternative but to accept it because in the past decade, the Government has been finding all sorts of ways to "sap" them, including limiting the number of live chickens supplied by the Mainland to Hong Kong, slashing the number from over 100 000 per day at the peak to 20 000 prior to this incident. In addition, the number of chickens raised in local farms has been compressed all the time. Whenever avian flu outbreaks occurred in nearby regions, the Government would play up the matter by saying that the avian flu virus had mutated, the vaccines were no longer effective, and so on, thus scaring the public so much that they dared not buy live chickens. Should there be any suspected case, all businesses would have to shut down for a period of three weeks to three months. As a result, the livelihood of members of the trade is grossly insecure. However, the Secretary maintained that he had told them about this long ago and that this trade had risks, only that they were unwilling to quit, so of course, they have to shoulder the consequences.

This time, the Government has adopted the tactic of making threats and offering inducements to put a complete end to the whole live chicken trade. By inducements, of course, I mean the favourable *ex gratia* payment offered to retailers and as to threats, as the Secretary said, the condition of *ex gratia* payment is offered only for a limited period of time and for retailers, the deadline is 24 July and for wholesalers, the transport trade and farms, the deadline is 24 September. If the trade refuses to accept it, after the expiry date, if there is any outbreak of avian flu in the future, apart from the statutory compensation for the slaughter of poultry, the Government will not offer any more *ex gratia* payment or financial assistance to the trade for the loss it suffered. If this is not making threats, what is it? The trade has been subject to the oppression of the Government for many years and this time, it is obvious that even though there is not any sick or dead chicken, things have turned out to be the "last supper" for the trade. If the licences are not returned this time around, in the event of another outbreak later, all their efforts and money will go to waste, so they can only accept the compensation offered by the Government and quit the trade.

This measure taken by the Secretary is successful but the propriety of this tactic is questionable. We can see how great the grievance of the trade is. In the past fortnight, chicken farmers have gone to the Government House to stage petitions, and they have staged a sit-in protest at the headquarters of the FEHD. Moreover, when Vice President XI Jinping visited Hong Kong, they braved the torrential rain to stage a protest at the hotel by moving on their knees. The wholesalers also brought along some chicken cages to the outside of the Legislative Council to stage a petition. The drivers in the chicken transportation trade, apart from organizing a drive-slow protest round the wholesale market, have in fact also prepared two vehicles which they intended to torch on the road during the petition when the Vice President was visiting the venue in Sha Tin for the equestrian events. They subsequently gave up the idea after my advice to them that they should not damage the image of Hong Kong and should avoid unnecessary legal proceedings.

Why is the Government suddenly so eager to put an end to the live poultry trade? Each time the Secretary made a response, he would say, "Avian flu threatens the lives and health of people. In 1997, six members of the public lost their lives to it. Like other flu viruses, the avian flu virus will keep changing in response to the environment and its host. Health authorities worldwide are therefore constantly vigilant in order to guard against an outbreak of the disease.". However, last week, when the Secretary made these remarks, the Government had lowered the Response Level for avian flu to the Alert Response Level. Besides, in the papers submitted to the Legislative Council by the Food and Health Bureau on measures against the avian flu, it was said almost every time that "Hong Kong has all along won international praise for its efforts in guarding against the avian flu.". Despite such a favourable opinion, it turns out that our Government is taking the lead in destroying it as it wants to completely eliminate the live poultry trade. If we look at other advanced countries in which avian flu outbreaks have occurred, such as the United States, the United Kingdom, Japan, Korea and even the Mainland, chickens are still being raised and fresh chickens are still available.

In addition, the avian flu vaccine will soon be available and Professor YUEN Kwok-yung has also successfully researched a way to treat the avian flu. In my view, the Government is very eager to put an end to the live poultry trade for good because after the Panel on Food Safety and Environmental Hygiene had opposed allowing the central slaughterhouse to become a monopolistic

slaughtering and processing centre in Hong Kong, the potential bidders believed that relying on the chicken slaughtering business alone was not commercially viable and therefore, they gave up making any bid. In view of the unlikelihood of establishing a central slaughterhouse in 2010, the Government took this opportunity of finding the virus to make a pre-emptive strike.

Although the Secretary stressed that chickens and humans had to be segregated in Hong Kong, he also said, "I believe that there is still room for survival for local farms. They can continue to sell live chickens. Some local farms are now actively working on the one-stop operation mode.". I also gather that some local brand-name farms are indeed acquiring other farms and the licences of retailers, with a view to establishing a one-stop business under the "From Feed to Table" concept, so that they can also undertake the slaughtering of chickens and then supply the chickens to the market.

Originally, such a mode of operation is preferable. However, since this occurs only after the Government has devised a number of plots, this move is questionable. Furthermore, only the more robust and big companies are financially strong enough to refuse the Government's *ex gratia* payment and stay in business. As regards those small and medium enterprises (SMEs) that depend on the live chicken trade for survival, they cannot possibly hold on anymore and can only get the money and leave the trade. However, is it fair for the Government to force SMEs to close down by means of such a tactic, so as to hasten the birth of one-stop enterprises in the live poultry trade? The Government claims that it is against monopolization and wants to introduce a fair competition law. However, in this measure to put an end to the live poultry trade, what principle of fairness has the Government adopted?

When Vice President XI Jinping, visited Hong Kong, he asked our Government to be "understanding and reasonable; unified and efficient" but in this whole incident, not only is it "not understanding and not reasonable", it even wants to attain its goal by causing divisions in the trade. I do not believe this is what the Vice President means by "strong governance". In view of the high inflationary pressure facing the entire community at present, can the Government make reference to the remark made by the Vice President urging us to "understand, support and co-operate with each other" and give small businesses some breathing space for the time being? The people who will quit the trade are mainly middle-aged or even older people with a low education standard and no

other skills. Even though they have \$2 million or \$3 million in their hands, their money is just "dead money" and it will be spent sooner or later. In that event, will this group of people become a burden to society?

Deputy President, when I was drafting this speech, I felt more and more indignant. Although I understand that there is no absolute fairness in this world, I cannot refrain from speaking and lobbying on account of this. Therefore, in order to do justice to my sector, I support the repeal of the legislation on the measure of "daily rest night" at retail outlets. I so submit. Thank you, Deputy President.

MR WONG YUNG-KAN (in Cantonese): Deputy President, concerning this subject today, in fact, it can be said that the Government must assume some responsibility. Although it looks as though the Government's hands were forced by farmers, wholesalers and retailers, in fact, the opposite is the case and it is the Government that is forcing the trade to "fold".

Of course, as the representative of the trade, I have all along I joined the Legislative Council in 1997 and in 1998, there was an outbreak of the avian flu. Everybody was very concerned about the places used by the trade. The Government often says to us that our chicken farms and retail outlets are located amidst crowds of people and should any incident happen, it would be impossible to contain it. In 2001, Professor YUEN Kwok-yung also told us in this Chamber that should any incident happen (at that time, Secretary Dr York CHOW was not yet in office and the Secretary then was Dr YEOH Eng-kiong), hundreds of thousands of people would perish and people would definitely be infected, so there was no room for discussion and this trade had to be eradicated.

From 1997 to 2001, the thinking then was that this trade had to be exterminated and keeping live chickens overnight could not be allowed. No live chickens could be allowed to exist in the community. At that time, we asked the professor based on what rationale he told us that in the event of an outbreak, hundreds of thousands of people would perish. The professor said that this was a possibility. At that time, I felt very angry and told him that although he was a scholar, professor and dean, he was making a judgment based on possibility. I believe that if we follow this argument through, human beings probably would not exist in this world. Why? Because a lot of things can cause great fatalities. To give a very simple example, even with regard to

sneezing, in the Government's announcements of public interest (APIs) nowadays, the very first thing mentioned is the avian flu and the public are told not to come into contact with, look at and touch chickens, while the common flu is mentioned only afterwards. The Government just thinks very little about anything else and of all things, it talks about the avian flu first and the source of the common flu is completely attributed to the chickens. What I want to say is that for a number of times, I invited this professor and the committee on food safety of the Government to communicate with the trade to see how improvements can be made within the trade. A decade has passed and this gentleman or professor and even this group of people have always been unwilling to meet our retailers, wholesalers and chicken farmers, as though we are beasts and that they would perish should they meet with us. Therefore, I think this is very unreasonable. In view of this, I believe the Government has also listened to the views of these experts and thinks that actions must be taken now. Since the source of the virus in the excrete could not be identified and nothing could be found, if things go on like this and should someone die, no one can be held responsible. This makes the Government extremely nervous.

I remember that in 2002, when Mr TUNG was still in office, I heard him make one remark, "We must achieve the target of zero infection.". In fact, to be honest, who can control diseases so well as to reach the point of zero infection? Which Government is capable of doing so? I wish to ask our Secretary, since he came from a medical background, if it is possible to achieve zero infection. Even though we often say that AIDS can be fatal, we cannot achieve zero infection, mate. At present, the whole world is working on this matter, including our Chinese Government, and everyone is taking preventive measures. I think this is a very big problem.

Moreover, at present, among the people around the globe who come into contact with live chickens every day, apart from the avian flu outbreaks in Vietnam and other countries, can Members consider how many people among those who come into contact with live chickens were infected by the disease? Not to mention the several thousand or 20 000 to 30 000 people in Hong Kong, a considerable number of people have come into contact with live chickens before. In our China and in Guangdong alone, 3.2 billion chickens are being kept, so does it mean that those people are not afraid and we are the only ones who are afraid? I am worried that even if the Government eradicates this trade, it will still be impossible to predict the outbreak of avian flu. At that time, we had discussions with Professor LEONG Che-hung a number of times, saying that if

the position of the Government remained the same, we were concerned that should any disease occur, it would be impossible to know where the disease came from and how it emerged because live chickens would no longer exist, so how do we find out what caused the illness? Should any incident occur, I wonder to whom the Government can shift the blame? In that event, perhaps it would shift the blame to chilled chickens or some other thing.

However, I think that at present, we can find through recent media reports that society and the World Health Organization have adjusted the alert level for avian flu downwards, that is, it does not appear as horrible as before. This is because a decade has passed and in the past decade, when the avian flu appeared in countries such as Vietnam or Thailand or in some other backward countries, since people came into contact with the disease only for the first time, they had little understanding of it. That was also the case in Hong Kong. When we came into contact with it for the first time, no one had any idea what was happening but now, the numbers of avian flu cases in other countries are on the decrease. Therefore, I hope the Government can reflect on this a little. If we continue to rely on those microbiologists to deal with the diseases in Hong Kong, I am very concerned about this. If we talk about how very incompetent they are, one example is that they are incapable of solving the problem of the hand, foot and mouth disease even now. Where does the problem lie? It lies in the excessive trust that the Government places in this group of people. Whenever something happens, schools are closed and classes are suspended. If this situation goes on, whenever something happens, all we know is just one thing and that is, to kill and to suspend, so as to prevent something from emerging. Will this work? In fact, my intention in speaking today is not to offend the Secretary. I only want to point out that the Government is relying too heavily on those people. For a decade, I have been saying that I want to talk with those people but still, this cannot be done. On one occasion, a group of wholesalers, retailers and chicken farmers went to the University of Hong Kong to stage a petition. At that time, Professor TSUI Lap-chee told us not to be so irate, saying that he would talk to those people. Why? We only wanted to have a discussion with them. If the Secretary still relies on those people as his behind-the-scene advisors or consultants, I think this will surely be terrible. At that time, I also said that doing so would surely lead to problems because he was incapable of containing diseases and whenever something happens, he would deal with it as a microbiological infectious disease. In that case, if some serious incident happens in the future, what should one do?

We often say that the Centre for Food Safety should put more veterinarians in charge. We once made a visit to the United Kingdom and France together with Mr Fred LI and there, these diseases are dealt with by veterinarians, instead of letting doctors solve the problems. Even in the European Union, this approach is also adopted. In view of this, why is our Government still sticking to its present approach? I really find this very strange.

Of course, it can be said that the compensation being offered is closely related to a large group of people. As we all know, in the past, there were more than 160 farms but now, only 50 farms remain and the number of people at the wholesale and retail levels has also dwindled from a large group to a small number of people. Now, the Government even wants to get rid of them. People in the trade find that business operation is increasingly difficult. Moreover, I believe the Government also has to take into account the fact that in the future, this group of people will become its burden. It must not think that all problems can be solved just by giving them some money now. To take our fellow workers as an example, can the Government solve the problem just by giving them \$35,000 each? I do not think this matter can be resolved merely by doing so. First, their education standard is not high; second, they cannot switch to other trades and thirdly, they are old. Most of them are in their fifties and sixties, so what other trade can they switch to? No one would even hire them as security guards. Therefore, if the Government does not consider these matters, I think this is a problem.

In addition, today, I will say once again that we do not know where wet markets are headed in the future. After live chickens are no longer available for sale, how many people will still visit wet markets? If we talk about the transfer of benefits, to put it meanly, it seems the Government is transferring the benefits to consortia because at present, there are a lot of supermarkets everywhere. I do not know if the Government thinks this way but as I see it, everyone is very concerned that this will happen. I think the Government must also consider the future livelihood of this group of people. Although some people say that farm operators can get nearly \$15 million and that this is a large sum of money, but after paying their debts our brothers in the wholesale and retail trades are worried that they cannot get back the money they are owed. After this group of people have repaid their debts, little money will be left. If Members do not

believe this, they can conduct a survey on their own to see if this is the finding because the Government may think that we are scaremongers.

Therefore, I hope that when solving the problems relating to compensation, the Government will not just think about solving the problems relating to chicken farming, wholesale, retail, slaughtering and the workers concerned. Some relevant trades, for example, the day-old chicken trade, have not received any attention from the Government. This is very simple. Without day-old chicks, how can people raise chickens? Although initially, the Government said that incubators could be used for the job, so far, not many chicken farms have them. Therefore, I hope the Government will consider examining how day-old chicks can be imported to solve some of the problems.

Of course, Mr Vincent FANG and the Chairman of our party also said just now that at present, there is a group of farmers who do not really wish to get compensation from the Government because after getting it, they will lose their livelihood and will have nothing to live on, so what can they do? They can only group together and turn to other retail outlets or they can co-operate with one another in the hope of preserving this trade. There are some people who want to get into the business of raising brand-name chickens. I wonder if the Government has some desirable ways to assist them in the future. Hong Kong is located in Guangdong and the Cantonese love to eat fresh chickens. One clear example is my younger sister. There are four members in my family and every time she buys fresh chickens, she will buy two for the whole family. I once asked her why she had bought two chickens, even though there were only four people in the family. However, it only took us one day to consume two chickens. This shows that Hong Kong people love to eat fresh chickens.

However, I think that in the future, the Government also has to review its policy. If there are indeed some farms or people who have invested in the operation of modernized farms or have achieved a larger scale of operation and are at the forefront of the world in various areas, including in disease prevention, and these farms are considered very advanced even in our country or in the world, I think the Government may consider allowing these people in the trade to engage in chicken farming again or to operate a "one-stop" business. If they can continue with their business operation, everyone can make a living, so why not do such a desirable thing?

The measure taken by the Government against us on each occasion is that of extermination. The trade, me included, is in fact very unhappy about this because before I became a Member, I was a fish farmer, so I understand their way of thinking very well. I could see those fry grow up into fish and that was very delightful. However, even such sights will no longer be seen because without day-old chickens and with no one to raise chickens, nothing whatsoever will be seen. Of course, the Government says that it plans to teach them to practise organic farming or some other trade but I wish to tell the Government that in order for them to practise organic farming, the Government must first establish a market properly and provide certification to their farm produce. It must not label farm produce from all over the world as organic food casually. If it is possible for Hong Kong to do something, the Government must do such things properly for them, so that when these people switch to other trades, they can find new opportunities. We must not say all the time that they should fend for themselves. It is not possible for them to do some of the things and they must have the assistance of the Government before they can do a good job in this trade.

Therefore, I hope that in the future will I support the motion moved by Mr Albert CHAN? I will abstain and will even leave this Chamber because I am very unhappy. This trade will be gone. Although there will still be some people in this trade and some people working in this trade will stay in it, I think that of course, I am not against the direction taken by the DAB but insofar as I am concerned, I will leave and will not vote.

Deputy President, ever since I joined the Legislative Council, on seeing how the Government has been finishing this trade off, I feel a great deal of unease. The Government treats all trades with the same approach: It never gets in touch with you or discuss with you. Each time, it would only deal with a matter from the viewpoint of experts. Even in a large society like the Mainland, the chicken farming trade will sit down to have discussions together with farmers, so why are we bent on eliminating this trade in Hong Kong?

Deputy President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, Mr TAM Yiu-chung said just now that tonight, perhaps due to the fact it is now late at night, the voices of Honourable colleagues were a bit flat. However, I think

that apart from this reason, another possible reason is that we — or rather, some Honourable colleagues — think that, as Mr WONG Yung-kan put it, the Government is watching the trade perish (I think what will perish is not just the trade but also a culinary culture, in particular, the culinary culture of eating fresh chickens may also disappear soon), so naturally, they feel depressed and it is difficult for Members to speak cheerfully and raise their voices.

This motion moved by Mr Albert CHAN proposed the abolition of the policy of "no overnight stocking of live chickens". In fact, the Secretary is really issuing a very, very serious challenge to the health of the community, traditional culinary culture, that is, the culinary culture of eating fresh chickens and the survival of the chicken farming industry. Deputy President, why do I say so? In fact, although the measure of "no overnight stocking of live chickens" appears to be very simple, the Secretary has forced the trade to accept one of these two options: Either accept the measure of "no overnight stocking of live chickens" or return the operation licences and wind up the businesses. Only these two options are available and apart from them, there are no other alternatives.

Deputy President, this is what I am unhappy and dissatisfied with. Several Honourable colleagues also said just now that this was a kind of coercion. In fact, I think not only is this coercion, this also shows the incompetence of the Secretary because the duty of the Secretary is not to take the easy way out. His duty should be to study how, in view of the three areas that I mentioned just now, he can preserve both the trade and the traditional culture of the community and ensure that they remain unharmed. This is what matters the most. However, to the Secretary, this matter is very simple. Once the avian flu virus is detected, all chickens will be killed. This sounds very simple. In addition, what is the ultimate aim of these two methods, that is, the measure of "no overnight stocking of live chickens" and winding up business? Ultimately, it is hoped that the chicken farming industry will disappear altogether and after that, one will have the peace of mind and there is no need to worry about any future sudden outbreak of avian flu and not knowing what to do any more, and there is no need to fear criticisms from other people and accusations from the public that the Government has not performed one's duty properly. In order to avoid such criticisms, this convenient and easy approach has been adopted, so I think it is indeed a very easy task to serve as the Secretary.

Just now, several Honourable colleagues pointed out that in the past decade, the trade and Honourable colleagues have continually offered a lot of advice to the Government, hoping that the problems relating to the chicken farming industry could be dealt with more effectively or properly and the outbreak of avian flu could be avoided. However, I hope the Secretary can do some soul searching by asking himself — although this is not entirely the responsibility of the Secretary — what efforts the Government has made from the beginning to now? What methods has the trade proposed to avoid an outbreak of avian flu? I think the measures taken by the Government number no more than all the fingers on both hands.

I think that since this problem is so important, as a Secretary, he should first consider how to ensure the survival of the trade and preserve a traditional culture, as well as taking into account how the health of the community can be protected. It is necessary to give consideration to these several points. However, it turned out that the Secretary simply said "kill the chickens", carry out cleaning and that was all. This is really as simple as it can be. Before this so-called "no overnight stocking of live chickens" policy was introduced, in fact, this measure had already been implemented in Macao and Mr Albert CHAN also pointed this out just now. He proposed this measure five years ago but did the Government deal with this matter and discuss it with the trade? Deputy President, very regrettably, the trade told me that not to mention the Government's attitude back then, even in the very tense period at present, when the trade wanted to make an appointment to meet the Secretary to talk about the policy of "no overnight stocking of live chickens" and how compensation should be offered, the Secretary still said that he had no time to see them. Can we describe this attitude as dealing with the problem conscientiously? On such a serious and major issue, the Secretary could go so far as to say that he had no time to meet those people and discuss the issues. What actually is the Secretary doing now?

When it comes to this trade, I agree very much with the comments made by Mr Vincent FANG just now and his speech is an excellent one. He reflected a lot of problems and in particular, when he talked about the operation of the trade, he pointed out that this was not just a matter concerning the chicken retail trade, as the transportation trade was also involved. All these people are members of the grassroots. However, the Secretary has paid no heed whatsoever to this and he just arbitrarily offers them a compensation of some \$30,000 and thinks that will do. Can he see the difficulties they are facing and

how they can make a living in the future? They have neither skills nor experience, so what can they do? It looks as though the Secretary is granting them an imperial favour and he thinks that offering to them tens of thousands of dollars in compensation is already enough. However, is it really enough? Although compared with their monthly wage of several thousand dollars, a sum of some \$30,000 is equivalent to three to four months of their wage, it seems to me that this amount is just like payment in lieu of notice. What does it amount to? However, this trade will have to vanish afterwards. If the money were payment in lieu of notice, even if one does not work in one company, one can still work for other companies and an entire trade does not have to disappear altogether. However, at present, an entire trade will disappear, so how can they make a living? I wonder if Members have thought about the difficulties. However, my heart is aching for this trade because it will disappear altogether. Of course, it may be a bit high-sounding to talk about traditional culinary culture but in fact, this is nothing high-sounding. Rather, this is a tradition, not something invented by me. Why do we not consider how to protect and preserve it? This is also very important.

Of course, Members will ask: Do we not have to care about physical health? Of course, we agree that this issue must be treated seriously. However, as a number of Honourable colleagues asked just now, were the incidents of avian flu that occurred within this period of time really very serious and did they happen frequently? At present, is it really impossible to prevent or avoid them? We must keep asking these questions. The Secretary wants us to accept his ways, that is, the "no overnight stocking of live chickens" measure and the compensation proposal. However, earlier on, when the Secretary requested the trade to carry out large-scale cleaning, did it ever occur to him that he had to support our friends in the trade? The Government requested members of the trade to stop doing business on Wednesday and they complied. It requested members of the trade to clean their stalls and they complied. It requested members of the trade not to do business and they complied. However, how can members of the trade earn any income? The Government did not care and only told them to take care of this themselves. Members of the trade have to rely on their businesses for a living and if they stop doing business for a couple of days, they will not have any income, so may I ask the Secretary how they can make a living? The Government does not provide any support to them. This is why today, the Secretary said that many members of the trade were willing to return their licences and leave the trade.

In fact, Honourable colleagues are very right in saying that members of the trade who are willing to return their licences are just like residents in public housing estates. Many public housing residents want to buy the public housing units in which they live. What is the reason for this? In fact, public housing tenants cannot add any new family member to their households and the Government often increases their rent or collects double rent from them. For this reason, they would rather buy their public housing units. I said "they would rather" do so, but they do not really want to. Now, members of the trade say that they would rather wind up their business and get a sum of compensation to put an end to this matter. I say "they would rather" do so but they are not really willing to do so. Why? Often, the Secretary himself also says that in fact, the trade has to take risks. What sort of risks? It is the risk of being asked all of a sudden to carry out cleaning or one thing or another. They cannot possibly carry on like this.

In the past few years, the Government kept asking members of the trade to do this or that from time to time. They did what they were told to but no support was provided to them. Had the trade been requested to stop doing business and carry out cleaning and had the Government provided support to them, it would not have mattered. However, the Government did not provide any support whatsoever. The Government only thinks that the trade is involved in commercial operations, so why should support be provided to them? The trade must take the risk and assume responsibility and that is it. I think the Government is being irresponsible in adopting this approach because this problem is not created by the trade itself; rather, it is a problem stemming from the natural environment. Why must the trade shoulder all the responsibility on its own? Why does the Government not share the responsibility? This is not just a problem for the trade; rather, it is a problem for all of us. However, the trade is asked to shoulder sole responsibility, whereas other people do not have to. Insofar as this issue is concerned, I think this is very unfair.

Now, the Secretary says that the aim is not to exterminate this trade and if possible, it is hoped that 15% of the members of this trade can be retained, so as to enable the trade to continue to operate. Just now, Mr Vincent FANG put it very well when he said that this had the effect of eliminating the weak and keeping the strong. The fitter one is, the greater the chances of survival, whereas the weak are all eliminated. What we are doing is the opposite of what the Government is doing. We wish to speak up for socially disadvantaged

groups, whereas the Government wants to trample on and exterminate them, keeping only the fittest who have the right conditions to survive. What sort of society is this? Never mind this cruel reality of the survival of the fittest but has the Government ever assisted the weak? I really feel very unhappy because I think that on the face of it, these two so-called policies this time around have the health of the Hong Kong public as their foremost consideration, so they were proposed and the trade is asked to accept them. However, I think the situation they face is one between the devil and the deep blue sea: Either they wind up their businesses or they cannot retain their live chickens overnight. Fortunately, insofar as this measure of "no overnight stocking of live chickens" is concerned, members of the trade can still find a little room for survival. After they have got used to this measure, some operation can still be maintained. However, is the situation really so ideal? In the long run, is it really so desirable? In fact, I am feeling concerned. I am concerned that this practice can only be sustained for a period of time but in the long run, the trade will gradually shrink.

I do not agree with any of these two policies. I hope the Secretary can reconsider how to strike a balance among the following three major areas, so that the trade can survive, our traditional culinary culture can be preserved and public health can be safeguarded. I hope the Secretary can give more thoughts to these three areas and will not land us in a situation of taking care of one at the expense of the other. Deputy President, I so submit.

MR FRED LI (in Cantonese): Deputy President, I too do not intend to read out my speech because I want to respond to the comments made by some Honourable colleagues. I think some Honourable colleagues have not fully grasped what the present problem is.

(THE PRESIDENT resumed the Chair)

Just now, Mr LEUNG Yiu-chung described chicken vendors in such a light that it looks as though they were all very poor and socially disadvantaged but in fact, this is not the case. What Mr LEUNG Yiu-chung should do is to lobby for the workers of chicken stalls instead of speaking for their employers.

Some chicken stall owners are very rich and of course, some others are very poor. However, I hope we will not paint all of them with the same brush and say that all of them are socially disadvantaged. This is not so. Instead, we have to lobby for the benefit of chicken stall workers. Why? The problem now is that it cannot be proven that these workers work for chicken stalls because they have not been enrolled into MPF schemes and many of them are paid \$400 or \$450 in cash as the wage on a daily basis.

In the last adjournment debate, I said that these workers fared the worst because they could not get that sum of compensation amounting to \$35,000, never mind whether the sum should be \$35,000 or what. When the Government offered compensation on the last occasion, some of them could not get any compensation because those unscrupulous employers made use of their relatives to deceive the authorities by claiming that their relatives were the workers of their chicken stalls, then pocketed the compensation for workers because these workers cannot produce any proof. Therefore, I told the Secretary that in contrast to the compensation amounting to more than \$1.1 billion, the compensation for a worker amounting to \$35,000 was really humiliating but if the workers could not get any compensation at all, it would be an even greater humiliation. For this reason, I demand again that in this regard, the Secretary should make things easier for chicken stall workers who cannot produce any proof. I think this is what we should lobby hard for and what we have to do.

Next, talking about this being a natural phenomenon, Mr LEUNG Yiu-chung, this is not necessarily a natural phenomenon. Why are the four markets involved all under the management of the Food and Environmental Hygiene Department (FEHD)? In fact, we have to investigate this and this may not necessarily be a natural phenomenon. Members can see from the video footage that ever since the resumption of the sale of live chickens on 2 July, people are still having very close contacts with live chickens when they buy chickens. When they want to look at a chicken, they would pick it up immediately and would even blow a puff of air onto it. This is the traditional method but in fact, it is also the most dangerous method. Therefore, such practices are still allowed in markets and those segregation measures are just gestures. If this goes on, although I do not want to see any risk, the risk is still very great. Therefore, this is not necessarily a natural phenomenon. Although part of the problem can be attributed to natural causes, there is also the human element of inadequate oversight. Together with factors over which the

trade has to assume responsibility, the H5N1 virus was found in the samples of chicken droppings taken from those four markets.

Some people say that this is the consequence of selling smuggled chickens, so who is selling them? Again, it is some members of the trade. I once had a discussion with the stall owner of a large chicken retail stall. He has a number of stalls and is quite well off. He said someone once asked him if he was interested in buying chickens at \$12 per catty. Those were smuggled chickens. He said that usually, the import cost was \$16 to \$18 per catty, so the profit margin was quite great. If he had been unscrupulous and bought those chickens, he could have made a lot of money. The question is: Where did those chickens come from? He did not know. He only knew that the price was cheap and one should not ask so many questions. If there are people who, unlike my friend, act unscrupulously by procuring this kind of stock and selling them — and there are indeed such cases — is this a natural phenomenon? No. It is a man-made one and there are malefactors in the trade who sell these chickens of unclear origins at the retail level. Are there such cases in those four markets? I do not know but I harbour a very strong suspicion. However, the sale of smuggled chickens really exists and there are also some malefactors who do this in chicken stalls. I think these people have to be condemned because they have dragged the whole trade into troubles, have they not? They have dragged the other chicken vendors into troubles.

Going back to this proposal of "daily rest night", had this proposal been made five years ago, I think the shock to and the opposition from the trade would have been even greater. Macao has implemented the "daily rest night" arrangement since two years ago and with this arrangement, the Government may perhaps get some backing by saying that since this measure is being implemented in Macao, Members can consider what should be done. If this proposal had been put forward five years ago, since no one had adopted such a measure at that time and Macao had not yet introduced this measure, if we had taken the lead in implementing it, I think it would have been practically impossible to raise the "daily rest night" proposal in the first place. Even when we proposed introducing an additional half day of business suspension, everyone was already protesting loudly, saying that it was over the top and very difficult to implement, let alone the "daily rest night" proposal. This is a fact, is this not?

I think the Member representing the trade is very devoted to his duty and the Secretary is also very accommodating but up to now, problems have kept occurring. Despite the passage of several years, such a situation has occurred

in the four markets managed by the FEHD, so the FEHD has to do some soul searching properly. Why has nothing of the sort happened in the markets managed by the Link Management? Of the 469 fresh provision stalls, half of them belong to the FEHD but why do the four markets in these incidents all belong to this half? Why is its record so bad? Such cases could also be found in the past. The Yeung Uk Road Market and Tai Shing Street Market are also under the management of the FEHD. I think there are indeed areas that the Government has done a poor job, for example, in ventilation, supervision and cleaning. This cannot be considered a natural cause; rather, it is a human problem. Unfortunately, this problem still exists.

In the future, will live chickens still be available in Hong Kong? The Democratic Party conducted a territory-wide public opinion survey in mid-June, which is quite recent, and found that 70% of the people still hope that live chickens would continue to be available. I think many Honourable colleagues have already voiced this view and this is a fact. I have personally gone to the Tai Shing Street Market to poll 300 persons who were shopping there and 70% of them also expressed the hope that live chickens would continue to be available. However, 60% of them supported the Government's "daily rest night" proposal. We asked them in particular if they supported the Government's present proposal of "daily rest night" to prohibit overnight stocking of live chickens and 60% of them expressed their support, 20% did not support it and the other 20% had no opinion. Therefore, in fact, the Democratic Party has considered many aspects of this issue and I think the public support this measure very much. Moreover, the "daily rest night" proposal will be conducive to reducing the risk of selling live chickens to a minimum.

I have also discussed this issue with some doctors. I think it can be said that in the medical profession, it is not just Professor YUEN Kwok-yung but all doctors are in support of this measure unanimously. What I mean are doctors, not necessarily veterinarians. Doctors with whom I had discussions all supported the "daily rest night" measure. Moreover, in the long run, they also support stopping the sale of live chickens because Hong Kong as a city is too densely populated and people of all ages would visit markets. Even old women would take their grandchildren along to the markets to pick chickens. They would use their hands to pick up and choose chickens. Such sights can still be seen in markets. What can we do? If it is said that this is tantamount to "trimming the toes to fit the shoes", there is nothing we can do because it is practically impossible to carry out monitoring and there are still members of the

public who fearlessly pick up live chickens, blow a puff of air onto them, and so on. In doing so, they make chicken feathers and droppings fly everywhere. If the chickens are not infected by virus, all would be fine but what if they are? In addition, the virus can incubate for several days.

Therefore, in these circumstances, the "daily rest night" proposal will be able to reduce the risk to a minimum. I do not mean that there will no longer be any risk. The risk will still be there. If we implement total human-and-chicken segregation, there will not be any risk any more and this is the so-called central slaughtering option to be introduced in the future. However, there has been news from the Government that it may not be necessary to implement central slaughtering because at present, the number of chilled chickens consumed in Hong Kong stands at 80 000 to 100 000. Honourable colleagues, I have also conducted some studies and found that the greatest numbers of chilled chickens are sold not by the two major supermarket chains, so please do not think that once central slaughtering is implemented and only chilled chickens are available in the market, the two major supermarket chains will monopolize the market. This is something that I am very concerned and worried about but I have discussed this matter with fellow members of the trade selling chilled chickens — they are not exactly my fellow members since I am not in their trade — and they are doing good business and outdoing the two supermarket chains significantly. According to the figures provided to me by the two supermarket chains, I found that the number of chilled chickens sold by them has not increased but fresh provision shops and frozen meat shops are doing good business selling chilled chickens. Therefore, I now feel more at ease because all along, I have been concerned about such issues as fair competition and monopolization, so this has always been a matter of concern to me.

At present, we can see that many shops are still highly capable of competing with the two major supermarket chains in selling chilled chickens. In the whole incident, local farms are the most innocent. I will say this again. This time, the 50 farms in Hong Kong are the most innocent. No problem was found in them. I think that the one-stop approach, whereby they would undertake wholesale and operate their own retail service, with the Government monitoring them, is a long-term proposal worthy of consideration because it is practically infeasible to implement central slaughtering in Hong Kong. As far as I understand it, the cost of a chilled chicken from the Mainland is \$1 but the cost of slaughtering a chicken in Hong Kong is \$7, so how possibly can this be competitive? If it only takes several hours to transport chilled chickens from

the Mainland to Hong Kong and it only takes a couple of hours more for them to reach Hong Kong compared with chilled chickens produced locally, what difference would this make? There is no difference unless the latter are freshly slaughtered chickens. The Government also once raised the idea of freshly slaughtered chickens, that is, after the chickens are slaughtered, they are not chilled and are delivered to restaurants when they are still a bit warm, so they will taste just like fresh chickens. However, the Government did not say whether it would permit this arrangement of providing freshly slaughtered chickens. If central slaughtering is implemented in Hong Kong, what is likely to survive competition is local brand-name chickens, such as Kamei chickens and Tai On chickens. These chickens are raised by local farms and they are well-received by the public. Even though they are more expensive, the public are still willing to buy these chilled chickens slaughtered locally. Another possibility is freshly slaughtered chickens, but if the Government does not pursue the option of freshly slaughtered chickens and does not pay much heed to brand-name ones, it is impossible for chickens from the local central slaughterhouse to compete with chilled chickens imported from the Mainland. Therefore, what is now sold in the market are all mainland chilled chickens, except another kind of chilled chickens which are flown from France to Hong Kong and sold for \$300 to \$400 each. However, they are not chickens that you and I would eat. The Secretary may perhaps eat them. Therefore, I believe that to implement a measure that will enable the public to buy chilled chickens from the Mainland will definitely be easier than to implement central slaughtering in Hong Kong.

President, on behalf of the Democratic Party, I wish to point out here that we have all along been dealing with this problem very solemnly and we also hope that a balance can be struck among the demands of various parties. The Government now proposes that compensation amounting to \$1.1 billion be offered and I think this is taxpayers' money, so it must be used prudently. Similarly, on providing disaster relief to Sichuan, we also have a lot to say and a lot of views on that sum of money amounting to \$10 billion.

We are looking at this issue in a reasonable light. What we are most concerned about is the couple of workers hired by the owner of a chicken stall to slaughter chickens. I think they are most prone to be left out this time around. Moreover, they are people at the grassroots who are the most disadvantaged and helpless. The entire Legislative Council should compel the Government to find a feasible way to assist them under this \$1.1 billion proposal. The workers

involved may only stand in the hundreds. About 469 stalls are at stake and at the most, about two workers work for each stall. The number of people will not be very great but I think that these several hundred people need our care and support the most. All along, they have been the victims. They have not been enrolled into any MPF scheme, they do not have any employment record, and they are not entitled to any sick leave, annual leave or statutory leave. They have nothing whatsoever. If they work for one day, they will receive the wage for the day. We must help this group of people secure this compensation offer amounting to \$35,000, even though it is not very attractive.

With these remarks, I wish to state that the Democratic Party does not support the motion moved by Mr Albert CHAN.

MR TOMMY CHEUNG (in Cantonese): Madam President, I agree that public health is very important. If avian flu is a serious threat to Hong Kong people, it gives no cause for much criticism when the Administration takes resolute actions and asks for the co-operation of the live poultry industry in suspending their operation until the threat has been eliminated.

In fact, since I joined the Legislative Council in 2000, whenever avian flu incidents took place, I acted as a bridge between the Government and the industry so that efforts would be made in respect of hygiene and prevention, with a view to reducing the chances of infection among the people, and the results are not bad. However, from the 7th to 11th last month, the avian flu virus was found in chicken excreta in four Food and Environmental Hygiene Department (FEHD) markets. The Administration immediately suspended the operation of the whole live poultry industry. Even though the avian flu virus has not been found in the tests on live chickens from farms and at the wholesale and retail levels, except in chicken excreta, and there are no sick or dead chickens, and nobody has been infected and there is no sign of health hazard, the Secretary still does not allow the industry to resume business in the markets. Indeed, is that necessary?

The Secretary has acted in a tyrannical and hegemonist manner by insisting on the gazettal of the policy. Mr Vincent FANG and I are very dissatisfied. On the ground of reducing the risk of avian flu, the Administration suddenly introduced the "daily rest night" proposal. Nevertheless, the proposal actually represents an important change made by the Government. On the

surface, it is an interim proposal before the implementation of the central slaughtering of live poultry scheme. In fact, it signifies that the central slaughtering scheme will be stillborn. This is indeed a serious matter which is not discussed in the Legislative Council beforehand and on which extensive consultations have not been conducted. Yet, the Administration is bent on having its own way and has neglected the strong opposition of the industry. This proposal was rashly published in the Gazette and implemented on 2 July.

Implementing the "daily rest night" proposal is definitely better than not implementing it, and it seems to be easily acceptable by the people. However, the Administration has not given any data to explain the extent to which the risk would be reduced after the implementation of a "daily rest night", though there will certainly be a lower risk. I also think that the risk would be reduced, but by how much? One ten millionth or one tenth?

The Secretary has also remarked that the avian flu virus was found in the FEHD markets this time, and as Mr Fred LI — he is not in the Chamber now — has said a while ago that there are many smuggled chickens, where have these smuggled chickens come from? We have discussed this issue for a long time because the Secretary often tells us that the number of chickens supplied to Hong Kong should be limited to 10 000 or 20 000. Later on, he kept lowering the number of chickens, thus pushing up chicken prices. A chicken is sold for RMB 30 yuan in Shenzhen but \$80 in Hong Kong, so how can it not attract smugglers? When there is heavy taxation and a quota system, the prices are always pushed up, and people are always forced to engage in smuggling. Therefore, when it is said that the avian flu virus has been found at the FEHD markets, and the source of infection is smuggled chickens, President, how can a ban on overnight stocking of live chickens put an end to chicken smuggling? According to the Secretary, counting the number will become easy, but I do not understand why counting would be easier. Is it necessary to count the number when there is no chicken left at night time? An inspection is not conducted in the morning; if the smuggled chickens are sick, the chickens will still be sick.

During the adjournment debate last week, I already explained that the Administration, in claiming that the "daily rest night" proposal was made for the sake of people's health, was like chanting an election slogan. I think the Secretary would surely win if he participates in an election. In fact, it is just a slogan-like tactic, and a sinister measure to compel the industry to give in.

We should know that Macao is the only place in the world that puts a "daily rest night" into practice; however, the retailers there can collect chickens from the wholesale markets at any time. There are only dozens of chicken stalls in Macao which is a smaller place than Hong Kong, and it takes less than half an hour to travel from the farthest chicken stall to the wholesale market during the busiest hours. Thus, chickens can always be bought at uniform prices. Nevertheless, Hong Kong is a bigger place with hundreds of chicken stalls. How can the number of chickens bought by the retailers every day be flexibly controlled like what is done in Macao? Also, a week or so before, when the Director of Agriculture, Fisheries and Conservation attended a special meeting of the Panel on Food Safety and Environmental Hygiene, she told us very clearly that the Government had never thought about allowing chicken vendors to collect chickens from the wholesale markets more than once each day, and these vendors ought to transport all chickens away before 7 am. There is a question that we often ask: what would happen if a rainstorm warning signal is issued in the morning? What would happen if there is heavy rain just like the downpour this morning, and nobody goes there to collect the chickens? There are exceptional cases in Macao; if a rainstorm warning signal is issued, the "daily rest night" requirement will be lifted on that day. However, the SAR Government does not do the same. It wants to follow the example of Macao to ban overnight stocking of live chickens but it takes no notice of many things when it implements the arrangement, and it just wants to implement the policy but it has not taken any matching measures. Madam President, if the Administration is committed to implementing a "daily rest night" effectively, should it not formulate enough matching measures for the industry with a view to ensuring that they would have profits and allowing the market to resume full operation?

In the final analysis, the Government does not have the sincerity to implement a "daily rest night" effectively, and it only wants to take advantage of this incident to "stab" the industry. It even spoke in an intimidating way earlier, telling us that it would even withdraw the compensation of some \$1 billion if we turn down the "daily rest night" proposal today. I am really scared and my hands and feet are trembling. If the industry accepts the "daily rest night" proposal, they would be "dried up"; otherwise, they have to stop selling live chickens for good. The industry will have nothing to rely on to make a living. In that case, the live poultry industry will ultimately be forced to accept the compensation proposal, surrender their licences and leave the trade. Even if some of them disagree with the compensation proposal, there is not any

room for discussion. With this totalitarian way of thinking, the Government is really forcing the people to rebel, and I can hardly accept that.

Given that the Administration has proposed to implement a "daily rest night", why does it not start with the FEHD markets that fall within the Secretary's ambit? It seems that the remarks just made by Mr Fred LI are very similar to mine. Actually, the chicken manure tested positive with the virus came from four FEHD markets. Also, from day one, that is, 1997 onwards, whenever the avian flu virus is found, it is either found in the Tai Shing Street Market or the Yeung Uk Road Market, which are FEHD markets. However, sick chickens have not been found in the remaining 100 or so markets under the Housing Department. When problems emerged in the wholesale markets, we found that these markets are managed by the Agriculture, Fisheries and Conservation Department (AFCD). As a matter of fact, if any policy is to be implemented, the Secretary should start implementing it in the markets managed by the Government, and after it has put an end to the problems in these markets because the other markets do not have such problems and yet, they have been implicated. As we all know, the Po On Road Market is involved this time, and it is later found that the Luen Wo Hui Market in Fan Ling, the Yan Oi Market in Tuen Mun and the Ap Lei Chau Market are also involved, and they are markets managed by the Government. An Honourable colleague has just pointed out that problems have not been found in the markets under the Housing Authority and the Link Management; nor is there any problem in private stalls. Throughout the years, problems have been found in the markets managed by the Secretary. We have to ask this: If the Secretary really wants to implement the "daily rest night" measure now, should it first be implemented in the FEHD markets?

The Secretary has just said that good results have been obtained one week after the implementation of this measure, and only slightly more than 1% of the chickens are left unsold at night but he has not told us how many chickens are sold each day. I believe that, deducting the chickens supplied to food establishments, if people do not make advance orders, they cannot buy any chickens in most cases. It is because chicken vendors will reserve chickens for customers who have placed advanced orders, and they do not reserve chickens for customers who have not placed advance orders. In fact, the daily turnover of many chicken stalls is only less than 10% of that before, and they may even suffer losses if expenses such as transportation fees and wages are taken into account. Madam President, why do they still stay in business? So long as they have chickens to deliver, they will have cash flows for payments. They

also fear that they may not get compensation from the Government, in which case the retailers will not be able to pay the wholesalers, and the wholesalers will not be able to pay the farmers.

Facts have proven that as a result of the "daily rest night" measure, the farmers, wholesalers, retailers and transporters cannot resume normal operation, and all members of the industry are waiting for the Government to make a decision. In other words, the live poultry industry will slowly disappear, and it is no longer necessary to implement central slaughtering. Yet, if Hong Kong people are asked if they would still like to eat freshly slaughtered chickens, as Mr Fred LI has just said, 70% of them would still like to eat these chickens. However, the public have been misled by the Government into believing that live chickens will be supplied continuously after the "daily rest night" measure has been implemented. Some people even think that the prices of chickens will become lower while some others think that the chickens will be fresher because since all chickens would have been slaughtered at night, fresh chickens will be supplied the next day. Nevertheless, they are not aware that after the implementation of the "daily rest night" policy, the live poultry industry will be "dried up", and the central slaughtering of live poultry will no longer be needed. In the end, there will not be any freshly slaughtered chickens in Hong Kong, and what will be supplied are only chilled chickens directly imported from Shenzhen.

Nonetheless, I have said long ago that it is not necessary for central slaughtering to be implemented in Hong Kong because it is impossible for us to compete with Shenzhen just a river away. The central slaughterhouse there can transport to Hong Kong chilled chickens or freshly slaughtered chickens. The time taken for transportation will not be much longer than that taken from the central slaughterhouse to be established in the North District of Hong Kong, but the selling prices will be much lower due to lower transportation costs in the Mainland. Hence, the Administration should not waste money on the implementation of central slaughtering.

The Administration has recently proposed a buyout package for permanent cessation of business of the live poultry industry, and live poultry retailers can only accept the proposal in view of the "daily rest night" policy. Actually, I would personally think that, frankly speaking, Secretary, even if there is no "daily rest night", the compensation proposed for the live poultry retailers cannot be described as unreasonable. Of course, the recipients of the compensation always want to receive more, but we are obliged to look after the taxpayers' money. As to whether the compensation for the live poultry wholesalers is fair,

as Mr Vincent FANG will express their views on their behalf, I do not want to go into details.

However, the Administration is only giving live poultry transporters a compensation of some \$100,000, saying that they can make alterations to their vehicles and take up other transportation jobs. I highly disagree with that. Although they are not members of the industry which I represent, as nobody filed applications when a compensation of \$50,000 was previously offered, what is the use of proposing a compensation that is three times more? Their problems will still not be solved. Moreover, the live poultry industry is shrinking but the Administration has not given compensation to day-old chicken importers and feed suppliers, and this is also unreasonable.

Concerning chicken farmers, the Secretary has already heard their dissatisfactions. WONG Yung-kan has just spoken, and I rarely heard him make such heart-felt remarks. However, he has not stayed in this Chamber to continue listening to the remarks made by other Honourable colleagues in support of him. I am not sure why he has to leave before voting. Actually, chicken farmers are hard-hit, and they have all along been coaxed by the Administration, as it has been claiming that central slaughtering will be implemented and live chickens will be allowed. As such, the farmers make investments and proactively build up their brands, thinking that live poultry can still be distributed through the central slaughterhouse even if there will be no live poultry retail stalls.

The central slaughtering proposal has now become stillborn, and the compensation proposal made by the Government only makes calculation on the basis of farm areas. According to the farmers, the Government will not take into account all the farm areas and it will not factor into calculation the brands, such as Kamei Chicken and Tai On Chicken just mentioned by Honourable colleagues, that they have painstakingly built up and so, it can hardly be an attractive incentive for them to give up. As a matter of fact, the Secretary may not have run a business before and he may not understand, but brands are very important to doctors too. If people believe that a doctor has excellent medical skills, they will consult the doctor even if they have to pay higher consultation fees. If someone pays for the acquisition of the Coca-Cola plants without making compensation for its brand, would that be possible? That would definitely be impossible.

Therefore, if brands are not taken into account when calculating the compensation, after the compensation package for cessation of business has been proposed to the Finance Committee next week, the Secretary may recover most of the licences of live poultry retail stalls but he may only be able to recover a small number of farm licences.

In the next few months, I really hope that the Secretary would seriously explore the above issues I raised, that is, how the Government can continuously enable the public to buy freshly slaughtered chickens while allowing the continuous development of chicken farmers who have established their brands, as well as implementing human-chicken segregation measures to ensure that live chickens are safe and hygienic. Can the Secretary, together with the whole live poultry industry, including farmers, wholesalers, transporters and retailers, seriously study this: Regardless of whether live chickens will be slaughtered by chicken farmers in farms or centrally slaughtered in future, can he allow the transportation of freshly slaughtered chickens or chilled chickens to retail stalls in various districts by vehicles equipped with facilities to keep the chickens warm and fresh, and also allow the freshly slaughtered chickens unsold each day to be chilled? Certainly, the freshly slaughtered chickens can be directly delivered to restaurants which can then supply freshly slaughtered chickens to customers.

I have been saying that the catering industry, especially Cantonese cuisine restaurants, hopes that freshly slaughtered chickens can still be bought. Thanks to the Secretary for what he did, members of the public no longer have fresh geese, ducks and pigeons for cooking. Some Honourable colleagues have referred to quails today and in fact, not too many people eat quails. A month or so ago, the Liberal Party travelled to a small city in Guilin in the Guangxi Province, and I had had the most delicious grilled goose there for the past two years. Surely, I have highly recommended the grilled geese there to my colleagues. If there are no more freshly slaughtered chickens in Hong Kong in future, the reputation of a gourmet destination painstakingly earned by the catering industry of Hong Kong throughout the years can hardly be maintained. If so, the Secretary will really be a sinner in history.

Regarding the motion today about abolishing the "daily rest night" arrangement, I initially thought that no other Members supported it except Albert CHAN, Vincent FANG and me. But after listening to Honourable Members' speeches, I found that there are more Honourable colleagues in support of the motion. Nevertheless, now that Secretary Dr York CHOW has made the "daily

rest night" proposal, and if the proposal is not revoked today, I think the Secretary should be responsible to the public. To make the "daily rest night" a success, the Secretary should supervise and urge his subordinates, especially the FEHD and AFCD, to formulate adequate matching measures for the industry so that they could continue to provide the public with safe and hygienic freshly slaughtered chickens.

Mr Fred LI has just referred to smuggled chickens, and I have responded to his comments. In fact, having heard what he said, I think our opinions are not very different from each other; however, I do not know why, in the course of our discussion on this motion, he has given me an impression that he is just like a royalist while I am in the opposition. Yet, both of us are actually working for the people's interests. For sure, he does not want people to blow air into the chicken's bottom; neither do I. Nonetheless, the point is that nobody has fallen ill from blowing air into it — Certainly, we do not want people to continue to do so. As a matter of fact, everybody did very well in the past five to six years. I think the Secretary has obliterated everybody's work in the whole industry and within the whole supply chain, and he seemed to be saying that other people, including me, do not care about the health of Hong Kong people, that he is the only one who cares and that he is the only gatekeeper. I think that discrediting people this way is hardly acceptable to the whole industry.

Madam President, I so submit.

MR ALAN LEONG (in Cantonese): Madam President, I think that this last meeting of the Legislative Council in this term is most tormenting. So far, we have already debated for 52 hours, and I trust that all of us are very tired. In fact, the Civic Party has briefly stated our position during our debate on 2 July when Mr Tommy CHEUNG moved a motion for the adjournment of the Council for the purpose of debating the predicament faced by the live poultry industry.

Today, I would account for our views even more briefly. Madam President, nothing is absolute. Some have said that only two things are absolute: Paying tax and going to heaven. Of course, it would be a bit hard to prove that the risk of avian flu will become zero when there are no live chickens. Having said that, the remarks made by many Honourable colleagues have invoked some feelings in the Civic Party. In the face of the avian flu problem, it seems that the Government has chosen an easier alternative and given up the

harder ones. In any case, so long as public health is threatened, chickens will be culled because it is a very simple solution. For sure, this solution is open to question.

However, Mr WONG Yung-kan has, earlier on, talked about the fight for more than 10 years and up to this stage, we found that 85% of the industry, especially the trades downstream, seemed to be no longer interested in staying in business, and they would like to leave the industry after getting compensation. When we consider this problem under the present circumstances, though we have complaints about the Government's handling approach which has caused the incident to develop to the present stage, there seems to be limited room for manoeuvre today.

Madam President, when the Civic Party initially heard that the Government wanted to fully ban the poultry retail industry, we did not quite agree with it. After all, we think that, as also indicated in the results of the surveys conducted by various parties and groups, Hong Kong people still wish that live chickens will be available for their consumption. So, if the Government wants to fully ban the poultry retail industry, it definitely cannot meet this aspiration of the public. The Government subsequently appeared to be slightly changed in its position and adjusted downward the percentage set previously. In other words, only 85% of the industry will suffice, instead of a great majority of it. Certainly, the Civic Party considers this a progress made policy-wise. If 15% to 20% of the retail trade will continue with their operation, the "one-stop" mode of operation from farm to the table will be maintained in Hong Kong, and live chickens raised in quality local farms can be supplied to the market in order to meet the needs of Hong Kong people.

Since it is a more flexible policy, and in view of the development of the incident so far, and the limited room for manoeuvre as I have just said, the Civic Party tends to support the Government's "daily rest night" policy, but we must tell the Administration that it must be impartial and make sure that the workers can really get compensation, especially when making compensation to the front-line workers in the retail trade. Furthermore, when the Secretary seeks funding approval from the Finance Committee next week, we hope that he would more explicitly account for how the Administration would continue to provide support to the development of quality local poultry industry in Hong Kong with a view to promoting the healthy development of the industry.

I have briefly stated the position of the Civic Party. We oppose Mr Albert CHAN's resolution.

MR WONG KWOK-HING (in Cantonese): Madam President, the Government has made the "daily rest night" proposal for handling the problem of the live poultry industry. I think that on the whole, this policy measure of the Government is not a product of a positive agriculture and fisheries policy but one of a negative agriculture and fisheries policy. According to the Government, the basis of this proposal is public hygiene and safety. Certainly, under this premise and given no other alternatives, we can only do so if that is the only feasible thing to do.

However, can the Government make further and more elaborate considerations, and deal with the live poultry industry from a more positive perspective? Can it take a more comprehensive view of the problem rather than adopting the "daily rest night" measure just to meet an urgent need? Given that there is no new information or justification, in order to safeguard public safety and health, we have to listen to the analyses and views of doctors or professionals. Should the Government approach the problem from the public policy angle, and implement proactive and elaborate policies on the agriculture and fisheries industry that is closely related to people's living? If the Government does not do this, in regard to the "daily rest night" proposed at present, this transitional arrangement will undoubtedly "dry up" the industry, and the industry will certainly disappear in the end.

Thus, I would like to ask if the Government can consider other proposals. I wish to suggest carrying out a reform. Can the Government positively consider the situation of the live poultry industry and implement proactive measures, such as convening meetings with the industry to pool collective wisdom, learning from the advanced experience of other places or regions, and considering whether a solution can be found through a reform? Or, does it only have the present transitional measure but not other feasible measures? So, I hope the Secretary would consider carrying out a reform, and find out if he can do something in this connection.

Madam President, concerning the "daily rest night" policy implemented by the Government this time around, as Legislative Council Members representing the labour sector, Members of the Hong Kong Federation of Trade Unions (FTU) are highly concerned about the interests of the workers in the industry.

It is because workers had not been protected during the two previous chicken culls. Unlike what Fred LI has said, the wages in the industry are not calculated on a daily basis, but on the number of chickens, which means that a worker gets a certain amount of money for each chicken slaughtered. For this reason, some unscrupulous employers had taken away from the workers the compensation that they should get from the Government by various means, causing immense harm to the workers.

On this occasion, we have done all we can to fight for workers' benefits by urging the Government to take actions, and we have conducted many rounds of negotiations. We have had many discussions with the Government on behalf of the trade unions and finally, the Government has promised to pay by direct transfer to the bank accounts of the workers in the poultry industry the compensation of \$35,000. Not only the workers at the retail level but also the employees engaged in transportation and other related work are eligible for receiving compensation. It is very important that the money will be transferred directly to their bank accounts. The second point is also very important. In the past, the employers would terminate the employment of workers and offset the compensation, payment in lieu of notice and severance payment payable by the employers with the Government's compensation. As a result, the workers could not get the compensation to which they are entitled. This time, after discussing the matter with us, the Government has accepted the request of the FTU by not allowing employers to offset the relevant payments. If an employer wants to terminate the employment of a worker, he must pay all compensation payable by him arising from the termination of the employment contract, and he cannot offset this compensation with the \$35,000 compensation. Actually, the severance payments or pensions of some workers who have worked or have been employed for a long time may exceed \$35,000. On this point, we have fortunately succeeded in fighting for this arrangement.

Furthermore, the Government has provided that it will only pay to an employer the remaining sum of the compensation when he has very clearly made all the compensation and resolved the employment relation with an employee. In this connection, the Government has accepted our views, and I think it has done very well as this would ensure that the employers will not take advantage of legal loopholes. Moreover, as regards the verification of the identity of an employee, the lack of work records in the industry is a problem. As we mentioned in the past, the immunization records of the workers can be taken as proof. The Government has also considered our request, and it is now

proposed that when the evidence given by the employees and employers cannot solve the problem, the trade union concerned can provide proof of the eligibility of workers. Concerning the points mentioned above, we really hope that the Government would fulfil its undertaking and monitor the payment process of the \$35,000 *ex gratia* compensation so that workers can truly receive the compensation.

At this juncture, I would like to say that the sum of \$35,000 to be collected by a worker contains blood and tears. How long can this sum of \$35,000 support the living of a worker? If he spends \$5,000 a month, the amount is only enough for five months. Since the Government has not adopted a proactive agriculture and fisheries policy, a "daily rest night" will ultimately "dry up" the industry. That is why I think that the Government should give this careful consideration.

We would like the Government to think about this: For instance, the Government has currently specified that compensation will be given for the permanent cessation of business if 85% of the stalls would accept the proposal. Should such a broad-brush approach be taken? If there are other proactive ways to implement the "daily rest night" policy that can also ensure hygiene, is it possible compensation may be given to the industry even with an acceptance rate of less than 85% of the stalls? Furthermore, if there are investors or operators in the industry who are willing to run their business in a "one-stop" manner from farm to the table, why can they not be assisted for them to stay in business? If this industry is given room for survival, it will after all be able to provide job opportunities to the industry and to wage earners in the industry with low education and low skills who are beyond middle age. The Government should take job opportunities into consideration. Although it is going to allocate \$1.1 billion for this purpose, if the whole industry no longer exists, job opportunities will also disappear. If those workers fail to find a job after using up that \$35,000, will they ultimately be forced to receive CSSA payments? Hence, in considering this issue, I think the Government should work in the direction of a proactive reform rather than negatively "drying up" the industry.

In addition, even though a worker can receive compensation of \$35,000, Madam President, it is in fact difficult for the worker to find another job. Given that almost one fourth of the stalls are vacant in the public markets in the territory, I wonder if the Government can consider coming up with more methods to open up more channels, so that the operators will have other

opportunities to make a living. For example, now that the Government is prepared to conduct a review on the licensing policy and management of hawkers, can it come up with more ways to provide them with more opportunities to make a living? In addition, under the existing retraining scheme, can tailor-made courses be provided to help these 2 500 workers? Actually, I think the Government should proactively consider these methods rather than taking action to phase out the industry after the passage of the "daily rest night" proposal, causing permanent harm to the whole industry and the workers in the industry.

As a matter of fact, if we adopt a more proactive approach, since Macao can handle the problem through a "daily rest night" — though Hong Kong is a bigger city than Macao, it is still divided into many districts — if the Administration can be more proactive, it should learn from the successful experience of other places, and consider whether it can carry out a reform to ensure public health and environmental hygiene, while allowing people the choice of fresh chickens, so that the industry will have a chance to survive without compromising public health. I think the Government should actually consider doing so.

Madam President, it is now 12 midnight, a time for chickens to crow. There was an animation film named "Chicken Crows at Midnight" in the past. Now, the chicken crows at midnight in the hope the Government would take proactive measures to support the development of the agriculture and fisheries industry, and handle the problems of the poultry industry with a reformist mindset rather than taking the attitude of exterminating the industry. Thank you, Madam President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is just past 12 midnight. Good morning, Members. Three Members are now waiting for their turn to speak, the first one is Mr Frederick FUNG, the second one is Mrs Selina CHOW and the third one is Mr LEUNG Kwok-hung. I have to suspend the meeting at this juncture, and when the meeting starts at 9 am tomorrow, Mr Frederick FUNG should be the first to speak.

Suspended accordingly at one minute past Twelve o'clock in the morning.

Annex V

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGEAmendments to be moved by the Secretary for Security

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| Long title | <p>(a) By deleting "of observing and" and substituting "in".</p> <p>(b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".</p> |
| 1 | In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴". |
| New | <p>By adding -</p> <p style="padding-left: 40px;">"1A. Commencement</p> <p style="padding-left: 80px;">This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette."</p> |
| 2(1) | <p>(a) In the definition of "categorization" -</p> <p style="padding-left: 40px;">(i) in the Chinese text, in paragraph (a), by deleting "須具報" and substituting "須匯報";</p> |

- (ii) in paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- (b) In the definition of "classification" -
 - (i) by deleting paragraphs (a) to (e) and substituting -
 - "(a) substantiated;
 - (b) substantiated other than reported;
 - (c) not fully substantiated;
 - (d) unsubstantiated;
 - (e) false;
 - (f) no fault;
 - (g) withdrawn;
 - (h) not pursuable;
 - (i) curtailed;
 - (j) informally resolved; or
 - (k) of such other description as agreed between the Council and the Commissioner;"
 - (ii) in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In the definition of "Council", by deleting everything after "'Council'" and substituting "(監警會) means the body corporate established by section 3;"
- (d) By deleting the definition of "non-reportable complaint" and substituting -

- "notifiable complaint" (須知會投訴) means a complaint categorized as a notifiable complaint in accordance with section 13;".
- (e) By deleting the definition of "reportable complaint" and substituting -
- "reportable complaint" (須匯報投訴) means -
- (a) a complaint categorized as a reportable complaint in accordance with section 10; or
 - (b) a request for review treated as a reportable complaint in accordance with section 12;".
- (f) In the definition of "Secretary" -
- (i) by deleting "Secretary" where it twice appears and substituting "Secretary-General";
 - (ii) by deleting "(秘書)" and substituting "(秘書長)";
 - (iii) in the Chinese text, by deleting "警監會" and substituting "監警會".
- (g) In the Chinese text, in the definition of "主席", by deleting "警監會" and substituting "監警會".
- (h) In the Chinese text, in the definition of "委任成員", by deleting "警監會" and substituting "監警會".

- (i) In the Chinese text, in the definition of "委員會", by deleting "警監會" and substituting "監警會".
- (j) In the Chinese text, in the definition of "法律顧問", by deleting "警監會" and substituting "監警會".
- (k) In the Chinese text, in the definition of "副主席", by deleting "警監會" and substituting "監警會".
- (l) In the Chinese text, in the definition of "覆核要求", by deleting "須具報" and substituting "須匯報".
- (m) By adding -
"material" (材料) includes any document or record
in any form and any article or substance;".

2

By adding -

"(3) In sections 7(1)(b), 18(1)(e), 24 and 37(2A)(b), a reference to any action taken or to be taken in respect of a member of the police force includes a decision that no action be taken against that member."

Part 2

In the heading, in the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".

- 3 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 3 By deleting subclause (1) and substituting -
- "(1) There is hereby established a body corporate known as -
- (a) "Independent Police Complaints Council" in English; and
- (b) "獨立監察警方處理投訴委員會" in Chinese."
- 3(2) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 3(3) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 4 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 4(1) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 4 By deleting subclause (2) and substituting -

"(2) The following persons are not eligible for appointment under subsection (1) -

(a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department; and

(b) a person who was a member of the police force."

5 In the heading, by deleting "**Secretary**" and substituting "**Secretary-General**".

5(1) (a) By deleting "Secretary" and substituting "Secretary-General".
(b) By adding "of employment" after "terms".
(c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".

5(2) (a) By adding "of employment" after "terms".
(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

5(3) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 6 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Part 3 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 7 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 7(1) (a) In paragraph (a), by deleting "manner in which reportable complaints are handled or investigated" and substituting "handling and investigation of reportable complaints".
- (b) In paragraph (b), in the Chinese text -
- (i) by deleting "須具報" and substituting "須匯報";
- (ii) by deleting "警監會" and substituting "監警會".
- (c) In paragraph (c), in the Chinese text -
- (i) by deleting "須具報" and substituting "須匯報";

- (ii) by deleting "警監會" and substituting "監警會".
 - (d) In paragraph (e), in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (e) In the Chinese text, by deleting "警監會的職能" and substituting "監警會的職能".
- 7(2) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 8(1)
- (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
 - (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 8(2) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- 8(3)
- (a) In paragraph (a), by deleting "non-reportable" and substituting "notifiable".
 - (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".

(c) By deleting paragraph (c) and substituting -
"(c) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, the reasons supporting that ground."

9 (a) By deleting everything before paragraph (a) and substituting -

"9. Certain complaints not to be included in lists under section 8(1)

A list under section 8(1)(a) or (b) must not include a complaint that -".

(b) In paragraph (b), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the summons is validly issued".

(c) In paragraph (c), by deleting "and does not relate to police conduct" and substituting "and solely relates to the question of whether the notice is validly issued".

10 (a) In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In paragraph (a)(i), by adding ", whether or not

he identified himself as such a member" after "duties".

(c) In paragraph (b), by deleting "in the opinion of the Commissioner,".

(d) In the Chinese text, by deleting "須具報" and substituting "須匯報".

11 By deleting the clause and substituting -

"11. Categorization of belated complaints

(1) Except as provided in subsection (2), a belated complaint must not be categorized as a reportable complaint.

(2) A belated complaint must be categorized as a reportable complaint if -

- (a) it is serious in nature; and
- (b) but for subsection (1), it would be categorized as a reportable complaint in accordance with section 10.

(3) In this section, "belated complaint" (逾期投訴) means a complaint that is made to the Commissioner after the expiration of -

- (a) 24 months from the date of the incident giving rise to the complaint; or

(b) (where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in paragraph (a)) 12 months from the date of the final determination of such proceedings,

whichever is later."

12 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

12(1) (a) By deleting "A request" and substituting "Subject to subsection (1A), a request".

(b) By deleting "the Commissioner is of the opinion that".

(c) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".

12 By adding -

"(1A) A request for review must not seek for the review of a reportable complaint that is classified as "informally resolved"."

13 By deleting the clause and substituting -

**"13. Complaints categorized
as notifiable complaints**

A complaint received by the Commissioner must be categorized as a notifiable complaint if it is neither a reportable complaint nor a complaint referred to in section 9."

14(1)(a) By deleting "parent" and substituting "relative".

14(2) By deleting "(1)(b)" and substituting "(1)".

14(3) By deleting "(1)(b)" and substituting "(1)".

15(1) (a) By deleting "the list of non-reportable" and substituting "a list of notifiable".

(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

(c) In the Chinese text, by deleting "為須具報" and substituting "為須匯報".

15(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 15(3) By deleting everything after "the Commissioner to provide" and substituting -
- "-
- (a) explanations to support the categorization of a complaint as a notifiable complaint;
 - (b) in relation to a belated complaint (as defined in section 11(3)) that is not categorized as a reportable complaint solely on the ground that the complaint is not of a serious nature, explanations to support that ground; and
 - (c) information or material in support of the explanations."
- Part 3,
Division 2 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 16 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 16(1) (a) In the Chinese text, by deleting "須具報" and substituting "須匯報".

(b) In the Chinese text, by deleting "警監會" and substituting "監警會".

16(2)

(a) In paragraph (d), by deleting "and".

(b) In paragraph (e) -

(i) by deleting "other";

(ii) by deleting the full stop and substituting "; and".

(c) By adding -

"(f) such other information as the Commissioner and the Council may agree.".

16

By deleting subclause (3) and substituting -

"(3) An investigation report on a reportable complaint classified as informally resolved must -

(a) contain -

(i) a summary of the process of informal resolution of the complaint;

(ii) an account of the incident giving rise to the complaint as described by the complainant;

- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
 - (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint;
 - (v) such information as the Commissioner thinks necessary; and
 - (vi) such other information as the Commissioner and the Council may agree; and
- (b) explain the reasons for resolving the complaint by informal resolution.

(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report."

- 17 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 17(1) (a) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 17(2) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- 17(3) (a) By deleting "explain".
- (b) In paragraph (a), by adding "contain a summary of" before "the progress".
- (c) In paragraph (b), by adding "explain" before "the reasons".
- 17(4) (a) By deleting "the explanation given under subsection (3)" and substituting "an interim investigation report".
- (b) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 18 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 18(1) (a) By deleting paragraph (a).
(b) In paragraph (d), by deleting "or" at the end.
(c) In paragraph (e), by deleting the full stop and substituting "; or".
(d) By adding -
 "(f) its recommendation on the report other than those mentioned in paragraphs (b), (c) and (d).".
(e) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 18 By adding -
 "(1A) If an investigation report is amended in response to the Council's recommendations referred to in subsection (1), the Commissioner must submit the report as amended to the Council as soon as practicable.".
- 18(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 19 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(1) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- 19(2) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- 19(3) (a) By adding "reasonably" before "of the opinion".
(b) In the Chinese text, by deleting "有可能" and substituting "相當可能會".
- 19(5) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(6) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 19(7) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

- 19 By deleting subclause (8) and substituting -
- "(8) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel at an interview under this section."
- 19 By deleting subclause (9).
- New By adding immediately after clause 19 -
- "19A. Record of interview**
- (1) The Council must make a record of every interview under section 19, and the record is to be kept for such period as may be necessary for the performance of its functions under this Ordinance.
- (2) The record may be used in the circumstances provided for in section 37(2) but not otherwise."
- Part 3,
Division 3 In the heading, in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 20 In the heading, in the Chinese text, by deleting "警監會可要求處長提供關乎須具報" and substituting "監警會可要求處長提供關乎須匯報".
- 20(1) (a) In paragraph (a), by deleting everything after "relating to a reportable complaint," and before "video" and substituting -
"including but not limited to -
(i) any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint; and
(ii) any".
- (b) In paragraph (b), by deleting "or discrepancy" and substituting ", discrepancy or findings".
- (c) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 21 In the heading, in the Chinese text, by deleting "警監會可要求處長調查須具報" and substituting "監警會可要求處長調查須匯報".

- 21(1) In the Chinese text, by deleting "警監會可要求處長調查某須具報" and substituting "監警會可要求處長調查某須匯報".
- 21(2)
- (a) By adding "subject to section 12(2)," after "then,".
 - (b) In the Chinese text, by deleting "如有關須具報" and substituting "如有關須匯報".
 - (c) In the Chinese text, by deleting "警監會方" and substituting "監警會方".
 - (d) In paragraph (a), in the Chinese text, by deleting "須具報" wherever it appears and substituting "須匯報".
 - (e) In paragraph (b), in the Chinese text -
 - (i) by deleting "須具報" where it twice appears and substituting "須匯報";
 - (ii) by deleting "警監會" and substituting "監警會".
 - (f) In paragraph (c), in the Chinese text, by deleting "警監會" and substituting "監警會".
- 21(3) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 22 (a) By deleting the heading and substituting -
- "22. Notification of classification of reportable complaint and result of review".**
- (b) By renumbering the clause as clause 22(1).
- 22(1) (a) By deleting "The Council may require the Commissioner to inform" and substituting "In the case of a reportable complaint that is not a request for review, the Commissioner must notify".
- (b) In the Chinese text, by deleting "須具報" where it twice appears and substituting "須匯報".
- 22 By adding -
- "(2) In the case of a reportable complaint that is a request for review, the Council must notify -
- (a) the complainant; or
- (b) (where the reportable complaint was made by a person on behalf of the complainant) the person who made the complaint,
- of the result of the review and the reasons for the result.
- (3) Subsections (1) and (2) do not apply where the complainant or the person has indicated

to the Commissioner or the Council that he does not wish to be so notified.

(4) In determining the time at which the complainant or the person is notified of such matters as required under subsection (1) or (2), the following provisions apply -

- (a) if the notification is left at his address, the notification is effected when it is so left;
- (b) if the notification is sent by post to his address, the notification is effected when it would in the ordinary course of post be delivered to that address;
- (c) if the notification is sent by facsimile transmission to his facsimile number, the notification is effected when it would in the ordinary course of such transmission be received at that number; or
- (d) if the notification is sent by electronic mail transmission to his electronic mail address, the notification is effected when it

would in the ordinary course of such transmission be received at that address.

(5) In subsection (4), references to his address, his facsimile number or his electronic mail address mean the address, facsimile number or electronic mail address (as the case may be) provided by the complainant or the person to the Commissioner or the Council as a means of contacting him in relation to the reportable complaint."

23 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

23(1) (a) In the Chinese text, by deleting "警監會" and substituting "監警會".

(b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".

(c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

23(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

- 24
- (a) In the heading, in the Chinese text, by deleting "警監會可就已經在與須具報" and substituting "監警會可就已經在與須匯報".
 - (b) In the Chinese text, by deleting "警監會" and substituting "監警會".
 - (c) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- 25
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
 - (c) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- 26
- In the heading, by deleting "**Council may require**".
- 26(1)
- (a) By deleting everything before "consult the Council" and substituting -
 "(1) The Commissioner must".
 - (b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
 - (c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 27 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) By renumbering the clause as clause 27(1).
- 27(1) By deleting everything after "unless" and substituting -
- "the Secretary for Security certifies that compliance with the requirement would be likely to prejudice -
- (a) the security of Hong Kong; or
- (b) the investigation of any crime.".
- 27 By adding -
- "(2) A certificate signed by the Secretary for Security certifying the matter referred to in subsection (1)(a) or (b) is conclusive evidence as to the matter so certified.".
- 28 By deleting "from time to time".
- Part 3,
Division 4 In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- 29 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

- (b) By adding "reasonable" before "fees".
- (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- (d) In the Chinese text, by adding "複製本或" before "文本".
- 30 (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the Chinese text, by deleting "警監會" and substituting "監警會".
- 31 By deleting subclause (2) and substituting -
- "(2) The following persons are not eligible for appointment as observers -
- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) the Secretary-General, the Legal Adviser or any other employee of the Council; and
- (c) a person who was a member of the police force."
- 32 In the Chinese text, by deleting "警監會按照本部的條文觀察

處長處理或調查須具報" and substituting "監警會按照本部的條文觀察處長處理或調查須匯報".

New

By adding -

**"33A. Prior notification of
interview and collection
of evidence**

(1) In so far as practicable, the Commissioner must, before he conducts -

- (a) an interview in respect of a reportable complaint; or
- (b) any collection of evidence in the investigation of a reportable complaint,

notify the Council of the interview or collection of evidence.

(2) The notification must set out -

- (a) the nature of the allegations contained in the reportable complaint;
- (b) the date, time and place of the interview or collection of evidence and the form in which it will be conducted; and
- (c) the particulars of the interviewee and the interviewer.

(3) If the Commissioner has conducted an

interview or any collection of evidence referred to in subsection (1) ("the incident") without prior notice to the Council, the Commissioner must, as soon as practicable after the incident and in writing -

- (a) notify the Council of the incident;
- (b) explain to the Council the reasons why such prior notice has not been given; and
- (c) provide to the Council information that would have been required to be set out, under subsection (2), in a notification in respect of the interview or collection of evidence if such prior notice had been given."

- 34(1) (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

- 34(2) In the Chinese text, by deleting "警監會" and substituting "監警會".

34

By adding -

"(2A) If an observer has an interest (whether directly or indirectly) in a reportable complaint in respect of which an interview or collection of evidence is conducted by the Commissioner, the observer must not attend the interview or observe the collection of evidence."

34(3)

- (a) By adding "(whether directly or indirectly)" after "has an interest".
- (b) In the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In paragraph (d), in the Chinese text, by deleting "警監會" and substituting "監警會".

35

- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) By renumbering the clause as clause 35(1).

35(1)

- (a) In the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (c) In paragraph (b), in the Chinese text, by deleting "須具報" and substituting "須匯報".

35

By adding -

"(2) For the avoidance of doubt, a duty roster under subsection (1)(c) does not affect an observer's right under section 34(1) to attend an interview or observe the collection of evidence at any time."

Part 5

In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".

36

In the definition of "specified person" -

- (a) in the Chinese text, in paragraph (a), by deleting "警監會" and substituting "監警會";
- (b) in the Chinese text, in paragraph (b), by deleting "警監會" and substituting "監警會";
- (c) in paragraph (c), by deleting "Secretary" and substituting "Secretary-General";
- (d) in the Chinese text, in paragraph (d), by deleting "警監會" and substituting "監警會";
- (e) in the Chinese text, in paragraph (f), by adding "任何" before "身分".

37(2)(b)

By adding "or any suspected crime" after "crime".

37

By adding -

"(2A) For the avoidance of doubt, in making a disclosure under subsection (2)(a), the Council may disclose to the public -

- (a) the facts of any disagreement between the Council and the Commissioner on the findings or classification of a reportable complaint; or
- (b) its opinion on the action taken or to be taken in respect of a member of the police force by the Commissioner in connection with a reportable complaint."

37(4)

(a) In paragraph (a), by deleting everything after "a specified person" and substituting "as defined in section 36 (other than paragraph (f) of that definition);".

(b) By adding -

"(ba) a person who has written authorization from the complainant -

- (i) to make a complaint or request for review on behalf of the complainant (as provided in section 14); or
- (ii) to handle in the complainant's stead

the complaint or request for review
made by the complainant;".

(c) In paragraph (d), by deleting "or" at the end.

(d) By deleting paragraph (e) and substituting -

"(e) a person whom the Council invites to an
interview pursuant to section 19 or any
person who is present at an interview in
accordance with that section; or".

(e) By adding -

"(f) the Chief Executive.".

38 In the heading, in the Chinese text, by deleting "警監
會" and substituting "監警會".

40(2) In the Chinese text, by deleting "由警監會" and
substituting "由監警會".

40(3) (a) By deleting "is required to be done and".

(b) In the Chinese text, by deleting "由警監會" and
substituting "由監警會".

New By adding -

"40A. Pre-existing legal claims

Without limiting section 40, a legal claim
(including any judicial and administrative

proceedings) -

(a) by or against the former
Council; and

(b) existing immediately before the
commencement date,

does not abate by reason of the commencement of
this Ordinance."

41(1) In the Chinese text, by deleting "任警監會" and
substituting "任監警會".

41(2) By adding "1A(b) or" after "under section".

41 By adding -

"(2A) A person who, immediately before the
commencement date, is the Secretary or the Legal
Adviser of the former Council continues to be, as
from that date until the Secretary-General or the
Legal Adviser (as the case may be) has been
appointed under section 5(1), the Secretary-
General or the Legal Adviser (as the case may be)
of the Council on the same terms and conditions
as those applicable to that person immediately
before that date."

41(3) (a) By deleting "including" and substituting "other

- than".
- (b) By adding "until such time as the Council and the Government may agree" after "as from that date".
- 42 (a) In paragraph (a), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (b) In paragraph (b), by deleting "non-reportable" and substituting "notifiable".
- (c) In paragraph (c), in the Chinese text, by deleting "須具報" and substituting "須匯報".
- (d) In paragraph (d), by deleting "non-reportable" and substituting "notifiable".
- 43 In the Chinese text, by deleting "投訴警方獨立監察" and substituting "獨立監察警方處理投訴".
- Schedule 1 (a) In the heading, in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (b) In the cross-heading immediately after the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1 By adding immediately before section 1 -
- "1A. **Term of office of Chairman**

The Chairman (other than a person appointed under section 4) -

- (a) is to be appointed for a term not exceeding 3 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 3 years each."

Schedule 1, section 1

- (a) In the heading, by deleting "**Chairman**".
- (b) By deleting "The Chairman, a" and substituting "A".

Schedule 1, section 5

In the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 1, section 6

- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (d) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (e) In subsection (3), in the Chinese text, by

deleting "警監會" where it twice appears and substituting "監警會".

- (f) In subsection (5) -
- (i) by deleting "Secretary" and substituting "Secretary-General";
 - (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

Schedule 1,
section 7

- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (d) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (e) By adding -
- "(3) The Council may, by its procedure determined under section 12, make provisions for a Vice-Chairman to appoint, in the absence of the Chairman, the time and place for the Council to meet."

- Schedule 1,
section 8
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- Schedule 1,
section 9
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In subsection (1), in the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1
- By deleting section 10.
- Schedule 1,
section 11
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In subsection (1), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (c) In subsection (3), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (d) In subsection (4), in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
 - (e) In subsection (5) -

- (i) by deleting "Secretary" and substituting "Secretary-General";
 - (ii) in the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- (f) By deleting subsection (6).

Schedule 1 By adding -

"11A. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of the Council has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the Council, the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the complaint;
- (c) must not vote on a resolution concerning the complaint; and
- (d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate

the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

**11B. Disclosure of interest
in matters other than
reportable complaints
and notifiable
complaints**

(1) If a member of the Council has an interest (whether directly or indirectly) in a matter ("the Matter") being discussed or to be discussed at a meeting of the Council and the Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the

- Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting -
- (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

11C. Disclosure of interest in cases of written resolutions

In the case of a written resolution on a matter in which a member of the Council has an interest (whether directly or indirectly) -

- (a) the member -
 - (i) must state the nature of his interest in the papers being circulated; and
 - (ii) must return the papers with his interest so stated to the Secretary-General; and
- (b) the member -
 - (i) must not vote on the written resolution; and
 - (ii) must not be counted in calculating a majority for the approval of the written resolution.

**11D. Disclosure of interest
be recorded**

A disclosure made under section 11A(1)(a), 11B(1)(a) or 11C(a) must be recorded by the Council."

- Schedule 1,
section 12
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) By deleting everything after "own procedure" and substituting a full stop.
 - (c) In the Chinese text, by deleting "警監會可" and substituting "監警會可".

- Schedule 1, section 13
- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) By adding "from amongst its members" before "establish".
 - (c) In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".

Schedule 1 By deleting section 14.

- Schedule 1, section 16
- (a) In subsection (5), by deleting "Secretary" and substituting "Secretary-General".
 - (b) By deleting subsection (6).

Schedule 1 By adding -

"16A. Disclosure of interest in reportable complaints and notifiable complaints

(1) If a member of a committee has an interest (whether directly or indirectly) in a reportable complaint or a notifiable complaint being discussed or to be discussed at a meeting of the committee, the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting

during the discussion of the complaint;

(c) must not vote on a resolution concerning the complaint; and

(d) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must vacate the chair during the discussion of the complaint.

(3) When the member vacates his chair under subsection (2), the other members present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

(4) In this section, a reference to a reportable complaint or a notifiable complaint includes any matter that is related to the complaint.

**16B. Disclosure of interest
in matters other than
reportable complaints
and notifiable
complaints**

(1) If a member of a committee has an interest (whether directly or indirectly) in a matter ("the Matter") being discussed or to be discussed at a meeting of the committee and the

Matter is neither a reportable complaint (including related matter) nor a notifiable complaint (including related matter), then the member -

- (a) must disclose the nature of his interest at or before the meeting;
- (b) must withdraw from the meeting during the discussion of the Matter if so required by a majority of the other members present at the meeting; and
- (c) except as otherwise determined by a majority of the other members present at the meeting -
 - (i) must not vote on a resolution concerning the Matter; and
 - (ii) must not be counted for the purpose of forming a quorum.

(2) If the disclosure is made by the member presiding at the meeting, the member must, if so required by a majority of the other members present at the meeting, vacate the chair during the discussion of the Matter.

(3) If the member is required to vacate his chair under subsection (2), the other members

present at the meeting must appoint, by a majority, one of their number to preside at the meeting when the chair is so vacated.

**16C. Disclosure of interest
in cases of written
resolutions**

In the case of a written resolution on a matter in which a member of a committee has an interest (whether directly or indirectly) -

(a) the member -

(i) must state the nature of his interest in the papers being circulated; and

(ii) must return the papers with his interest so stated to the Secretary-General; and

(b) the member -

(i) must not vote on the written resolution; and

(ii) must not be counted in calculating a majority for the approval of the written resolution.

**16D. Disclosure of interest
be recorded**

A disclosure made under section 16A(1)(a),

16B(1)(a) or 16C(a) must be recorded by the committee."

- Schedule 1, section 18
- (a) In the cross-heading immediately before the section, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (c) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Schedule 1, section 19
- In the Chinese text, by deleting "警監會" where it twice appears and substituting "監警會".
- Schedule 1, section 20
- In the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1, section 21
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
 - (b) In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Schedule 1, section 22
- In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".

- Schedule 1,
section 23
- (a) In the heading, in the Chinese text, by deleting "警監會" and substituting "監警會".
- (b) In subsection (1) -
- (i) by adding "(as may be reasonable in the circumstances)" after "period";
- (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (c) In subsection (2), in the Chinese text, by deleting "警監會" and substituting "監警會".
- Schedule 1,
section 24
- In the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- Schedule 1,
section 25
- (a) In subsection (1) -
- (i) by deleting "Secretary" and substituting "Secretary-General";
- (ii) in the Chinese text, by deleting "警監會" wherever it appears and substituting "監警會".
- (b) In subsection (3), in the Chinese text, by deleting "警監會" and substituting "監警會".
- (c) In subsection (4), in the Chinese text, by

deleting "警監會" and substituting "監警會".

(d) In subsection (5), in the Chinese text, by deleting "警監會" and substituting "監警會".

(e) In subsection (6), in the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 1,
section 26

In the Chinese text, by deleting "警監會" and substituting "監警會".

Schedule 2,
section 4

In the Chinese text, by deleting "警監會" and substituting "監警會".

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------------------------------|---|
| Long title [NOT PROCEEDED WITH] | By deleting “Incorporate the existing Independent Police Complaints Council” and substituting “With the objective of preventing abuse of power by the police force, establish an Independent Police Complaints Council as a statutory body”. |
| 4(1) [NEGATIVED] | <p>(a) In paragraph (a), by adding after “the Chief Executive” “upon approval by the Legislative Council”.</p> <p>(b) By deleting paragraph (b) and substituting –</p> <p style="padding-left: 40px;">“(b) (i) 2 Vice-Chairmen who shall be elected by the Legislative Council from among its members;”.</p> <p>(c) In paragraph (b), by adding –</p> <p style="padding-left: 40px;">“(ii) one Vice-Chairman appointed by the Chief Executive;”.</p> <p>(d) In paragraph (c), by deleting the full stop and substituting a semicolon.</p> <p>(e) By adding –</p> <p style="padding-left: 40px;">“(d) the Commissioner for the Independent Commission Against Corruption appointed in accordance with the Basic Law, or a person nominated by him as his representative; and”.</p> <p>(f) By adding –</p> <p style="padding-left: 40px;">“(e) the person appointed to be the Ombudsman under The Ombudsman Ordinance (Cap. 397), or a person nominated by him as his representative.”.</p> |

4
 NOT PROCEEDED
 WITH

By deleting subclause (2) and substituting –

"(2) The following persons are not eligible for appointment under subsection (1) –

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) a person who was a member of the police force; and
- (c) a person who is an immediate family member of a member of the police force."

4
 NOT PROCEEDED
 WITH

By adding –

"(3) For the purposes of subsection (2)(c), "immediate family member" (直系家庭成員) means a spouse, child, parent, brother or sister.

NEGATIVED

(4) At least 5 members appointed by the Chief Executive under subsection (1)(c) shall, in the opinion of the Chief Executive, have knowledge of, or experience in, or exposure to, criminal investigation, criminal litigation, social work, and affairs of ethnic minority."

5(1)
 NOT PROCEEDED
 WITH

By deleting "the Chief Executive on the advice of".

Part 3
 NOT PROCEEDED
 WITH

By deleting the heading and substituting –

"OBJECTIVES, FUNCTIONS AND POWERS OF COUNCIL".

7
 NOT PROCEEDED
 WITH

In the heading, by deleting "**Functions of Council**" and substituting "**Objectives, functions and powers of Council**".

7(1)
 NOT PROCEEDED
 WITH

By deleting "The" and substituting "With the objective of preventing abuse of power by the police force, the".

8(1)
 NEGATIVED

By deleting ", as the Commissioner and the Council may agree –" and substituting "as the Council may decide –".

10

[NEGATIVED]

(a) In paragraph (a)(ii), by deleting everything after “who” and substituting “, directly or indirectly, identified himself as such a member while off duty;”.

[NEGATIVED]

(b) In paragraph (a), by adding –

“(iv) the conduct of an agent instructed by a member of the police force while on duty or in the execution or purported execution of his duties; or”.

[NEGATIVED]

(c) In paragraph (a), by adding –

“(v) abuse of information (obtained through his status as a member of the police force) by a member of the police force while off duty;”.

[NOT PROCEEDED
WITH]

(d) In paragraph (b), by deleting “Commissioner” and substituting “Council”.

11

[NOT PROCEEDED
WITH]

(a) In paragraph (b), by deleting “in the opinion of the Commissioner, the complaint is of a serious nature.” and substituting “in the opinion of the Council, the complaint is of a serious nature;”.

(b) By adding –

“(c) the complaint is made by a person who is below the age of 16 at the time of the incident giving rise to the complaint;”.

(c) By adding –

“(d) the complaint is made by a person with mental incapacity or is unable to make the complaint due to illness at the time of the incident giving rise to the complaint;”.

(d) By adding –

“(e) though made to the Commissioner after the expiry of the period applicable to it under paragraph (a)(i) or (ii), in the opinion of the Council, the complaint is justified by good cause.”.

14(1)(a)
 NOT PROCEEDED
 WITH

By deleting “or guardian” and substituting “, guardian, de facto guardian, relative or step parent”.

14(2)
 NOT PROCEEDED
 WITH

By deleting “subsection (1)(b)” and substituting “subsection (1)(a) and (b)”.

14(3)
 NOT PROCEEDED
 WITH

By deleting “subsections (1)(b) and (2)” and substituting “subsections (1)(a), (b) and (2)”.

15(2)
 NEGATIVED

By deleting the full stop and substituting “and provide explanation, information and material relating to such reconsideration.”.

15
 NEGATIVED

By deleting subclause (3) and substituting –

“(3) Having considered the explanation, information and material by the Commissioner under subsection (2), the Council may decide the category of that complaint, and the Commissioner must handle and investigate the complaint according to such decision.”.

16(2)
 NOT PROCEEDED
 WITH
 NOT PROCEEDED
 WITH

(a) In paragraph (d), by deleting “and”.

(b) In paragraph (e), by deleting everything after “as” and substituting “the Commissioner or the Council thinks necessary; and”.

NEGATIVED

(c) By adding –

“(f) if any, information or material of any criminal or civil proceedings in relation to the complaint.”.

16
 NOT PROCEEDED
 WITH

By deleting subclause (3) and substituting –

“(3) In the case of a classification of informal resolution, an investigation report submitted under subsection (1) must –

(a) contain –

(i) a summary of the process of informal resolution of the complaint;

- (ii) an account of the incident giving rise to the complaint as described by the complainant;
- (iii) (if the complainee is identified) an account of the incident giving rise to the complaint as described by the complainee;
- (iv) an account of the action taken or to be taken by the Commissioner in connection with the complaint; and
- (v) such information as the Commissioner or the Council thinks necessary; and

(b) explain the reasons for resolving the complaint by informal resolution.”.

16

NOT PROCEEDED
WITH

By adding –

“(4) In subsections (1) and (2), a reference to an investigation report includes an investigation report supplementary to a previous investigation report.”.

17(1)

NEGATIVED

(a) In paragraph (a), by deleting “6” and substituting “4”.

(b) In paragraph (b), by deleting “Commissioner and the Council may agree” and substituting “Council may decide”.

17(2)

NEGATIVED

(a) In paragraph (a), by deleting “6” and substituting “4”.

(b) In paragraph (b), by deleting “Commissioner and the Council may agree” and substituting “Council may decide”.

17(3)(b)

NOT PROCEEDED
WITH

By deleting “6” and substituting “4”.

18

NEGATIVED

In the heading, by deleting “**opinion or**”.

18(1)(e)

NEGATIVED

By deleting “opinion” and substituting “recommendation”.

18(2)

NEGATIVED

By deleting “opinion or”.

18

NEGATIVED

By adding –

“(3) The Chief Executive shall respond to the recommendations submitted to him under subsection (2).”.

New

NEGATIVED

By adding immediately after clause 18 –

“18A. Council’s endorsement of investigation report

(1) Subject to subsection (2), the Council shall endorse an investigation report submitted under section 16 or 18 and notify the Commissioner the endorsement.”.

(2) The Council shall not endorse an investigation report submitted by virtue of subsection (1) unless it is satisfied with –

- (a) the content of the report; and
- (b) the manner in which the interview or collection of evidence in relation to the complaint has been conducted.”.

19(1)

NEGATIVED

By deleting “information” and substituting “information or material”.

19

NEGATIVED

By deleting subclause (3).

19(8)

NOT PROCEEDED
WITH

By deleting everything after “such record” and substituting “may be used only under circumstances under section 37(2)(a), (b), (c), (d) and (e).”.

19

NOT PROCEEDED
WITH

By deleting subclause (9) substituting –

“(9) Despite subsections (5) and (7)(c) but without prejudice to subsection (6), a person interviewed by the Council has the right to be accompanied by his solicitor or counsel or a person specified by him at an interview under this section.”.

20(1)

NOT PROCEEDED
WITH

In paragraph (b), by deleting “or discrepancy” and substituting “, discrepancy, allegation, ambiguity, doubts or points”.

20

NEGATIVED

By adding –

“(3) Notwithstanding any claim of legal professional privilege, the Commissioner shall provide the Council for the purposes of performing the Council’s functions under section 7(1)(a), (b), (c) or (d) with all documents between the Commissioner and his professional adviser in so far as the same are relevant to the handling or investigation of any reportable complaint.”.

22

NOT PROCEEDED
WITH

By deleting the clause and substituting –

“22. Notification of result of complaint and result of review

(1) In the case of a reportable complaint that is not a request for review, the Commissioner must, within the time limit which the Council may specify after the Council has endorsed the investigation report of the complaint under section 18A, notify the complainant of –

- (a) the summary of the investigation;
- (b) the finding of facts in relation to the complaint and the evidence in support of the finding;
- (c) the classification of the complaint, and the reasons for the classification;
- (d) the account of the action taken or to be taken by the Commissioner in connection with the complaint; and
- (e) such other information as the Commissioner or the Council thinks necessary.

(2) In the case of a reportable complaint that is a request for review, the Commissioner must notify the complainant of the result of the review and the reasons for the result.”.

23(1)

NEGATIVED

(a) In paragraph (a), by deleting “and”.

(b) In paragraph (b), by deleting the full stop and substituting “; and”.

(c) By adding –

“(c) attend to any part of an investigation conducted by the Commissioner in respect of a complaint.”.

24

NEGATIVED

By deleting “explanation” and substituting “explanation and justification”.

25(a)

NEGATIVED

By deleting everything after “statistics of” and substituting “conduct relating to members of the police force; and”.

26

WITHDRAWN

In the heading, by deleting “**Council may require Commissioner to**” and substituting “**Commissioner must**”.

26(1)

WITHDRAWN

By deleting “the Council may require the Commissioner to” and substituting “the Commissioner must”.

27

NOT PROCEEDED
WITH

By renumbering the clause as clause 27(1).

27(1)

NOT PROCEEDED
WITH

By deleting everything after “unless” and substituting –

“the Chief Executive certifies that compliance with the requirement would be likely to prejudice –

- (a) the security of Hong Kong; or
- (b) the investigation of any indictable crime.”.

27

NOT PROCEEDED
WITH

By adding –

“(2) The Chief Executive shall not sign the certificate by virtue of subsection (1) unless he is satisfied that the certificate is necessary upon balancing public interest involved in compliance with the requirement against the prejudice made under subsection (1)(a) and (b).”.

28

NEGATIVED

By renumbering the clause as clause 28(1).

28

NEGATIVED

By adding –

“(2) The Chief Executive shall respond to the report made to him under subsection (1).”.

31(1)

NEGATIVED

By deleting “Secretary for Security” and substituting “Council”.

31(2)

NOT PROCEEDED
WITH

By deleting subclause (2) and substituting –

"(2) The following persons are not eligible for appointment as observers –

- (a) a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department;
- (b) the Secretary-General, the Legal Adviser or any other employee of the Council;
- (c) a person who was a member of the police force; and
- (d) an immediate family member of a member of the police force."

31

{ NOT PROCEEDED
{ WITH

By adding –

“(3) For the purposes of subsection (2)(d), “immediate family member” (直系家庭成員) means a spouse, child, parent, brother or sister.”

32

{ NOT PROCEEDED
{ WITH

By deleting “observe” and substituting “monitor through observation”.

34(2)

{ NEGATIVED

By deleting paragraph (a) and substituting –

“(a) where applicable, in his opinion, the manner in which the interview or collection of evidence has been conducted in an unfair and partial manner; and”.

37(2)

{ NEGATIVED

(a) In paragraph (c), by deleting everything after “law” and substituting a semicolon.

(b) In paragraph (d), by deleting the full stop at the end and substituting “; or”.

(c) By adding –

“(e) for –

- (i) revealing any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by members of the police force;

- (ii) revealing a serious threat to public order or to the security of Hong Kong or to the health or safety of the public; or
- (iii) public interest.”.

37

NOT PROCEEDED
WITH

By deleting subclause (3) and substituting –

“(3) For the avoidance of doubt, where there is disagreement between the Council and the Commissioner regarding –

- (a) the findings and classifications of any reportable complaint; or
- (b) the actions taken or to be taken by the Commissioner against any member of the police force,

the Council may disclose all facts relating to such disagreement to such persons as it considers appropriate, and such disclosure shall be regarded as being necessary for the performance of the Council’s functions under this Ordinance.”.

37

NOT PROCEEDED
WITH

By deleting subclause (4).

38(1)

NEGATIVED

By adding “without gross negligence,” after “to be done,”.

Schedule 1,

section 1
NEGATIVED

In paragraph (a) and (b), by deleting “2” and substituting “3”.

Schedule 1,
section 11(3)
NEGATIVED

By deleting “subsection (5)” and substituting “subsections (5) and (5A)”.

Schedule 1,

section 11
NEGATIVED

By adding –

“(5A) Notwithstanding subsection (3), a matter for determination relating to a complaint involving –

- (a) an allegation of –
 - (i) criminal offences committed by members

- of the police force;
- (ii) assault by members of the police force;
- (iii) fabrication of evidence by members of the police force;
- (iv) threat by members of the police force; and
- (v) abusive or illegal exercise of police powers by members of the police force;

- (b) a complaint with a total of 5 or more counts of allegations either listed or not listed in paragraph (a), either raised by the complainant or registered in the course of police investigation,

must be decided at a meeting.”.

| | |
|---|---|
| Schedule 1, section 23(1) [NEGATIVED] | By deleting “or such further period as the Chief Executive may allow,”. |
| Schedule 1, section 23(2) [NEGATIVED] | By deleting “after receiving the Chief Executive’s approval for tabling”. |
| Schedule 1, section 25(1) [NOT PROCEEDED WITH] | By deleting “, a member of the Council, the Secretary, the Legal Adviser or any other employee of the Council,” and substituting “or a member of the Council,”. |
| Schedule 2, section 3 [NEGATIVED] | By deleting “Secretary for Security” where it twice appears and substituting “Council” . |
| Schedule 2, section 4 [NEGATIVED] | By deleting “as the Secretary for Security approves”. |

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Wing-tat

| <u>Clause</u> | <u>Amendment Proposed</u> |
|--|--|
| 31(1) [NEGATIVED] | By deleting “Secretary for Security” and substituting “Chief Executive”. |
| 37(4) [NOT PROCEEDED WITH [NOT PROCEEDED WITH] | (a) In paragraph (d), by deleting “or” at the end. (b) In paragraph (e), by deleting the full stop at the end and substituting a semicolon. |
| [NEGATIVED] | (c) By adding – “ (f) the Legislative Council;”. |
| [NEGATIVED] | (d) By adding – “ (g) the Secretary for Justice; or”. |
| [NEGATIVED] | (e) By adding – “ (h) the Commissioner of the Independent Commission Against Corruption appointed in accordance with the Basic Law.”. |

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable CHEUNG Man-kwongClauseAmendment Proposed31(1)
NEGATIVED

By deleting “Secretary for Security may appoint” and substituting “Council may appoint, upon recommendation by the Secretary for Security, ”.