

OFFICIAL RECORD OF PROCEEDINGS

Tuesday, 3 July 2012

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

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

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

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

THE HONOURABLE TOMMY CHEUNG YU-YAN, S.B.S., J.P.

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

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

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

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

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

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

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

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE STARRY LEE WAI-KING, J.P.

DR THE HONOURABLE LAM TAI-FAI, S.B.S., J.P.

THE HONOURABLE CHAN HAK-KAN, J.P.

THE HONOURABLE PAUL CHAN MO-PO, M.H., J.P.

THE HONOURABLE CHAN KIN-POR, B.B.S., J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

THE HONOURABLE WONG KWOK-KIN, B.B.S.

THE HONOURABLE IP WAI-MING, M.H.

THE HONOURABLE IP KWOK-HIM, G.B.S., J.P.

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

DR THE HONOURABLE SAMSON TAM WAI-HO, J.P.

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE CHIM PUI-CHUNG

DR THE HONOURABLE LEUNG KA-LAU

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE LAI TUNG-KWOK, S.B.S., I.D.S.M., J.P.
SECRETARY FOR SECURITY

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

CLERKS IN ATTENDANCE:

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

BILLS**Second Reading of Bills****Resumption of Second Reading Debate on Bill**

PRESIDENT (in Cantonese): Good morning, Members. We now resume the Second Reading debate on the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012.

(Bill originally scheduled to be dealt with at the last Council meeting)

**UNITED NATIONS (ANTI-TERRORISM MEASURES) (AMENDMENT)
BILL 2012****Resumption of debate on Second Reading which was moved on 22 February
2012**

PRESIDENT (in Cantonese): Mr LAU Kong-wah, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR LAU KONG-WAH (in Cantonese): President

MR WONG YUK-MAN (in Cantonese): A quorum is lacking.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): Mr LAU Kong-wah, please continue.

MR LAU KONG-WAH (in Cantonese): President, in my capacity as Chairman of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (the Bills Committee), I would like to report on the major deliberations of the Bills Committee.

The United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (the Bill) seeks to implement two recommendations of the Financial Action Task Force on Money Laundering (FATF) set out in the Mutual Evaluation Report (the Report) on Hong Kong published in 2008. In response to the recommendations of the FATF, the Bill seeks to amend the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) in the following three main areas —

- (a) expanding the definition of "terrorist act" to cover acts intended to coerce international organizations;
- (b) broadening the scope of prohibited terrorist financing from acts involving "funds" to those involving "property" of every kind; and
- (c) creating a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.

The Bill proposes to replace the term "funds" by "property" under various sections of the UNATMO. However, "property" is not defined in the Bill or the UNATMO. In the absence of such definition, the definition of "property" in the Interpretation and General Clauses Ordinance (IGCO) is to apply save where the contrary intention appears either from the IGCO or from the context of the UNATMO.

Members have expressed concern that the coverage of "property" as defined in the IGCO is too wide as compared to that of "funds" in the UNATMO.

The Administration has advised that the FATF recommended that the definition of "funds" under the UNATMO should be extended to "assets of every kind, whether tangible or intangible, movable or immovable". Hence the Bill proposes to replace the term "funds" by "property" to cover assets of every kind in order to address the recommendations of the FATF, as set out in the Report.

As explained by the Administration, the various references to "property" under the UNATMO have consistently relied on the definition of "property" under the IGCO. The authorities pointed out that the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003, as passed by the Legislative Council in 2004, used the word "property" to replace the term "funds" under section 6 of the UNATMO to implement the requirement of United Nations Security Council Resolution (UNSCR) 1373 and FATF Special Recommendation for freezing "fund" and "non-fund" assets of terrorists and terrorist associates. According to the Report, the FATF did not raise any adverse comment on the use of the term "property" in the UNATMO.

Besides, the Bills Committee has also discussed whether it is necessary to amend section 3 of the UNATMO in order to make clear that the term "property" applies to property whether within or outside Hong Kong.

The Administration has responded that as the requirements of UNSCR and FATF recommendations are to prohibit financing of terrorism on the international level and that section 3 of the UNATMO has also set out the extra-territorial effect, the property being covered under the UNATMO should in principle also cover property located outside Hong Kong whilst the actual application of individual provisions related to any property will depend on the facts of each case. The Administration is of the view that the definition in the IGCO should continue to be used lest the FATF may consider that Hong Kong has made any substantial changes. The Bills Committee agrees that it will not be necessary to amend the UNATMO in this regard.

The Bills Committee expressed concern that the Bill proposes to expand the scope of the definition of "terrorist act" in the UNATMO to cover the intended coercion of international organizations. The term "international organization" is, however, not defined in the Bill or the UNATMO. Members then considered whether it was necessary to define the term "international organization".

According to the Administration, the proposed inclusion of the term "international organization" is for the purpose of implementing the recommendation of the FATF in the Report that Hong Kong should "broaden the scope of terrorist acts to also cover the intended coercion of an international organization". This recommendation was based largely on express references to "international organization" made in Article 2.1(b) of the International

Convention on the Suppression of the Financing of Terrorism (TF Convention). The TF Convention does not formulate a definition for the expression "international organization". Neither has the FATF required its members to formulate a definition for the term.

After clarification was sought by the Bills Committee, the Administration has confirmed that the International Committee of the Red Cross is not an "international organization" insofar as the Bill is concerned.

Regarding the fact that the Bill proposes the addition of a new provision under section 8 of the UNATMO to prohibit the collection of property or the solicitation of financial services for terrorists or terrorist associates, some members have expressed concern that the coverage of the proposed section is too wide. Consequently, a person who provides basic necessities to terrorists on humanitarian grounds, or collects reasonable legal expenses or solicits legal services for alleged terrorists will violate the new offence.

According to the explanation of the Administration, the proposed offences under section 8 of the UNATMO require the mental element of knowledge or "recklessness". The Administration has pointed out that for the provision of basic necessities to terrorists or collection of property such as collecting legal expenses, a person would only commit an offence under the proposed section 8 if he knows that, or is reckless as to whether, the person is a terrorist or terrorist associate. The prosecution has to prove the requisite *mens rea* of "knowledge" or "recklessness".

The Bills Committee notes that the existing section 15(1)(b) of the UNATMO provides that the Secretary for Security, in granting a licence under section 6(1), may specify certain exceptions including the reasonable living expenses and the reasonable legal expenses. Members have enquired whether "basic necessities" can be regarded as an exception so that the provision of basic necessities to terrorists on humanitarian grounds can be defended.

The Administration has explained that the provisions in section 15 of the UNATMO are the conditions and exceptions which may be specified in the licences granted by the Secretary for Security under section 6(1) or 8 of the UNATMO, rather than arguments for defence. While the existing section 15(1)(b) of the UNATMO concerning exceptions is already wide enough

to permit exceptions to be made in relation to non-fund property such as medicines and medical treatment, it is not appropriate to amend that section.

The Bills Committee has also requested the Administration to explain why the solicitation of financial (or related) services for terrorists or terrorist associates is proposed to be an offence.

The Administration has explained that UNSCR requires all States to prohibit their nationals or any persons and entities within their territories from "making any funds, financial assets or economic resources or financial or other related services available", directly or indirectly, for the benefit of terrorists. This requirement is currently implemented under the existing section 8 of the UNATMO, which will become the proposed section 8(a). However, the FATF considered that the existing section 8 could not cover the act of "collection". For the purpose of consistency with section 8(a) and full implementation of UNSCR, the Administration has proposed adding section 8(b) to the Bill so that both the "making available" of property or financial (or related) services to terrorists and terrorist associates and the act of "collection" in this respect would be criminalized.

The Bills Committee supports the resumption of the Second Reading debate of the Bill today.

President, this is my report on the deliberations of the Bills Committee. I would like to express my personal views as follows.

Under the major trend of globalization, there are no national boundaries in respect of combating terrorist activities as this is the responsibility of each and every region. In order to effectively combat terrorist activities, the prevention and suppression of terrorist financing are a most important task. As an international financial centre, Hong Kong is the hub for financial services. As many multinational banks have set up offices in Hong Kong, there are often a lot of funds circulating in Hong Kong. Hong Kong would turn into a money laundering centre for outlaws if a sound mechanism and legislation were not put in place.

Hong Kong is a member of the FATF which seeks to ensure that its members, regions or countries can effectively implement the international

standards in respect of anti-money laundering and combating terrorist financing, in particular, the internationally recognized recommendations made by the FATF. The Bill before us today seeks to bring us on par with international standards, strengthen efforts in anti-money laundering and optimize the system for countering terrorist financing. The improvements include criminalizing the financing of terrorism, terrorist acts and terrorist organizations, and the full implementation of the relevant provisions of counter-terrorist financing of the United Nations. If Hong Kong fails to take any improvement actions, the FATF may tighten the scrutiny and monitoring on Hong Kong, which could indirectly affect Hong Kong's status as an international financial centre.

Therefore, today's Bill is most important to Hong Kong, and the Democratic Alliance for the Betterment and Progress of Hong Kong supports the passage of the Bill. Thank you, President.

DR MARGARET NG (in Cantonese): President, a great controversy was aroused when the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) was passed by the Legislative Council in 2002 because the Ordinance would deal a heavy blow to human rights and the rule of law. However, when terrorism has caused panic to the world, Hong Kong has an obligation to pass the legislation. So the legislation was eventually passed. However, we have great reservations about the UNATMO and its subsidiary legislation, and cast serious doubts on the relevant provisions.

President, a number of amendments have been made to the UNATMO and its subsidiary legislation since 2002. Despite the authorities' concessions in 2002 in order to enable the timely passage of the UNATMO, the applicability of the Ordinance has been broadened on many occasions. Nevertheless, due to the international obligations, it is difficult for us to oppose the amendments. The Bill before us today is no exception.

President, the most important part of the Bill is to create a new offence, and the term "funds" in the original relevant provisions is changed to "property". The term "property" covers a very wide range of areas, including tangible and intangible assets, movable and immovable property. The Bill proposes to change the term "funds" to "property", and the definition of "property" in

Chapter 1 of the Laws of Hong Kong (Cap. 1) is to apply. The definition in that Chapter is also very broad. However, as we do not think that the definition of "property" in Cap. 1 has exceeded the requirements of the United Nations, it is also difficult for us to oppose it.

President, as we can see it, after the passage of the Bill, the scope of the offence which has already been broadened infinitely will be further broadened, making it difficult for us to understand what behaviour is to be included and what behaviour is not. President, why is the difference so huge? The definition of "property" in Cap. 1 consists of two parts, which was also mentioned by Mr LAU Kong-wah just now. Let me cite it again. Property includes: (a) money, goods, choses in action and land; and (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition.

President, a person will face great difficulties when he wants to abide by the law in order to avoid committing an offence. President, the Bill mainly seeks to amend three provisions. Firstly, it seeks to amend section 6 so that the subtitle of the section "freezing of funds" will be replaced by "freezing of property". In fact, the term "funds" in this context has been changed to "property". President, funds are something that can be seen while the definition of property is much broader, as reflected by the definition I read out just now.

After section 7 has been amended, the provision will be changed to prohibition on "collection of property" rather than "collection of funds". President, when reading the Chinese version, people will find the concept "collection of property" difficult to understand.

The most crucial amendment is the one to section 8. President, the original section 8 mainly seeks to impose restriction on making funds or financial services available to terrorists. Apart from stating the provision of funds or financial services, it has also specified "directly or indirectly" making funds or financial services available. After adding "indirectly", the scope has become so broad that it is incomprehensible. It specifies that "making any funds or financial services available directly or indirectly, to or for the benefit of a person". This has made the provision much broader.

Originally, restriction may be imposed from the perspective of *mens rea*. It will certainly be fine if it is stipulated in the clause that the person has "knowledge" that someone is a terrorist. However, with the stipulation of "knowledge" or "recklessness", the scope of "recklessness" becomes much broader. It is not difficult to confirm that a person "knows" that someone is a terrorist. But regarding "being reckless as to whether, the person is a terrorist or terrorist associate", President, I really cannot imagine how broad the scope will be.

Section 8 originally stipulated that the act described in that section was not an offence if authorized by the Secretary. However, the new clause is divided into two parts, one of which specifies that the act so described is not an offence if authorized by the Secretary while another part specifies that it is still an offence regardless of whether it is authorized by the Secretary.

Let me explain this in two parts. Firstly, when the term "funds" is changed to "property" and property includes easement, the scope will be quite broad. If a person solicits financial services directly or indirectly for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate, that person shall be guilty of an offence. It is stipulated in the clause that the person "solicits" rather than "provides" financial services because it is difficult for an ordinary citizen to provide financial services to the others. If it is a bank, it will provide such services. Under such circumstances, it is also an offence to "solicit" financial services.

President, after the term "funds" has been changed to "property", this situation will arise besides, the term "property" includes property in Hong Kong or foreign countries. If you own some property in a foreign country — It is said that many Secretaries of Departments and Directors of Bureaux own properties in foreign countries — If you ask a person to take care of your property and the person allows some people to lodge at your property or pass through your property (involving easement), and those people who have lodged at or passed through your property are terrorist associates, then you, as the property owner, may commit an offence even though you are tens of thousands of miles away. President, under such circumstances, regardless of whether you know that the person concerned is a terrorist or terrorist associate, you will commit an offence as long as you are reckless as to whether the person is a terrorist or terrorist associate.

President, if you have studied the laws, you should know that the term "罔顧" has a very strict definition and may not necessarily give rise to any problem. The English equivalent of the term "罔顧" is "reckless", which means that under certain circumstances, you should have made inquiry about the occurrence of a possibility, but you have turned a blind eye to it. However, it is a subjective judgement regarding when a possibility or danger or incident may occur. As it can be seen from cases in recent years, the authorities, with the benefit of hindsight, consider that the person concerned is "reckless", the definition of which is very broad.

In fact, as you can imagine, if you are a lawyer and your client is a terrorist associate by definition, then when you provide services to him, have you committed an offence or not? This depends on whether the authorities consider that you are "reckless" or not. If you are a lawyer who deliberately commits an offence, there will be no problem because you know it very well that the person is a terrorist or the subordinate of a terrorist. In that case, you will be very careful in concealing all traces of your crime when helping the person to deal with his business. But if you are innocent, most likely it may give rise to this situation: The person or his family members are terrorist associates, and you have to prepare a will for him although you do not know the situation. However, the authorities may think that you have knowledge of it. As a result, you might be prosecuted. Even though you may be acquitted by the Court of Final Appeal, you may be utterly discredited and lose all of your fortune in this process.

So, President, this Bill is a weapon of mass destruction. If the authorities are cautious, we do not have to worry about it. However, if the Government's awareness of the rule of law is weak and is always ready to use the law as a tool to suppress the people, we would be in danger. Therefore, President, we in the legal profession are always very much concerned about the UNATMO and its amendments as we are very worried about these possible scenarios arising.

However, President, we have no room to manoeuvre. As stated in the Bills Committee's Report, the FATF has pointed out that the definition of "funds" should be extended to cover assets of every kind, whether tangible or intangible, movable or immovable. Therefore, President, we have to comply if we are to honour our international obligations.

So, President, although we will not oppose the passage of the Bill today, I have to raise our various concerns in the course of its passage. In particular, we have to remind the authorities that this is a weapon of mass destruction, and we hope that the Government will be most cautious in dealing with it. If the Government infringes human rights in the deployment of this weapon, it will give rise to great distrust in the Government.

President, I so submit. I hope the authorities will be vigilant and do not let us down. Thank you.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, I request a headcount in accordance with the Rules of Procedure.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Does any other Member wish to speak? Mr LEUNG Kwok-hung, please.

MR LEUNG KWOK-HUNG (in Cantonese): President, since the September 11 incident, I think that the issue of anti-terrorism has been wantonly abused by many governments. I wonder if Members might recall that only one Congresswoman voted against the proposal to attack Iraq by George W. BUSH when the Congress of the United States voted on it. The Congress as a whole, just like this Council, would say nothing but give assent: "If the President wants a war, we go to war." However, after arriving in Iraq, the American troops did not find any weapons of mass destruction, which had been asserted to be present in Iraq, just like what LEUNG Chun-ying and Henry TANG had asserted. Nothing

could be found in the big pit dug. Despite the United States' assertion about the concealed weapons, nothing could be found. Nothing could be found except a man. Certainly it was Saddam HUSSEIN, who was a tyrant who should be overthrown.

Regarding anti-terrorism legislation, my views are different from those of Dr Margaret NG. The issue concerning "property" and "funds" mentioned by her is certainly a problem. But I am more concerned about the unclear and ambiguous definition of "anti-terrorism" because this will lead to a piece of "merciless" legislation. This is just like the phrase "invincible and glorious" in describing MAO Zedong Thought, which had become meaningless and vanished into thin air. But the problem is that even the target of anti-terrorism measures is also ambiguous. What is "terrorism"? The Muslim Brotherhood in Egypt, which has just taken power, is headed by a terrorist organization called the "military" which has dissolved the parliament before the arrival of the president, who could not see any members of the parliament at all. I am not sure whether Hong Kong will get into a situation in future where the Legislative Council has been dissolved while Chief Executive is elected.

The key lies in the fact that it is extremely difficult to define "terrorism". I read a book which described terrorism and opportunism as twins when I was young. This is certainly right because Lenin's elder brother died of terrorism. The case of terrorism boils down to one question: If a handful of people advocate the use of aimless violence to coerce others to agree with their political objectives, these people not only oppose the tyrant, but also become a tyrant themselves. This is the crux of the problem. If the definition of "terrorist" is drawn up by those in power, it will lead to endless disputes, right?

Let me cite an example. President Bill CLINTON and President George W. BUSH have never said that the Irish Republican Army (IRA) is a terrorist organization. If someone compiled a list and asked them whether the IRA was a terrorist organization, they would say that it was not. The IRA is not a terrorist organization. Why? You will know the answer by visiting Boston. Do they want to win the Irish Americans' votes? If yes, they will certainly say that the IRA is not a terrorist organization. Certainly, the IRA is a bit different from many other military groups known as terrorist organizations. However, if the IRA blew up the British Government's facilities and advocated struggle for independence by means of guerrilla warfare, would you consider it a terrorist

organization? You can say "Yes", and you may also say "No". If politicians or presidents of the United States announce in the United States that the IRA is a terrorist organization — according to the definition mentioned by Dr Margaret NG, this is not regarded as "property" — this is not feasible because they will lose the election. When British Prime Minister Tony BLAIR is also prepared to make peace with them and Chris PATTEN has also become a high-ranking official on the Irish issue, politicians of the United States will naturally say that the IRA is not a terrorist organization.

Where does the problem lie? The problem is that the term "terrorism" has been abused by these governments. Frankly speaking, President, regarding the Communist Party of China (CPC), if you ask me whether I have confidence in it, I will certainly answer in the negative because it will label everything "terrorism". If we stage a demonstration, it can even say that it is a kind of terrorism, right? When we wanted to see President HU Jintao, Andy TSANG instructed his spokesman to say that the two-meter-tall water-filled barricades are used to guard against terrorist attack rather than demonstrators. What on earth was he talking about? Let me cite another example. Some demonstrators of the League of Social Democrats had hurled banners at the motorcade of HU Jintao when it was passing by. If they were terrorists, HU Jintao would have died already. If it was a bomb, he would have been killed, right?

Our city is not ranked high in the list of countries facing the risk of terrorist attacks. But when our leader, President HU Jintao, visited Hong Kong, the authorities deployed the water-filled barricades Anyway, these water-filled barricades have lain idle for a long time after purchase. Perhaps the Director of Audit has recommended using it. From these simple matters, we can see how many evils are done in the name of "terrorism". The ordinary people's right to protest in a city of 6.9 million people is subject to restriction also in the name of "terrorism" We are well aware of this and no announcement is needed.

I am not sure whether Dr Margaret NG knows that a gentleman of the United States Department of Homeland Security has retired all have retired and RUMSFELD has also retired. He is really a genius. He said that if Afghanistan is not obliterated from the face of the earth, we should not expect to fight against terrorism. The scores that Americans owe the world have not yet been settled, let alone the CPC's. Afghanistan is accused of supporting terrorism

because of the presence of al-Qaeda and the Taliban. Although the Taliban is Afghanistan's government, the United States wants to eradicate it because it has co-operated with al-Qaeda. How ridiculous it is! The United States subsequently said that it could not see any direct relationship between Iraq and the Taliban, but it is found that Iraq has weapons of mass destruction and now even the Head of the Atomic Energy Commission said that no weapon of mass destruction had been found back then. He opposed sending troops to Iraq, but to no avail. The United States had to fabricate the pretext that Iraq possessed weapons of mass destruction, and said, "We in the world's Nuclear Club are 'omnipotent'. I can possess these weapons, but you cannot because I am righteous and will never make any mistakes. But you will make mistakes, and will cause big problems if you possess nuclear bombs. However, you can use nuclear power, and I do not care whether or not you will be killed because of that. Each and every one of you can use nuclear power which is a product derived from nuclear weapons. "

President, in this political system, you are also aware of your ranking and our seating order I could see you in a fleeting glance on the television, and when HU Jintao was passing by, we could also see him. What is your ranking? Not even ninth. It is said that the Legislative Council ranks below ninth.

The Legislative Council is the only body returned by election to monitor the Government. Moreover, it has been bestowed certain powers. But what kind of Council is this? Is it capable of performing its duties? Half of the Legislation Council Members are the so-called "expired dumplings" — they are pre-made and anyone who has eaten these dumplings will suffer from diarrhea. They smell bad and need to be reheated by steaming. They are pre-made every year.

When discussing the definition of "property", or the proposal to change the term "funds" to "property", Dr Margaret NG just pointed out that there was no alternative in a very polite manner. She has seized upon one point while ignoring the overall picture. Let me cite a very simple example. When I went on holiday in Europe, I met a leader of the New People's Army of the Philippines, who distinguished himself in action against Ferdinand MARCOS. But when Gloria ARROYO came to power, he was forced into exile. The government said it would arrest him on the ground that he was a terrorist. As the United States was launching a counter-terrorist campaign worldwide, he was regarded as

a terrorist, and subject to persecution even in Europe. I have met with him and chitchatted with him before coming back to Hong Kong. Would I be regarded as a terrorist associate if my meeting with him was disclosed? Because I have met with a person accused of being a terrorist! The Philippine authorities said that he is a terrorist, while the Yankees also said that he is a terrorist because he has engaged in guerrilla warfare in his whole life. They do not believe that he will really detach himself from worldly things after retirement. He has also said that the independence of the Philippines could only be achieved by means of military actions. Is this terrorism?

President, if I walked into your office for a tea and told you, "President, do you remember the New People's Army? Long live MAO Zedong Thought! Long live the victory of people's war! I have seen that man!" In that case, you are reckless because you clearly know that LEUNG Kwok-hung have met with the man in the Netherlands, and as a result, you are implicated. Do you not think that this is terrible? Is this terrorism? You have not invited me to your office. If you have, it would be reasonable for you to be implicated. However, if I walked into your office to tell you that to cut the filibuster was unreasonable and criticized you before informing you of my meet with that man, should you be regarded as having knowledge or not? Should you make a report about it? Should you advise the Bureau of State Security? I subsequently who is this man? A newcomer, I do not recognize. Secretary, who are you? You are too far away and I really cannot see you clearly. Do you have to inform the Secretary? If you did not inform him, would this fall within the definition of "reckless" as mentioned by Dr Margaret NG? I also hope that Dr Margaret NG can explain this point later because I have been sentenced to two months' imprisonment for the offence, *inter alia*, of being reckless. I was accused of being fully aware that the door I pushed during a demonstration would fall and people would be crushed to death by the door if it fell. Without paying regard to this, I was reckless and deserved a heavy sentence. These definitions in law under common law, we have the presumption of innocence and it is necessary for the prosecution to adduce convincing evidence. This is a fairly good system. In fact, it is superfluous to require the production of convincing evidence to prove a person reckless. How to prove it? A person will certainly be convicted if prosecuted, right?

Now we have a problem. Since this Council is so lame and our Government is also so lame do you think that the LI Wangyang incident is

an incident of terrorism? I think it is one hundred percent terrorism and the way in which LI Wangyang was dealt with is one hundred percent terrorism! According to my definition, those who support the regime and those who do business with them are being reckless of the human lives, right? Is it not terrorism by using systematic and organized violence to force the others to agree with one's political objectives? If it is not, what is it? Mrs Regina IP has gone out. When she was promoting the legislation on Article 23, she mentioned the so-called "magnificent revolution". That revolution is not counted because I also support it. The problem is that they acted in a diametrically opposite way after coming to power. Is tyranny a kind of terrorism? Tyranny is a kind of collective terrorism. How are Yankees qualified to call the others terrorists? In order to support any person to achieve its political objectives, the United States has become the world's top spender on military forces.

President, can we in this Council, which is of such a low level, discuss this matter? Does LEUNG Chun-ying understand it? LEUNG Chun-ying himself is a terrorist. He has made use of lies and the State machinery to cover up his unauthorized building works. I have no ties with him. Please do not come after me.

President, having said that, since the September 11 incident, the term "terrorism" has misled the whole world. Today, even the leader of al-Qaeda has already died and his whole family not all dead, as his wives and concubines are still alive. You still say that the power has to be expanded? What is this nonsense? When even the murderers and culprits are all dead, you still want to make use of terrorism to extend the powers to cover property? Buddy, according to this definition, your spectacles are also a kind of property rather than funds, right? If someone tells you, "Mr TSANG, I cannot see it clearly" and borrows your glasses, and you only realize afterwards that he has used your glasses to read an order to blow up a venue tomorrow, then you are also reckless. You know that he may be an al-Qaeda member, or an Afghan or person from the Middle East, why did you not ask him whether he was an al-Qaeda member before lending him your glasses? Since you do not know their language, why did you not ask him what he was reading in the first place? In view of such absurdity, we will face retribution if we enact the legislation on the ground that we have to honour our obligations.

Dr Margaret NG told me that there is no alternative. Yes, exactly. The fact that an organization which is full of terrorism has requested the passage of a Bill on combating terrorist organizations is the biggest paradox and the biggest irony *per se*. (*The buzzer sounded*) I am called a terrorist. I hope you will, in accordance with Rule 17 of the Rules of Procedure

PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): do a headcount. I am a terrorist.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr James TO.

MR JAMES TO (in Cantonese): President, I have listened to the speeches of Dr Margaret NG and Mr LEUNG Kwok-hung. First of all, I agree with what Dr Margaret Ng has said, and I will add a couple of points later on.

I understand the point made by Mr LEUNG Kwok-hung, that at the international political level, the situation where the winner is crowned a king and the loser branded as a bandit is particularly likely to happen. Very often, the definition of terrorists by a country and the ruling government may actually involve very complicated reasons. But since Hong Kong is a member of the international community, it is difficult for us to stay aloft and remain unaffected. If a vast majority of countries or a vast majority of people on earth have chosen to define what acts should be prohibited or what criteria should be observed through the United Nations or some internationally recognized organizations, it is very difficult for Hong Kong not to follow suit. If we are worried that the application

of the relevant provisions will affect Hong Kong or the people of Hong Kong in respect of human rights and freedoms, all we can do is to examine them by all means in order to ascertain whether these requirements are of a minimum standard required for compliance in the relevant international agreements. We have no choice, as we are already involved in international politics and even in the definitions adopted in places all over the world regarding what is considered a terrorist organization and what is not considered a terrorist organization.

President, for the past two decades or so since I was elected in 1991, I have had the opportunities to attend some international conferences, and I have carried out lobbying work in the United Nations in relation to its monitoring of the implementation of international human rights covenants in Hong Kong. We would meet a lot of people in the United Nations Building and sometimes we must be very careful in order not to put ourselves in a very disadvantageous position. But as we gain a better understanding of people from different parts of the world, we know that in the international community, there can be cases in which a ruling government has suppressed the dissidents in some very atrocious ways and these dissidents in the country may put up resistance in ways that are as atrocious as those of the government or with atrocity proportional to that used by the government. Of course, these two types of inhuman acts are prohibited by different covenants. Similarly, if a certain organization, in putting up resistance, has launched terrorist attacks in ways that have departed from international humanitarian standards, this organization will be considered terrorist under the existing definition.

I remember that I have once attended a meeting in the European Union. Normally, the European Union does not specifically make a definition of "terrorists" in holding meetings, because in most of the cases, the European Union and the United States are quite consistent in their views in this respect, and I had actually come into contact with these people or talked to them in close distance. When I learnt the history of other countries, I found that the situation is rather complicated.

What has given me the deepest impression is a case relating to Iraq. We all know that in Iraq, there are the Kurds with a population of several tens of million. Their leader and I were invited by the European Union to an international conference, and what had been discussed were not just human rights issues because he is the leader of several tens of million people. But one who

has looked up this part of history will ask whether he has, in the course of putting up resistance or striving for autonomy, adopted means which are considered as means of terrorists or terrorism under the existing legislation. He has indeed resorted to such means.

We can even take ARAFAT as an example. I still remember seeing him wearing a scarf on his head when I was small, and he was regarded as a terrorist until there were changes in the developments. He was then treated as an honourable guest by many big nations and even considered a peace envoy.

I remember meeting another person who came from South Sudan. As we all know, South Sudan has recently become independent after a referendum but their leader had actually fought for independence for many years. I have seen him for many years and he would sit next to me at the conference. But I have been thinking about this: Assuming he has bought some souvenirs from me, such as the souvenirs that cost several tens of dollars or hundreds of dollars that the public very much liked to buy during the 1 July rally just held, would this taken as collection of funds? If a certain organization is considered terrorist or a terrorist organization in the entire international community, it is possible that people who may not fully know its background or organizational structure will give it several tens of dollars as a donation.

Of course, the scope of regulation is now extended from "funds" to cover "property". In fact, my greatest concern is the application of the provisions from a practical perspective, or their application to humanitarian or humanitarian relief organizations. International organizations, such as the Red Cross, are very careful with their work, and even if they have slightly stepped out of the line technically in certain circumstances, I believe various countries or Hong Kong may not venture to take legal actions against them under the relevant law.

However, we must be careful about whether some people may, out of sympathy, take actions to rescue a dying person, or they may, on compassionate grounds, provide a slice of bread, a meal and a night's lodging for other people or even bandage them in emergency conditions and hence get into troubles. Many kind-hearted people in Hong Kong will also participate in volunteering services or the work of international organizations in foreign countries, and some people will also travel to places overseas and they may somehow come across these situations. Of course, not many people may necessarily face such situations.

If extra-territorial jurisdiction is established, and even if we may have provided only some bread and water to these people overseas, it would be a different case according to the Government because people all over the world must work in concert to combat the terrorists. Certainly, Hong Kong has established extra-territorial jurisdiction in this respect, and if that really happens, will prosecution be instituted? I think the chance of prosecution is low but from the legal point of view, we do feel worried about it.

The Government's reply is that application can be made for the grant of a licence. It is imaginable that if a person knows that if he goes to a remote place in the world, say, if he travels to Afghanistan or some places in the Middle East, it is possible that some "property" Please bear in mind that "funds" refer to money, whereas "property" includes everything which is tangible in the world. So, a slice of bread is also "property". I may have two bottles of water left with me in a desert and I give one to a person who has then survived and may become a hero or a prisoner in future. This can happen just in the flash of a second.

I may argue that I saw a person who was dying at the time, not knowing that he is a terrorist, and the problem lies in the element of "recklessness". If he told me that he had been shot or he had been hounded by the government, while I might not know everything about him, I might have reasonable doubts about his identity and at least, I should suspect that he might be a robber, or else why would he be hunted by the government? In that case, I may get into troubles.

President, speaking of our country, while it is true that Hong Kong has no locally-bred terrorist organization, there are many secessionist campaigns or campaigns for independence in our country. If we travel to places like Xinjiang or Tibet, will we be caught by the law inadvertently in certain circumstances? President, I think we must be very careful in this respect.

All I can say is that the Democratic Party will eventually support the Bill. I can tell you that we have no choice. For the sake of the overall interest of Hong Kong, we can only take part in international organizations. We cannot afford to take such risk and be penalized by international organizations. It is impossible for our State to do so either. So, this is a game we must play, a game we must take part in. If a relevant resolution is proposed for this purpose, it must be accepted and passed.

What we have to say is: Will the Hong Kong Government exercise great care in enforcing the law? Let me put it more directly. In dealing with cases of local citizens falling foul of the law inadvertently, will it take an overall perspective and examine whether the citizens We have recently found that many citizens of the United States or the United Kingdom have purposely gone to the al-Qaeda headquarters to receive training because they consider what their countries have done disagreeable or they support al-Qaeda's campaign. While I think Hong Kong people are seldom involved in these situations, I hope the Government can carefully look into the enforcement of the law, so that when Hong Kong people give away a slice of bread or a bottle of water, they will not be rashly taken as financing or helping the terrorists. Hong Kong people may appear to have strong awareness of the international arena, but they actually may not know what exactly has happened. For this reason, the Government should, insofar as these cases are concerned, enforce the law as carefully as possible and think clearly before handling them.

I also understand that in an overwhelming majority of cases when we need to invoke these statutory powers, countries with global intelligence agencies must have received intelligence that certain financial transactions in Hong Kong may involve terrorist organizations and so, being a member of the global fund network, we are requested to help in blocking or monitoring these transactions. As I have said repeatedly, cases involving intelligence that is purely generated in Hong Kong or Hong Kong citizens proactively assisting terrorists are, I think, few and far between, and perhaps there may even be none of these cases. In spite of this, we still have to exercise extra caution.

This is all I wish to say.

MR LEE CHEUK-YAN (in Cantonese): President, today, this

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): Excuse me, President. I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, please.

MR LEE CHEUK-YAN (in Cantonese): President, this motion today actually concerns the property of terrorists. It used to be the provision of funds that was prohibited and now, the prohibition is extended to cover property. First of all, the Labour Party considers that the general concept of "terrorist" is actually open to question. What does "terrorist" mean? Who can define who are terrorists? Besides, the definition of "terrorist" is open to abuse. I will talk about some examples of how the Hong Kong Government has used the definition of "terrorist" later on but now, I would start with the first point that I wish to make.

The first point involves the general concept. By whom the meaning of "terrorist" is defined? The answer is the United Nations. Then what are the countries that make up the United Nations? Of course, we may say that it is comprised of various countries in the world but we all know that the United Nations Security Council is monopolized by the big powers, and ideology-wise, these countries mostly do not really support the people. Not only are they not in support of the people, they may even be tyrannies.

When a mixture of tyrannical countries and democratic countries will decide who the terrorists are, how will a decision be taken? It all boils down to one factor and that is, interests. This is a case of "I scratch your back, you scratch my back". They make use of each other, and they make deals with each other for their own interests, and the outcome of these deals is the definition of "terrorist".

However, Members must bear in mind that many democratic countries nowadays may actually be born of political parties which used to be considered as terrorists, for they have come to power after overthrowing the tyranny. The most obvious example is the world's most famous and revered terrorist, Nelson MANDELA.

Nelson MANDELA has spent 27 years in prison. He was imprisoned because he was a key figure of the African National Congress (ANC). In one of his most famous speeches he explained why the tyrannical government must be overthrown and how an armed revolution was taken forward. This armed revolution was started by the armed wing of the ANC with the objectives of overthrowing the tyranny, overthrowing the white government and overthrowing apartheid. They considered that there was no alternative but to resort to violence.

Then where should the line be drawn? This is so difficult indeed. Under what circumstances is the use of violence considered reasonable? It actually depends on the extent of the violence used by the ruling regime. When the regime has used violence to the extent that a citizen has to come forth to stage a protest and fight for his basic rights, but when he sees that his relatives and friends, parents and children are being shot, how will he feel? The most well-known incident is certainly the shooting of 76 young people in Soweto, South Africa. The overall developments in South Africa had since been intensified, making the blacks believe more firmly that they must come forth to fight for their rights. However, they were defined as "terrorists" at that time.

Besides, in South Africa, there was once a government in exile and its president had specifically trained armed forces at the base of the exiled government with a view to overthrowing the white government. Judging from this historical background, who were the tyrants and who were the terrorists? In fact, the tyrannical government itself was the terrorists. The white government at that time was no different from the terrorists.

Certainly, we are very glad to see that South Africa could ultimately achieve a great reconciliation. That was an encouraging and genuine reconciliation. Nelson MANDELA had been imprisoned for 27 years and finally, with a remark stressing "national consideration", he achieved a great

reconciliation for the whole nation and carried out democratic reforms. At least South Africa has become a democratic country now and there is no longer a tyranny, and the white people and black people can live together. This is a very good ending but they were labelled as terrorists back then.

There are many more such examples. Yasser ARAFAT is also a case in point. His political party is obviously considered the mainstream now, and there is also the Hamas, which is a more radical political party than ARAFAT's. I believe for the sake of greater national interests in future, and if there is a chance for them to establish a country, the Hamas will give up their terrorist path and return to the mainstream.

Therefore, regarding these international issues, those so-called "terrorists" should often be compared against the tyrannical regime, because if the tyrants do not repent of their wrongdoings, their regime will only become the breeding ground for terrorists. Of course, certain acts of the terrorists do not only give cause for concern but also warrant our condemnation. It is not our wish to see the occurrence of violent incidents, but behind violence, we must realize the unbalanced powers of the two sides. Furthermore, we must ascertain whether there is a tyrannical rule behind violence, and how the violence that stems from a tyrannical rule should be judged. All these are what we need to consider in examining this Bill.

Secretary LAI Tung-kwok is in the Chamber now. The second point that I would like to discuss is how the Government of the Hong Kong Special Administrative Region (SAR) has made use of "terrorists" to suppress human rights and freedoms in Hong Kong. The other day I lodged an appeal on the arrangements for the rally on 30 June to the Appeal Board on Public Meetings and Processions, and I listened to a lecture given by the police for almost 15 to 20 minutes there, explaining how they had assessed the risk of a terrorist attack in Hong Kong in a bid to rationalize the various measures and actions taken by the police, which included the setting up of lines of water-filled crowd control barriers, the use of force by the police and designation of the demonstration area at a faraway place, in order to eliminate the noises and sights of demonstrators. These measures were taken to ensure that the demonstrators could not appear before the eyes of HU Jintao and that not even their voices could be heard. What did they say? They said that they must watch out for the terrorists. When we — not "we", but members of the Appeal Board asked them what level

of the threat of a terrorist attack was, the police replied that the threat had all along been at a moderate level only but it would have to be adjusted during the State leader's visit in Hong Kong. However, they did not say to which level it was adjusted.

In other words, it is necessary to upgrade the level of the threat of a terrorist attack during HU Jintao's visit, but this was not supported by any intelligence; nor was there any information to rationalize such a decision. In fact, the immigration authorities of Hong Kong have long got many lists for surveillance, and the problem could have been resolved purely through immigration control. But the Administration did not do it this way but had to turn the entire Hong Kong into a security zone and enforce a small curfew. President, how is their description of terrorists at that time related to this issue under discussion today? They gave an analysis on the terrorists all over the world and cited a few examples to us. The first is the East Turkistan elements who are considered most dangerous because supporters of the independence of Xinjiang will particularly target the President of China, HU Jintao. But had the police obtained any intelligence suggesting that the East Turkistan elements would sneak into Hong Kong? No.

Second, even the al-Qaeda was cited as an example, and I find it difficult to see how this organization is related to us. The police said that the al-Qaeda, which is based in Pakistan, would launch terrorist attacks all over the world. But how is al-Qaeda related to the security zone set up internally in Hong Kong? We had no idea indeed what they were talking about then.

Third, the police put forward a new term that I heard of only for the first time. I wonder if Secretary LAI Tung-kwok has heard it before. It is "self-radicalized terrorists". What does "self-radicalized" mean? In simple terms, it means people with psychiatric problems who become self-radicalized all of a sudden. The authorities cited an absolutely amazing example: A "lone wolf" attack. I was wondering why the wolves would suddenly turn up in their explanation and then I found out that the police were drawing an analogy between wolves and terrorists and so, they called it a "lone wolf" attack. This "lone wolf" actually referred to that murderer in Finland who suddenly fired shots at many people, and he was referred to as the "lone wolf". Members can look up this term, "lone wolf", on the Internet. So they even resorted to making an allusion to the wolves in an attempt to intimidate us, claiming that there were

threats of terrorist attacks and "self-radicalized terrorists". The authorities were using these three types of terrorists to rationalize their arrangements for the designation of the demonstration area but they were not willing to tell us to which level the threat of a terrorist attack was upgraded.

President, I think the authorities might intend to make use of such terms as terrorists to suppress the freedom of speech and freedom of the press in Hong Kong. I believe in their eyes, that reporter of the *Apple Daily* on that day is a terrorist, as he was taken away once he mentioned the vindication of the 4 June incident. Was it because he is considered a terrorist, too? If so, the authorities have abused the term "terrorist" to allege that the reporter of the *Apple Daily* was "self-radicalizing" and that he was setting off a bomb suddenly. However, what he had set off was just one remark, not a bomb of any kind.

They went on to explain why the demonstration area had to be set up at a point that is so far away, and why those water-filled crowd control barriers had to be extended to the Central Plaza, and these were again presented as precautionary measures taken against terrorists. The police were worried that the terrorists' hand-carried bombs could hit places as far as 200 m away and their body bombs could hit places as far as 100 m away and their guns could have a shooting range of 50 m. So, if calculation was made on this basis, the demonstration area would have to be set up 200 m away for fear that somebody would go into the crowd to throw a grenade. They had gone so far as to describe Hong Kong as such a horrible place. They just say whatever they like all the time.

So, President, we consider that this Bill is far from neutral, and the United Nations and the SAR Government are also not neutral enough, as they have often abused such terms as terrorists and terrorism. For this reason, the Labour Party will not support this Bill. Certainly, we strongly condemn those terrorist attacks that have really cost the lives of innocent people, and we do not wish to see them happen. But we consider that the shooting of innocent people under a tyrannical rule must also be condemned and resisted. Why does the United Nations not deal with the violence that happened under a tyrannical rule? Why does the United Nations not deal with the cause of LI Wangyang's death? This has to do with a tyrannical rule, too, and the sacrifice of an innocent life. So, the United Nations is, after all, a product of unbalanced powers. The people's voices and human rights issues which are a concern to the people still cannot be conveyed to the United Nations, for the United Nations itself is a grossly defective and unfair

mechanism. Therefore, it is impossible for us to support this Bill relating to the United Nations. Thank you, President.

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

MR ALBERT CHAN (in Cantonese): President, I would like a headcount to be done first. Is that alright?

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please.

MR ALBERT CHAN (in Cantonese): President, the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 will be passed today but ironically, although this Bill is meant to fight terrorism, it has actually created a new kind of terrorism in Hong Kong, as the Government has turned itself into a producer of terrorism under the pretext of fighting terrorism.

In recent months, and from the visit of a leader of the Central Government in Hong Kong last year, we have seen the police creating terrorism in order to fawn on leaders of the Central Government by ensuring that they did not see certain people. A man wearing a T-shirt and taking a walk in the estate where he lives was arrested. Students who planned to take part in a demonstration in the university were detained for an hour. A reporter who loudly put a question to a leader of the Central Government in the reporters' zone was unlawfully detained for 15 minutes. Protestors were confined to an area which is far away from the venue and surrounded by lines of seven-foot-tall water-filled crowd control barriers. It is even more ridiculous that strong pepper spray was fired at

them within the demonstration area. All these were done by security officers who claimed that the purpose was to maintain order.

In Hong Kong, over the past 15 years or 20 years let us not say 20 years, but for the last 15 years after the reunification, what terrorist activities or terrorist acts were there which are more serious and more horrifying than the many acts that I have just mentioned, acts that violate human rights, violate personal freedoms and hurt the unarmed civilians? There is terrorism in Hong Kong now. The Security Bureau is a terrorist organization, and policemen in Hong Kong are the terrorists. This Bill will only further provide tools to these people who turn a blind eye to human rights, to law and discipline, and to the personal freedoms of the people, enabling them to act arbitrarily. Therefore, the People Power will not support this Bill.

Certainly, from the perspectives of international agreements and the requirements of the United Nations, since Hong Kong is a world metropolis, it is required to honour certain international obligations. However, Hong Kong has gradually become one of the major cities of China, and this includes the police becoming more and more like public security officers on the Mainland. During the rally and demonstration held on the day before yesterday, the slogan that the participants had chanted most was "Step down, LEUNG Chun-ying", followed by "Step down, Andy TSANG" or slogans accusing Andy TSANG of being shameless. The participants did not just chant slogans accusing LEUNG Chun-ying of being a liar and shameless. The angry attitude of Hong Kong people towards police officers is unprecedented, and they have gradually learnt to behave as radically as the leftists did in Hong Kong back in the 1960s. Back then, the leftists scolded the policemen as "white-skin pigs" and "yellow-skin pigs", and they hurled home-made bombs which killed many policemen. The suppression, detention and arrests that Hong Kong citizens are currently subject to may not be any less than those faced by the leftists in the 1960s. President, I understand that back in those years, you were

PRESIDENT (in Cantonese): Mr CHAN, what you are saying now has strayed from the Bill.

MR ALBERT CHAN (in Cantonese): President, I am discussing terrorism.

PRESIDENT (in Cantonese): The Bill is clearly intended to give effect to the two recommendations of the Financial Action Task Force on Money Laundering. Please focus on this aspect in your speech. You have sidetracked in your remarks just now.

MR ALBERT CHAN (in Cantonese): President, the Bill consists of three parts. The first part seeks to, as you have said, expand the definition of "terrorist act" to cover acts intended to coerce international organizations; the second part seeks to, as you have said, broaden the coverage from "funds" to "property"; and the third part, which is more serious, seeks to create a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.

Regarding this question of terrorism, why did I make the scope of my discussion so broad just now? It is because this Bill is underlined by several basic problems. One of the problems is that the definition of "terrorism" is extremely ambiguous. Given an unclear definition of "terrorism", "Yuk-man" and I may be arrested and regarded as terrorists any time. In the definition of "terrorism", "intention" is a concept which is more ambiguous or covers a wide scope.

President, when we speak in the Legislative Council we cannot guess the intention of a Member, because intention is open to interpretation. The movements against the "three evils" and the "five evils" and the condemnation of the landlords during the Cultural Revolution targeted only the identity of the people in question, without making allegations about what crimes they had actually committed, and as long as a person belonged to the capitalist class, he would have to be condemned. With Hong Kong communists ruling Hong Kong under LEUNG Chun-ying, urging LEUNG Chun-ying to step down or calling for the toppling of the Communist Party of China (CPC) can be defined as terrorist and made targets of condemnation any time, because the intention is to overthrow the Government. Is toppling the CPC not tantamount to overthrowing this Government, and does it not point to an intention to overthrow this Government? Although DENG Xiaoping said back then that the CPC would never be toppled in the face of criticisms, the incumbent leaders — especially the lackeys in Hong Kong — are afraid that if the CPC is toppled in the face of criticisms, they would

not be able to reap any gains. Coming back to this definition, the definition in section 2 of the ordinance sets out a range of intentions and stipulates that actions carried out with these intentions, including seriously interfering with or seriously disrupting an electronic system, as well as a series of other actions, will constitute terrorist acts.

Moreover, the definition in section 2(1)(a)(i)(F) also mentions "seriously interfering with or seriously disrupting an essential service". President, I wonder if the cordoning off of tram lanes and roads for the purpose of a rally will constitute a disruption of an essential service. This is why the new definition and the new scope are terrifying. In the course of enforcement As I said earlier on, a person who asked the State President a question loudly was alleged as impolite and unlawfully detained for 15 minutes for this reason. Acts which were permitted in the past few decades, including such acts as wearing a "4 June" T-shirt and walking on the street which were generally allowed, will result in unlawful detention.

President, the terrorist acts as referred to in the Bill will make the public breach the law unawares. According to the standard of enforcement by the Hong Kong Police Force, any person who participated in a march may be defined or suspected as a terrorist and put under arrest and even prosecuted any time after the passage of the Bill. Even if he eventually wins the lawsuit, he may probably have spent all of his fortune and run into huge debts.

PRESIDENT (in Cantonese): Mr CHAN, the Bill does not amend the definition of "terrorism" in the original ordinance.

MR ALBERT CHAN (in Cantonese): President, I am pointing out that the definition of terrorism is ambiguous. As regards the clause of the Bill, the question of "reckless" in section 8 of the ordinance as proposed in clause 6 is entirely related to terrorist acts. The definition of "associates" as referred to in the clause is as loose and vague as the definition of "terrorism". Coupled with the problem concerning "reckless" and the replacement of "funds" by "property", many acts and contacts may possibly be defined as terrorist acts. This is all because the person concerned is reckless as to neglect certain circumstances and has committed an act which is related to property.

Dr Margaret NG made it very clear earlier on that if "funds" were replaced by "property", it would be like extending the coverage from the earth to the entire galaxy, which is immensely huge. Under section 3 of the Interpretation and General Clauses Ordinance, "property" is defined to include (a) money, goods, choses in action and land; and (b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as defined in paragraph (a) of this definition. Even those that are "contingent" are included, President. If Members take a look at its coverage, they should understand why I said that it is like being extended from the earth to the galaxy. Even those in future are included, and so are those that are established and contingent; and the direct or indirect ones as well as those that may possibly come into being (or expected to come into being) are also included. So, I think Dr David LI must be careful, because if his bank were involved in any direct or indirect investment or deposit services relating to these so-called terrorist organizations, and as the interests paid by banks are considered as interest, meaning that his bank has, once in a while, financed terrorism, he might probably be arrested in future. LEUNG Chun-ying may really target him, for he is the ring-leader of the "Tang camp". He has to be careful indeed.

Therefore, terrorism is likely This Bill may likely become a means to deal a blow at or suppress political opponents. We are already prepared to bear hardships but those friends in the "Tang camp" who are finely bred and accustomed to leading a life of niceties must really be careful. This is why the amendments to this anti-terrorism ordinance are not as simple as they are generally said to be; nor are they like what some Members An example is those Members like Mr LAU Kong-wah who pledge their lives to defend the Government. They all intend to gain advantages, swelling their pockets and enjoying a high status with great powers. They obviously enjoy political privileges, but the general public and some innocent citizens are in great miseries.

President, I am most worried that firstly, the devil is in the details, a point mentioned by many Members already. Secondly, Hong Kong is an international city, and many members of the public come from places which are considered to be the epitome of terrorism. In Hong Kong, there are many Indians and Pakistanis as well as Muslims. I am worried that after the passage of this Bill, the police will employ various means to make things difficult for the Indians and Pakistanis and find faults with them and conduct all kinds of investigation into them, in order to show that they are loyal and that they have fulfilled their

international obligations. It would be like what York CHOW has done in order to get an international health award, turning a blind eye to the living of newspaper vendors and the plights faced by the elderly in living solely for his personal reputation.

Similarly, in order to fulfil certain international obligations and to make a mark in the international community, senior officials have made use of their powers to suppress and intimidate the people and even neglected the rights of the people in Hong Kong to create glory for themselves. York CHOW has done this, and the succeeding officials will also follow in his footsteps. Therefore, the passage of the Bill will only cause the Police Force which are already abusing their powers to become more reckless and rampant. Given that the police have now neglected the rights of the people, coupled with the attitude of officials in the top echelons, Hong Kong people, especially their political opponents, have been turned into targets of suppression.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, why did you press the "Request to speak" button?

MR LEUNG KWOK-HUNG (in Cantonese): Can I speak again?

PRESIDENT (in Cantonese): During the resumption of the Second Reading debate of the Bill, Members can only speak once and you have spoken just now.

MR LEUNG KWOK-HUNG (in Cantonese): Sorry, pursuant to Rule 17 of the Rules of Procedure, I hope you can allow me to speak without giving a speech.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Does any other Member wish to speak? Mr WONG Yuk-man, please speak.

MR WONG YUK-MAN (in Cantonese): President, on 28 September 2001 the Security Council of the United Nations passed resolution no. 1373 and the Government of the Hong Kong Special Administrative Region (SAR) had to follow the Central Government — that is, the Chinese communist regime — and shoulder this international responsibility. Therefore, the Chinese communist Government has also instructed the SAR Government to implement the resolution.

Secretary, are there terrorist organizations in Hong Kong? There should be none. If you say there are, then do those of us from some radical faction in the opposition camp belong to such terrorist organizations? If we can be called terrorists, then it would really be shocking. But on the other hand, the cops who suppress us under the leadership of TSANG Wai-hung are no different from those in a terrorist organization. The only difference is that they use the violence vested in them by the law.

In Hong Kong, and as we can see in more than a decade since the September 11 attack, these so-called international terrorist organizations have never taken roots in Hong Kong. According to information from many sources and even from the intelligence from your side, we cannot see any activities of these so-called terrorists in Hong Kong or their using Hong Kong as a base.

But since Hong Kong is an international city and many large-scale international events are held here, such as when we co-hosted the Asian Games, hosted the East Asian Games or some international conferences, the police and the security authorities will put on the highest alert and take precautions to guard against the so-called terrorists from springing any incidents on these occasions. Of course, we have never seen such activities throughout the years, right?

But the question is, Hong Kong being one of the safest cities in Asia or even in the whole world has to scrutinize and pass such legislation because it is obligated by its own security concerns and international responsibility.

However, we must look at these issues with reference to some basic principles and concepts. We also need to strike a balance between anti-terrorist efforts and human rights. This reigns true worldwide. Not long ago when we had a filibustering war and when mention was made of resignation to trigger a by-election, we referred to a certain case and that is, after the passage of the anti-terrorist law in the British Parliament, someone resorted to using resignation to initiate a by-election to oppose some of the provisions for the fact that these provisions would cause great damage to human rights.

Confucius once said that the most important functions of a state were those related to sacrificial rituals and military matters. By military matters they mean both national defence and internal security. Such an idea was advanced more than two thousand years ago. By sacrifices and offering homage to heaven, these would mean the things being done by the Home Affairs Bureau now. Such activities were carried out in a solemn manner in the ancient times, and they were related to the passing on of the cultural heritage. Talking about rituals and military matters, the latter is certainly related to arms and warfare. It is divided into two parts. As internal matters, it means the maintenance of public order. And in an external sense, it means national security. Externally, this is national defence and international security. Internally, this is the maintenance of public order and this is premised on the protection of human rights.

So this kind of power or right is passive. If a country's national defence is not meant for self-defence but for waging war on other countries, this is like transforming a passive right into an active right. Efforts to maintain public order should also be passive.

Of course, in many cases, the maintenance of public order is to prevent something undesirable from happening. On this idea of preventing something undesirable from happening, if action is taken in an active manner, that will deal a severe blow to human rights. The Police Force led by TSANG Wai-hung are a classic example of this, a good illustration of how such powers are being used in an active manner. This is no different from abuse of power.

This accounts for the fact that ever since he has assumed office as Commissioner of Police, the number of people arrested in peaceful demonstrations was 10 times more than the number of arrests made when the

former Commissioner of Police was in office. Why are we wary about this amendment of the anti-terrorist law? This is one of the reasons. When the ancient sage talked about rituals and military affairs being the most important functions of a state, by military affairs they meant defending the state against enemies from outside and internally, it means maintaining the public order. The use of such power is passive and not active.

Anti-terrorist laws in general will infringe on human rights. So we have to be very careful with the enactment of such legislation. We must be on the highest alert against the Government using anti-terrorism as a pretext impose a clamp on the freedoms and rights enjoyed by the people should enjoy. So in examining the relevant legislation, we hope to hold on to two principles — that the relevant provisions do not go beyond the requirements as specified in resolution no. 1373 of the United Nations or those under the Financial Action Task Force on Money Laundering (FATF), as well as the limitations on the freedoms and rights of the people. When carrying out anti-terrorist work, this sort of power must not be used in an active manner. For if not, this will have a grave impact on the freedoms and rights of the people.

We believe that the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 will not be very controversial, so we have not proposed any amendments to it. It is expected that this Bill can be passed in this Council today. But we cannot help but ask: Why do we have to examine this Bill at this time when the Legislative Session is about to end and when there is a congestion of Bills in this Council? Why can this not be done earlier? President, a quorum is not present.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): Today is 3 July and the FATF, that is, the Financial Action Task Force on Money Laundering in its report for the year 2008 requested the SAR Government to implement its recommendations on an anti-money laundering (AML) regime within four years, that is, the end of June this year. In other words, the SAR Government has not been able to meet the requirements of the FATF on time, hence failing to request removal of the SAR from the follow-up process of the FATF. If the FAFT is to tighten its vetting and monitoring of Hong Kong, this would affect our position as an international financial centre and the flow of international capital in and out of Hong Kong will be affected. The Government should not shirk its responsibility and put the blame on Members for this state of affairs. As a matter of fact, the FATF report was issued in 2008 and there were four whole years for the SAR Government to engage in legislative work. Why was this Bill introduced only in March this year? It is the Government which should take the major responsibility for this.

Ten years ago when the Government passed a law on anti-terrorist measures recommended by the United Nations, the Security Bureau at that time was likewise under fire. There was only a short span of time as three months from the introduction of the relevant Bill to its passage into law. The Secretary for Security at that time, that is, Mrs Regina IP, has now become an Honourable Member of this Council and she is returned by popular elections. I remember at that time, that is, 10 years ago, Mrs IP who is now a Member of this Council launched an attack on the royalist camp. I think Members may still have fresh memory of this incident. She criticized members of the Bills Committee for not speaking during the deliberations and often not attending the meetings. The result was only one kind of opinion was heard in the Bills Committee. This is the same case now. If you were the Secretary now, I do not think you would level criticisms against the royalists. When these royalists do not speak, would there be any other people who will speak? Now only Mr LAU Kong-wah, Chairman of the Bills Committee, has made a few remarks. Who else will speak? None. President, it is like the same old saying, people seem to have been doped and they look like dumb. Right?

This Bill will certainly be passed today. I do not think the Secretary should have any worries. You sit here as a newcomer and your Bill is placed in the very front of the order of business. This is safe enough. So you do not have to fear anything. Right? But why is there such a delay? In this regard, I

would think the new Government should think over it. But the head of this new Government does not know how to conduct a review. All he knows is to take a rotten foldable stool and stage a show everywhere. I have decided that whenever he will go to visit any district, I will send my people there. We will also take foldable stools and we will also write the two words *Qi Xin* (meaning "of one heart") on these stools and sit on them. But incidentally, these two words *Qi Xin* are the name of the wife of JI Zhongxun and the mother of our Vice President JI Jinping. Remind him not to sit on these words. This is politically incorrect. You are just putting on a show, buddy. You are just causing trouble to the people when you go to the districts. Is this really called visiting the districts? If he really wants to do so, there is no need for him to bring all of his brigade. What he can do is to send some of his subordinates and that will do. Why is he putting on this show?

PRESIDENT (in Cantonese): Mr WONG, you have strayed away from the question.

MR WONG YUK-MAN (in Cantonese): What I am doing is making use of the subject under discussion to put over my ideas.

The deliberations in the Bills Committee have shown that the Government has acted in a most wilful and arrogant manner. The Bar Association, The Law Society of Hong Kong and the Legal Adviser of this Council have put forward their views and recommendations on improving this Bill. Although some of these views and recommendations do not touch on the matter of principle, they are helpful to clarifying some of the principles involved. But the Government has refused to accept all these views and recommendations. Why can the Government not approach this Bill in a pragmatic manner? In terms of the title of the Bill, the Bar Association has suggested removing the words "United Nations" from the United Nations (Anti-Terrorism Measures) Ordinance, so as to enable the title of the Ordinance to better reflect the current situation. As a matter of fact, the Ordinance is enacted in response to the following: First, the United Nations resolution no. 1373; and second, the recommendations made by the FAFT. If the title of the Ordinance only mentions the United Nations, this will give people a wrong impression that the contents of the Ordinance are only meant to comply with the requirements of the United Nations resolution no. 1373. Although there is supplementary information attached to the Ordinance, the

recommendation made by the Bar Association can be accepted. Should someday we have to honour some other international obligations and amend this law and the contents of these amendments go beyond the United Nations resolution or the recommendations made by the FAFT, then the title United Nations (Anti-Terrorism Measures) Ordinance would then become inappropriate. Right? Therefore, it would not compromise any principle held by the Government if this law is changed into the Anti-Terrorism Measures Ordinance.

Besides, the two lawyers' associations have not expressed any concern about the interpretation of the term "international organization". In our opinion, it is a correct approach to take when a definition is laid down for certain terms of importance because this will facilitate law enforcement. In order that the interpretations can be updated more easily, we think that a schedule can be compiled to set out the international organizations to which the application is applicable. If there is a need for it, the Security Bureau can update the schedule from time to time by way of resolutions.

The Bill replaces the term "funds" by "property". But it does not give a definition for "property". The original definition of "funds" is to be deleted because it is considered to be no longer applicable. The Government points out that under the Interpretation and General Clauses Ordinance, the definition of the term "property" can be applied to the United Nations (Anti-Terrorism Measures) Ordinance. This is all right. But we should note that the term "property" is much wider in scope than "funds" and if that is the legislative intent, then this should be clearly stated in the Bill. This would be a safer approach to take. An example is clause 7 which provides that "A person shall not provide or collect, by any means, directly or indirectly, funds". This is to be changed to "A person shall not provide or collect, by any means, directly or indirectly, property". There is something which I do not quite understand here. And people can easily be caught by the law.

In 2002 when the relevant Bill was being scrutinized, the Bar Association put forward its views on the definition for the property of terrorists. It pointed out that the scope covered by funds which was used to finance terrorist acts or to aid such acts was too wide. At that time, the Legal Adviser of this Council suggested amending the clauses to clarify whether or not property would include property outside Hong Kong. But the Government did not respond to that suggestion.

There are of course many other details which we think are problematic. But as a matter of principle, we will support this Bill because this is about certain international obligations that we have to bear. The People Power supports this Bill. Thank you, President.

MS CYD HO (in Cantonese): President, the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 today is an extension of the United Nations (Anti-Terrorism Measures) Ordinance (Anti-Terrorism Ordinance) which was passed in 2002. It was because of the September 11 attack that the Security Council of the United Nations made resolution no. 1373 in no time. And that time the then Secretary for Security, Mrs Regina IP, said that we had to fulfil our international responsibility and if we passed the law even a bit later than scheduled, we would be doing a disservice to the United Nations, the United States and our Motherland. President, you were also a member of the relevant Bills Committee. We all have a vivid memory of that incident because it was an attempt by the Government to pass the Bill in such an unprecedented forceful manner. I was both enraged and furious about it.

This Bill today covers two aspects. The first is to change the term "funds" to "property". In the past, we would only talk about money and the scope was much narrower. Now an amendment is to be made pursuant to the definition of "property" as laid down in Chapter 1 of the Laws of Hong Kong, that is, the Interpretation and General Clauses Ordinance. Once the scope of that definition is widened, some problems will appear because "property" will now mean also real estate and land titles. That is to say, it will cover both movable property and immovable property, as well as instruments of investment. Even profits that will be so generated are included. Moreover, the scope of regulation is changed from collecting funds to collecting property or soliciting financial (or related) services.

Actually, when we discussed the anti-terrorism law back in 2002, we pointed out that innocent people might be implicated. This is because apart from people who are actually terrorists, if these terrorists run some business as a kind of cover-up, those employees who work in that business may also be implicated. So what are included when this Bill says "soliciting financial (or related) services"? Will people like consultants who provide professional services to the business concerned be included? This kind of situation where people are implicated is most horrible. This is also one of the reasons why in

2002 we insisted that the scope of the term "funds" must be narrowed down as much as possible.

But an international organization called the Financial Action Task Force on Money Laundering (FATF) has released a report. It says that if Hong Kong does not take active steps to address its deficiencies, Hong Kong will be put on a follow-up process. These international organizations, like the World Bank and others, will act according to the values they uphold or the governments they support. Or the other way round, various governments will lend their support to these international organizations in taking a certain political and economic stand in the work they do. But is this really conducive to world peace? I do not think so. We have just talked about the problem of implication and what we are referring to are not people like Robert DUVALL who plays the part of a lawyer or legal adviser who knows all the secret dealings in the movie *Godfather*. We are talking about people who may be caught by the law unknowingly. They will be implicated. So since 2002, I have been opposing this law and I cannot agree to it even now.

Another part of the Bill is to broaden the scope of terrorist acts to cover also the intended coercion of an international organization. The Bill does not give a definition to "international organization". During the scrutiny of the Bill by the Bills Committee, our Legal Adviser found a definition which is more or less acceptable internationally. And this means an organization which has international legal personality and consisted of State members. Such organizations can be constituted by an international multilateral treaty and they include those like the World Bank and some international copyright associations. However, those international organizations which are genuinely promoting peace in the world or a concern for global sustainable development may not be included. These include *Medicins sans Frontieres*, *Reporters sans Frontieres*, *Amnesty International* and *Greenpeace* and such like international organizations. But some countries may interfere with the work of these organizations. An example is that the vessel *Rainbow Warrior* of *Greenpeace* was sunk by armed vessels from France.

Therefore, when we talk about international organizations, there will be many different interpretations of the term. Moreover, there is a major difference between these international organizations in terms of their operation and goals. We may question whether or not they really pursue world peace. Even when it

comes to organizations like the European Union, actually it will work through its own system of methods or foreign aid and the result is the eradication of cultures of developing countries in the Third World.

In the case of Turkey, if it is to join the European Union and get its first sum of foreign aid, then the Turkish people may be breaking the law if they continue to bake bread in a charcoal stove in the traditional way. It is because only the method of making bread by use of electricity generated by natural gas as used in the European powers will be regarded as lawful. So as we talk about international organizations, we should consider what their interests are. I am sure many people who have joined international organizations or some civil society activities will know that international organizations as referred to in this Bill may not really be operating to promote world peace or protect the safety of all the people in the world.

As we talk about global sustainable development, even when countries have entered into some international agreements, there are chances that they may take French leave. In the case of the Kyoto Protocol which is on carbon emissions, the Protocol is about to expire, and for those countries which cannot reach carbon emission targets, such as Canada, they will withdraw from that Protocol in order to avoid paying a hefty fine. It can therefore be seen that when countries join these international organizations, they are doing this for the protection of their own interests. On the question of whether they are really concerned about the safety of all the people in the world, I think many cases can prove that the opposite is true.

President, I have always been adverse to this Anti-Terrorism Ordinance for the reason that the governments of these big powers are actually exploiting the fear in their people of terrorist attacks and infringe on their privacy and civil rights. An example is about workers who take meter readings for some public utilities in the southern part of the United States. They can report to the authorities when they see some suspicious persons when they are inside a house to take meter readings. And these meter-reading workers have not received any special training. Once they are inside a house and when they see someone who looks like people from the Middle East, they can make a report. And the case will be taken up by the Federal Bureau of Investigation. This kind of anti-terrorist action will often lead to racial discrimination. In the United

Kingdom, the enforcement agencies are given great powers to detain suspects and the duration of detention can be very long as well. There is great controversy over this. In fact, if we want to achieve true and lasting peace, it will not work simply by suppression and killing. These acts will only sow the seeds of hatred.

In Hong Kong, the Anti-Terrorism Ordinance here is even used as a tool to crack down on people holding assemblies and demonstrations. About the recent visit by the President of China and as mentioned also by Mr LEE Cheuk-yan earlier, he came to know when he talked with the police that the security alert for that period was pitched at a medium level. When a national leader pays a visit to Hong Kong, just how will the alert level for terrorist attack be raised? No reply on this is given to date. Can the new Secretary tell us about that later? Also, why should those so-called core security areas be so large? The police have said that it is feared that there would be a terrorist attack from the East Turkestan activists and so they have told Mr LEE Cheuk-yan about a heap of information on safety distances, like the safety distance for a grenade is 200 m, that for a suicide bomb attack is 100 m and it is 50 m for guns, and so on.

May I ask what kind of attack which is considered most serious during the past week and last year and which has led to such a bad abuse of power by the police? The answer is the T-shirt showing some words about the 4 June incident worn by a Mr WONG in Laguna City. What is the safety distance in that particular incident and just how many blocks away? It seems that it is 150 m. It turns out that it is feared that a T-shirt with words about the 4 June crackdown will become an eyesore to the national leader. Right? Things are explained in a clearer manner this year. The imposition of a safety distance is meant to address some violence in the form of sound. That is to say, when some reporter asks the national leader in a loud voice whether or not he is aware of the wish of Hong Kong people for vindication of the 4 June incident. Would this be called launching an attack in sound on national interest and causing national leaders to lose face? If this kind of attack in sound is to be pre-empted in the great march on 1 July next year, then how farther will the core security area have to be expanded?

Certainly, the Government will say that many kinds of threats of terrorist attacks do exist here, only that people are not aware of them. We recall that the former Director of Immigration, that is, the current Commissioner of the

Independent Commission Against Corruption, Mr Simon YL PEH, said last year that Hong Kong did have a danger of terrorist attacks. But when reporters pursued that question, he did not give any reply or disclose any further details. Maybe he was using the excuse of taking anti-terrorist actions to eliminate the transparency of information. The then Secretary for Security even came out to deny what Mr PEH said was true. In the end it was natural that the person of a lower rank had to shut up. We can see that the Government often makes use of the excuse of carrying out anti-terrorist activities. The first thing it will do is to abuse its power and clamp down on the people's rights to assembly and demonstration. Second, it will eliminate transparency and refuse to release even the most basic information to the public.

President, lastly, I wish to respond to the comments made by Mrs Regina IP about me in a Council meeting two terms before the current term. In 2002 I pointed out that the attitude displayed by the Government during the discussions on the anti-terrorism Bill was one of swiftness and high-handedness. Even when it was too late to distribute the photocopies of the text of the amendments to Members, the officials would simply read out the amendments in the meeting. And Members had to write down the wordings as if in a dictation exercise. Mrs Regina IP did not deny this categorically. She only said that she believed in the remarks made by Ms Cyd HO. Actually, she does not have to say she believes in that. It is because the remarks are true. There are records of the debate held in the Council meeting in 2002. People will know if they have not lost their memory. At that time, the Bills Committee proposed a motion to reprimand the authorities for being sloppy with their legislative exercise and forcing through the passage of the Bill in this Council. President, I remember you were there also and you abstained from voting. This is because although you are a member of the pro-establishment camp, you can also notice this kind of hard-line action. But you did not oppose our motion. So I do have some respect for you.

These facts have already been entered into the records of proceedings of this Council in 2002. I wish to put this on record once again. Thank you, President.

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

MR ALBERT CHAN (in Cantonese): President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I will call upon the Secretary for Security to speak in reply. After the Secretary has given his reply, this debate will come to a close.

SECRETARY FOR SECURITY (in Cantonese): President, I would like to thank Mr LAU Kong-wah, Chairman of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (the Bill) and all members of the Bills Committee for their detailed scrutiny of all the clauses of the Bill and support of the resumption of Second Reading debate on the Bill.

We believe that the Bill will not only enable Hong Kong to discharge its international duty of combating terrorism, but it will also meet the practical needs of Hong Kong. In 2008, the Financial Action Task Force on Money Laundering (FATF) completed the evaluation report on Hong Kong's compliance with its recommendations on countering money laundering and terrorist financing (the Report). Specifically, the Report pointed out that Hong Kong should review the United Nations (Anti-Terrorism Measures) Ordinance (UNATMO), in particular, it should implement legislative measures and expedite the compliance with the two major recommendations. To implement the major recommendations of the Report by the FATF, the Bill seeks to amend the UNATMO in the following three main areas:

- (a) expanding the definition of "terrorist act" to cover acts intended to coerce international organizations;
- (b) broadening the scope of prohibited terrorist financing from acts involving "funds" to those involving "property" of every kind; and
- (c) creating a new offence of collecting property or soliciting financial (or related) services for terrorists or terrorist associates.

According to the FATF procedures, Hong Kong should complete the major recommendations of the Report within four years after the release of the Report, that is, by June 2012, and seek removal from the FATF's follow-up process. In the light of the fact that the resumption of Second Reading debate on the Bill was originally scheduled on 13 June, we must get the Bill passed expeditiously in order to comply with the requirements of the FATF. If Hong Kong fails to seek removal from the follow-up process duly due to absence of substantial improvements, the FATF may tighten scrutiny and monitoring on Hong Kong. To uphold Hong Kong's status as an international financial centre, and in consideration of the fact that Hong Kong's major trading partners including the United Kingdom, the United States, Singapore, Australia, and so on, have complied with the two major recommendations of the FATF respectively, there is an urgent need for Hong Kong to pass the Bill and seek the FATF's agreement to remove Hong Kong from the follow-up process.

I would like to thank Members for the comments they have made earlier. The authorities will act prudently and in accordance with law when discharging their law-enforcement duties. With these remarks, President, I implore Members to support the Bill. Thank you.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

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

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

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms Miriam LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP and Mr Paul TSE voted for the motion.

Dr Margaret NG, Ms Audrey EU, Mr Ronny TONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 35 Members present, 28 were in favour of the motion and six abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012.

Council went into Committee.

Committee Stage

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

UNITED NATIONS (ANTI-TERRORISM MEASURES) (AMENDMENT) BILL 2012

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012.

CLERK (in Cantonese): Clauses 1 to 12.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those

(Mr Albert CHAN indicated his wish to speak)

MR ALBERT CHAN (in Cantonese): Chairman, I am sorry. I did not respond quickly enough.

CHAIRMAN (in Cantonese): Mr CHAN, please.

MR ALBERT CHAN (in Cantonese): Chairman, I have made it clear in the Second Reading that the People Power has many worries about the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012, especially about the impact caused by changing the term "funds" to "property". This is because many of the amendments proposed in the Bill are related to this change from "funds" to "property".

Chairman, as you also know, Hong Kong people will dispose of their funds in many ways and means. At the same time, funds and property do not always belong to individuals and they may be jointly owned by family members or a number of relatives. Apart from family members and relatives, some assets may be associated with friends and many people will make investments with their friends as partners.

As we all know, terrorist activities cover a wide scope and any act may be related to possible or genuine international terrorist organizations. We know from TV serials, books and magazines that these terrorist organizations operate in a most secretive manner. Many of them are by outward appearance religious bodies or charities. The government of our great and powerful Motherland regards the Falun Gong as a terrorist organization and completely bans its activities. I do not know whether, after the amendment to this Ordinance, the Hong Kong Government will change its view on the nature of the Falun Gong.

If the property of any terrorist organization is thus affected, the number of people associated with that could be very large. This applies especially to those listed companies, joint partnerships and funds. And these funds may invest in or finance certain charities and their activities. Besides, religious bodies will be involved as well because the relationship between terrorist activities and religion is becoming more and more intricate. An example is Tibetan Buddhism, which is related to the issue of the independence of Tibet.

CHAIRMAN (in Cantonese): Mr CHAN, I have to remind you that what should be discussed at this stage are the details of the clauses, not the principles of the Bill.

MR ALBERT CHAN (in Cantonese): Chairman, I am discussing the question of funds and property. This is because the many clauses that we will pass later on are all related to this substitution of the term "funds" by the term "property". Since this substitution has widespread implications and impact, I wish to put on the record my deep anxiety over the impact of this substitution.

I am sure many people in Hong Kong will face many problems calmly. This includes the question of being reckless. According to the relevant clauses, if a member of the public does something out of inadvertence, such as leasing a property to these people, this could be regarded as making the property Previously when the term "funds" was used, the meaning was narrower in scope. This is because by "funds" it would mean that there has to be some actual contact in the financial sense. But when "funds" is changed to "property", plus the fact that the mental element behind the act in question is relaxed to include the state of being "reckless", then if somebody leases his real estate (that is, his property in the sense of the Bill) to a certain religious body, and when this religious body engages in activities that may have some sort of relationship with terrorists, then the property owner or the landlord will commit an offence.

Chairman, the amendments have the effect of expanding the scope of coverage and such serious problems may be caused. And these problems are not those which ordinary members of the public, including those property owners, those who run a guesthouse, or those who engage in educational activities, charities or social services will notice. In the case of the United States, ever since the September 11 attack, there have been changes in the country in its society, laws and administrative and security measures. A lot of negative impact has taken effect on its people and the country's groups. I will talk more on this point at the Third Reading. Now I would not speak on that in detail. The worst thing about this change from "funds" to "property" is that it is related to the amendment about being "reckless" If this has undergone some rigorous investigation and if the defendant is proved to have aided the terrorists or if he has actually taken part in terrorist activities but that is different from the definition of a criminal offence in general.

Chairman, with respect to criminal offences in general, the defendant is usually assumed to be innocent and it is the responsibility of the prosecution to

provide information and evidence to prove that the defendant is guilty. But what we can find in the clauses here simply send a chill down our spine. I have said in the Second Reading debate that this Bill is creating new terror. This is because the criminal offences there are not merely those which are direct acts done by the person concerned but may also stem from his negligence, inadvertence or simply ignorance. At times some persons may commit a criminal offence unknowingly. An example is that the defendant may be in a state of mental incapacity, but in such circumstances he can use that as a defence. But the clauses in this anti-terrorism law have the effect of giving a defendant less chances of defence. And on the other hand, it is easy for the prosecution to adduce evidence to prove that the defendant has contravened the provisions in that law. This is because, as I have just said, a person is found guilty provided that his property is related in some way to terrorists. So we are worried about the impact that may be caused by the amendments proposed in this Bill.

Chairman, I request a headcount.

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

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

CHAIRMAN (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Chairman, is it my turn to speak now?

CHAIRMAN (in Cantonese): Mr CHAN, please go on.

MR ALBERT CHAN (in Cantonese): Yes, Chairman.

Chairman, I just wish to add one more thing. I hope the Secretary can respond to that at the Third Reading. This is because I am very worried. In fact, when the bell was ringing earlier, I had worries all the time. After the passage of the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012, the Hong Kong Government may become like the American Government in that after the September 11 attack, the American Government set up the Guantanamo Bay Detention Camp and a lot of problems related to the abuse of detainees are found, and there are acts of abuse like those by sound, sex abuse and religious abuse, and so on

CHAIRMAN (in Cantonese): Mr CHAN, you have strayed away from the question.

MR ALBERT CHAN (in Cantonese): Yes, Chairman, but I hope that the Secretary can make a clarification later.

Chairman, I have made my worries known. Would the Secretary give an explanation when he speaks in the Third Reading to see if our apprehension can be allayed? We should not be like our Chief Executive who always says that he does not know, remember and understand. He is a big liar and he wants to shirk his responsibility.

CHAIRMAN (in Cantonese): I now suspend the meeting until 1.30 pm.

12.23 pm

Meeting suspended.

1.30 pm

Committee then resumed.

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

MR ALBERT CHAN (in Cantonese): Chairman, there are only three Members in the Chamber. This is disrespect shown to you, Chairman. I therefore would like to request a headcount. Thank you.

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

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

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Chairman, I would like to give a brief response to the remarks made by Mr Albert CHAN just now. The Bill under examination is similar to the legislation of other common law jurisdictions, and the clauses have struck a balance between various aspects. The authorities will act prudently and in accordance with law when discharging their law-enforcement duties. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1 to 12 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)

Mr Albert CHAN rose to claim a division.

CHAIRMAN (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

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

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

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr KAM Nai-wai, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE and Dr Samson TAM voted for the motion.

Dr Margaret NG, Mr Ronny TONG, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 41 Members present, 34 were in favour of the motion and six abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

UNITED NATIONS (ANTI-TERRORISM MEASURES) (AMENDMENT) BILL 2012

SECRETARY FOR SECURITY (in Cantonese): President, the

United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you as stated

(Mr Albert CHAN indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Albert CHAN, I have already put the question to Members. Next time, please indicate your wish to speak earlier. You may now speak.

MR ALBERT CHAN (in Cantonese): I am beginning to feel a bit sluggish now. I feel fatigued after the rally two days ago and my voice has become hoarse. President, sorry for my sluggish response.

President, as I mentioned just now, I am worried that the passage of the Bill may lead to a kind of new terrorism, meaning that the scope of law enforcement will become much broader and the Government's powers will also be expanded, thus adversely affecting the people's rights.

I think the adverse result of anti-terrorist operations of the United States in the past decade or after the September 11 incident is worthy reference for the Hong Kong Government. And there is a great chance that the Hong Kong Government will make the same mistake. The fact that the same mistake is repeated may not necessarily be due to the actual impact of terrorist attacks. Rather, the Government will stifle people's freedoms and rights in the name of counter-terrorism with a view to achieving certain political objectives since anti-terrorism acts can be confused with safeguarding public safety easily.

As we can see in the series of deployment and violent acts recently, including the setting up of "the great wall of water-filled barricades" by the Government on 29, 30 June and 1 July I would call it metaphorically the "new Great Wall", which has in fact revealed the ruler's sense of guilt. This is just like the building of the Great Wall by Qin Shi Huang. At the end of the day, the Great Wall could not ensure the continuous existence of the Qin Dynasty, which is the most short-lived in Chinese history. The use of the great wall of water-filled barricades by the Government has reflected the sense of guilt of the ruler. Just like the Great Wall which could not protect Qin Shi Huang, the great wall of water-filled barricades will be overturned and eradicated sooner or later. At the end of the day, the regime may also be overturned and eradicated. Therefore, owing to the Government's sense of guilt, it will certainly tighten its control. Owing to its sense of guilt, it will step up its control and suppression by means of various powers and pretexts

PRESIDENT (in Cantonese): Mr CHAN, the debate on the Third Reading of a Bill should be restricted to discussion on its content.

MR ALBERT CHAN (in Cantonese): President, this is precisely related to the Bill. As I said at the Second Reading of the Bill, the scope of the Bill will be expanded as the term "funds" will be replaced by "property", and the term "reckless" be introduced coupled with the ambiguous definition of "terrorism". These three main factors will be prone to become a pretext for the Government to suppress the people.

President, I am just doing an analysis. The root cause of the Government's suppression of the people under this pretext lies in the sense of guilt of the ruler. Hence, these are the series of causes related to the Bill. If we do not provide any tool to the Government as a means to suppress the people, it will be relatively difficult for the Government to adopt other means. We are now giving the Government the "through train", giving it the prerogatives and convenience in law

President, very often Hong Kong people will state that they attach importance to the laws and the rule of law. Now we are precisely doing something tantamount to throwing the door of law wide open. Regarding the laxity of this door, I can always cite many examples. For instance, a person has rented his property to someone who is not directly related to any terrorist organization. But he may have a friend who stays at his place, or makes a telephone call or send a message to a person who is associated with the so-called terrorism or terrorist activities. Under normal circumstances, the person will not be implicated. However, if some senior government officials have a list, in which this person is named a political dissident, the Government may, under the pretext that he has made contact with some people who are suspected of engaging in terrorist activities and in accordance with this Ordinance because he is "reckless" of the shame that may be brought to his place by providing his place to terrorist associates who have used the telephone there.

The term "reckless" rarely appears in other ordinances. For instance, if the Buildings Ordinance contains the term "reckless", LEUNG Chun-ying is finished. If the Buildings Ordinance contains the term "reckless" in respect of unauthorized building works, the person concerned cannot pass the buck by saying "I do not know", "I do not remember" or "I do not understand".

Why does the Buildings Ordinance not adopt the term "reckless" in its provisions? If it has, property owners are finished and will be arrested,

handcuffed and persecuted immediately. Therefore, the use of different terms in an ordinance will produce different legal effect and achieve different purposes. Certainly, the People Power recognizes the original objective of the Ordinance, namely, to prevent and combat terrorist activities and terrorism. But we need to define "terrorist activity" and "terrorism" in the first place.

I can also say Andy TSANG has engaged in many terrorist activities. When a policeman sprays a lady who is surrounded by water-filled barricades and cannot make any move with a super pepper spray, is this not a terrorist activity? This is a kind of sheerly shameless terrorist activity, Secretary.

President, speaking of the terms "reckless" and "property", given that the definitions are loose, it is prone to give rise to bias in law enforcement, thereby resulting in infringement of human rights. Years ago, some young people were prosecuted by the Government without justifiable grounds. They staged petitions and demonstrations, without making any physical contact with Donald TSANG. But Donald TSANG went to the hospital for examination, saying that he had sustained injuries. Eventually they were acquitted after being charged. There are numerous examples in recent years to show that the Government has initiated prosecution without justifications. After the reunification, especially after Andy TSANG has been appointed the Commissioner of Police, we have seen that cases of abuse of power by the Government have increased in a geometrical manner. So, I also hope that the Secretary will explain the future development of the situation.

After the September 11 incident, some human rights studies in the United States study found that there are many human rights problems had arisen and mistakes been made in the United States. First of all, military expansion has led to the fiscal problem of the United States Government. The passage of this legislation will oblige the Government to increase its expenditure at any time. I wonder whether an ad hoc stability maintenance team will be established under the Police Force — at present, the stability maintenance cost in the Mainland is higher than military spending — relevant spending will be substantially increased in the name of anti-terrorism. Surely, I will oppose it. But it will certainly be passed with the defence put up by the "royalists".

Second, in the name of combating terrorism, a lot of new policies have been prematurely formulated. These new policies are poor, ill-considered, resulting in serious problems in operation and abuse of powers. Many policies are formulated to serve politics, rather than the community or the people. As a result, Americans have also been treated in an unreasonable and brutal manner, and even subject to violence.

Third, many humanitarian services have been cancelled. Criminality has led to the cancellation of services which are supposed to be provided, thus affecting a lot of humanitarian services.

Fourth, some political refugees were refused entry. As we all know, there were many political refugees in the United States in the past. There are also many political refugees in Hong Kong. In future, people from Tibet and Xinjiang will not be able to come to Hong Kong because of the so-called concerns about terrorism. Regarding international refugees, Hong Kong used to accept many political refugees of Indian or Pakistani descent and from Africa, but they may be refused entry because of this Ordinance in the future.

Fifth, international links will be prohibited or cancelled as a result. In the international community, the provision of religious and cultural services will face problem at any time because of the concern about association with terrorism or terrorist organizations.

Sixth, acts of violence by governments will be rationalized and legalized. As I mentioned when I spoke on the Bill just now, the United States has set up the Guantanamo Bay detention centre after the September 11 incident, thus leading to a lot of atrocities.

Seventh, there are more and more incidents of abuse and torture of suspects with increasing brutality and involving more modern technology.

Eighth, formal trials or hearings by courts are decreasing as cases which were handled by courts in the past have been dealt with by some special organizations or special departments. Acts violating human rights and the rule of law have been committed in the name of counter-terrorism.

Ninth, it is not possible to establish any military, security and intergovernmental links in a systematic manner. Very often, an independent department will go unchecked because of the secrecy in anti-terrorist actions. This is just like what the Hong Kong Government has done, including false imprisonment, suppressing the people and using pepper spray in an indiscriminate manner, to prohibit petitioners from making contact with the head of state.

Tenth, problems of religious and racial discrimination have increased. After the September 11 incident in the United States, there have been countless examples of such and the problem is seriously deteriorating. Therefore, we have to guard against the occurrence of such incidents.

Finally, President, I would like to cite some examples for law-enforcement officers in Hong Kong in order to illustrate that they cannot do whatever they want in enforcing the law. In 1992, it was finally ruled that an East German soldier stationed at the Berlin Wall was guilty and sentenced to three and a half years' imprisonment. This is the famous shootings at the Berlin Wall case, in which the soldier had shot on the command of his superiors. Similarly, policemen in Hong Kong have also committed acts such as pepper spraying and arrest of people, who may be handcuffed and beaten. According to the court's ruling, "When you have a conscience, your conscience rather than the decree is the highest standard of your conduct in judging a confrontation." It is also pointed out in the ruling that "You have to shoot, but you can choose not to hit the man"

PRESIDENT (in Cantonese): Mr CHAN, your remarks now are irrelevant to the Bill.

MR ALBERT CHAN (in Cantonese): President, I am about to finish. I would like to conclude my speech with this example in order to advise those who will enforce the law in future because there are many grey areas and ambiguities in this Ordinance, coupled with a series of power abuse cases in recent days as I mentioned just now, law-enforcement officers should exercise judgment according to their conscience in discharging their duties. Back then, the German soldier who shot and killed civilians at the Berlin Wall was finally found guilty by the International Tribunal and sentenced to three and a half years' imprisonment.

MR LEUNG KWOK-HUNG (in Cantonese): President, the case mentioned by Mr Albert CHAN just now is certainly a very good case, and you are also a good case. You said that the June 4 Incident is definitely wrong, or else so many people would not have been killed. Your remark is excellent

PRESIDENT (in Cantonese): Mr LEUNG, let me remind you again that Members should speak on the contents of the Bill in the Third Reading debate.

MR LEUNG KWOK-HUNG (in Cantonese): I just want to express my feelings as I heard that

PRESIDENT (in Cantonese): Please speak on the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Okay. I am not allowed to compare you with others? In that case, I will leave it to the final part of my speech. I will talk about it in the last minute.

What makes a person qualified to decide whether some people are terrorists? In fact, similar incidents have occurred many times in human history. There were four Crusades. Buddy, we believe in Christianity

PRESIDENT (in Cantonese): Mr LEUNG, let me remind you that you should speak on the Bill and do not talk about history.

MR LEUNG KWOK-HUNG (in Cantonese): I am now talking about the Bill. The Government has continuously expanded the scope of the Bill and even the term "reckless" has been introduced. In other words, everything will be included indiscriminately and no offence will go unpunished. This is precisely what I oppose. Why would this happen? It is because the Government thinks that it is faultless. Otherwise, in the Cultural Revolution, there would not be a situation where one was allowed to query what was "active thinking". President, you also know this because you have gone through that period and

considered that MAO Zedong Thought was glorious I am talking about the contents. That Honourable colleague, the saying you agree to does not work anymore. Can a person announce that the others are evil simply because the person thinks that he is righteous?

Why did I say that? First, who compiled the list of terrorist organizations? We cannot. It must be compiled by them. Who are they? They are the United Nations and the governments of various countries. Thus the governments of various countries have different lists of terrorist organizations. As I explained earlier, the IRA is not a terrorist organization in the United States. In the United Kingdom, it is a terrorist organization, but it may not be. It is not a terrorist organization during the peace talks. So, this is tricky. What is terrorism? The meaning of terrorism is defined by people without any legal basis and it is not legal

PRESIDENT (in Cantonese): Mr LEUNG, you are not speaking on the contents of the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Who says that these are not the contents of the Bill? In the Bill, the term "reckless" is mentioned and the term "funds" is changed to "property". These are the changes. If one has signed a treaty under coercion to raise funds or do something for the other party, he has no alternative. But now, regarding the factor of "reckless", the situation is different. Buddy, it is wrong not to evade someone if you clearly know that he may be a terrorist. This is tantamount to not deferring the starting time of a meeting by half an hour if you clearly know that the meeting will be aborted. Otherwise you will also be reckless, and as a result, the meeting is aborted. The President on that occasion was really smart for he had changed the time of the meeting to 9.30 am on realizing that it was possible that the meeting would be aborted if it was started at 9 am. The President is really smart, not reckless.

Thus, this is the crux of the problem, which is also the legal basis. On what ground should we sign a treaty under coercion? As Dr Margaret NG said, we are forced to sign a treaty under coercion because we do not enjoy sovereignty. Under the "one country, two systems", the issue falls within national affairs and the anti-terrorism treaties should be signed by the State. Are

we in this very very small Council, which will serve as a rubber stamp again, not allowed to express our views? Regardless of what we say, this Bill will certainly be passed.

The scope of the Bill will be much broadened by amending the term "funds" to "property". It is the same for other issues. President, I wonder if you might remember that the legislation on Article 23 of the Basic Law was also the same. A person's property will be gone if he is suspected of funding activities related to subversion or treason. If the person has the chance to know that those activities are really related to subversion or treason as alleged, his property, excluding bank accounts, will be confiscated although foreign currencies can be retained. So, it is less stringent than this Bill. This Bill is very stringent because a towel for washing one's face is also a property. How can such stringent provision be acceptable?

That is why I say that the definition of terrorist — in other words, to define whether a person is your enemy — is ambiguous. How can we know who was right and who was wrong in the Crusades? As a result of the Crusades, the continent was scourged by war for years, leading to the collapse of the European economy. In fact, this is because the Islamic economy was better than that of European countries, and the reason is that Islam came to Europe by gaining its foothold in Spain. Therefore, the theory of Western imperialism can never convince me.

Besides, there is the League of Nations. What is the League of Nations? Is there anyone who knows the League of Nations? Secretary, do you know what the League of Nations is? It is the League of Nations that labelled Germany as terrorist. Under the Treaty of Versailles, Germany could not make warships, its tanks had to stop operation, and its military spending could not exceed a certain amount of money, apart from the obligation to pay reparation every year. Such chauvinism caused the World War II. When Germany said that 6 million people were unemployed and the inflation rate was as high as 1 million%, were these not the factors leading to another international terrorist leader, Hitler? As Members do not know much about history, how can they know the grave consequences of this Bill?

Well, after World War II, the United Nations was set up. But the People's Republic of China was ostracized. This must be damned, do you think so, President? The People's Republic of China was not a member of the United

Nations Security Council (UNSC). It was not a permanent member of the UNSC. Did it mean that the People's Republic of China supported terrorism? What is an embargo? Do those who preach national education understand it?

We are demonized and labelled as terrorists. This is called state terrorism. Today, it is our turn to sit in that seat. When the People's Republic of China is sitting on the Security Council, it has the right to say that someone is a terrorist

PRESIDENT (in Cantonese): Mr LEUNG, you have strayed away from the question. Please speak on the contents of the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): So, I say this is not acceptable. I urge Members not to support this Bill because it will lead to an unlimited expansion of the common law definition of two important terms by changing the term "funds" to "property" which will include all properties. The term "property" is very important, and it is different from "funds". If a piece of legislation is enacted in this way, it means that it targets something which is most undesirable. But it is up to the legislators to decide whether something is so undesirable. Do you not think that this is most interesting? You can take other people's lives. You can pass a death sentence on people. You may also mete out a sentence of imprisonment on them in the 90th tier of Hell it should be the 19th tier of Hell. There is no 90th tier.

But there must be justifications instead of alleging that they have original sin. Buddy, many international terrorist organizations have turned into governments subsequently. The Zionist woman Prime Minister carried bombs before the Israeli Government took power. So, I would like to tell Members that we should not listen to those who talk nonsense. What is a terrorist organization? Under the definition of most international forces, a terrorist organization is one which will wreak havoc rather than being constructive and refuse to listen to their words.

No one wants to hear my speech. I request that they be summoned back by invoking Rule 17 of the Rules of Procedure. President, please do a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please continue.

MR LEUNG KWOK-HUNG (in Cantonese): President, just now I mentioned that the amendments proposed in the Bill are substantial changes. Basically, the most ambiguous concepts in common law are incorporated into the Bill, including the introduction of the term "reckless" and the replacement of the term "funds" by "property". As a result, the Ordinance may be subject to abuse.

For example, Donald TSANG has proposed the development of Islamic finance, which will involve the Middle East or Muslim countries, such as Pakistan or other countries in the Middle East. I know that Donald TSANG has paid lip-service only because he will not even kill a sheep or read their holy books. So the development of Islamic finance is not successful. What can we do if we really want to develop Islamic finance? When so many people who are considered heinous races in the eyes of Western imperialists and who may believe in fundamentalism or support the Taliban or al-Qaeda will make business trips to Hong Kong, will it promote our economic development? I do not think so because they will be discriminated against upon arrival on the ground that they may be terrorists. To put it simply, the proposals and the objectives of the Bill are in fact the same as the discussions of the "big brothers" in the UNSC or member countries of the North Atlantic Treaty Organization (NATO) — including Germany, which cannot become a member of the UNSC because it is a defeated country in the World War II.

In my opinion, if this Bill is passed, the Government, according to the justice of law, should set up a body like the Commission on Human Rights, or a committee which comprises of members who elected from among independent individuals or composed of judges, or chaired by a virtuous person to monitor the implementation of the anti-terrorism law given that the Government has expanded its powers to such an extent that it can go unchecked and become autocratic through its legislative powers. In other words, according to the universal values,

if we think that human rights are bound to be jeopardized, we have to make adjustments from time to time according to when human rights are jeopardized, when human rights can be restored after being infringed, the seriousness of infringement and the degree of grievances thus caused.

In the implementation of human rights, we have the Commission on Human Rights Needless to say, we certainly do not have such a commission in Hong Kong, or else no one will pepper spray indiscriminately on our heads and faces. We do not have a Commission on Human Rights, but since this legislation will come into operation I think not only Hong Kong, but also the United States should have a Commission on Human Rights. When this Government has stated unequivocally that human rights and the motto "property is freedom" in capitalism should be sacrificed, are we not required to elect a pope or bishop who is more virtuous to take up the duty of monitoring? When I was a child, I read a very interesting book called *Pocket Theology* (《袖珍神學》), in which there are stories about priests. Every night there were two extra pairs of clogs or slippers at the beds of some priests, why? Because they were greedy of both women's and men's charms. They preached people to do fast and be thrifty so that they could give 10% of their income to the Church. But they led a licentious and immoral life.

So, on this issue, we as a legislature should reflect to our State, regardless of whether it intends to restrict human rights or not, that we really need a remedial mechanism when the international anti-terrorism framework is invoked for the deprivation of human rights. I think that when a regime has jeopardized the people's rights by means of a political objective or ideology — meaning that those in power can deprive the rights of people through a proviso in the original legal system without violating the law — the people should be given an imperial sword, which is, of course, not to be deployed by me or you. It means that some people in the legal profession or some virtuous and respectable people are appointed to monitor the application of this legislation.

For example, when we have to cope with corruption, we have an ordinance which provides that the parties concerned have to explain why their incomes are not commensurate with their official positions — I believe Donald TSANG may be required to explain why he has got so many Maotai. However, we must have a Commissioner of the Independent Commission Against Corruption (ICAC)

whom we trust, and a Governor whom we trust above the Commissioner of the ICAC. But the Governor whom we trust does not exist anymore.

To be fair, I think by reviewing history, the Crusades, the United Nations and the NATO are groups of bandits, only that they are more capable bandits. When the bandits bully the innocent people rather than seeking to displace violence with violence, a remedial mechanism should be set up to protect the civil society from being abused for no reason.

So, I think I know I will not have another chance to speak because I can speak only once at the Third Reading of the Bill legislation of this kind should not be allowed to develop in the absence of a remedial mechanism. When the United States was severely molested in the September 11 incident in 2001, it had justifications to launch subsequent attacks to another country. Now I have found that a number of "clubs" formed by China, the United Kingdom, the United States, France, the Soviet Union and Germany control the whole world. If they point their fingers at the President and say, "Jasper TSANG, you belong to terrorism", this is possible.

I have watched a movie called *The Terrorizers* ("恐怖分子"), in which the Taiwanese director pointed out that each one of us are terrorizers because we feel terrified in our hearts. The essence of a democratic system seeks to impose restriction on a tyrant. So, if we say that we believe in democracy, human rights and the rule of law, then it is impossible for us to allow some superpowers in the world to do something which they claim they will never do by means of the so-called anti-terrorism legislation. And there is only one reason, "It is in your interest", which means, as I said before, that "your mother is killed in the Name of the Father". This is unacceptable.

So, I hope the President would understand that I have been standing here not talking nonsense. Rather, I hope we can have a better organization that can prevent the anti-terrorism law from being abused.

MR PAUL TSE (in Cantonese): President

MR ALBERT CHAN (in Cantonese): It seems that a quorum is not present. Thank you.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Paul TSE, please go on to speak.

MR PAUL TSE (in Cantonese): President, the Bill that we are dealing with today is obviously related to the principal ordinance. So, please allow me to refer to some sections of the principal ordinance when necessary, particularly in view of some remarks made by several colleagues earlier on. I am worried that if people only listened to their speeches without reading the relevant amendments or before the Secretary makes further clarifications, confusion or panic might arise. For this reason, I think I am duty-bound to add some points.

Certainly, many colleagues who are in this Chamber now participated in the deliberations on this ordinance in 2002, and they must know the background better than I do. I hope that they can rise to speak when they consider it necessary to do so.

President, I mainly wish to add three points. The first point relates to the question of terrorist activities. In their speeches earlier on, some colleagues seemed to be suggesting that any kind of activity organized in Hong Kong may be taken as terrorist activities or related to terrorist organizations, as if the room for free speech and activities in Hong Kong has been further suppressed.

In fact, President, in the principal ordinance, and for example, section 4, mainly provides for two ways or two channels to define terrorist activities. The first is that the Chief Executive should adopt the definition made by the United Nations Security Council or committee that specifically deals with terrorist activities.

I hope Members will understand that I am no expert in international law or political activities and so, I cannot say too much in this respect. But basically, as far as I understand it, many such determinations are made after certain procedures of deliberation. In fact, this is the outcome of political wrastlings among various big powers and so, it is not easy to arbitrarily determine a certain country, a certain organization and certain acts as terrorist, for this would lead to serious sequels.

After a determination is made by the United Nations, the Chief Executive of Hong Kong will only publish the relevant decision in the Gazette, announcing that it is a terrorist organization or terrorist activity.

The second channel is that this can actually be handled through the Court in Hong Kong. The Chief Executive can make an application to the Court and the Court, namely, the Court of First Instance of High Court, will proceed to make an adjudication. This has to go through a certain process of consideration, and there must be certain evidence before this can be handled.

In fact, with regard to the United Nations channel that I have just mentioned, that is, the first channel, it is based on presumptions, but if there is counter-evidence, a determination can be overthrown. So, insofar as terrorist activities are concerned, there is a stringent definition which is made through a stringent channel. It is not the case that a certain organization or political organization will be turned into terrorist activities or terrorism because some people have casually said that it is involved in terrorist activities or because it is more violent.

President, the second hurdle that I wish to talk about is that in the principal ordinance Sorry, President, let me refer to the relevant definition in the ordinance, that is, the definition in section 2 of the ordinance. It gives a definition of "terrorist act" and particularly, paragraph (a)(i) has clearly set out what actions are considered terrorist acts.

Basically, six actions are set out under this definition. The three most serious actions are, firstly, (A) causing serious violence against a person; secondly, (B) causing serious damage to property; and thirdly, (C) endangering a person's life, other than that of the person committing the action (which means the life of another person). These are the three most serious actions, followed by

paragraphs (D), (E) and (F). I must also mention paragraphs (D), (E) and (F). Why do I have to mention them?

Perhaps let me first read out their contents before further explaining them. Paragraph (D) is "creating a serious risk to the health or safety of the public or a section of the public"; paragraph (E) is "seriously interfering with or seriously disrupting an electronic system"; and paragraph (F) is "seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private".

These three paragraphs of (D), (E) and (F) do not seem to be imposing very high requirements. In fact, if certain actions take place in Hong Kong, such as deliberately causing damages to the network or communications or obstructing transport facilities, these actions may theoretically be caught by these provisions. Having said that, this definition has also made one point clear and that is, in case an action as stated in paragraphs (D), (E) and (F) is committed to a less serious extent, and if it does not include the use or threat of action in the course of any advocacy, protest, dissent or industrial action, the action does not constitute a terrorist act.

It means that unless serious injuries have really been done to a person's life and a serious action as stated in paragraphs (A), (B) and (C) is committed, for those slightly less serious actions in paragraphs (D), (E) and (F), such as certain actions taken by some political parties in Hong Kong in opposition to the Chief Executive or the Government, they will be excluded from the scope of terrorist acts. So, this is another hurdle to clear. I believe this can provide sufficient assurance to Hong Kong people, and they do not have to be too worried about the room of freedom being unreasonably narrowed by this ordinance.

President, for the third point that I would like to add, earlier on some colleagues have kept on stressing the point of "reckless" I heard some noises

PRESIDENT (in Cantonese): A Member is speaking now. Other Members please keep quiet. Mr LEUNG Kwok-hung, please return to your seat and keep quiet.

MR PAUL TSE (in Cantonese): Such an act is not taken as terrorism, President. It is just a nuisance.

President, about the third point that I wish to add, in common law, we can always come across the definition of "reckless", and it is absolutely not a concept of extraordinary significance. For any criminal offence, it is often said that there must be an intention, and the concept of "reckless" is often connected with it. That is, at times when there is no evidence to prove an intention and if a person committed an offence knowingly These concepts are almost like twins, and they are often applied. So, we can often find this provision in criminal law. The inclusion of this concept in this legislation is not at all significant; nor is such inclusion intended to infinitely expand the scope of the safeguard.

President, we now live in a time that can best be described in that book of Charles DICKENS. The first line of the first paragraph says, "It was the best of times, it was the worst of times". We have greater freedoms, especially after the invention of the Internet. The living habits of the whole world have changed, and we enjoy far greater freedoms. But at the same time, there are far more regulations hindering or restricting our actions. Why?

I remember that when I was a bit younger than I am now, flying to the United States was like taking a taxi to me, as I could buy a flight ticket any time, go through the departure gate at the airport and board the flight. That was before the September 11 incident. After the September 11 incident, there have been changes in tourism and the travel habits worldwide. Many of those freedoms and rights that we used to take for granted have been reduced considerably. It seems that when we possess some rights, we have to sacrifice some other rights.

In this connection, I think as we are one of the societies with an advanced system in the world, we should, like many other Western countries, follow what most of the others do in handling these issues. Although Hong Kong is lucky not to have been hit by serious terrorist attacks so far, these things can still happen any time. If we do not take precautions and once an incident happens, I am afraid the entire Government would have to take a large share of the blame. For this reason, sorry, I cannot agree to what some colleagues have said earlier. They questioned why, during President HU Jintao's visit to Hong Kong, the

security alert had to be upgraded by such a large extent. They seem to think that Hong Kong will not be hit by any terrorist attack.

In fact, Bali was also a paradise before the bomb attacks, but the paradise was turned into hell in just a blink of an eye. So, I prefer to take all necessary precautions in dealing with this issue, for this would be better than feeling regret after an incident.

President, with regard to this Bill, I think that even though we do not have a say in these matters to a certain extent as we have to act in accordance with the resolution of the United Nations, this is a duty of Hong Kong, being part of China, under Articles 13 and 48(8) of the Basic Law. This is what we are duty-bound to do.

For these reasons, I support this Bill. Thank you, President.

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

MR WONG YUK-MAN (in Cantonese): In fact, eight years ago, at a time when this Council was also approaching the end of the term as it is now, the Government introduced the United Nations (Anti-Terrorism Measures) Bill in great haste and now, the word "amendment" is added to it. We all know that the Bill mainly involves issues in three aspects, which were mentioned by many colleagues earlier on. We are now at the stage of the Third Reading of the Bill, and I have to state my personal position.

I remember that it was the very high-handed Regina IP, the then Secretary for Security, who was in charge of that Bill eight years ago. Insofar as the post of the Secretary for Security is concerned, Regina IP and LAI Tung-kwok can be regarded as two extremes. Whether in respect of their appearances, their ways of work, and their attitudes in facing the public, there is just a sea of difference between them but they actually share the same nature. Judging from their appearances alone, the Regina IP back then seemed to be more detestable and now, she obviously looks different. Things are always like this in life. One's bottom decides where one's brain is, right? For how long had the Bill been discussed when it was introduced to the Legislative Council for passage back

then? President, I remember that it took 11 hours. For how many hours has this discussion been held by us since this morning? Deducting an hour of rest time, our discussion here has been held for only a few hours but Members have already made strong complaints about it, refusing to sit long enough to warm the seat. President, a headcount please.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): President, the Bill was passed after 11 hours of deliberations back then — Mrs IP has returned to the Chamber. As far as we know, Members of the democratic camp and the legal profession had very strong views about the Bill. Most of them expressed opposition to it and therefore, they fell over each other to speak against it. Mrs IP felt that there was only one voice in this Council and took the pro-government camp to task. I remember that Mr LAU Kong-wah refuted the Secretary's comment and said that even though they had not spoken up, it did not mean that they did not have a voice. He said that their voice was supportive of the Bill.

Eight years have passed and this Bill today has the word "amendment" added to it. In order to give effect to the recommendations of the United Nations and the Financial Action Task Force on Money Laundering, the freezing and confiscation of terrorist assets, ratification and implementation of United Nations instruments, and even the financing of terrorism, terrorist acts and terrorist organizations are incorporated into the scope of the Bill, in order to fulfil certain international obligations. However, Members have a lot of questions about this, just as they did before. The question that they raised back then was that after the passage of the anti-terrorism law, the Government would be given greater powers to combat terrorist activities, which included freezing the property

of the terrorists without having to go through proceedings in court, and this had aroused great controversies at that time.

Nowadays, we actually have the opportunity to make better provisions. Despite the need to comply with the resolutions of these relevant international organizations in order to duly fulfil the duties required of Hong Kong in the international community, we can actually make adaptation arrangements in the light of the local situation with our legislative powers, and it is not the case that we must fully comply with these guidelines. In fact, this has also aroused great controversies in Western countries, and there have been contentions for a long time. Certainly, everyone considers it very important to fight terrorism, especially the United States which was scourged by the September 11 incident and it is certainly most concerned about this. But if we ask those Islamic countries in the Middle East instead, the people there may think that the United States stands for the biggest threat of terrorism.

Just take a look at the history in the last century and we will know what terrorism was about in the first half of the 20th century. It was started by the narrow ethnists. Ethnism was then elevated to nationalism, and when nationalism further went to the extreme, it became Fascism. This resulted in the Nazi Germany starting the World War, as well as the roles played by Italy and Japan. Just look at the first half of the 20th century and we can see that it was basically these narrow nationalists that brought about the World Wars, causing massive damages to the property and lives of the people in various countries. This kind of terrorism is far more powerful than the subsequent Islamic extremists, extreme religious cults or al-Qaeda. In terms of the fatalities caused, would the number of people killed by the Fascists and the Nazis be considered small? Japan alone had already killed countless Chinese people.

It was with gruelling efforts that Fascism was destroyed but then, in the latter half of the last century, Fascism was replaced by Communism. Let us look at the last century. Democratic politics was confronted by two countering forces. The first was Fascism in the first half of the last century when those who hoisted banners of patriotism, ethnism and nationalism suddenly turned into extreme Fascists and proceeded with invasion into other countries. Was this not terrorism? In the latter half of the century, while a tiger was sent away, a fiercer lion was let in — Communism. So, in human society, democratic politics was confronted by a second countering force in the latter half of the 20th century,

namely, Communism, which is also a kind of terrorism. Communism has wreaked havoc for at least 40 years until the start of the 1990s in the last century when the Soviet Union collapsed and knock-on effects took place in Eastern Europe. Subsequently, the Cold War came to an end and it was replaced by

PRESIDENT (in Cantonese): Mr WONG, please focus on the contents of the Bill in your speech.

MR WONG YUK-MAN (in Cantonese): What I am trying to say is very simple. I hope that Members can gain new insights through reviewing the past, and understand what terrorism means

PRESIDENT (in Cantonese): Mr WONG, please focus on the contents of the Bill in your speech.

MR WONG YUK-MAN (in Cantonese): As of today, the biggest kind of terrorism is obviously communism. Such being the case, President, can Hong Kong freeze the property of the communists? Can we freeze the property of a state-run listed company? If it has financed terrorist activities and if communism is branded as terrorism, do we need to freeze its property? This is precisely a point at issue now. Of course, you can say that we are elevating the issue to a political plane but frankly speaking, it actually depends on how the authorities have defined terrorism. As I made it very clear earlier on, even though it is necessary to implement these recommendations in order to duly fulfil our duties to fight terrorism as a member of the international community, according to the stipulations of the United Nations, we are required to comply with these stipulations according to the instructions of the suzerain State or sovereign State, but a double standard has been adopted now.

One the one hand, they have claimed that support should be given to the implementation of some resolutions of international organizations in order to fulfil our duties as a member of the international community, but on the other, they are taking the lead to violate some universal values, international standards, the United Nations's Universal Declaration of Human Rights, and the relevant

covenants on political rights. They implement only those stipulations that can be used to serve their purpose but criticize those that do not serve their purpose as foreign intervention in the politics of Hong Kong, claiming that these Western values must not be adopted. But are these proposals in the Bill not Western values? As Mr LEUNG Kwok-hung said just now, the United States is the biggest terrorist, and could it be that our intention is to lend it a helping hand now? This is a dubious move. Why do the patriots sitting over on that side not say a word? Are they not patriotic? President, a quorum is not present.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): President, we are now reading the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (the Bill) for the Third time. We have summarized our concerns and studies on the Bill over the past period of time. The Bill will be passed by a majority of Members today, but as I emphasized earlier, unlike the situation in 2002, not many Members have voiced their dissenting views today. Nor will many Members of the pan-democratic camp and legal profession offer a variety of opinions. Undoubtedly, many of these voices were not heard today.

Perhaps Members think that as the Bill will be passed anyway, it would be better to deal with it promptly as other Bills are pending examination in this Chamber in the current session. Unfortunately, we cannot hear the pros and cons which would have come as enlightenment to us, people who have superficial knowledge of the Bill. We can only speak on the Bill according to our understanding of the legislation in order to express our concerns and the worries or even apprehensions of some members of the public as we did before. The collection of funds is one of the main apprehensions. Will this lead to violations of the law more easily in the course of making financial arrangements? May a

person easily fall foul of the law in making contact with international and overseas organizations or making monetary transactions? The public may be deeply concerned about it, so the definition must be stated clearly in the Bill.

On the other hand, our opinions are still diverse on the definition of terrorism. Of course, if we adopt the definition of the United Nations as the yardstick, we can straightly comply with the international standard. But as I said just now, the Government's unswerving adherence to the international standards on certain matters as opposed to its resolute refusal to the adoption of other effective standards regarded as universal values for centuries is a problem worthy of our deep thoughts when scrutinizing the relevant legislation. What does "terrorism" actually mean? We need to learn a lesson rather than merely focusing on the word "terrorism".

To put it simply, Dr PAN Pey-chyou once alleged that I am a terrorist. If Dr PAN's definition makes sense according to his standard, it will be a big problem because people who have engaged in monetary transactions with me should be jailed. Dr PAN calls me a terrorist perhaps because he sees things from a different perspective. As a psychiatrist, he may consider that I suffer from mental disorder. But he does not know how to name it and he knows he cannot say that I suffer from mental illness, so he calls me a terrorist. His statement was a subjective judgment made on objective fact. The objective fact is that I have resorted to filibustering, driving me crazy. If I were a terrorist, I am afraid Mr WONG Kwok-hing, who is sitting two seats away from Dr PAN, could by no means avoid such allegation because he engaged in writing Chinese calligraphy in an extremely busy manner in this Chamber for no reason. Is he a terrorist then?

Thus, different people have different views. Dr PAN's remark about me is certainly a mixture of joke, reprimand and ridicule. We understand it because we have not yet reached the level of terrorists. In the eyes of the communist party, we at most can be called "reactionaries". But this was a yardstick in the past and such a label has become obsolete. President, nowadays no one calls other people reactionaries. I believe you also know the meaning of "reactionary". It refers to those who move against the tides or the trend of proletarian revolution. This is what you and I are most familiar with. Members of the Democratic Alliance for the Betterment and Progress of Hong Kong and the Hong Kong Federation of Trade Unions who are sitting on my left

side should be well-versed in it as they have been subject to the edification of communism for a long time. Does anyone call other people reactionaries nowadays? Of course not. But the terms "dissident" or "opposition camp" are used instead.

The opposition camp in this Council consists of just a few people. So Members should not worry that the opposition camp will turn into terrorism. Regarding the passage of the legislation, I indeed made it clear in the Second Reading debate that we would give it in-principle support. But the problem is that some of the details or standards are not clear enough. The present situation is that the Central Government has instructed the SAR Government to implement the relevant resolution and a deadline has been set. If the SAR Government fails to do so, there will be follow-up actions. But this legislative exercise should have been completed in June 2012. Now the deadline has been missed and the newly appointed Secretary seems to be a little bit negligent. If the former Secretary, Mr Ambrose LEE, could complete the work before 1 July, the Government would barely avoid any follow-up. But even follow-up action is taken, the lapse of time is just a week. If one asks why the schedule is so tight, I have to reiterate that the Government should not put the blame on me. The authorities should have submitted the Bill much earlier. The Bill should be dealt with as early as four years ago. Even assuming that the authorities submitted it in 2010, we would not be caught in the present situation. As the current Session is coming to an end, Members want to have the Bill passed quickly in a perfunctory manner.

Probably because we have resorted to filibustering in the Chamber, or meetings have been prolonged because of us, many Members put up resistance in a passive manner and remain silent. I may be held responsible in this regard. Owing to our action, you have put up resistance in a passive manner and remained silent as a gesture to show your disapproval. However, your refusal to speak will shorten the discussion time of the Bill and you are doing a disservice to Hong Kong people *de facto*, buddy. If there is any mistake in future, people may, by looking back, find that it is because many Members did not speak.

Mr LAU Kong-wah made a pithy remark back then. Just now I did not quote it clearly. His pithy remark was that "Our support to the Government does not require verbosity." This is the words of Mr LAU Kong-wah at the Legislative Council meeting on 12 July 2002 during our discussion, debate and the Second

Reading of the relevant principal ordinance. These words were uttered because the then Secretary for Security, Mrs Regina IP, criticized the "royalists" for not speaking and a low attendance rate. I think Mrs Regina IP was outstanding in this regard. Which Secretary will speak in such a straightforward manner like her? If Secretary LAI Tung-kwok dares to criticize Members for their poor attendance rate, he will certainly be bombarded. Mrs Regina IP was indeed a very tough Secretary (*The buzzer sounded*) and she also had great courage. Thank you, President.

DR MARGARET NG (in Cantonese): President, I would like to briefly explain why the Civic Party will abstain in the vote on this Bill.

President, when the United Nations (Anti-Terrorism Measures) Bill was passed in 2002, there were indeed very heated arguments. With regard to the issues raised by many colleagues today, such as terrorism, terrorists, funds, and the question of how the provisions on direct or indirect assistance will cause innocent people to fall foul of the law, and even the question that we raised at that time about excessive powers of the Secretary for Security as he can freeze the funds of other people so long as he has doubts about him, we already put forward these issues for discussion during the discussion on that Bill in 2002. President, we have not brought up these issues today not because we have forgotten them; nor is it because we have slackened off. It is because all this is water under the bridge that we will not forget.

I always remember the scene of two airplanes crashing into the twin towers of the World Trade Centre. Some people have said that the twin towers collapsed not as a result of the airplanes crashing into them, but because of the supporting frames inside the buildings. It is because according to the way that the twin towers were built, the melting down of the supporting frames inside the buildings would cause the whole building to collapse. Therefore, we consider that all anti-terrorism laws will seriously undermine human rights. In fact, terrorist acts *per se* may not destroy free society, but the laws for combating terrorism will undermine freedoms and cause damage to our freedoms and human rights. We will not forget these lessons.

Certainly, this is the second time that we deal with a relevant Bill, with the purpose of introducing amendments to the ordinance. President, if we draw a comparison between the first and the second anti-terrorism Bills, we will find that

concession has actually been made. When an anti-terrorism law was enacted for the first time, the many powers of enforcement involved were so enormous that they were even bigger than general police powers. Mrs Regina IP may remember what happened back then. We did not agree that the Bureau should handle these powers by way of subsidiary legislation. We, therefore, insisted that in order to exercise these powers, the Bureau should further table a piece of principal legislation in future, as we did not agree to the handling of these powers by way of subsidiary legislation. So, when amendments are introduced to the ordinance for a second time, the relevant proposals are incorporated into the principal legislation. As things now stand, the various amendments, such as replacing "funds" by "property", are no longer under our control, for we must do so to show respect to international obligations.

President, this is why, with regard to this anti-terrorism law today, we entirely cannot forget what happened and remove our doubts. For this reason, we cannot vote in support of it, but as this is an international obligation, we have come to a stage where we cannot vote against it either. President, we can only abstain in the vote because we think that we must always stay vigilant. What is most likely to undermine our rights is not external terror, but our own reaction to external terror.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): President, first of all, I would to thank Members for making a lot of comments in today's debate. Also, I have to thank Mr Paul TSE for elaborating the provisions of the Bill and the definition of terrorism.

Hong Kong is a society of rule of law, in which our disciplined forces will act in accordance with law, and I gave a response to some of the worries mentioned by Mr Albert CHAN earlier. I reiterate that the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 (the Bill) aims at implementing the specific recommendations made by the Financial Action Task Force on Money Laundering (FATF) with respect to revising anti-terrorism legislation. Hong Kong must pass the Bill expeditiously in order to comply with the requirements of FATF. If Hong Kong fails to implement the substantial improvements recommended by the Report, the FATF may tighten scrutiny and monitoring on Hong Kong. To uphold Hong Kong's status as an international financial centre, and in the light of the fact that Hong Kong's major trading partners have complied with the relevant recommendations of the FATF respectively, there is really a need for Hong Kong to pass the Bill expeditiously. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012 be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr WONG Yuk-man rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

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

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

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr KAM Nai-wai, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the motion.

Dr Margaret NG, Ms Audrey EU, Mr Ronny TONG, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 39 Members present, 31 were in favour of the motion and seven abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Companies Bill. Members please refer to page 1 of section IIB of the Script.

(Bill scheduled to be dealt with at this Council meeting)

COMPANIES BILL

Resumption of debate on Second Reading which was moved on 26 January 2011

PRESIDENT (in Cantonese): Mr Paul CHAN, Chairman of the Bills Committee on the above Bill, will address the Council on the Bills Committee's Report.

MR PAUL CHAN (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Companies Bill (the Bills Committee), I would like to report to the Legislative Council on several major issues in the deliberations of the Bills Committee.

The Companies Bill (the Bill) seeks to conduct a comprehensive rewrite of the existing Companies Ordinance (CO) to further modernize the Ordinance to meet the needs of the business community as well as to enhance Hong Kong's status as a major international business and financial centre and its competitiveness.

The Bills Committee has held 44 meetings and invited trade associations, professional bodies, the regulators, investor interest groups and the general public to give views on the Bill as a whole and specific clauses. Regarding the two clauses concerning offences relating to contents of auditor's report and the headcount test necessary for schemes of takeovers and mergers, the Bills Committee has again separately invited deputation representatives and the general public to attend meetings to express their views.

The Bills Committee supports the four major objectives of the Bill, which are, first, enhancing corporate governance; second, ensuring a better regulatory regime for companies; third, facilitating business operation and attending to the needs of small and medium enterprises (SMEs), and fourth, modernizing the company law of Hong Kong. On the objective of facilitating business operation, the Bills Committee supports the various initiatives to remove unnecessary requirements on companies and streamline procedures to facilitate their operation. The Bills Committee has emphasized the need to ensure that the new requirements under the Bill will not increase compliance costs on companies,

especially SMEs which account for over 90% of companies in Hong Kong. Moreover, as directors and officers of SMEs often have limited resources and with little professional training and legal knowledge, the Bills Committee has urged for the need to ensure that the new requirements will not impose unnecessary burden on them.

In the course of scrutiny, members have expressed special concern on several controversial clauses. Next, I will report concisely on the deliberations of the Bills Committee in six areas.

First, it is the new formulation of "responsible person" of a company. Under the existing CO, offence provisions seek to punish a company and officers of the company who are in default. At present, section 351(2) of the CO defines an "officer who is in default" as "any officer of the company who knowingly and wilfully authorizes or permits the default, refusal or contravention". Some of the contents are omitted in my quotation of the provision just now. As prosecution is difficult given that the evidential burden for proving "knowingly and wilfully" is very high, the authorities have introduced a new formulation of "responsible person" in the Bill, which is modelled on the United Kingdom Companies Act 2006, to replace "an officer who is in default". Under clause 3 of the Bill, "responsible person" is defined as an officer or shadow director of the company or non-Hong Kong company who "authorizes or permits, participates in or fails to take all reasonable steps to prevent, the contravention or failure". He is liable to criminal responsibility for such conduct. Members have been very much concerned about the impact of the reference to "fails to take all reasonable steps to prevent" on directors and officers of a company, worrying that these people have to bear criminal liability for acts of negligent omissions. To SMEs with limited resources, operators may easily overlook the numerous filing requirements due to carelessness and have to bear criminal liability as a result.

Having considered members' concerns, the Government has proposed to delete the limb of "fails to take all reasonable steps to prevent" from the formulation of "responsible person". The Bills Committee has agreed with the relevant amendment proposal. Members have noted that with the removal of the relevant limb, negligent omissions by officers will not be caught. And, the scope of culpable acts will be narrowed such that the circumstances under which liability may be incurred by officers for the breach by the company will be

reduced. Under this formulation, the *mens rea* of "authorizes or permits, or participates in" has to include actual knowledge, wilful blindness or recklessness, but not negligence. As compared to the formulation of "officer who is in default" under the existing CO, the prosecution threshold for the revised formulation of "responsible person" will still be lower as there is no need to prove "wilfulness", hence the policy objective of enhancing corporate governance will still be achieved.

Second, it is the standard of directors' duty. Clause 456 of the Bill provides that a director must exercise reasonable care, skill and diligence, which is determined by both objective and subjective standards. The objective standard is the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and the subjective standard is the general knowledge, skill and experience that the director has. Members share many deputations' concerns about the dual standard for directors, which include first, whether the subjective part of the standard would raise the demand for those directors having special knowledge or experience, second, whether the objective part of the standard would raise the standard of directors' duty for non-executive directors requiring them to exercise the same care, skill and diligence of executive directors; third, how the Court would interpret the dual standard; fourth, whether imposing the dual standard would reduce the incentive for professionals to take up directorship in Hong Kong, and fifth, whether directors of SMEs would encounter great difficulties in meeting the standards.

Members have noted the Administration's explanation. Clause 456 of the Bill makes it clear that the Court, when determining whether a particular director has exercised reasonable care, skill and diligence, must take into account the actual functions carried out by the relevant director. There are variations in responsibilities between executive and non-executive directors, and also between different types of executive directors and different sizes of companies. Hence, the relevant standards would not raise the demand for the standard of directors' duty.

President, third, it is the "simplified financial reports". The Bill proposes to allow qualified SMEs to prepare "simplified financial reports", which aims to reduce compliance costs of these companies. The relevant requirements include: first, aggregate total annual revenue of not more than \$50 million net;

second, total assets of not more than \$50 million; third, no more than 50 employees. Companies meeting two of these three requirements are qualified. The Bills Committee has noted that a number of deputations have expressed support to further relaxing the criteria to allow more companies to benefit from the submission of "simplified financial reports". On the other hand, many deputations have suggested the extension of the use of "simplified financial reporting" to private companies of any sizes when members holding certain voting rights in the company approve and no member objects. Members have agreed that relaxation in the qualifying criteria would help reduce compliance costs of large private companies. And, allowing these companies to adopt "simplified financial reporting" with their members' approval will not undermine members' interests.

At the Bills Committee's request, the authorities conducted a public consultation on the qualifying criteria again in December 2011 and invited the Hong Kong Institute of Certified Public Accountants (HKICPA) to review the size criteria in the Small and Medium-sized Entity-Financial Reporting Framework in order to enforce the "simplified financial reporting" requirement. After considering the views received and the conclusions of the consultation of the HKICPA, the Government has proposed to double the size criteria, that is, HK\$100 million assets, HK\$100 million revenue and 100 employees while maintaining the "two out of three" approach.

As regards whether private companies of a larger size should be allowed to prepare "simplified financial reports" if members of the company so resolve, the authorities have decided to revise the relevant criteria after considering members' views. Under the new criteria, private companies satisfying any two of the following conditions, with the approval of members holding at least 75% of the voting rights and no other members objecting, may adopt "simplified financial reporting". The three conditions are: aggregate total annual revenue of not more than HK\$200 million net; aggregate total assets of not more than HK\$200 million; and no more than 100 employees.

Members generally support the new revisions proposed by the Government, which they regard to have struck the right balance between protecting shareholders' interests and reducing compliance costs of companies. With the relaxation on the qualifying criteria, it is expected that an overwhelming majority of private companies will automatically qualify for "simplified financial

reporting". To ensure the criteria set on revenue, total assets and employees would cater for market changes, members have urged the Government to conduct regular reviews of the thresholds in each proposal. On the other hand, members have considered it important to ensure the relaxation in the qualifying criteria would not prejudice the interests of shareholders and investors to have fuller financial information on the company. The Government has explained that there are provisions in Part 14 of the Bill to enable company's members to apply for a court order to inspect company's books and receipts.

Fourth, it is the alignment of the penalties for offences under the Ordinance. The Administration has taken this opportunity of rewriting the CO to align and rationalize the penalties for offences under the Ordinance to ensure that offences of similar nature would be punishable with similar penalties and that the penalties involved reflect the relative seriousness of the offences. Some members have expressed concern that the imposition of a daily default fine of \$300 for Level 3 fine offences under the Bill would impose a burden on some SMEs, especially if a company is not aware of the breach while the daily default fine incessantly accumulates. As these offences are mostly minor offences only, the Bills Committee has urged the authorities to remove the daily default fine for minor offences with a Level 3 fine level, in particular those which are not serious and do not involve public interests. Some members consider the imposition of a daily default fine an important mechanism to ensure quick remedial actions by offenders and discontinuation of the offences.

Having considered the views of the Bills Committee and conducted a review, the authorities have agreed to remove the daily default fine for 19 offences with a Level 3 fine level. The Bills Committee has agreed to the revision and also noted that the authorities' intention in removing the daily default fine for 19 offences is to reduce the amount of fine that would be imposed but there is no intention to change the nature of the offence. And, the ability of the Registrar of Companies to prosecute would not be restricted as a result.

President, fifth, it is auditors' criminal offences. Clause 398 of the Bill requires that if the auditor is of the opinion that the financial statements of the company are not in agreement with its accounting records in any material respect, or the auditor has failed to obtain all the information or explanations that are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report. Clause 399 of the Bill proposes to impose a criminal

sanction on a person for "knowingly or recklessly" causing the above necessary statements to be omitted from the auditor's report.

The Bills Committee has noted that the HKICPA and the accounting industry have expressed deep concern over clause 399 of the Bill, which would subject accountants to criminal liability. The HKICPA has also questioned the need for introducing criminal sanctions in clause 399 given the Institute's power to discipline its members. The HKICPA is of the view that although similar legislation on criminal sanctions against auditors exists in the United Kingdom Companies Act 2006, the relevant provision was part of a package to bring about auditors' liability reform in the United Kingdom. Clause 399 should not be introduced on its own when there is no similar package for auditors in the Bill.

Some members share the concern that although the penalty does not include imprisonment, a criminal sanction is imposed against an auditor who is at work without *mens rea*, and a criminal record could spell the end of his auditor career. Some deputation representatives have also been concerned it is possible that clause 399 is applicable to employees of the auditor and junior persons involved in the audit. On the other hand, the Bills Committee has also noted the support from some deputations for clause 399 on its benefit in enhancing the accountability of auditors and integrity of the financial reporting system, thus boosting investors' confidence in the auditor's work and the company's accounts.

The Government considers the criminal sanction under clause 399 necessary to ensure auditors carrying out their duty to make the necessary statements in the auditor's report. Taking into account the views expressed by the Bills Committee and deputations, the authorities will propose an amendment to remove the references to officer, partner, employee and agent of the auditor from clause 399. The amendment aims to make it clear that only the persons who sign the auditor's report or perform managerial functions in relation to the audit under the immediate authority of the person who signs the auditor's report, and who knowingly or recklessly cause the necessary statements to be omitted from the auditor's report would be liable.

Members generally agree that the imposition of appropriate criminal sanctions on auditors' deliberate omission of company information in the auditor's report is appropriate. Some members have pointed out that small investors have high expectation of the company's auditor in playing an independent gatekeeper's

role in respect of the company's financial reporting. Any omission of important financial information in the auditor's report would adversely affect investors' interests.

However, the Bills Committee, after scrutinizing the Bill, has received strong views from the HKICPA and the accounting industry. They are of the view that the amendments proposed in the course of scrutiny of the Bills Committee not only fail to ensure junior persons involved in the audit immune from criminal sanctions, the scope of persons liable to legal responsibility is instead extended, easily implicating employees with less seniority and limited experience in an accounting firm. Moreover, the industry is also very much worried that the reference to recklessness in clause 399 would easily criminalize professional misjudgment without *mens rea*.

In fact, the amendments proposed by the Government were submitted at the Bills Committee meeting on 26 May when the scrutiny work of the Bills Committee was nearing the end. The Government did not fully consult the accounting industry affected before introducing these amendments. Then, a month later on 26 June, that is, last week, the Bills Committee received another paper on clause 399 from the Government, stating the inadequacies of the original clause in reflecting the legislative intent to regulate a firm or a corporate practice. President, I have to point out here that in the course of scrutiny of the Bills Committee and even in its deliberations of the amendments proposed by the Government to clause 399, the Government has never discussed with members matters concerning drafting of the original clause. The Government did not bring up the matter until just a few days before the resumption of Second Reading. As Chairman of the Bills Committee, I have to express deep regret at the authorities' course of action.

President, sixth, it is the "headcount test". Clause 664 of the Bill provides that when a company conducts members' schemes such as amalgamation, takeover and share buy-back, the requirement of "headcount test" would be retained, that is, a majority in number representing 75% of the share value of members at the meeting have to agree to the proposed scheme. At the same time, clause 664 gives the Court a new discretion to dispense with the "headcount test" in special circumstances.

The Bills Committee has held in-depth discussions on whether or not to retain the "headcount test" for members' schemes. Members and various stakeholders have held different views on this subject. Deputations in support of abolishing the "headcount test" are of the view that this requirement is contrary to the "one share, one vote" principle; it may create a loophole for vote manipulation; and minority shareholders' interests are adequately protected by other means, including the Court's discretion not to approve a particular members' scheme and the requirement that the number of votes cast against the resolution shall not be more than 10% of the voting rights attached to all disinterested shares under Rule 2.10(b) of the Code on Takeovers and Mergers. Some members have stressed the importance to uphold the "one share, one vote" principle and that retaining the "headcount test" is contrary to the majority views received by the Government during previous public consultations.

On the other hand, deputations in support of retaining the "headcount test" have raised the following major arguments: the "headcount test" serves as a potentially important check to counterbalance the "value test", which is of great importance to safeguarding the interests of minority shareholders; and there is no credible evidence to support the argument that reasonable privatization schemes are blocked by the "headcount test". In this connection, some members have stressed the need to safeguard the interests of minority shareholders and urged the Administration to act prudently on the matter. Moreover, there is a suggestion from some deputations that in addition to abolishing the "headcount test", the "10% objection rule" of the Code on Takeovers and Mergers should also be included in the Bill.

Finally, the Government has proposed that the "headcount test" be replaced by a new requirement in members' schemes for takeover offer and share buy-back. The new requirement makes it clear that in takeover offer and general offer for share buy-back, the number of votes cast against the resolution to approve the relevant scheme is not more than 10% of the votes attached to all disinterested shares. The Bills Committee considers that the Administration's revised proposal is acceptable and strikes a balance in protecting the interests of minority shareholders and addressing the concerns about the abolition of the "headcount test". As for creditors' schemes, the "headcount test" would be retained.

Some members have been concerned that minority shareholders might be reluctant to challenge some unfair members' schemes in court because of legal costs. To address members' concerns, the authorities have proposed to add a new clause to make it clear that the Court may only make an order as to costs against these minority shareholders if their objection to a scheme is frivolous or vexatious. Members in general have found the Government's proposal acceptable.

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Paul CHAN, please continue.

MR PAUL CHAN (in Cantonese): President, the Bills Committee has also held in-depth discussions on many other clauses, details of which are contained in the written report. To address the concerns of members and deputations and to improve the drafting of clauses, the Government will introduce a number of Committee stage amendments (CSAs). The Bills Committee has agreed to these amendments proposed by the authorities.

President, the Companies Bill (the Bill) is divided into five books with a total of more than 2 000 pages. It is a voluminous Bill rather complex in nature. The time spent on the scrutiny of the Bill is relatively short. In the course of scrutiny, the Bills Committee has got the full support of the staff of the Legislative Council Secretariat and its Legal Service Division. Frequent overtime work has not affected their careful examination of the Bill. They have

put forward many valuable opinions on the clauses, no matter whether they are in Chinese or English. On behalf of the Bills Committee, I would like to express our heartfelt thanks to them for their professionalism and conscientiousness.

President, the above is the Bills Committee's Report. I will express my personal views on the Bill later. Thank you, President.

MR RONNY TONG (in Cantonese): President, under the common law system, company law is an important link of the business law of Hong Kong. Nearly 90% of the business disputes we have dealt with involve the company law. However, strangely enough, when I returned from the United Kingdom, I found Hong Kong still using the company law dated back to 1949 — sorry, it should be 1948. And, surprisingly, a comprehensive review was not conducted over the past decades.

President, this is not the time to discuss who should be held accountable for the stagnation of such an important law. I just wish to raise one point, and that is, this law is very important and extremely complex in nature. It contains several hundred provisions and scores of appendices, which involve some quite complex rules and provisions of everyday use. Therefore, a comprehensive review of this law is actually a mammoth task.

President, I remember not long after I was elected as a Member of the Legislative Council in 2004, the Government proposed a comprehensive rewrite of company law. Back then, the ongoing discussion on such a rewrite was that the task might span two terms of the Legislative Council, that is, from the term of 2004 to the term of 2008. Regrettably, when we left office as Members in 2004, the draft Bill for company law was yet to be materialized and the case remained the same when we returned in 2008. Although the Companies Bill (the Bill), which is both complex and important, is finally introduced now, the actual time for its scrutiny is a little bit more than one year.

President, the Chairman of the Bills Committee has pointed out just now that despite the very tight timeframe, the Bill was subjected to detailed scrutiny by the Bills Committee. President, I believe the Chairman of the Bills Committee has exerted his utmost. And, that remark came from his heart. However, President, as the Bill was scrutinized in the final year of this term of the

Legislative Council, colleagues concerned about the business law such as Ms Audrey EU, Mr Albert HO and I, and representatives of the business sector such as Mr Andrew LEUNG and Mr Jeffrey LAM had to scrutinize at the same time several equally important and complex bills such as the Competition Bill and the Residential Properties (First-hand Sales) Bill. We had to spend at least two to three days a week to examine these three complex Bills. President, at least, insofar as I am concerned, not only was I unable to attend all the meetings to scrutinize the Bill, I also dare not claim — like Mr Paul CHAN did — I have given detailed consideration to each and every clause. Moreover, the Bill contains a number of controversial clauses. Mr Paul CHAN, Chairman of the Bills Committee, has briefly talked about some of the most controversial clauses. We will also have debates on these clauses later. I wish to point out that within such a tight timeframe of scrutiny, even if Members have superhuman abilities or no matter how they exert their utmost, I find it very difficult to believe the Bill hastily scrutinized and passed in this way is better than the Bill proposed to be scrutinized in a phased approach by the Government in the first place.

President, another issue that makes me extremely anxious is that many clauses in the Bill involve small shareholders' interests. We all understand that one of the most important mechanisms in company law is majority rule. Exactly for this reason, there is always an incentive in a commercial society for the majority shareholder to infringe on the interests of small shareholders. And, they succeed to do so due to this principle of majority rule. President, there are actually many colleagues representing the business sector in this Council. Regrettably, in the course of scrutiny of the Bill, they have only focused their attention on safeguarding directors' interests and minimizing directors' liability, especially legal liability.

President, I do not blame them for only focusing on the interests of their sector. I only wish to point out that there are really not many organizations representing small shareholders in Hong Kong. And, there are also not many Members of the Legislative Council really representing small shareholders and participating in the scrutiny of the Bill. Besides, as I said earlier, we had to scrutinize many other complex Bills at the same time. Although I have done my utmost, I dare not say that the interests of small shareholders can be protected by every clause. President, for this reason, I must express my apology. I do so not because I have not exerted my utmost. I only find the situation really unfavourable to small shareholders.

President, I believe and hope that after the passage of the Bill in this term, the SAR Government will seriously examine the Ordinance afresh in the future. It is because there must be many mistakes and omissions in the Ordinance. These problems actually warrant immediate rectification. We need to examine every provision as quickly as possible from the angle of small shareholders to see if it is perfect.

President, as a Member, at this stage, I can only say that I have done my utmost to ensure that the Bill has attained the high level demanded by us. Although I am afraid things have gone contrary to my wish, I will still do my utmost to participate in the debate and scrutinize several hundred amendments. I always hope that the Government will review the Bill in a humble manner. And, I particularly hope that the authorities will reconsider those proposals put forward by the Law Reform Commission of Hong Kong for a large number of provisions which are not accepted, so that such proposals will be adopted as far as possible.

President, I will speak again later in the debate on other more controversial amendments and clauses. Thank you, President.

MR ANDREW LEUNG (in Cantonese): President, first of all, I declare that I am the owner of more than 10 companies, and also several

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert CHAN, what is your point? Are you requesting a headcount again?

MR ALBERT CHAN (in Cantonese): Yes. President, I wish that more Members will listen to Mr Andrew LEUNG's speech.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Andrew LEUNG, you may speak now.

MR ANDREW LEUNG (in Cantonese): President, first of all, I declare that I am the owner of more than 10 companies, and I am also an independent non-executive director of several listed companies.

I speak in support of the resumption of Second Reading of the Companies Bill (the Bill).

The Bill seeks to make a comprehensive rewrite of a law that has not seen any major revisions over the past 20 years and more to modernize the law to meet the needs of the business community and enhance the competitiveness of Hong Kong. The Bill has four major objectives, including first, to enhance corporate governance; second, to ensure a better regulatory regime for companies; third, to facilitate business operation and attend to the needs of small and medium enterprises (SMEs), and fourth, to modernize the company law of Hong Kong. The Federation of Hong Kong Industries and I support the Bill. However, over 900 000 companies in Hong Kong are regulated by the Companies Ordinance (CO). Enterprises, irrespective of their size, ranging from tiny one-man companies to listed consortia with a market value of hundred billion dollars and over 10 000 employees are all subject to the same legislation. Big companies, when faced with a heap of legislation, have no problems at all with the support of lawyers and accountants. However, 98% of the local companies are SMEs. We must ensure that the rewritten company law will not unnecessarily increase the compliance costs of SMEs.

The Bill is largely modelled on laws in such countries as the United Kingdom, Australia and Singapore, which are not necessarily suitable for Hong Kong. And, a number of new regulations are added. It is euphemistically described as enhancing corporate governance. But, in reality, heavier penalties are imposed to implement harsh laws and severe punishments. This regulatory approach runs counter to the objective of facilitating business operation, oblivious to the compliance difficulties faced by SMEs. In short, medium enterprises, small enterprises and micro enterprises are all treated as big enterprises. SME bosses are required to handle heaps of documents like listed consortia. Heavier penalties and implication of directors may scare people away from acting as directors, possibly leading to a wave of "director drain" any time.

President, since my very first attendance at the Bills Committee meeting, I have advised the Administration that the rewrite of the CO should aim to encourage more capital to move to Hong Kong and more companies to register in Hong Kong. According to information provided by the Government, as at the end of June 2011, 1 448 companies were listed on the Hong Kong Stock Exchange, but only 202 of them (less than 14%) were registered in Hong Kong. The remaining 1 246 were all overseas companies. When compared with other countries, among the 2 034 listed companies on the Australian Securities Exchange, as many as 1 941 companies (95%) are registered locally; among the 2 914 companies listed on the London Stock Exchange Group, 2 321 companies (around 79.6%) are registered locally; among the 2 318 companies listed on the United States NYSE Euronext, 1 801 companies are registered locally; the ratio of the Singapore Exchange is a bit lower where only 461 out of 773 companies are registered locally, but they still account for 60% of the total number of listed companies.

Figures have shown that listing in Hong Kong is very appealing to enterprises. However, should the Government not take one more step and make one more consideration to think of ways to attract a greater number of companies in the world to incorporate and set up a base in Hong Kong before seeking listing here to raise funds? In particular, a number of non-locally registered companies have recently been found running into trouble. We should all the more step up our effort to attract more companies to choose to register in Hong Kong, so as to boost the confidence of investors in listed enterprises in Hong Kong and further strengthen our status as the international financial centre in the region by means of our sophisticated judicial and accounting regulatory systems.

President, the Bill under examination this time around involves the rewrite of an ordinance. Many changes proposed in the Bill add new elements to a long-established law. The newly-added parts have caused concern of mine and other members of the business community. The term "responsible person" is one of the examples.

The Bill introduces the new formulation of "responsible person" while there is no such formulation now. The authorities have explained that as prosecution of "an officer who is in default" is very difficult now due to the high prosecution threshold, the proposed formulation will immediately lower the prosecution threshold. Another matter that worries us is that this formulation by

the authorities will make officers of SMEs who lack professional training encounter difficulties and even break the law in the course of compliance. The original intention of the enforcement authorities to enhance corporate governance will turn into a weapon that will wrongly kill the innocent.

Although officials have refused to add the prosecution threshold of "knowingly and wilfully", I have found it acceptable for the authorities to listen to my view finally to delete the limb of "fails to take all reasonable steps to prevent".

President, although the Bill tries to rationalize the penalties in the existing Ordinance, there are still 168 offences in the original Companies Bill that impose legal liability on responsible persons. Most of the offences are related to documents filed to the Registrar of Companies. Among them, 158 offences carry summary conviction and are punishable by a fine. The remaining 10 offences may be convicted or prosecuted summarily or on indictment and punishable by imprisonment. Numerous offences and heavy penalties give me the impression of "governing with severe laws in times of chaos". However, Hong Kong is not in chaos now. Is it necessary to impose heavy penalties on companies at every opportunity?

When I first asked the Government not to impose such heavy penalties, Members considered it a minor issue, thinking that the business sector is rich enough to be punished and that only companies are punished. However, subsequent to our careful examination, we found that some clauses are really too stringent. A Level 3 fine of \$300 each day will be imposed on companies just failing to print a copy of the electronic version of accounting records. By calculation, the fine will amount to almost \$10,000 a month. To companies that have ceased to operate, it is a heavy burden. To SMEs and tiny enterprises with insufficient resources and little legal knowledge, any failure to file documents will incur heavy penalties that they practically cannot afford. For rectifiable mistakes with little impact, I strongly oppose the imposition of heavy penalties by the Government.

The authorities have finally heeded sound advice and proposed an amendment to delete 19 clauses that impose daily default fines. I consider it a realistic and practical approach.

President, a number of instances in the Companies Bill require directors to be liable to legal responsibility. Many Members and I have queried at the meetings whether directors should be subject to legal liability at every opportunity. Officials have stressed that officers such as directors have the responsibility to supervise a company. I can agree to this explanation. However, I personally have great reservations about the consequence of carrying a criminal record.

In recent years, a large number of companies have failed to file annual returns on time. There were 90 400 such companies in 2008; 97 000 in 2009, and 110 000 in 2010, meaning one out of eight companies was late. If the law is really enforced strictly, many directors will get a criminal record and those with professional qualifications will possibly see their licences suspended as a result. President, is this penalty not too heavy? Should other ways be used to encourage and assist companies to file annual returns on time to avoid all company directors possibly turning into criminals eight years later?

I have suggested in the Bills Committee to officials a proposal of requesting the Registrar to issue a notice or warning to companies where non-filings are discovered and if the offenders have taken immediate remedial actions to re-file the document within a specified time, the Registrar should not proceed with prosecution. Although officials have not acceded to my request, they have explicitly stated that the Registrar has been delegated with authority to prosecute summary offences under the CO in Magistrates' Courts. In deciding whether to prosecute, the Registrar will first act in accordance with the Prosecution Code for Prosecutors as set out in The Statement of Prosecution Policy and Practice published by the Department of Justice, and will consider whether or not there is sufficient evidence and whether or not it is in the public interest to pursue prosecution.

I hope that the enforcement authorities will handle these cases in a suitably lenient manner. If the company fails to file documents inadvertently and the document neither makes any impact on others nor involves public interest, the authorities should not enforce the law strictly and pursue prosecution in a manner of "killing all suspects at the expense of the innocent".

President, another issue that has cost us much time deliberating again and again is financial reporting. Financial statements are vital for the monitoring of

a company's management. I have made enquiries with accounting professionals and got the advice that simplified reporting should not be regarded as second rate. It can equally reflect precisely the actual financial position of a company. Besides, many companies of Hong Kong are small in scale with a non-complicated structure. Simplified reporting is enough to reflect their actual financial position. To people without any professional knowledge in accounting, a simplified statement can facilitate small shareholders in reading and understanding the company's operation. Such being the case, why do we take the trouble of giving up an easy task and seeking a difficult one instead? Why have the authorities covertly deleted section 141D of the existing Ordinance that allows private companies to file a simplified report with the consent of all the shareholders, and instead required companies to file a detailed statement every time? Fortunately, I have spotted this in the course of scrutiny. Only after repeated arguments did the Government accede to retaining the relevant provision.

Clause 664 of the Bill provides for the headcount test in respect of mergers and takeovers. I agree to the need to protect the interests of small shareholders. However, the "one share, one vote" principle also needs to be respected. The majority shareholder should not be led by the nose just because a human-wave tactic is employed where a large number of people hold only a small number of shares. Therefore, I have accepted the amendment proposed by the authorities to draw a line at 10% of "disinterested shares". In my view, this practice strikes a balance among the interests of small shareholders, big shareholders and the company as a whole.

Lastly, many parts of the Bill involve the keeping of records of a company's internal affairs such as the change of directors or share options and the filing of documents to the Registrar of Companies. Some original clauses proposed by the Government have stipulated that the relevant document must be filed within "seven days" and some have stipulated "14 days". President, the Government has actively promoted the five-day working week in recent years, and we have many public holidays as well. If we encounter a scenario where Ching Ming and Easter holidays come one after another and happen to fall on a Saturday and Sunday, seven days will possibly turn out to be two days. Therefore, I have proposed to the Government to revise it to "15 days" to enable companies to have enough time to prepare documents for the filing to the Registrar of Companies. I am grateful that officials have accepted our view.

President, the Companies Bill is a piece of legislation that has profound impacts and a direct bearing on the business environment. In the course of scrutiny, I have kept voicing my worry about insufficient scrutiny time to the Government and the Chairman of the Bills Committee. I have even requested the Government several times to consider withdrawing the Bill and introducing it again in the next term. Of course, my view has fallen on deaf ears. And, Chairman Paul CHAN, in order to strive for more meeting time, often increased the number of meetings, and each meeting lasted four hours. In the end, two to three meetings were held in a week. A member has mentioned just now that we actually were unable to handle so many matters. Moreover, in respect of such an important piece of legislation, there were only the Chairman and I facing a dozen or so officials most of the time at many meetings. The officials have worked very hard, sending us a large number of papers at frequent intervals. And, each paper contained dozens of pages. We practically had no time to read them all. Many a time, we could only rely on the assistance of the two Legal Advisers of the Legislative Council.

Regarding clause 399 of the Bill that causes a controversy today, we practically had not enough time to work it through. So, after the completion of the scrutiny, the trade unions sent us letters overwhelmingly to oppose clause 399.

I support the resumption of Second Reading of the Bill today. And, I also hope that our efforts and those of the Secretariat over the past one year and four months will not be wasted. However, I hope that once the authorities find any slips or omissions in enforcement in future, they will introduce amendments to the Legislative Council immediately.

President, I will speak on individual amendments later at the Committee stage. I so submit.

MR JEFFREY LAM (in Cantonese): President

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): Sorry, I wish to ask again for a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Jeffrey LAM, please.

MR JEFFREY LAM (in Cantonese): President, it has been 28 years since the Companies Ordinance (CO) was given a massive amendment in 1984. Over the past decade, there have been constant fluctuations and upheavals in the international market. There were a number of financial crises and major scandals on corporate governance such as those concerning Enron, the closure of the British bank Barings, the scandal involving the Robert Maxwell retirement fund and the financial tsunami in 2008, and so on.

In recent years, listed companies in Hong Kong have been found on a number of occasions to have provided untrue information or exaggerated figures. Such dubious affairs occur frequently. They have not only affected the shareholders, creditors and the staff, making them lose everything, a chain effect may also be caused and economic development as a whole and public interest undermined. This is because a large corporation is closely linked with other corporations and if a bank folds, the public and their hard-earned money may suffer a great loss.

Therefore, members of the public and investors press for more stringent requirements in good corporate governance. Companies must enhance their operation transparency and the Government should strengthen its laws and regulations to raise the accountability of company directors and auditors. All these are global trends. An example is that in 2008, the United Kingdom made a major revamp of its company law. In the United States, the Sarbanes-Oxley Act was passed to impose stiffer penalties on those in the company management or white-collar staff when they commit an offence. The aim of all these reforms is

to enhance the regulation of company operations, give greater protection to investors, improve the business environment and upgrade competitiveness.

President, in comparison, the CO in Hong Kong is clearly outdated and unable to catch up with the times in terms of regulating corporate governance and promoting business operation. This is because for more than a decade the business environment in Hong Kong has witnessed rapid changes of a great magnitude. I agree that the authorities should amend the CO in the light of our position as an international financial centre. This will hopefully enhance corporate governance, facilitate business operations and enable the law to keep abreast with the times, hence making Hong Kong more competitive as an international commercial centre.

The Government's rewrite of the CO this time will greatly affect the operations of all the some 980 000 registered companies in Hong Kong as well as the interests of investors. Therefore, we in the Economic Synergy are very much concerned about the clauses in the Bill. We have tried our best to scrutinize each one of them. However, owing to the time constraints, we had to work overtime everyday during the last stages of the deliberations. We would hold meetings for two or three times a week and each meeting would last more than four hours. Often we had clashes in the timetable with two or three other meetings. I am sure many Members were not able to attend meetings of the Bills Committee on the Companies Bill all the time. I would think that the time arrangements can be improved.

President, we have also found that many of the consultations done in the past were simply meant to solicit the views of the Hong Kong Institute of Certified Public Accountants, whereas the views of people in other sectors were ignored. This is a shortcoming of the consultation exercise. On this occasion, we have asked the Government to try by all means to consult people from other sectors, including those from the business sector. This is to ensure that all the sectors would consider the Bill to be fair and impartial and that it would be different from the Competition Ordinance or Minimum Wage Ordinance which is full of landmines and sugar-coated poisons which bring many unnecessary regulation and operation difficulties to the business sector.

The present attempt to rewrite the CO involves more than 900 provisions and there are many places which we consider not sound enough and which lead to

concern and worries in the business sector. Currently, more than 98% of the enterprises in Hong Kong are small and medium in size. We think that some of these provisions lack flexibility and have not taken into account the impact on SMEs and their compliance difficulties.

First of all, clauses 456 and 457 of the Bill propose that company directors have a duty to exercise reasonable care, skill and diligence. The standard is both objective, that is the standard of reasonable expectation, and subjective, being related to the director himself. But the Bill does not set out the relative weights of these two aspects in the standard. Should the Courts pay more attention to subjective or objective aspects of the standard? The Bill carries no clear determination of this.

President, as we know, the requirements of an objective standard are more rigorous. Our concern is that with this objective standard, will the liabilities of a non-executive director be the same as those of an executive director? Will large enterprises and SMEs be subject to the same objective standard? We know that the duties of a non-executive director and an executive director are completely different. A non-executive director does not have to handle the day-to-day duties of a company and he is unlike an executive director in that the latter can have the latest information of the company's operation and decisions at his fingertips. The size and scale of a large enterprise and those of a SME cannot be compared at all. The Administration has explained that the Courts would determine an objective standard according to the differences in the duties of directors and the types of companies. But no one will know how the Courts will interpret objective and subjective aspects of the standard regarding "reasonable care, skill and diligence" and "general knowledge, skill and experience".

Moreover, in the case of directors with special knowledge or experience, would the subjective standard have to be made more stringent? In the Lehmann Brothers incident, investors are divided into experienced and inexperienced investors. But up to the present moment, I still fail to see what the differences are or what kind of subjective standard should be applied. So we really feel concerned how strict or loose subjective standards may be applied. This uncertainty would exert a great pressure on company directors and this may also affect the incentive of professionals to act as directors in Hong Kong.

Besides, SMEs operate on a small capital. Many of them are family businesses. Their directors may not have received any management training. If the directors of SMEs are required to comply with the same objective standard applicable to directors of large enterprises and listed companies, this will add greatly to the compliance difficulties of these SMEs and their cost burden. On this issue, we have not only conveyed our concern during the deliberations on this Bill in the Bills Committee but also raised the same concern when deliberating on other Bills. Since Hong Kong is a diversified international city, the ambiguities in law should be clarified and clearly set out by all means. This will enable companies both large and small in size to understand easily the requirements in law.

President, we are worried that this double standard may result in the directors of SMEs having to be held liable for acts done inadvertently. This also imposes undue pressure on SMEs, being made to make every one of their decisions with great fear. We have asked the Government to consider granting some sort of exemption to the directors of SMEs or setting up some sort of safe harbour provision as protection and to specify under what kinds of circumstances these SME directors will be exempted from liability. But the Government has insisted on its view so far. I hope that the Government can try to better understand our plight, especially the SMEs, because they have difficulties in finding suitable directors. Now it is not that easy to hire a director even if you have got the money. On top of that, there are so many ambiguities in the law. What should people in the business sector do?

Another proposal which we oppose is the headcount test required for approval of a privatization scheme. This headcount is unlike the request for a headcount which Mr Albert CHAN often makes in this Council. We in the Economic Synergy have told the Government on many occasions the disadvantages of this headcount test. We have tried our best to ask the authorities to abolish this proposal. The disadvantages include the fact that this headcount test is contrary to the "one share, one vote" principle which is fair. It creates a loophole for vote manipulation by certain shareholders. With respect to the protection of minority shareholders, since most of the small investors do not register formally as shareholders, it is not common for them to vote in person at a shareholders' meeting. The existing Code on Takeovers and Mergers can give adequate protection to the rights of minority shareholders. The Court can also have discretion not to approve a scheme.

Fortunately, the authorities have accepted some of our suggestions and the headcount test for takeover and repurchase of shares is removed. Instead, the "10% objection rule" as specified in the Code on Takeover and Mergers is adopted in the place of the headcount test. In our opinion, this "10% objection rule" is not necessary and it would only bring difficulties in implementation to the SMEs. President, the number of shareholders in SMEs is not large and this rule will only result in the decision power being concentrated in a minority or a certain number of persons. It is unfair to the majority shareholder and it brings too many unnecessary restrictions to the SMEs in their operation. I hope the Government can consider removing this "10% objection rule" so as to make Hong Kong more competitive.

In respect of penalties, the Government should be fair and the administrative staff and directors in all sectors and trades as well as lawyers and accountants should be treated equally. Hong Kong is a financial centre in this recent package of presents which the President of China has brought to Hong Kong, of these six presents, there is assistance to enhance our off-shore Reminbi services. I would think that this present can bring many benefits to Hong Kong in financial terms. This is because offshore Reminbi clearing service or other operations will attract many foreign companies to set up their headquarters in Hong Kong or they will relocate their regional headquarters in Asia here.

If investors find that our system is not perfect and if they think it is not fair and impartial, they will question whether or not Hong Kong upholds the rule of law or the rule of man. If we can ensure that everything is fair and impartial and no favour is shown to any specific trade or sector, then the investors will have greater confidence. President, although this rewrite exercise cannot be considered flawless, we hope that the Government will take our views into consideration and make the adjustments in due course.

President, I so submit.

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): President, I would like to request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Ms Audrey EU, please.

MS AUDREY EU (in Cantonese): President, as many Honourable colleagues have mentioned, Hong Kong is a well-developed place in economic terms. Often people need to do business in the form of companies with limited liabilities. For people who are not actually doing business, quite a number of them may own one or more than one companies because many people own properties through a company and property transactions are carried out through the sale and purchase of the shares of their company. Therefore, company law is a very important part of the laws of Hong Kong.

However, as Mr Ronny TONG said earlier, strangely enough, our company law lags behind the times. This is because a large part of it is based on the Company Act of the United Kingdom enacted in 1948. For many years this Council has been urging the Government to speed up its reform of company law. I recall on one occasion Ms Emily LAU slammed the bench and asked whether the Government was short of resources and whether more resources should be allocated in order to speed up the reform of company law.

We have actually been talking about a revamp of the company law for 20 years. An expert panel was set up then but the report submitted by that panel was not acceptable to many people. So everything has to be overturned and start again. This is not the first occasion on which the company law is amended. Two terms before this current term of the Council, that is, in 2003, I worked on a reform of the company law. At that time, the Government was rather conservative and the company law which it submitted to this Council was only the size of a Blue Bill. Then it was divided into four parts. We were told that if a certain part could not be completed before the recess or expiry of the term, at least we should divide the Bill into four parts and complete as many of them as possible.

I do not know if the Government is getting more aggressive this time. On this occasion it has introduced a Blue Bill on company law which is as many as five parts and in one go. It is hoped that everything can be passed at one time. At that time we asked the Government whether it was possible to deal with it in parts. This is because if we were to handle such a large amount of contents, in the end Members would not have the time to understand all the relevant clauses, and this might lead to far-reaching impacts. But the Government insisted that this Council should handle this five-part Companies Bill in one go.

In fact, the Government would send a large group of people to attend the meetings every time. These people did not just include officials but also many overseas experts. I must say that they have worked on the clauses very carefully. However, due to circumstances beyond our control, that is, the massive volume of Bills or other matters that have to be dealt with when the term of the Council is coming to an end, plus other matters like the proposal by Mr LEUNG Chun-ying on the five Secretaries of Departments and 14 Directors of Bureaux which have jumped the queue, so Members did not have enough time to deal with all the clauses.

Most of the changes proposed in the Bill are technical in nature. This is because times have changed and in many ways, a company will not adopt the same practices and management style as before. This is especially true in, for example, holding meetings. Often meetings are held in a form which is different from a meeting in the traditional sense, for an electronic approach may be taken and people do not have to be in the same room to hold a meeting. They can use video conferencing or other methods to hold a meeting or vote. So the Blue Bill has added many clauses of a technical nature or about modernization. And many of this kind of technical amendments are not controversial. But there is a small number of them which are controversial. An example is that some people would question how the identity of people in a video conference can be verified, or whether the votes cast can be trusted. Members do have many worries like this. But these can be dealt with. Of course, since there are many overseas companies in Hong Kong, we have to deal with clauses in this respect.

The Bill does have quite a number of clauses which are controversial, especially because of the fact that companies have their own internal problems. This accounts for the fact that all along the majority rule used by companies is respected at common law. Often the companies would have their own way of

operation. But with the changes in time in society, many minority shareholders would need protection in law. So there are more and more provisions in company law on protecting the rights of minority shareholders. Disputes may thus arise or there is the problem of how to strike a balance.

Many people have come to this Council to voice their opinions on the Bill. One of this kind of opinions is the headcount test mentioned just now. That is to say, when a company is to effect a privatization scheme, should the existing terms be kept and the minority shareholders be allowed to take the headcount approach, so as to ensure that the number of people holding shares is enough and this does not matter if these people hold one share or many shares in that company. In sum, even if a person holds just one share, he will be counted under the headcount approach. This is the so-called headcount rule. Some people will say that this is to the advantage of minority shareholders. But many others will say that this is not to the advantage of minority shareholders for the reason that the majority shareholders can likewise split up their shares and get many people to hold these shares. So in disguise, this also creates an unfair situation.

This headcount rule has really led to many disputes. The Council has heard many views expressed on this issue. As a matter of fact, there are experts who agree on each side of the argument. We have heard many rounds of expression of views and the Government has also made revisions on a number of occasions. The final version proposed by the Government now is acceptable to the Civic Party. This is because the approach keeps some of the practices used in takeovers under the existing securities law, that is, ensuring that a scheme is not passed if 10% of the people object to it. And on top of that, the Court will play a gate-keeping role.

The issue of lawyer's fees calls for improvement. In fact, when middle-class people, not to say minority shareholders, want to instigate a legal action, they would often find the costs unbearable. If they want to take a case to the Court to object to a takeover or privatization scheme because they hold some shares in the company concerned, it would be very hard for them to do so simply by relying on their own funds or their own abilities. The Amendment Bill this time would add certain clauses as appropriate so that provided that these people take reasonable steps, the company concerned will meet the costs. And also, provided that such an action is not of a frivolous nature, the persons concerned

will not have to pay any fees. Such are the amendments proposed and they are meant to offer better protection to minority shareholders.

Of course, I know that many people in this Council would think that the existing practice of making a headcount may give the greatest protection to minority shareholders. We respect this view and so we have to wait until the voting result in the end. But that is really a difficult decision to make.

President, I would like to make special mention of another clause. Certainly, I know that more Members will talk about it at the Committee stage. This clause is actually a victim of this Council's speeding up its business. It is clause 399. When we first handled the clauses in this Bill, we did not find clause 399 controversial. It was only very late in the deliberations that the Chairman, Mr Paul CHAN, pointed out suddenly that the accounting sector was very concerned about it and some professionals wanted to come here to voice their opinions. And we held a special meeting for them.

We used to think that when the Bill was being formulated, the Government had discussed in detail with all the relevant sectors, especially the accounting sector. I am sure the Government will say so later on. But in any case, we had a special meeting and many representatives from the accounting sector came and they included those from the Securities and Futures Commission.

They talked about clause 399. And I think Members should also look at clause 398 which comes before clause 399. That clause is about "Auditor's opinion on other matters". It is said in that clause that when an auditor prepares an auditor's report for a company, he should state clearly his opinion on the accounting records. In clause 398(2) and clause 398(3) in particular, it is stipulated that a company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that adequate accounting records have not been kept by the company; or the financial statements are not in agreement with the accounting records in any material respect. Or if a company's auditor fails to obtain all the information or explanation that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report. These are things that an auditor must write down specifically, record or state. Clause 399 points out that if the auditor fails to meet the above requirements and if the person "knowingly or recklessly" does not do that, he commits an offence.

These two clauses should have been quite consistent because clause 398 sets out the liability and since we cannot have a clause which is a toothless tiger, so we have clause 399 which provides for the condition that if a person "knowingly or recklessly" contravenes the clauses, then the person will have to face the consequences in law. Originally, these two clauses are most reasonable and as a matter principle I would support them. If a professional neglects his professional responsibility knowingly or recklessly and incurs some criminal liability, I would think that this is understandable. But it is unfortunate that some professionals, especially accountants, think that the clauses are not so well-written.

Then the Government proposed some amendments at the last meeting. I could not attend that meeting. When I learnt about these amendments subsequently, I found that they were really unclear. The Government explained that it considered the amended version better than the drafting in the Blue Bill because special mention was made of the persons who should bear the responsibility incumbent on the auditor. Apart from the auditor, other persons performing managerial functions will also be held responsible. President, I am really baffled as to what people performing managerial functions are.

President, someone in my family is in the auditing business and I know very well what the situation is like in the profession. People in the auditing profession are university graduates who have to work for some years while taking professional examinations and undergo an internship. It would take about five years for them to get a licence and become qualified as an auditor. But does it mean that they can only perform managerial functions after they are licensed? This point is not clear. This is because when the clients cannot afford a high fee, then these big auditing firms will assign some young people who have worked for only two or three years to some remote factories on the Mainland to work. These young people include my daughter. Their supervisors may be people who graduated just one or two years earlier than they. It is very likely that it is after a very long time before they are qualified to sign papers. But does it mean that they perform managerial functions?

Then I asked the Government what that expression meant. The reply was that some guidelines would be formulated under the CO and the prosecution policy would then be stated. I urged that this be furnished with me at that

moment so that I could gain some understanding of under what conditions would the persons concerned be prosecuted and how managerial functions should be understood. The Government said that they could not be provided to us then but they would definitely be provided in future. President, I feel that this is hardly acceptable. If it is said that I will only be informed of the prosecution policy of a certain criminal law in the future, this is tantamount to saying that there is no certainty about this criminal law.

So I reviewed the original clauses to see if they were acceptable. What are the persons as stated in the original clauses who should bear the legal consequences? First, the auditors. This I understand. It is because the auditor is the person who puts his signature on the papers. Then there is "every employee and agent of the auditor who is eligible for appointment as auditor of the company". My understanding of this is like what I said earlier, that these people are those who have about five years' experience from their graduation, to their taking of professional examinations and undergoing an internship. It means that they have a licence and can sign papers. This should be the original interpretation of the clause and in my opinion, that is acceptable.

But the fact is different. When I made an enquiry with the Government, it gave me a paper, saying that that interpretation was not correct. This is because the relevant words should be construed in the light of the definition of the eligibility for appointment as auditor as found in clause 384. It turns out that only a "practice unit" is eligible for appointment as auditor of a company. What is a "practice unit"? There is a definition of it and we have to look at section 2 of the law on professional accountants. The Government said that if enforcement were carried out according to all these provisions, the big firms will certainly be able to get away with it and only the small firms would be made the targets. I was very surprised to hear this explanation and I felt that this was just not right.

President, it was in 29 June that we received an explanation from our Legal Adviser. He pointed out that this interpretation would not work, that is, the Government's understanding of it was not correct and my original understanding was correct. President, the Bill should have resumed its Second Reading on 27 June. But I have in my hands the explanation from our Legal Adviser dated 29 June. President, when there are so many uncertainties and different

interpretations, I do not think I (*The buzzer sounded*) I can only object to clause 399.

Thank you, President.

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert CHAN, are you wish requesting a headcount?

MR ALBERT CHAN (in Cantonese): President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Albert HO, please.

MR ALBERT HO (in Cantonese): President, I am still feeling the effect of the 1 July march. Can I speak for 15 minutes? (*Laughter*) President, I request that be allowed to speak later. Would that be fine?

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

(Mr WONG Yuk-man stood up)

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please.

MR WONG YUK-MAN (in Cantonese): I will speak first. Do we have a quorum now?

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please speak.

MR WONG YUK-MAN (in Cantonese): Am I allowed to speak now?

PRESIDENT (in Cantonese): Please speak.

MR WONG YUK-MAN (in Cantonese): I have not lost my voice. I can speak. Am I allowed to speak now?

PRESIDENT (in Cantonese): Please.

MR WONG YUK-MAN (in Cantonese): Recently there has been a congestion of Bills in this Council. For a piece of legislation as important as the Companies Bill — a Bill so thick in print — only a few Members have spoken at the Second Reading, it can go down in history as a classic example in this Council. But we will certainly persist in our struggle.

We have scrutinized many Bills recently and during that course we can see many things which are disappointing and frustrating. Of course, Members from the pro-establishment camp will say that the slow progress in scrutinizing the Bills is due to some people often requesting a headcount, filibustering and trying to lengthen the meeting time on purpose. Then why do they not say that there are people who do not speak on purpose? There are people who do not perform their duties as representatives. This is relative. When they do not speak, I will certainly request that the bell be rung and I will speak all the time, right? Many things are relative in this sense. There would be no point when there is no comparison. I am now buying space with time.

In this process we can see some very funny aspects of this Council and they gave us some insights into why make people have such a low opinion of this Council. Is this caused by people like us who throw bananas or gate-crash this Council? Or is it because some people in this Council are prepared to act as the henchmen of the Government, be it the new or the old one?

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please focus on the Companies Bill when you speak.

MR WONG YUK-MAN (in Cantonese): Buddy, there ought to be some introduction for any speech, right? There were quite a number of unpleasant events during the deliberations. But when I see this Companies Bill today, my spirits are uplifted. This is because the Law Drafting Division of the Department of Justice released a paper entitled "Modernisation of Drafting" on 1 March last year. I do not know if Members have read this paper. By modernization it means that those in the past are by-gones and now there is a need to modernize. As a matter of fact, there are problems with the term "modernisation". President, maybe you can modify it a bit. How should "modernisation" be changed? The meaning of that term is simple. It means that law drafting has to keep abreast of the times. Was there no problem of modernization in the past? Previously, English was used in law drafting, and this problem also existed. There was also the problem of the law growing fossilized. Or that the provisions were not accurate enough. There was this problem when English was the language used in drafting. The situation is worse now. We use a bilingual approach, that is, to draft the English version first and then translate it arbitrarily into Chinese.

As this paper is related to the Companies Bill, it caught my attention. The paper points out the problems that exist in law drafting today and makes some suggestions for improvement. I would like to make criticisms of the Chinese draft version of the law when this Council deliberated on relevant Bills in the past. With respect to this Companies Bill, the paper which I have just mentioned pointed out a few areas that warrant improvement, namely, first, the structure of provisions; second, the length of provisions; third, cross-references;

fourth, section headings; fifth, terminology; sixth, gender neutral language; and seventh, notes.

I would not comment on these seven areas for the time being because they are well-intentioned. But in some places, the statements made are problematic. An example is, what is meant by the Chinese version of "Cross-references" and "Section headings"? These are very clumsy Chinese expressions. But "Gender neutral language" can be readily understood to mean gender mainstreaming and this is a popular trend now in Hong Kong. It is proper to say like in a Chinese expression which can be literally rendered as "the men are robbers while the women are prostitutes". But for another Chinese saying which literally translates as "when a chaste woman loses her chastity in her old age, it is worse than an old prostitute who is reformed", this is not proper because someone would protest that no mention is made of the masculine gender. It is all right to say "the men are robbers while the women are prostitutes" because both the males and females are wicked. And so there is no sex discrimination against any particular sex. But someone would split hairs and say, why can women not be robbers and men not be prostitutes? It would be pointless to argue with this kind of people. But the fact is there are indeed such kind of people in this Council who are die-hard and hard-liners and they are rigid and fossilized to the extreme. What can we do about it? They will jump at the very mention of the word "women". So we have to use gender neutral language.

I really wish to examine these new clauses and see whether or not things I have just mentioned can be achieved. Can the drafting of the Companies Bill achieve what this paper has set out to do? President, since I have not joined the Bills Committee, I have no idea as to how much improvement has been embodied in the Companies Bill in accordance with the main points on improving law drafting as espoused in the paper released by the Law Drafting Division of the Department of Justice. But it is not too late for us to look at the clause-by-clause deliberations on the Bill during the Committee stage. Now we can look into the clauses because the entire week from now will be spent on discussing the Companies Bill. There are many clauses in it and I am trying very hard to study them. I will speak at the Committee stage again because I hope to do what I have done when scrutinizing the Competition Bill. At that time, I spoke for about four or five hours. Although I have almost lost my voice after shouting hard in the 1 July march, I will stay on and fight to the end.

Speaking from the angle of law drafting, our demands on the clauses in the Companies Bill are simple. First, we hope that they can be readable. That is to say, ordinary members of the public do not have to consult lawyers before they can understand the requirements in law. I remember Dr Margaret NG made many criticisms of the double negative and quadruple negative sentences found in the clauses of the Competition Bill. I hope that this kind of thing will not appear in the Companies Bill. Or else I will speak for all the 15 minutes allowed on contents similar to those in Dr Margaret NG's speech. I can do that.

The Government says that there are some objectives in amending the Companies Bill — first, enhancing corporate governance; second, ensuring better regulation; third, business facilitation; fourth, modernizing the law.

President, I hope you can summon Members back here to hear me speak.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue.

MR WONG YUK-MAN (in Cantonese): The Companies Ordinance (CO) is a law enacted almost 80 years ago, that is, in 1932. Throughout these 80 years, society has changed so much. Secretary, do you know that this law is 80 years old? There have been some minor revisions to it, but all of these are changes of a minor and piecemeal nature and no fundamental change has been made to it.

Come to think about this. In these 80 years, how great the economy has changed? How many SMEs were there 80 years ago and how many SMEs and companies are there now? The weird things done by companies now as compared to those done by companies in the past Previously people did business by mutual trust and a promise made was always honoured. But now even if a contract is signed, the parties involved may still be cheated. In fact, we

need not talk about such a long time in the past as 80 years ago. We can say that the kind of minor patchwork revisions made during the past 20 years cannot be regarded as any fundamental change at all. There is no way these trivial changes can meet the needs of society as it develops.

Instead of making some patchwork revisions to the CO in the hope that it can be made better, it would be better to rewrite it. The result of that rewrite is this voluminous Bill before us today and this is something done to serve public interest. I did not take part in the deliberations of the Bills Committee and I do not know how many meetings were held. When we look at the report of the Bills Committee, we find that it is such a thick report. We have tried our best to read it over once.

Certainly, the Government has shown great determination on this occasion. It hopes to transform the CO and imbue a new life to it. Unfortunately, there is only one more Council meeting for this term and there are just some 10 days left. People are in a hurry to wrap things up and they are not enthusiastic. Many Members in this Council have served here for more than 20 years, but I have never heard of course, they will say that they have spoken in the Bills Committee.

Then how many people spoke in the Bills Committee meetings anyway? We can check the minutes of meeting to see what these Members had done when the Bills Committee deliberated on the Bill. We can find their attendance rate and the public will know instantly. Members of this Council, not to say those part-time Members, even those full-time Members, have not really fulfilled their duties.

Why do they join a Bills Committee? Sometimes I am really surprised. It is because they are just there to occupy the places. It turns out that the first task done in a Bills Committee is to elect a chairman, something I realized only not long ago. I came to know that when I was returned as a Member to this Council. Members would take up a place in a Bills Committee in order to be elected as the chairman. When they have got enough votes, they can be there to act as royalists and at certain crucial points in time, they will cast their votes like a machine.

This Bill is a *de facto* rewrite. I trust that, insofar as this term of the Council is concerned, no Blue Bill of any law is as thick as this. How many people have read it once from cover to cover? This is a big question. For me, I have not read it over, because I am not a Member of the Bills Committee. I think maybe the President has managed to read it from cover to cover. The President has got an excellent memory and maybe he can do it. Who has read it from beginning to the end? No. Are there such people here? A Member nods. Congratulations. He is really a hardworking person. Honestly, I have not read it through.

The President always instructs us not to speak so much in the Chamber because everything has been covered in the Bills Committee. But I have not joined the Bills Committee and so I will have to speak here. Many people do not speak at all. I find this Council most funny, so ringing the bell to summon Members is the right course of action.

We hope that the Government can have the same mentality when it works in other areas as when it is amending the CO or drafting the Companies Bill. For example, about the Mandatory Provident Fund Schemes Ordinance, it would be futile whatever number of amendments the Government made to it. It is because there is no way this law can enable the people of Hong Kong to lead a good retirement life. This mandatory provident fund scheme should have been rescinded. It would not serve any purpose no matter how many times it is amended. There is no way low-income people, the unemployed or housewives can be helped by all these patchwork amendments to lead a retirement life with any decency. This Mandatory Provident Fund Schemes Ordinance should be rewritten just like the CO is rewritten. Its title should even be changed to the Universal Retirement Protection Ordinance.

We notice that the rewrite of the CO actually began in 2006. It took the authorities six years to draw up the Companies Bill. The Government has disclosed that after the Companies Bill is passed, it would be necessary to enact many pieces of subsidiary legislation and wait for the Companies Registry to change the system for updating these statutory forms. So even if the Bill is passed in this term, the new CO will come into force only in 2014, that is, two years later.

I can tell Members that I am very interested in this CO. I have not joined the Bills Committee. We used to run a business, but it ended up a failure every

time. This Companies Bill is really all-embracing and comprehensive to such an extent that it is stunning. We have learnt a good lesson. There are 21 parts in it, together with 909 clauses and 10 schedules, plus those clauses on winding-up that should be handled. This work of rewriting the CO is really a monumental feat. The Secretary has been in his office for a number of years and he should have taken part in formulating this Bill. Of course, his predecessors must have helped him a lot. He is sitting here now, looked a bit bored (*The buzzer sounded*) so he should get an assistant to help him out with the work.

I will speak later because I have not finished. Thank you, President.

MS STARRY LEE (in Cantonese): President, the rewrite of the Companies Ordinance (CO) is believed to be a legislative exercise that has taken the longest time in the history of Hong Kong.

The main provisions of the existing CO were made as early as in 1932, and the CO was last substantially reviewed and amended in 1984. Although the Government has, over the past two decades, conducted several reviews of different scales on the CO and implemented some amendments, the amendments were, after all, just minor patch-ups and far from thorough. Coupled with the fact that other major common law jurisdictions, such as the United Kingdom and Australia, have substantially reformed their company laws over the past two decades, the rewrite of the CO can brook no delay in order for the company law of Hong Kong to progress with the times and to maintain Hong Kong's position as a major international commercial and financial centre.

It has been a great honour for me to be the Deputy Chairman of the Bills Committee on Companies Bill (the Bills Committee). President, I remember that when I was studying at school, it was already mentioned that the CO was obsolete and required a rewrite and review. Now that I have been an accountant for more than a decade, and a rewrite and review of the CO has been proposed for a long time. That I can join the Legislative Council and take part in the Bills Committee has indeed given me some different feelings. I hope that the amendments proposed to the CO will not ultimately fail to pass because of the filibuster. I believe the Companies Bill is not the target of the filibustering Members, and the Companies Bill has indeed many clauses on which Members

can discuss and expound their views. But anyway, if the Bill cannot be passed before the end of this term, that will really be most undesirable and it will also affect the status of Hong Kong as a major international business centre.

Therefore, the Government launched the comprehensive rewrite of the CO as early as in mid-2006, and a dedicated Companies Bill Team was established under the Financial Services and the Treasury Bureau to follow up the relevant work. A Joint Working Group was set up between the Government and the Hong Kong Institute of Certified Public Accountants (HKICPA) for reviewing the accounting and auditing provisions in the CO, and four dedicated Advisory Groups comprising representatives from relevant professional bodies, business organizations, academics, regulatory bodies and government departments were established to advise on various areas.

In view of the magnitude of the work required and the extensive issues involved in the rewrite of the CO, a two-phased approach was adopted. Phase one, which was launched in mid-2006, focused on the core provisions affecting the daily operation of over 700 000 companies, whereas phase two dealt with the winding-up provisions in the CO. After drawing conclusions from many rounds of consultation, the Companies Bill was eventually gazetted on 14 January 2011. I hope that the review of the winding-up provisions can be taken forward in the next-term Government because these provisions are also seriously outdated.

The rewrite of the CO aims at achieving four main purposes, namely, enhancing corporate governance, ensuring better regulation, facilitating business operation, and modernizing the company law. The Bill consists of 21 parts, 909 clauses and 10 schedules. The Blue Bill itself contains five books, and the deliberation work was extremely heavy.

I am very grateful to Mr Paul CHAN who was willing to take up Chairmanship of the Bills Committee because we have spent 100 hours on the deliberation of the Bill. Mr WONG Yuk-man did not take part in the work of the Bills Committee, but I hope he can understand that Members have indeed spent a great deal of time on the deliberations. Apart from Mr CHAN, I have observed that whether in scrutinizing the Competition Bill or the company law, many Members have worked conscientiously. Particularly, I must sing praises of Mr Andrew LEUNG, Mr WONG Ting-kowng and Mr Jeffrey LAM from functional constituencies (FCs), who are in the Chamber now. They have in

fact, provided persistent support for the operation of the Bills Committee. A meeting was held for two to four hours every Friday morning, which was not easy indeed, and Members should understand that the discussions at the meetings were very technical and would not attract coverage by the media. But members of the Bills Committee, especially those whom I have just mentioned, have fulfilled their duties by providing a lot of input for improving the contents of the Companies Bill proposed by the Government.

I also have to sincerely thank the Government for maintaining close communication with the Bills Committee throughout the process. Other than the hiccups caused by clause 399 at the final stage (I will talk about this point later on), there was generally adequate communication between the Government and Members. Regarding the controversial issues, such as the "headcount" requirement that Members should recall, the Government has arranged for meetings with various political parties and Members on a number of occasions, in order to come up with a proposal acceptable to all before the Third Reading of the Bill, hoping that the rewrite of the company law would not be impeded. Therefore, I think that throughout the process, the Government has indeed done its utmost to forge communication with Members, and we have also witnessed that FC Members could indeed perform their functions insofar as this Bill is concerned. It is because the outcome of the amendment of the CO will have a direct impact on all companies, and FCs have maintained close connection with the commercial sector. Many of them come from professional sectors and have taken part in the work of the Bills Committee. Certainly, some pan-democratic Members have also made an effort to put forward their views to improve the Blue Bill proposed by the Government.

Today, I am not going to speak on the five books of the Bill one by one, because the Bills Committee has already spent 100 hours on their discussion, examining the clauses one by one. In my speech today, I wish to focus on two points that are more controversial. The first point is whether the "headcount" requirement should be retained, and the second point concerns the hiccups that emerged at the final stage concerning the criminal liability of accountants.

Let me start with the "headcount" requirement, which refers to the "headcount test" mentioned in clause 664. It actually means that in the course of privatization of a company, apart from the need to obtain support from 75% of the shareholders, depending on the number of shareholders, over half of the

shareholders attending the meeting must support the proposed scheme in order for the scheme to be approved.

The controversies over this requirement can actually be traced back to the privatization scheme proposed by PCCW in early 2009, but there were extensive reports in the media on suspected "vote-rigging" in an attempt to influence the outcome of the vote taken under the "headcount" rule. As a result, owing to the "headcount" requirement, the shareholders' meeting of PCCW was extensively followed and covered by the media, leading to an investigation by the Securities and Futures Commission, and the privatization scheme was ultimately rejected after the Court had ruled against it. To the minority shareholders, the "headcount" requirement can bar an unreasonable privatization scheme, and as I have participated in it, I am very concerned about whether the "headcount test" should be retained and have taken a keen interest in this issue.

For some time in the past, I have communicated with various organizations, the Government and Members, and I have received both supportive and opposition views. Indeed, both the supporters and critics have their own justifications. Those in support of the retention of the "headcount test" are mainly the small shareholders who consider that in the existing CO, the provisions for the protection of small shareholders are grossly inadequate, especially when small shareholders face the listed companies which are financially powerful, their positions are utterly unequal in terms of resources and information. They understand that even though the privatization of the PCCW was defeated not because of the "headcount" requirement, the "headcount" rule will at least give them a tool to arouse the attention of other shareholders and the media. So, with this mindset, the small shareholders consider that any method that can be retained should be retained, in the hope that by retaining the "headcount test", the rights of minority shareholders can be better protected.

However, people who are against its retention have indeed advanced a lot of reasonable arguments. They argued that the "headcount test" is disproportionate and contrary to the "one share, one vote" principle. We have all along stressed the importance of fairness and "one share, one vote" is, in theory, a fair arrangement and from this angle, the "headcount test" is unfair indeed. Second, the "headcount test" creates a loophole for vote manipulation, because a group of shareholders can unfairly influence the voting results by share splitting. In fact, the voting results can be manipulated not only by small

shareholders, for large shareholders can also influence the outcome of the vote through share splitting. If we draw an inference on this basis, we can come to a conclusion that many people can manipulate the voting results and if things go on like this, large shareholders can eventually win by splitting their shares even if the "headcount" requirement still applies. Third, the interests of minority shareholders are protected by many other means, which include exercising discretion not to approve a certain scheme.

After repeated discussions, the Government finally proposed to abolish the "headcount test". Instead, a rule for the protection of small shareholders in the Code on Takeovers and Mergers will be adopted and that is, "the 10% objection rule" will be added. This rule provides that a resolution is defeated if the number of opposition votes is more than 10% of the votes attached to all disinterested shares. It is hoped that this proposal can strike a balance between privatization and the interests of minority shareholders.

I consider this proposal acceptable after repeated consideration. But here, let me reiterate, and as I reiterated in the Bills Committee, that I actually agree to the point made by small shareholders, that the existing CO and even the entire structure are inadequate in protecting small shareholders. This is particularly the case as small shareholders do not have the ability to fight against the listed companies which are powerful in terms of both resources and information. In this connection, I proposed in the Bills Committee that the Government should seriously consider establishing a litigation fund for aggrieved small shareholders to take legal actions against companies proposing unfair schemes affecting the interests of minority shareholders. I understand that in the Bills Committee, the Government has agreed to give this proactive consideration. I will listen attentively to what the Government will say later. I hope that the Government can give a concrete response to my request in the Second Reading debate.

Lastly, I would like to come back to the impacts of clause 399. President, first of all, I declare that I am a registered accountant and I am employed by the Big Four accounting firms. It is because during the past discussions on clause 399, Members hoped to target at accounting firms that are larger in scale, and given the status of my employment, I think it would not be appropriate for me to vote, because I do not wish the public to take the view that as I am employed by the Big Four accounting firms, I would give priority to their interests in considering how I should vote. To avoid such suspicion, I have made an

application to the party caucus of the DAB for not casting any vote on this amendment.

Recently, the accountancy sector has voiced very strong views indeed on the amendment proposed to clause 399, especially the CSA proposed by the Government at the final stage. Their concern is very extensive, and whenever I return to my office or run into friends in the accountancy sector, I see that they all look miserable and depressed as they are worried that accountants will easily face criminal prosecution after the passage of clause 399. Although I had communicated with the Government for many times, and the Government considered that during the consultation, accountants and the HKICPA were already consulted on the wording of the clause in the Blue Bill, communication was indeed far from satisfactory. Insofar as responsibility is concerned, the Government may have to go back and further think about it, and the HKICPA also has to bear some measure of the responsibility because I remember that at the very final stage of the legislative exercise when a public hearing was conducted by the Bills Committee, the HKICPA once again expressed opposition, and I also reminded the HKICPA again that all the accountants must be told of the impact, so that accountants could fully understand and discuss

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): Sorry, Ms Starry LEE. President, I would like to request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Ms Starry LEE, please continue.

MS STARRY LEE (in Cantonese): President, I wish to make a clarification about the declaration of interest which I made earlier. I am employed in one of the Big Four accounting firms.

Also, with respect to the controversy over clause 399 aroused in the accounting sector, I would think that the Government has a lesson to learn in this. Even though the Government has engaged in an active dialogue with the HKICPA in the consultation exercise and the legislative exercise is carried out in the form of a Blue Bill, the fact is that the time spent on revising the Ordinance is too long. It has taken a very long time from consultation to the drafting of the Bill in the beginning to the actual launch of the legislative process eventually. There have been great changes in people's sentiments and public opinion. But that is inevitable. We have to accept that it is a fact in politics and society. It would be a great challenge for the Government of the new term to shorten the consultation period involved and take forward the relevant policies.

President, as regards the stand of the DAB with respect to clause 399, I would like to elaborate on that at the Committee stage. Lastly, I would like to express my strong dissatisfaction with those people who always request a headcount and employ filibustering tactics. This is because I had to wait for more than 10 minutes before I can finish a 15-minute speech. From the Second Reading debate on the Companies Bill up to this moment, there have been constant requests for headcounts. President, I do not know if we can ask the Secretariat to provide information every day on the amount of time wasted pending the presence of a quorum after each request for a headcount. This will enable members of the public to know what the real situation is like with respect to the progress of the Council proceedings.

PRESIDENT (in Cantonese): I now suspend the meeting until 7.45 pm.

6.39 pm

Meeting suspended.

7.45 pm

Council then resumed.

PRESIDENT (in Cantonese): Mr Albert HO, you may speak now.

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert HO, please hold on. Mr Albert CHAN, are you requesting a headcount?

MR ALBERT CHAN (in Cantonese): President, it is unreasonable that not a single royalist Member is here. It is really a great disrespect for the Secretary.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Albert HO, please.

MR ALBERT HO (in Cantonese): President, after its passage in 1932, our company law was substantially revised in 1986 and 2006 respectively. Furthermore, an expert was commissioned in 1997 to write up a consultancy report in preparation for a rewrite of the entire Companies Ordinance (CO). Despite the spending of tens of millions of dollars on the consultancy study, the Government did not take on board the recommendations in the Pascutto Report, and nothing was achieved in the end.

The Government is now poised for the passage in a single legislative exercise of a Bill involving a substantial rewrite of provisions. Members can see that the clauses involved are divided into five thick volumes, three times thicker

than the textbooks we had when we were studying in school. But unfortunately, two areas are left untouched. The first one concerns the rescue of enterprises. In my opinion, there is an urgent need for the Government to study the enactment of legislation in this respect. Despite our previous attempt in enacting a relevant Bill on this, the Legislative Council was unable to reach a consensus at that time. In my opinion, the time is now ripe for a study to be expeditiously conducted for the purpose of enacting a law on the rescue of enterprises or a relevant law, given that the current economic environment is not too bad. Otherwise, it would be too late should the economy slip. The second one concerns prospectuses of sale. Although the Government has reportedly indicated that such legislative work on prospectuses of sale will be carried out through a review of the securities law, I still consider this delay unnecessary and hope the Government can implement its plan expeditiously.

The entire Bill involves matters of a very broad spectrum. I will certainly not touch on each and every one of them during the Second Reading debate, but I still hope to raise several issues that have aroused greater concern and discussions. The first issue concerns responsibility on the part of directors. The Bill has introduced some relatively new points of view in this respect, in a bid to adopt both subjective and objective principles for consideration. This point is certainly not easy to understand. Even Members who have studied law would find this concept not easy to grasp, though it is not entirely new to us. Hence, it is absolutely understandable that colleagues who have never studied law find these concepts difficult to understand.

All in all, I believe counsel as well as officials representing the Government will clearly explain to us during the Committee stage the overall objective environment required to be taken into account: the types of companies involved; the types of work involved; and the background of the persons involved, so that consideration is given on the basis that directors are expected to exercise "reasonable care, skill and diligence". We agree to the adoption of this test.

In respect of "responsible person", we think that reckless behaviour, among others, should carry liability. In fact, this point is also spelt out in clause 399 concerning the liability of an auditor. We insist that this requirement be retained to hold people liable for recklessly committing these acts in addition to intentionally committing wrong acts. Nevertheless, the line we draw is that purely negligent omission should not carry criminal liability.

As regards the provision in the Bill with respect to fines, we agree, at the request of some colleagues, to abolish the requirement of imposing a daily fine for continued default on the ground that other provisions have actually provided for the imposition of fines for certain illegal acts. In addition, the Court will definitely, depending on the circumstances in which the illegal acts are committed, including the duration of such acts, determine the level of fines. Hence, we consider it acceptable for the daily fine to be abolished.

Some colleagues think that such provision for fines or even criminal liability is most unfair to directors. I would like to clearly explain this here. Such acts as omissions or failures to submit annual reports are definitely in breach of the company law and liable to fines. Nevertheless, I do not think that such fines should carry a criminal record. Certainly, insofar as law-enforcement agencies are concerned, a record will be kept if someone is fined by way of summons. But to my understanding, it is not tantamount to a criminal record. Similar to the method of imposing a fine by way of summons to tackle speeding, unlike what some colleagues said, it does not constitute a criminal offence which would otherwise have an impact on someone's eligibility to be a professional because of a criminal record marked against him.

In addition, I would like to say a few words about two relatively controversial issues. The first one concerns the headcount test. The Government now plans to propose CSAs to remove this requirement because it is stipulated in the law that, for the privatization of a company, the major shareholders are mandated to purchase the shares of small shareholders. Not only are the majority shareholders required to secure support from 75% of shareholders through the passage of a specialist resolution, but the law also requires that no more than 10% of shareholders (in terms of headcount) attending a meeting raise objection during the vote held at the meeting.

This has been one of the means to protect small shareholders from being compelled to sell their shares to the majority shareholders. We are well aware of the wide concern aroused by the headcount test in the incident involving the privatization of PCCW, though the headcount test failed to perform its function since small shareholders were unable to thwart the privatization with the objection raised by at least 10% of shareholders. However, there was public concern and intervention by the Securities and Futures Commission (SFC) due to suspected share splitting by the majority shareholders. Eventually, after taking into account the overall factors, the Court of Appeal ruled that the compulsory

privatization of PCCW was unreasonable. Hence, this point is most crucial. We therefore consider it necessary to return the 10% objection rule.

Regarding the aforesaid viewpoints, there are just several grounds of objection, and I would like to take this opportunity to refute the objections *seriatim*. First of all, it is argued that the "one share, one vote" principle should be adhered to. Nevertheless, it must be borne in mind that we are now talking about compulsory share acquisition, which is no different from "compulsory sale". In my opinion, small shareholders should receive special protection because we are talking about their assets being robbed and their being compelled to sell their shares at a certain price. Hence, it is totally unjustified to claim that it is already adequate to make the calculation purely on the basis of shares and doing so is consistent with the long-standing principle. It is because this is a very special case. Compulsory share acquisition can be regarded as "compulsory sale" under company law.

The second ground of objection is the concern about share splitting by small shareholders. But actually, share splitting by the majority shareholders is a lot easier. Hence, it is definitely not an excuse that small shareholders or certain people can easily resort to share splitting. All in all, if the Court suspects share splitting, it might as well take these factors into consideration in judging whether it is fair to do so. Like the PCCW incident, the SFC should be responsible for monitoring such instances.

Third, the Government is now proposing that the 10% objection rule under the Takeovers Code be included in the Government's CSAs and considers that adequate protection can then be offered. However, I disagree that the protection is adequate because 10% of shares and 10% of the number of shareholders are two separate issues. Furthermore, all relevant shareholders are already excluded from the 10% stipulated in the Takeovers Code, but relevant shareholders are not excluded from the 10% of shares rule added to the company law, for only some "interested" shareholders are excluded. There is a difference between the two. "Interested" shareholders refer to those involved in takeovers, but relevant shareholders, which are parties "acting in concert", involve a more extensive scope. Hence, we consider such protection inadequate.

Fourth, the Government emphasizes that the situation in Hong Kong is very special, because many people keep their shares in their accounts in the Central Clearing and Settlement System (CCASS) of the Hong Kong Exchanges and

Clearing Limited. Hence, the shares held by most shareholders are kept in the CCASS through their brokers rather than registered in their own names. The CCASS functions just like a large safe. Hence, according to the authorities, many shareholders will not take their shares out for the purpose of attending Annual General Meetings in order to achieve the headcount effect. While this viewpoint is certainly correct, for Hong Kong is different from foreign countries in that they do not have the CCASS, small shareholders in Hong Kong are in a disadvantaged position precisely because of the presence of the CCASS here, for many small shareholders prefer keeping their shares in the CCASS. If Hong Kong is considered unique in any way, such uniqueness will only put small shareholders in an even less favourable position. Hence, it is all the more necessary for the 10% rule to be retained.

Lastly, regarding the issue of share prices, Members should actually know that the majority shareholders are very often in the most favourable position. As they have experts to do evaluation for them, it is extremely difficult for small shareholders to raise objection. Moreover, these shareholders fear that they will have to pay the costs in raising objection. It is not enough for the Government to propose amending the law to prevent the Court from penalizing small shareholders casually by ordering them to pay the costs, because they still have to pay exorbitant fees in hiring lawyers to fight a legal battle, whereas the other party does not need to pay out of their pocket for the proceedings. Even if small shareholders need not be afraid of paying the costs for the other party, they still do not have adequate power to rival the other party, unless a fund as mentioned by Ms Starry LEE can be set up, and the Court may request the company to pay the costs in advance. *(The buzzer sounded)* hence, I oppose revising the requirement regarding the headcount test.

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

(Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do you wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): I hope the President can exercise his powers and functions in accordance with Rule 17 of the Rules of Procedure.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do you wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Yes, President. I wonder if you have read an essay "*Words of the Mandarin Orange Vendor*" written by LIU Ji. It was about someone who was very good at keeping mandarin oranges. He could keep them for a long period but still they looked fresh and juicy. However, it was found after they were cut up that their inside was as dry as discarded cotton. This story was told in "*Words of the Mandarin Orange Vendor*". While this guy sold tangerines, I prefer selling mandarin oranges.

What is the theme of "*Words of the Mandarin Orange Vendor*"? LIU Ji told the fruit vendor that the mandarin oranges bought would be used as offering to the spirits of ancestors or for entertaining guests. But they were so dry that they seemed to have been placed on an altar as offering for months. While it did not matter if one placed the mandarin oranges on an altar for a long period and they eventually turned dry, it was not good if the mandarin oranges were already as dry as discarded cotton when they were just bought. The fruit vendor smiled and responded, "This world is in fact full of crooks. Am I not the only one?" He went on to say, "Can those majestic looking city defenders, who are holding tiger-shaped tallies and sitting in the chairs covered with the tiger skin, master the art of war advocated by SUN Wu and WU Qi? Can those people who wear tall hats on their heads¹"

¹ <<http://www.chinese-forums.com/index.php/?topic/10282-fundamental-classical-chinese/>>

PRESIDENT (in Cantonese): There was something missing. There should still be one sentence after "tall hats on their heads". (*Laughter*)

MR LEUNG KWOK-HUNG (in Cantonese): Please point it out.

PRESIDENT (in Cantonese): It should read "tall hats on their heads and long girdles around their waists".

MR LEUNG KWOK-HUNG (in Cantonese): You are right. I have overlooked it. I will read it out — "and long girdles around their waists". President, you cannot outwit me. So, what is the next sentence? It reads, "..... arrogant looking pillars of society".

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, how is all this related to the Bill?

MR LEUNG KWOK-HUNG (in Cantonese): You said I had missed out one sentence, but how was it related to you as the President? Could I not miss out one sentence in quoting the essay? I know you know this essay, and so I will not waste my time quoting it again. I just want to tell colleagues that the fruit vendor was criticized for cheating. The same goes for people who gain fame by deceiving the public, including government officials, the Executive Council Members, Under Secretaries and the Chief Executive.

I have suddenly realized that this Bill is exactly like this. President, do you agree with me? These people are "sitting in great halls and riding on big horses". What was mentioned by Mr Albert HO just now did actually occur. Just as the incident involving 0008 (the stock code of PCCW) I once mentioned, rules were changed all of a sudden. Can the Companies Ordinance (CO) be amended to prevent the occurrence of such incidents? I am not sure. Nevertheless, regarding the 10% rule mentioned by Mr HO just now, small shareholders are actually capable of doing so.

The point is, every time when the market or the law goes wrong, how will consultation be carried out? Mr LAU Kong-wah should know best. The Government will find some people to conduct consultation as well as setting up relevant advisory committees. Nonetheless, many people still remain in these advisory committees even though they should have left according to the "six-six rule", whereby no member of an advisory and statutory body (ASB) shall serve on the ASB for more than six years or serve on more than six ASBs at any one time. I have repeatedly pointed out that both Europe and the Inca Dynasty had engaged in nepotism, which would definitely lead to insanity. On the political front, all public consultations are held by the Government behind closed doors. Moreover, meetings are attended by people from the same compound. So, what can we do? When Bills are tabled before the Legislative Council, Members will deliver speeches similar to mine. In fact, we should really not be blamed, as I was not consulted in the first place. Although I am a Legislative Council Member, has anyone consulted me? I had only received a telephone call asking whether I would join the protest during HU Jintao's visit to Hong Kong. However, I have never received any telephone call consulting me on the CO.

President, the Government has never consulted me, a lone Legislative Council Member — though many people are talking about the lone Chief Executive. With so many committees set up during the legislative process, how can I participate in all of them? According to Dr NG, these issues should have been discussed in the Bills Committee during the legislative process. However, I am weighed down with work, given that so many committees have been set up. Hence, sometimes I am in such a hurry that I can only read the documents when I come here. It is pretty normal to do so.

Why did I compare this piece of legislation to "dropping a watermelon when trying to pick up a grain of sesame"? When Mr Paul CHAN asked me whether I could give him three minutes, I told him it should not take that long. If he is a defender of SMEs and the managers, I can give him three minutes. I will definitely support him. It makes no sense to kill a man to spoil a child.

To put it simply, let us confine our discussion to the 10% rule. As pointed out by Mr Albert HO, given that the majority shareholders have a lot of money, they may resort to intimidation or bribery or sacrifice some shares. As for small shareholders, they are unorganized and being ordinary people, they just want to

hedge against inflation or engage in speculation. They will not want to hold the shares, will they? If no reform is introduced to address the problem, everything will remain the same. This will lead to yet another problem. I have once engaged in a legal battle. When it comes to fighting a legal battle, the Court is arrogant and insensitive. Like the saying goes, "One suffers torture with a plank for thirty strokes before seeing the official". Perhaps the President might think that I am talking nonsense again as such torture no longer exists. Of course, it still exists. President, sometimes, a person fighting a legal battle might be asked whether he has the money to pay as if he is playing a game of "show hand"

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you have strayed away from the question. Please focus on the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): I see. Why did you not tell Mr Albert HO that he was straying away from the question?

PRESIDENT (in Cantonese): What did you say?

MR LEUNG KWOK-HUNG (in Cantonese): Mr Albert HO was talking about the same issue.

PRESIDENT (in Cantonese): All his remarks were relevant to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): He did not mention the poker game, I see. The problem is really about "someone suffering torture with a plank for thirty strokes before seeing the official". President, you might think that this is an overstatement. Actually, it is not. In the ancient times, a magistrate had nothing to do and could only count on a ministry councillor to support his living. When people thought to be "unruly citizens" came to seek redress, the magistrate would order that they be subject to physical torture with a plank for thirty strokes to prove that they were not "unruly citizens" should they

be able to stand the torture. This is like the case that I cannot demonstrate my sincerity in protesting unless I am the first one to be treated to pepper spray.

As pointed out by Mr Albert HO just now, the Government says that reform is being carried out to the court proceedings. President, you should not assume that I did not listen to Mr HO's speech. I have merely not read the documents. According to Mr HO, under the Government's reform, the Court will be requested not to award costs by all means, especially when it comes to fierce legal battles between small shareholders and large consortia. Mr HO said that it was not enough to do so, even though it would definitely be less detrimental if no costs were awarded, but one would surely be frightened by the thought of raising funds to engage in a legal battle

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you are still not speaking on the Bill. Please confine your speech to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): I see. Nonetheless, the remark made by Mr Albert HO just now was exactly the same.

PRESIDENT (in Cantonese): If you had listened to his speech attentively just now, you should have known that, like you, Mr HO was talking about the issue of costs, but his speech was relevant to the content of the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): Right, he was talking about shareholders' meetings. Mr HO, were you talking about this just now?

PRESIDENT (in Cantonese): Mr LEUNG, please speak on the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): No, President, if I must speak on the Bill, I can only repeat the content of the Bill to ensure that my speech is relevant to it. I am making the best of what Mr Albert HO was allowed to say. Is it the case that you will not allow me to speak unless I can quote the source?

If it is so, I have no problem if you adopt a uniform standard in enforcing the rules, right?

PRESIDENT (in Cantonese): Would you please speak on the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): You are singling me out for bullying. Why do you not ask Mr HO what he said just now?

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, I have to discontinue your speech if you still do not speak on the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): I see. Let me come back to the Bill. I would like to raise another point concerning "responsible person". In the Companies Bill, the Government said that reference would be made to the company law enacted by the United Kingdom in 2000, and a new formulation of "responsible person" would be adopted. What are the consequences of adopting the new formulation of "responsible person"? The answer is that people who did not bear criminal liability under the CO might have to do so in the future. President, I am talking about criminal liability. What is the difference between criminal liability and civil liability? Civil liability will at most make one lose all his fortune. But still, one will not be deprived of his freedom. If I lose a legal battle and do not have the money to pay for the costs, I will lose my fortune or Legislative Council seat at the most. But still, I will not be deprived of my freedom. For many professionals or people working in accountancy firms or companies, it is really terrible to be deprived of their freedom. Such reform is vital, right? If a person loses his fortune, he might think that money is merely worldly possessions. However, he cannot accept losing his freedom.

Hence, the point is, when you are going to hold someone criminally liable, and the result is to have this person jailed under the Bill, we must be extremely careful for we cannot allow innocent people to be penalized. As in the present case, you are requiring that informed persons, or persons who have the opportunity of being privy to what was going on during the process — I am only talking about the opportunity of being privy to what was going on — to explain

why he has failed to fulfil his duty or exert his utmost when something goes wrong. President, I cannot accuse you when you are dozing or when Members are daydreaming or sleeping. Hence, on this issue, I think there is still room for discussion if you do not seek to criminalize such offences further. Nevertheless, if you are saying that you wish to magnify the penalty indefinitely, that is, to impose such a harsh punishment on others, it is really open to question.

In my opinion, we should catch the big tigers rather than slapping the flies. Why am I saying this? A person who can really do something — President, let me cite an example you know. It is about market making. When TUNG Chee-hwa was the Chief Executive, the share price of the Orient Overseas (International) Limited (OOCL) was only several dollars, or a single digit. After a period of time, however, it rose to a double digit, from around \$10 to nearly \$30. It was later found to be the result of amending the law — you gave it a helping hand apparently neither K C CHAN nor you — after the revision of the law, people holding more than 5% of the shares were required to make declarations. So, how could these people sell their shares after the revision of the law? It was found that a certain rich businessman holding 10% of the shares of OOCL

PRESIDENT (in Cantonese): Mr LEUNG, you have strayed away from the question.

MR LEUNG KWOK-HUNG (in Cantonese): I was just citing an example. If arrests have to be made, "big wigs" rather than the people involved should be arrested. For instance, I am working here and I had read the document. You may ask me to "fax the document", "read it and examine if its grammar is correct" or "read it and examine its compliance with common law". If I have signed the document after reading it or LEUNG Kwok-hung is shown by the record that he was sitting here and read the document on that day, I may be asked to explain why I did not do my best at that time. I will then reply, "I would only try my best to protect my own job. Would I be so stupid as to try my best to stop those "big masters" to manipulate the market?" The former Chief Executive was allowed to do so, right?

President, I will come to the end of my speech very soon. I am only putting what I have learnt into practice, so that people who are listening to the

debate here will know what I am talking about. Hence, it is really the right moment to do something, as what was done previously. Who would be suspected of manipulating the market when his shareholding was lowered from 10% to 5%? In other words, he was suddenly holding some "rubbish shares" for no reason. It is right to introduce this amendment. In doing so, the identity of people holding 10% of the shares of OOCL will be exposed, and they will have to give a reasonable explanation. Nevertheless, TUNG Chee-hwa was not required to make any explanation at that time.

Hence, I think that reform is warranted. As for the direction of reform, the person who first made wooden images to bury with the dead should have no posterity — as the saying goes, "Was he not without posterity who first made wooden images to bury with the dead?". Ordinary people who happened to pass by or employed by a tycoon should not be caught when they were given an opportunity of privy.

President, I know you are getting impatient. I am only fulfilling my responsibility to speak, and you need not be so frustrated. It is late in the evening, and one can get hot-tempered easily. Let us call it a day.

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

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert CHAN, do you wish to speak?

MR ALBERT CHAN (in Cantonese): President, as a matter of routine, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please.

MR ALBERT CHAN (in Cantonese): President, this company law can be regarded as the most complicated, the lengthiest, and most difficult law among all the laws of Hong Kong that I have ever come across over the years. This Amendment Bill consists of 21 parts and 10 schedules, and under these 21 parts, the provisions are further divided into divisions and subdivisions. The clauses involved are so detailed and the coverage of the Bill so extensive that they may not be remembered purely by human brains and must be handled part by part.

Looking back on the history of the amendment of this ordinance, and as a number of Members have mentioned, the spirit and the design of the structure of the entire old company law can actually be traced back to the pre-war period. Although the Government proposed a lot of amendments to it in 1984, history has told us that the amendments made back in 1984 were actually the result of the review conducted in the 1970s in Hong Kong. The review of company law in the 1970s in Hong Kong originated from 1948 when the United Kingdom enacted a new company law. As Hong Kong was a British colony, it was necessary for our company law to follow the pace of the British Act, especially as it was necessary to enact laws that could keep abreast of the times in respect of business operation. Therefore, the company law that we have in Hong Kong now actually follows the British model during the pre-war period and therefore, it basically cannot meet the current needs; nor can it catch up with the operation of society nowadays.

The number of registered companies in Hong Kong is astonishing. As at end-June 2011, there were as many as 912 242 registered companies, of which 90% were SMEs. For such an archaic law enacted in the pre-war period and modelled on the British Act in 1948, a review should have been conducted a long time ago. In fact, as far as I understand it, as early as in the 1990s, the then Hong Kong-British Government did actively conduct a review of the company law.

In this connection, I have looked up history to find out more information. So, filibustering is not useless at all, for it can force Members to work hard on their homework, or else everyone would just sit in his seat and say nothing,

waiting only for the time to press a button. I suggest Members to take a look at this report, for it is worth reading. It is the "Review of the Hong Kong Companies Ordinance Consultancy Report" published in March 1997. President, this report really seems to be authoritative. The issues involved are very complicated, and the report spans more than 200 pages. There is also a very detailed classification of the issues covered. In order to carefully study the various issues relating to company law, four dedicated working groups were set up and each working group was tasked to conduct in-depth studies on specific areas.

I would say that in the 1990s, each member of the working groups then could cope with their respective fields competently and independently. Two of them are colleagues with whom we are very familiar, namely, Matthew CHEUNG and Moses CHENG. The latter and I had worked together as Members of the Legislative Council. The review conducted at that time and the series of recommendations made then are believed to have provided the basis for this Bill today. However, as I do not have the time to ask detailed questions about which of these many recommendations have not been accepted and I have not looked into them in detail, I think I have to examine these recommendations made at that time one by one at the Committee stage, in order to find out which of these recommendations have been implemented and included in the Bill. It is because in the report, we can find a number of points that are actually extremely important.

Looking back on the entire company law at that time, the review was conducted in order for Hong Kong to become an international city and to this end, the company law of Hong Kong must meet international needs, especially the needs in Southeast Asia. At that time, the company laws in many places in Southeast Asia originated from two traditions, namely, Common Law and Civil Law which were adopted because of the colonial history of these places, and these are two distinctive legal traditions.

Hong Kong is an international metropolis, so how can the needs of different traditions be incorporated into the law, such that the needs of the development of foreign investors or companies setting up business in Hong Kong can be satisfied, while ensuring that the relevant legal provisions and structure can meet the needs of various other parties? In this connection, when carrying

out this task, not only is it necessary to have a good understanding of politics and the law, but it also requires certain wisdom and creativity — and I stress creativity — in order to accomplish the task.

In a blink of an eye, 15 years have passed since the publication of this report in 1997. President, it means a delay of 15 years. When this report was first published, it was claimed that five to seven years would be required to implement the recommendations made in the report, but 15 years have passed already, which is three or four times of what was expected back then. President, this Member who is sitting beside me seems to be getting very excited. He may have been provoked, but this is always how "Brother Hair" behaves. He can sit alone laughing hysterically or laughing like an idiot, and his laughter can give me more inspiration.

Regarding this law that we are going to pass today, will it be considered shameful or laughable in future? Our deliberations today or over the last few days or in the next 10 days will play a vitally important role. Members must not think that this law can be passed in a day or two, because more than 900 clauses are involved. "Yuk-man" and I have already divided the clauses into groups and we are prepared to give comments, analyses, and views on many of these clauses. I have also made some very detailed comparisons to analyse the proposals in the clauses, the recommendations made in the report published in 1997 and the proposals made by the relevant organizations. The purpose is to examine these clauses and put them on record irrespective of whether or not amendments will be made to them, in order to bear testimony to whether these clauses, after they have eventually come into effect, will become a laughing stock in future, just as what "Long Hair" has just said. So, the full scope of the clauses is broadly included, and as the Bill is divided into 21 parts and 10 schedules, the issues in various aspects have been classified in a very detailed manner.

There is actually a big problem with such a detailed and complicated company law, and this is also a result of the inherent defects of the company law in Hong Kong. President, why do I say so? I know nothing about doing business. Last year, in order to set up the Proletariat Political Institute, "Yuk-man" and I jointly set up two companies, and that was the first time I set up a company in my life. Later, in order to set up the Commune Populaire to fight against hegemony by supermarkets, I set up a third company. So I have set up three companies in a short span of three months and become the Director of three

companies, experiencing for the first time what it is like to be a company director. Therefore, I have had some experience in dealing with this law.

Many of the complaints relating to the company law that I have received before concern the setting up of companies and directors. An inherent defect of the company law in Hong Kong is that it covers all relevant institutions and organizations. If we make reference to the practices adopted in many other countries and places, such as Ontario in Canada, we will find that their company laws only cover enterprises, but the company law in Hong Kong covers charity organizations, political parties, religious organizations, social service providers, large companies and small companies; and of course, listed companies are governed by specific legislation. The company law in Hong Kong has such a comprehensive coverage that it is almost all-embracing. This practice has its merits and can provide convenience. The Government has refused to enact a political party law, and there is nothing we can do. Therefore, political parties must register as societies or companies. This is what must be done, unless a political party law is enacted by the Government. Given the indolence of the Government, or the incompetence or political stance of the Government, for everything that it does not wish to handle, it has shoved them all to the company law.

Therefore, given this inherent defect, all the 910 000-odd companies which are widely and vastly different in terms of their scope of business, scale, scope of influence, share capital, composition and background are brought under the regulation of only one ordinance insofar as their operation is concerned. Not only their administration and management structures are brought under regulation, even their composition of capital, registration, arrangements for filing tax returns, disposal of capital, and so on, are also brought under one ordinance which imposes regulation on such a large number of companies.

Therefore, I think the proposals made in those 900-odd clauses under the 21 parts of the new company law will certainly have big problems and defects. Given the inherent inadequacies, the work in drawing up provisions for the protection of small companies will definitely be affected. Certainly, the Bill has proposed separate regulation of companies according to their scale of operation, but with regard to these clauses, are they drawn up for the convenience of small shareholders and the operation of small companies, or to impose regulation on the malpractices of large companies in deceiving or withholding information from

small shareholders through capital raising? In respect of shareholders' interests and directors' interests and the balance between them, and the question of how, under the regulation of the law, a balance can be struck between obligations and duties and protection of interests or the sharing of legal liabilities, problems are often involved.

I have come across many cases in the districts in which members of the public complained to me in tears that they had entered into partnership and set up a small company with some relatives and friends or even their sons or people with whom they are closely related, and invested some \$200,000 or \$300,000. The amount involved is not over \$10 million, but only in hundreds of thousand dollars. They then became shareholders of a company and some had even signed documents and become directors. These cases abound indeed, and in the cases that I have come across in my ward office, many involve elderly people having invested their pension in companies set up by their sons or nephews. Some of these companies are said to be doing business in the Mainland or engaging in transportation business. They have not only become shareholders. Some have even signed documents and become directors. But when they made enquiries after some time, they were told that the investment had failed and that all the money had been lost. In some cases, they were contacted halfway and requested to make a further investment of \$100,000 but when they later made further enquiries about their investment, they were told that nothing was left. Let me ask Members this: How can these elderly people possibly know how they can verify whether the information is true or not?

Therefore, how can we ensure that through such regulation, Hong Kong people will easily understand the various requirements for setting up a company or the safeguards for the relevant rights? Or how can we reduce these cases in which some people have deceived other people or their relatives on the pretext of making investments? Certainly, the new legislation has already enhanced certain regulation or protection but generally speaking, there are still serious defects in many areas, and I will give my comments on the clauses step by step at the Committee stage.

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

MR PAUL CHAN (in Cantonese): President, I will speak briefly in support of the resumption of the Second Reading of the Companies Bill.

President, the major revamp of the Companies Ordinance (CO) last time was around 1984 and it was more than 20 years ago. At that time, I was doing a part-time course in MBA and I used the amendment of the CO as the topic of my master thesis. I remember at that time when I had to do my assignment, I had written to Members of the Council. But I did not get any reply. It has never occurred to me that now after 27 years I can take part in the rewrite of the CO direct.

It was mentioned earlier that the Bill could well be the longest Bill in history. It has a text of more than 2 000 pages and it comes in five bound volumes. But this is only the first phase of amending the law. Even if the Bill can be passed here during these few days, there is work in the second phase. The work in the second phase is also very important and this includes clauses on bankruptcy, liquidation and corporate rescue. I still recall that eight years ago, that is, in 2004, when I first joined this Council, the Bill on corporate rescue failed to pass through this Council because there was no consensus in the Council. Now it is eight years since and there is still no chance for that Bill to be introduced to this Council.

As Hong Kong is an international financial centre and despite our development up to date, our law on bankruptcy, liquidation and corporate rescue is still very outdated. If this Bill can be passed, I hope that the authorities can start the rewrite of these parts of the CO and introduce a Bill on this in the second phase to this Council.

President, I would like to mention in passing that our trust law is also very much outdated. If Hong Kong is to develop into an international asset management centre, our trust law must be updated as soon as possible. Otherwise, there is no way we can meet the needs of the times. Honestly, if our law stays in this outdated condition, our competitive edge will be greatly undermined when compared with our neighbours like Singapore.

President, as many Honourable colleagues have said, the time we have got in scrutinizing this Bill is much compressed. But we have put in much of our time and efforts in the Bills Committee. We have also tried as much as we

possibly can to be careful and I must say that it is not easy for us to come to this stage now.

I know that the duty of a Member of this Council is not in singing praises of the Government. However, I would think that we have to be fair and I wish to praise our colleagues in the executive authorities who are responsible for handling this Bill. These people include, for example, the Director of the Companies Registry, the Assistant Permanent Secretary, Mr AU YEUNG, and also Mr LEUNG Chi-yan who has been transferred to Taiwan. It can be seen from this Bill that they have put in a lot of effort, time and thoughts. They have also given swift responses to questions raised in the Bills Committee.

I dare not say that the Bill at this stage is perfect and it is not true to say that it is. About clause 399 which was mentioned earlier, there are strong opinions from the accounting sector. But I only discovered the problems in the Committee stage. However, I think that we should allow this Bill to be read the Second time and even passed in the Third Reading. We should take the first important step and try to perfect all the clauses later.

Lastly, I have drawn some conclusions on the experience I have gained from scrutinizing this Bill and this may serve as reference for the executive authorities. The CO is a very complicated and lengthy piece of legislation. The approach taken this time is to rewrite it comprehensively. As I look back at the whole process, I think that it has been an unwise step to take because it would only cause much time to be spent on it. When amending this law, the authorities had introduced a White Bill and many rounds of consultation were held and it was thought that a consensus had been obtained in all aspects. But when the Bills Committee actually scrutinized the Bill, all these kinds of consensus changed with the passing of time and there were certain matters that had to start from scratch again.

In view of these, I would think that if a complicated piece of legislation is to be amended in future, it would be better not to take the approach of a comprehensive rewrite. The experience on this occasion proves that when such a complicated and lengthy law is introduced to this Council for scrutiny, more time will be required before such work can be completed. If it is because of the expiry of the term of this Council that the deliberations cannot be completed, then

the work done before it will all be wasted. A lot of public resources will be wasted as well. However, it would not be easy to pass this kind of Bills in lots or parcels.

Summing up our experience in handling this Bill, I hope the Government can consider not to adopt this approach to deal with Bills which are complicated and heavily technical in future. This is because the risk involved in a rewrite is too high. And there is a possibility that the enormous amounts of resources, mental efforts, time and hard work put in it may be wasted.

Thank you, President.

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

(The President had called upon Dr Priscilla LEUNG to speak but Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

MR LEUNG KWOK-HUNG (in Cantonese): I ask that you act on Rule 17 of the Rules of Procedure

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, please hold on. Will the Clerk please ring the bell to summon Members back to the Chamber.

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

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, please.

DR PRISCILLA LEUNG (in Cantonese): President, the Companies Bill (the Bill) is a major piece of legislation in Hong Kong. The number of its pages already suffices to reflect its weight and importance. Although I am not in the

accounting profession, I have been relying very much on it for advice on each and every development since I started my career.

In my eye, an auditor is a most important manager. Colleagues who are sitting here should have formed a variety of groups, mostly non-governmental organizations (NGOs) and charitable organizations. In fact, a group of three persons or more can make an application to the police for registration as an association. The operation and activities of these groups are mostly regulated by the Companies Ordinance (CO).

People who once joined these organizations on invitation — in particular, public office holders will frequently be invited to join a variety of organizations — as directors or members, will be held liable, or even legally liable, in different ways. Very often, we have to rely on managers to manage the operation of the relevant organizations.

In my personal opinion, auditors and accountants are crucial to various enterprises and companies in Hong Kong.

When I was a law student, there was a compulsory subject called solicitors' accounts. I remember we were actually taught management at that time. One of the vital components in management was to manage money and taxes, because a wrong step would attract criminal liability in addition to civil liability.

Some people are so generous with their time that they would agree to take directorship in different institutions. However, in the event of negligence or, as pointed out by some colleagues just now, omission on the part of the managerial staff or manager of an institution, including the auditor responsible for managing the accounts, its directors will be held legally liable. But very often, they have no idea of this until something has gone wrong. Hence, in this respect, I think that everyone should really familiarize themselves with the Bill.

My father used to carry on a small business. I recall that he did not know how to audit his accounts and eventually had to hire a professional to fill the tax return for him. Since his business was not even considered a limited company, he as a sole proprietor merely took up some subcontracted works items, but still he was required to have all of his books audited.

Actually, both small businesses with just one staff member and large enterprises operated by tycoons with a number of subsidiaries have to open their eyes widely to examine clearly the impact of this piece of legislation on them. I have great respect for people in all professional sectors, including the accountancy and auditing professions. Since they consider it necessary to make such amendments, I believe they must have had detailed discussions with members of their respective professions.

Nevertheless, popular education in this respect is vitally important to clients who have to rely on the accounting and auditing professions. Which parts of the CO have been amended? What liability will be involved?

Prior to this discussion, a large number of auditors and accountants had approached different Legislative Council Members, including me, for assistance over some provisions in the Bill, and clause 399 is one of them.

Regarding clause 399(1)(b), which was read out by a number of colleagues earlier, their greatest concern is the part concerning "a person who knowingly or recklessly causes the statement to be omitted from the auditor's report". Their focus is not on "knowingly" because they think the person who committed the offence "knowingly" deserves punishment, even if it means criminal liability. In their opinion, the problem lies in the word "recklessly", and "omissions" is included as well.

I have personally joined some NGOs and organizations not yet qualified to call themselves charitable organizations. These organizations, which have just registered as limited companies, are also engaging in some non-profit-making work and serving the community, and they are in the process of applying to become charitable organizations. Most of the organizations I have joined are of this nature.

I find that these organizations are usually not financially sound because they have to support a project through raising funds. Hence, such organizations will not employ someone to manage their accounts. In most cases, a voluntary auditor will be invited to perform the task, though he is actually held liable. I am aware of this because, being a voluntary legal adviser, I am working with a voluntary auditor in a team to serve these organizations. He is given loads of account items, though he might come to check the accounts only every two or

three years. Since he only works on a voluntary basis, those organizations seek mainly to borrow his name without finding someone to actually look after the accounts. Under such circumstances, is it justifiable to adopt an indiscriminate method to impose criminal liability on reckless auditors or people responsible for performing managerial functions in these organizations, such as those mentioned just now? In my opinion, this requirement is a bit too tall because we all consider such liability overwhelming.

Why am I saying this? First of all, as Members are aware, it is not easy to qualify as a professional. Since these professions attach great importance to reputation, in the event of negligence or wrongdoing on the part of their members, we can pursue them through civil proceedings. Secondly, they will be penalized by their own professional body, too.

In this respect, if he is not careful or he is not careful because he might be serving some voluntary organizations I know that some auditors serve many organizations and allow these organizations to use their names. However, not all these organizations will get some professionals to assist in auditing their accounts after borrowing the names of the auditors I mentioned just now. Under such circumstances, so long as the auditor in question does not commit the act "knowingly and wilfully", I think it would be a severe punishment to him as a professional if he was disciplined by his own professional body, since professional sanctions may include "revoking licences". I consider it reasonable for the matter to be pursued through civil proceedings to allow him to make compensation for his carelessness or negligence in certain aspects.

Some of the industry practitioners have requested us to pay particular attention to clause 399. I am aware that some colleagues do not quite appreciate the request, because they do not understand why these professionals should make the request for exemption from liability, given the same liability is imposed on directors. In fact, these professionals are regulated by their own professional bodies, and the pressure and liability resulting from such regulation are substantial. If there is a chance for them to fall foul of committing criminal offences because of some careless acts done in serving an organization, I believe at least the non-profit-making companies I mentioned just now will find it extremely difficult to find a volunteer auditor in the future. Certainly, business enterprises have to make profits. We can pursue a professional if he has acted carelessly. However, if a careless act is committed when he is performing

voluntary work without receiving any pay, even though he might have indeed violated the requirements of the new law I think that consideration should be given to the actual operation of Hong Kong society. Not only large corporations require the service of these professionals, but all organizations, large or small, have to have their accounts audited. These professionals are actually managing different bodies on our behalf.

Some people have asked me these questions: Assuming that they have been doing something in a certain manner in performing managerial functions, particularly they have been performing managerial functions in some companies continuously, before the commencement of the new law, will their previous acts violate the new law? How should these cases be dealt with? In introducing this law with such a profound impact, I believe the authorities may consider providing for a buffer period. I am not asking the authorities not to press charges or impose punishment, but consideration must be given to the fact that this law is really extremely difficult for many people to comprehend. As pointed out by some colleagues just now, even people who had studied law would find it extremely difficult. I believe even those people who have been doing business and dealing with the company law all day long will still find it not easy to understand, for it will easily make people breach the law inadvertently.

According to the general principles of law, what happened before a law comes into effect must not be subject to any retrospective effect. However, if certain acts are persistent, which means that they exist before and after the commencement of the law, with some of them being omissions, or some directors in certain cases are already 70 or 80 years old, or dozens of companies are involved in the provision of paid or free services, things can actually go wrong easily. So, how can all sorts of people, including managers, responsible persons, directors or auditors be protected under this new law?

It has been pointed out that new auditors might be implicated for no reason. In my opinion, after the passage of a new law, the risk faced by auditors, be they young or senior, should be more or less the same. In the Mainland, the auditing profession is regarded as highly risky because the Mainland's criminal law clearly provides for heavy penalties for various professions since their liability is regarded as criminal liability. Offenders will definitely face imprisonment, not simply a criminal record. In Hong Kong, I can see that the rate of problems emerging in this respect is not too high. Nevertheless, the rate of disciplinary

action is actually very high. For a professional, a criminal record actually signals the end of his career.

With so many practitioners of the accounting profession and auditors reflecting the same views although I was not a member of the Bills Committee, I was invited to attend its meeting two weeks ago where the accounting profession and auditors expressed their views. I found it quite strange that such a discussion was not held earlier. Was it due to inadequate consultation? Hence, I really hope that the authorities can pay more attention to education and publicity. To my understanding, these auditing firms — I also know quite a number of auditors — will usually provide services to many small companies and allow the latter to use their registered address. These auditing firms are actually looking after many companies. In view of these circumstances, will the authorities enhance regulation of this common practice of auditing firms and provide them with clear guidelines? Otherwise, in the event of the passage of clause 399, auditors will not only have their "licences revoked", but also be held criminally liable, for their careless mistakes. Hence, the relevant provision will indeed bring a substantial change.

After listening to the views of the profession, I as a professional appreciate their concern and hence, I would like to state my approval of their demand and views. I also hope that consideration can be given to amending clause 399(1)(b). Thank you, President.

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

(Mr Albert CHAN stood up)

MR ALBERT CHAN (in Cantonese): President, I request a headcount.

PRESIDENT (in Cantonese): Will the Clerk please ring the bell to summon Members back to the Chamber.

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

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 Financial Services and the Treasury to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I am very pleased to see the resumed Second Reading of the Companies Bill (the Bill). After in-depth studies and comprehensive consultation to solicit views from stakeholders and members of the public following the launch of the rewrite exercise of the Companies Ordinance (CO) in 2006, the Bill was drafted and tabled before the Legislative Council in January last year.

Comprising more than 900 clauses and 10 Schedules, the Bill is believed to be one of the longest Bills in Hong Kong. Its scrutiny is daunting, too. That the debate on the Second Reading of the Bill can be resumed today owes much to the Bills Committee chaired by Mr Paul CHAN. Over the past year or so, the Bills Committee has made relentless efforts in scrutinizing the Bill, including spending more than 120 hours on holding 44 meetings to examine more than 200 documents and submissions from the Administration as well as relevant persons and bodies. Despite the Bills Committee's marathon scrutiny, there was definitely no filibustering. During the course of scrutiny, the Bills Committee has put forward a lot of incisive and valuable views on many clauses to facilitate our perfection of the Bill. I wish to take this opportunity to express my heartfelt gratitude to all members of the Bills Committee, the Legislative Council Secretariat and its Legal Adviser.

I also wish to take this opportunity to thank those who have made suggestions on the rewrite of the CO. They include members of the Standing Committee on Company Law Reform and the five Advisory Groups, as well as professional bodies, chambers of commerce, companies and members of the

public who made suggestions during the numerous consultations held. In drafting the Bill, we have given full consideration to and balanced their views, in order to make the Bill meet the needs of various sectors.

President, the objects of rewriting the CO are to modernize Hong Kong company law, and to further enhance Hong Kong's status as a major international business and financial centre. The Bill aims at achieving four main purposes: First, upgrading the corporate governance standard; second, enhancing regulatory arrangements; third, facilitating business operation; and fourth, modernizing its provisions.

These purposes and relevant specific provisions are generally approved of by the Bills Committee. Having regard to the views of the Bills Committee, we have proposed more than 800 CSAs. Not only has the Bills Committee spent more time discussing the headcount test, Members have also discussed the issue of criminal liability in relation to the contents of the audit report both inside and outside the Bills Committee. I will give a more detailed explanation later at the Committee stage.

After the passage of the Bill, more than 10 pieces of subsidiary legislation will be made in the years to come with the objective of enabling the new Ordinance to commence formal operation in 2014. Before the legislation comes into effect, we will launch publicity work in a timely manner to enable the relevant stakeholders to gain a better understanding of the requirements of the new Ordinance to facilitate their compliance with the new law.

President, the commencement of the Ordinance will upgrade the corporate governance standard and enhance protection for investors and various parties involved in transactions. This has far-reaching and great significance to enhancing Hong Kong's competitive edge as an international business and financial centre. I implore Members to support the Second Reading of the Bill and the CSAs to be moved by the Administration later at the Committee stage.

President, I so submit. Thank you.

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

(Members raised their hands)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

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

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

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 39 Members present and 38 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Companies Bill.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 4 July 2012, that is, tomorrow.

Adjourned accordingly at twelve minutes to Ten o'clock.