OFFICIAL RECORD OF PROCEEDINGS

Friday, 16 July 1999

The Council met at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE MRS RITA FAN, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE HO SAI-CHU, S.B.S., J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE EDWARD HO SING-TIN, S.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE MICHAEL HO MUN-KA

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE LEE KAI-MING, S.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE MARGARET NG

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE AMBROSE CHEUNG WING-SUM, J.P.

THE HONOURABLE HUI CHEUNG-CHING

THE HONOURABLE CHRISTINE LOH

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE BERNARD CHAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE GARY CHENG KAI-NAM, J.P.

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE LAW CHI-KWONG, J.P.

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

THE HONOURABLE FUNG CHI-KIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

MEMBERS ABSENT:

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

THE HONOURABLE CHAN KWOK-KEUNG

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.
THE SECRETARY FOR JUSTICE

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR TRANSPORT

MR RAFAEL HUI SI-YAN, G.B.S., J.P.
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR KWONG KI-CHI, G.B.S., J.P.
SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR THE TREASURY

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR SECURITY

MR LEE SHING-SEE, J.P.
SECRETARY FOR WORKS

MR GREGORY LEUNG WING-LUP, J.P.
SECRETARY FOR HEALTH AND WELFARE

MISS YVONNE CHOI YING-PIK, J.P.
SECRETARY FOR TRADE AND INDUSTRY

CLERKS IN ATTENDANCE:

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

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Good morning, Members. I think you have a common wish, which is to finish all the items of business on the Agenda. Failing that, we will have to continue our meeting on Monday.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate of the Road Tunnels (Government) (Amendment) Bill 1999.

ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1999

Resumption of debate on Second Reading which was moved on 26 May 1999

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

MR LAU CHIN-SHEK (in Cantonese): Madam President, can I ask once again whether we are discussing the Bill on road tunnels?

PRESIDENT (in Cantonese): Yes, we are on the Road Tunnels (Government) (Amendment) Bill 1999.

MR LAU CHIN-SHEK (in Cantonese): Madam President, the legislative intent of the Bill is to provide a legal basis for the continual operation and management of the Hung Hom Cross-Harbour Tunnel (CHT) by the relevant authority after the franchise expires in the end of August this year.

In passing the Revenue Bill 1999 last week, this Council passed at the same time certain terms and conditions for the transfer of the franchise, in particular, a drastic increase in the tolls for private cars and motorcycles. Despite the decision by this Council last week in this connection, I am still very dissatisfied at the toll increase proposed by the Government immediately following the reversion of the CHT.

Madam President, the Government announced last year that at the expiration of the franchise of the CHT, which would revert to the Government, it would contract out the operation of the CHT to an operator in the form of a management agreement for a term of two years. At the time, employees of the Cross-Harbour Tunnel Limited (the Company) was very much worried about their future, and represented their worries to the Panel on Transport. They were worried about losing their jobs with the expiry of the franchise. Even if the new management company was willing to re-employ them, their wages might be reduced.

Then, there was a consensus among colleagues in the Panel on Transport that the Government should be required to guarantee that employees originally working at the Company be re-employed by the new management company with terms of employment no less favourable than the original arrangement. I gave a warning at the time that I would vote against the Bill for the reversion of the tunnel to the Government if the employee's right to employment was not guaranteed.

Madam President, with luck, the Company was able to gain management of the CHT for the next two years after an open tender. The Company also agreed to re-employ the employees at their original jobs and wages. Therefore, I will support the Second and Third Readings of the Bill today.

However, there are two points that I would like to raise, hoping the Government would face them squarely.

First, the Government is duty-bound to monitor closely if the management company would reduce the wages and benefits of the employees, directly or indirectly, or to cut administrative costs by means of layoffs. I have to put this on the record: That I support the Bill because of the Government's guarantee that the working conditions of the employees of the Company will not be reduced at least in the next two years.

Second, insofar as the contracting out of public services by way of management agreements is concerned, the Government must establish a set of criteria to ensure that the contractors must offer reasonable terms of employment in their staff recruitment. Thus tenderers cannot minimize their tender price by cutting back on staff costs.

Madam President, I so submit.

PRESIDENT (in Cantonese): Secretary for Transport, do you wish to reply?

(The Secretary for Transport indicated that he did not wish to reply)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Tunnels (Government) (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Road Tunnels (Government) (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Road Tunnels (Government) (Amendment) Bill 1999.

CLERK (in Cantonese): Clauses 1 to 15.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ROAD TUNNELS (GOVERNMENT) (AMENDMENT) BILL 1999

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

Road Tunnels (Government) (Amendment) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Road Tunnels (Government) (Amendment) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Road Tunnels (Government) (Amendment) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate of the Road Traffic (Amendment) Bill 1998.

ROAD TRAFFIC (AMENDMENT) BILL 1998

Resumption of debate on Second Reading which was moved on 2 December 1998

PRESIDENT (in Cantonese): Under Rule 21(4) of the Rules of Procedure, I have permitted Mrs Miriam LAU, Chairman of the Bills Committee on the Road Traffic (Amendment) Bill 1998, to address the Council on the Committee's Report.

MRS MIRIAM LAU (in Cantonese): Madam President, I present the Report in my capacity as Chairman of Bills Committee on the Road Traffic (Amendment) Bill 1998. As the report has detailed the deliberations of the Committee, I shall speak only on the main deliberations of the Committee.

The Road Traffic (Amendments) Bill 1998 has made three legislative proposals to:

(1) tighten the statutory limits for alcohol concentration in drivers' blood, urine and breath and streamline the procedures of enforcing control on drink driving;

(2) put private light buses providing transport service for students under the control of the passenger service licence scheme (the Scheme); and

(3) rectify the existing payment arrangements for parking meters and the New Kowloon Bay Vehicle Examination Centres.

Drink driving

Since the implementation of drink driving legislation, there has been a decline in the number of accidents leading to deaths or serious injuries. Despite this, the Administration regards drink driving one of the main causes of road accidents. Therefore, the Administration is of the view that it is necessary to further tighten the prescribed alcohol concentration limits by lowering the legal limits of alcohol concentration from 80 mg/100 ml to 50 mg/100 ml. The statutory limits in a driver's urine and breath are lowered accordingly, so as to enhance the deterrent effect on drink driving. The Administration pointed out that research overseas has confirmed tightening the statutory limits is conducive to reducing the number of traffic accidents. The proposal is in line with the international trend of tightening control on drink driving. The Administration stresses the tightening of the statutory limits of alcohol concentration does not seek to prohibit drinking on daily or social occasions, but to compel people who drink to use public transport services.

Members of the Bills Committee have different views about the relevant proposals. Members who support the proposals agreed with the views of the Administration and thought that, if necessary, the limits can be lowered to 0 mg.

But other Members did not support that view. They considered the lowering of the alcohol concentration from 80 mg to 50 mg would have minimal effect. These Members pointed out that drink driving is not the same as drunk driving and the effect of alcohol varies from person to person, depending on a number of factors. In view of the absence of data to show that the problem of drink driving is deteriorating and the lack of substantial evidence to prove any close relationship between the amount of alcohol taken by a driver to the probability of an accident happening, the Administration has insufficient ground to justify the tightening proposals. Furthermore, some Members noted that many countries overseas are still using the 80 mg limit.

The Committee supports other amendments relating to improving procedures for the control of drink driving, but it suggests the Administration should put forward a technical Committee stage amendment stipulating that the notice by the Commissioner of Police designating a certain premises or vehicle as a centre for breath tests is not subsidiary legislation. The Administration has agreed to the suggestion and will propose a Committee stage amendment later.

Extending the passenger service licence scheme to cover school private light buses

The Committee supports in principle the extension of the Scheme to school private light buses. However, the Committee notes that the existing annual licensing fees for school private light buses are much higher than those for public buses which provide similar services. In view of this unfair phenomenon, and in response to a request of the Committee, the Administration has agreed to review the fee structure of annual fees for the relevant vehicles, and to waive the fees prescribed in the Scheme during the initial implementation of the new scheme, pending the outcome of the review.

Rectification of the existing payment arrangements for management agreements

With regard to the last part of the Bill's amendments, Members of the Bills Committee think it is necessary to rectify the existing payment arrangements for the management agreements executed between the Government and private operators to make them consistent with the provisions of the Public Finance Ordinance. They have suggested that the new arrangements be implemented as soon as possible. Members are also concerned that there might be other management agreements similar to the two problematic ones. Therefore the Committee has reminded the Administration of the need to rectify as soon as possible those arrangements in existing agreements inconsistent with the relevant provisions.

The Committee has carefully scrutinized the issues related to the Amendment Bill. The Committee unanimously agreed with the amendments put forward by the Administration, except the tightening of the statutory limits of alcohol concentration.

Madam President, I so submit.

MR ALBERT HO (in Cantonese): Madam President, the Democratic Party supports the Government's proposals in the Road Traffic (Amendment) Bill 1998, including the tightening of the statutory limits of alcohol in drivers' blood and streamlining the procedures of enforcing control on drink driving. I think the proposals can further warn drivers against the danger and can contribute to road safety and the reduction of accidents due to drink driving.

In the Coroner's Report 1998, Coroners P Kelly Esq And D I Thomas Esq had the following analysis and conclusion which are good reference materials. I quote: "There has been a generally satisfying fall in the number of vehicular accidents (271 deaths in 1997 — 219 deaths in 1998). Against that vehicular accident deaths where alcohol was involved remained constant (35 cases in 1997 — 34 cases in 1998). The result is that deaths where alcohol is involved now represents a higher proportion than last year. It is also worth noting that the level of alcohol, when detected, was, in many cases below the statutory limit. This finding reinforces the argument that there is no safe level of alcohol for the driver/cyclist." Figures in the report also revealed that in 1998, 21 victims of vehicular accidents had alcohol concentration at a level up to 100 mg in their

blood. This accounts for 9% of the deaths in accidents in which alcohol was involved. Thus it can be seen that the present statutory limit of 80 mg in 100 ml of blood is not good enough to effectively stop traffic accidents from happening. To further protect the safety of other road users, the Democratic Party supports the Government's proposal to tighten the statutory limit on alcohol concentration to curb drink driving.

Basically, I agree with the Coroner's observation that there is no safe level of alcohol. In fact, due to differences in physical conditions, there can be no uniform effect on a driver's judgment and driving under the influence of alcohol. For safety's sake, the Democratic Party is of the view that the best way is to remind drivers as far as possible not to form a habit of drinking before driving. Of course to limit the concentration of alcohol in blood to zero can unlikely be achieved in reality. For example, a person may inadvertently drink a glass or two during a cocktail party, or eat several pieces of chicken treated with wine or eat some chocolate containing wine. Then traces of alcohol may be detected in the blood. We believe the law is not targeted at such people and unnecessary prejudice may be done to these people in enforcement. I think we need to study that further.

In addition, experiences in other countries such as France, Belgium, Germany and Australia show that reducing the statutory limit from 80 mg to 50 mg could lower the number of traffic accidents from 4% to 50%. A number of countries worldwide tend to tighten the limit to discourage drink driving. So, I thnik Hong Kong should follow suit.

I conducted a survey on the Government's proposal to tighten the alcohol limit with the trade associations of public light buses, taxis and vans. They almost unanimously agreed with the proposal and indicated the stance of the industry. Indeed, they are the people who use the roads more frequently than anyone else and they are concerned about the safety of every road user, including drivers and passengers. They have been encouraging and urging colleagues to refrain from drinking before driving because they are worried that their alertness and judgment may be impaired. So, I think the proposal has the full support of the industry. It is also in the interest of the public and that of road users.

In fact, we have a very efficient public transport service in Hong Kong. If members of the public choose to drink on social occasions, they may turn to other transport services or choose not to drive, even though they cannot drive

themselves. Therefore, I do not think tightening the law on alcohol limit will seriously inconvenience the public or drivers. Nor should it be regarded as discrimination against the lifestyle of certain members of the public or hampering their rights.

As regards the proposal of streamlining the procedures for enforcing control on drink driving, the Democratic Party will lend its full support. As the alcohol concentration in blood diminishes with time, we think simplified procedures may enable law enforcement officers to obtain breath test results and blood samples from law-breakers in a short time and use them as evidence, so that enforcement efficiency is enhanced. We think this merits our support. Owing to the above reasons, we support the Second Reading of the Bill and we agree that it be read the Third time be passed.

DR RAYMOND HO (in Cantonese): Madam President, the Government's proposal to tighten the statutory limits of alcohol in a driver's blood from 80 mg/100 ml to 50 mg/100 ml has caused some discussion or even dispute among the engineering sector.

During the initial stages of the discussions at the Bills Committee, I received a number of representations saying it could be a harassment to the public. When I was Chairman of the Transport Advisory Committee in 1995-96, I put forward the proposal of 80 mg for consideration by the Government, subject to a review after several years into implementation. In this connection, we can note that countries all over the world have different ways of addressing the issue. In European countries such as Germany, France and Belgium, the statutory limit is a low 50 mg approximately. But other countries, such as England, take 80 mg as their limit. In the United States, limits vary from state to state and range from 80 mg to 100 mg. People's living habits differ between countries. At the same time, blood tests are affected by many factors, such as age, health, physical conditions at the time, sex, and even the alcohol content of the beer they drink.

Looking back at the fatal traffic accidents in the past three years, government statistics show that the alcohol concentration among drivers ranges from 50 mg to 80 mg. So the variation is not great, about 14.2%. If the statutory limit is reduced from 80 mg to 50 mg, it does not mean the variation can be brought down to 0. In any case, I think this is worthy of more research.

Therefore I conducted a more comprehensive consultation. The opinions I have collected from the engineering sector show that more and more people support the Government's proposal to reduce the limit from 80 mg to 50 mg. As I vote later, I will act on the opinions from the engineering sector.

DR LEONG CHE-HUNG: Madam President, I rise to support the Second Reading of this Bill, in particular, the tightening of legal alcohol level in blood for drivers.

Madam President, this Bill on tightening drink driving, amidst others, before us this Session, can really be a litmus paper of whether some political parties or perhaps legislators have their integrity to keep their earlier promises (promises made a few years ago), and whether they could balance their personal interest and the interest of the public at large.

At present, the law specifies that the alcohol limit of a driver is at 80 mg per 100 ml of blood. To enhance protection of the public, especially the innocent pedestrians, passengers and other sober drivers, it only makes sense to lower the limit to 50 mg.

The 50 mg limit has actually been promulgated by the World Medical Assembly since 1993, and is strongly supported by the local medical profession. Some people may say, "Why not bring it down to zero concentration?" That means, not even a sip of alcohol if you want to drive. I think the Honourable Albert HO has mentioned that it is quite impossible to bring it down to zero, because a lot of food that you eat does have some forms of contamination with alcohol. Furthermore, studies worldwide in the past decades have indicated that when alcohol concentration reaches about 50 mg, then drivers' ability to identify risk, hence clouding one's decision in the many processes of driving already takes effect. In other words, at that level, the effect takes place. It is based on this scientific reason that I actually moved an amendment in 1995 to lower the alcohol concentration from 80 mg to 50 mg, but in vain. The Government objected to it then by saying that they wanted to start off on a lenient basis, but I have to say categorically that they have missed the boat.

Madam President, there have been many voices within and outside this Chamber against such tightening. Some claim that it is "draconian", not allowing people to enjoy a glass or two of beer. Some say that it is unfair for those with better capacity for alcoholic influence. But do not forget, the influence of alcohol varies with different physiological states. If you are tired, if you have been in this room or under closed walls for two to three days, you will have some physiological changes. If you have a flu or happen to pick up something from the Honourable Andrew WONG who has got a flu, the influence of alcohol to you changes. So, all these comments basically miss the very important spirit of the whole issue. It is not about banning drinking, it is simply to promulgate: "Don't drink if you want to drive. Drink if you like, drink like a fish if you like, but don't drive." The medical profession is not promulgating a puritan lifestyle. Yet, we treasure the lives of many innocent road users more than protecting the transient drinking joy of some drivers.

Government statistics have indicated that in the past three years, some 77 persons were killed in traffic accidents involving drink driving. Among these, 39 were drivers found to have consumed alcohol. In other words, you subtract 39 from 77 and you realize that 38 innocent lives were lost with them. Among these drink drivers, seven were with alcohol blood levels of between 50 mg and 80 mg. If you cut it down to below 50 mg, you would save these seven persons and also those that they innocently killed. These people would not have been unnecessarily maimed or have lost their lives if we had introduced the tighter limit earlier.

Madam President, there are also some people in Hong Kong who believe that lowering the limit is unnecessary, given that Hong Kong does not have an extensive highway network and there are statutory speed limits for different types of roads already. However, in such a small place as Hong Kong, yet with busy traffic, any mistake or delay in assessing risk or making judgment during driving may result in serious accidents. The effect of alcohol on a driver's response ability has been well proven by scientific evidence.

There are also those who worry that with tightened law, the police would be prone to abuse their power. Such an argument is tantamount to putting the cart before the horse. The police have promised that breath tests would only be conducted on drivers involved in traffic accidents, traffic offences or those that the police have reasonable grounds to suspect of drinking. If there is any worry of power abuse, the proper means would be to put it in stricter monitoring mechanism and not to raise the alcohol level.

Back in 1995 when I moved the amendment to lower the alcohol level, as I mentioned just now, many legislators agreed with the Government's argument that since the scheme was first introduced, it should start at a more "lenient" level, subject to review within a year. Regrettably, it has taken three years now before a review was conducted. Regrettably, innocent lives have been wasted during these years. Many legislators in 1995 said that they would support tightening the law in the future, if experience of enacting the law proved such a need. Today, I hope that they will honour that promise. After all, even the loss of one innocent life is too much for anyone to tolerate.

Thank you, Madam President.

MR LAU KONG-WAH (in Cantonese): Madam President, regarding the issue of reducing the statutory limit of alcohol concentration in the blood of a driver from 80 mg to 50 mg for drink driving, I noted that there was a rather detailed debate in 1995 after a search of the records on the discussions of the relevant bill. The debate continued in the past few years. The reasons mentioned in the Bills Committee were repetitive.

I believe any enactment of the law or its amendment should hinge on the effect. What effect has there been during these three years when the 80 mg limit is in force? I feel rather deeply that the limit has an obvious deterrent effect on a person who intends to drive after drinking. In our daily lives, we will usually remind our drinking friends that they need to be more careful if they want to drive after their drinks. A television advertisement which is quite impressive to me depicts an increasingly blurred vision of a person as more and more alcohol is consumed. The reason is simple enough. Over the last few years, the deterrent effect has been conspicuous. According to data from the Government, on comparing the figures between 1997 and 1998, there was an increase in the number of tests on the roads on drivers who have been suspected of driving after drinking. So, more and more people have undergone tests, but the percentage of those who went over the limits remained at around 4% or 5%, which was a rather constant figure. Therefore, the deterrent effect is obvious. However, unfortunately, the tests showed that over 50% of the drivers had an alcohol concentration of over 80 mg in their blood. In other words, there were a bunch of drivers who did not abide by the law. They drank as they wished and then drove after drinking. So, I suppose there are two types of drivers: those who can be warned against the act and those who insist on drinking and ignore any warning.

If we look at the figures, in 1996, fatal traffic accidents due to drink driving account for 13% of the total number of deaths caused. Unfortunately, the figure rose to 15% last year. Is it worthwhile to die for a few drinks? If we compare Hong Kong to Singapore, some of us may think there is not much difference between 80 mg and 50 mg because, like Hong Kong, Singapore has probably set the limit at 80 mg. But in 1996, the figures for fatalities due to accidents arising out of drink driving were 13% and 2.8% respectively for the two places. Some may say this has nothing to do with the limit being set at 50 mg or 80 mg, and the cultures of both places are certainly very different. However, I think a set of figures should be very convincing. In the past few years, the number of deaths due to drink driving was 77. Among them 39 were drivers who had drunk, while the other 38 were innocent people, who might be passengers or pedestrians. The ratio between them was 1:1. Even if one is bold enough to drive after drinking, one should be considerate towards the passengers in the car or the pedestrians on the roads. Similar situations may happen to those of us in this Chamber or our friends and relatives. So, why do we not tighten the limits? During the past few years, two people in Hong Kong were killed due to drink driving each month, and this is not acceptable.

Many colleagues have spoken about experiences in other countries. The German experience particularly impresses me. In Germany, the limit was lowered from 80 mg to 50 mg in 1998 and the effect was that the number of accidents was reduced by half. Of course, in the Hong Kong culture there may not be any immediate effect. But even if the accident rate is reduced by 5%, I still think that it is worthwhile. In view of the stated effect, I think colleagues should place safety first, although they have put forth many reasons, such as: Some people may not like drinking, some may find it inconvenient, or sales volume of wine merchants may drop and so on. On balance, which is more important: life or drinking? Hence, the Democratic Alliance for the Betterment of Hong Kong supports the amendment.

MRS MIRIAM LAU (in Cantonese): Madam President, a while ago I presented the Report on behalf of the Bills Committee. Now I speak to state my personal views in my capacity as representative of the transport and communication constituency.

The transport sector places great emphasis on road safety. Motorists who are drivers by profession spend more time on the roads than anybody else. They fully appreciate the dangers on the roads, which may mean disasters for themselves and other people, so they would actively consider any proposals that may enhance road safety. I have conducted a survey on the acceptance of the sector of the Government's proposal to tighten control on drink driving. I issued questionnaires to 145 transport bodies/institutions and collected 76 returns. Sixty-one of them, mostly land transport groups accounting for 80.2% of the respondents, agreed with the Government's proposal. Only six of them opposed the proposal and the rest were neutral. The results show that the transport sector are in general in favour of the Government's proposal to lower the statutory limit of alcohol concentration from 80 mg to 50 mg.

Despite the fact that the number of traffic accidents involving casualties at night has decreased by about 7% since the implementation of the law on drink driving in 1995, the problem of drink driving in Hong Kong is still acute. Government statistics indicate that between December 1995 and July 1998, 38 941 drivers who were involved in traffic accidents underwent alcohol tests, 3 499 of whom (nearly 10%) were proved to have consumed drinks. That means one in every 10 drivers drank and drove and then was involved in an accident. Over half of the 3 499 drivers had alcohol concentration in their blood above the statutory limit. Moreover, in 1997, a quarter of the drivers who were killed in traffic accidents were found to have drunk beforehand. And in the three years from 1996 to 1998, 39 drivers killed in traffic accidents were tested to have drunk, and 38 people were killed in these accidents including six drivers who had not drunk, 19 passengers and 13 pedestrians. These innocent people were killed because somebody else had drunk and driven. These figures bear out the need to tighten the statutory limit on alcohol concentration in order to protect our safety.

There are however those who think that tightening the limit can only bring about minimal effect. Life is precious, and I think even if only one accident or life can be saved, it is still worth it. I doubt if the effect is going to be minimal. Data from the Institute of Alcohol Studies in the United Kingdom tell us that when the statutory limit on alcohol concentration was reduced to 50 mg in France, fatalities in traffic accidents decreased by 4%. In Belgium, when the limit was reduced to 50 mg, the fatalities in traffic accidents decreased by 10% in 1995 and

further decreased by 11% in 1996. In Cologne, Germany, when the limit was lowered to 50 mg in mid-1998, there was a reduction of 50% in the number of traffic accidents due to drink driving. Such experiences abroad are worthy references. I think tightening the limit on drink driving can sensitize drivers to the amount of alcohol they should take before driving to avoid breaching the law. Thus accidents due to drink driving will be reduced. Furthermore, the tightening can drive home a clear message: "If you drink, don't drive."

There are still those who think that the effect of alcohol varies from person to person. Some may have drunk a lot and remain very sober and vigilant and can still control their cars, but these are rare cases, or most of them happen to be seated in this Chamber. According to a report released by the United States National Institute on Alcohol Abuse and Alcoholism, when alcohol concentration in the blood reaches 50 mg or more, the ability of a driver to roll his eyeballs, resist strong light, observe things, control his car or analyse information may be continually undermined so that his reaction is slowed down. According to the Hong Kong Medical Association, research has shown that with 50 mg of alcohol in 100 ml of the blood of a driver, his ability to anticipate danger will be affected. The research refers to ordinary people and the effect is true of most people. I agree that different persons may have different reactions to alcohol, but the law cannot set different standards for different people. Even if there are those drivers who have a large capacity for liquor and who can maintain good control of their cars, they cannot guarantee those who have less will after drinking not be a danger to other road users. In the circumstances, we need to request the former to accommodate the later group of drivers.

Some may criticize the Government's proposal for unduly interfering with normal social activities and depriving people of their right to drink. I think we must not confuse social activities with safe driving. In fact, tightening control on the statutory limit of alcohol concentration does not mean restricting or prohibiting drinking. If people want to drink to above the statutory limit, they may do so and then use public transport rather than drive themselves. We now have a very efficient system of public transport. Late into the night there are still lots of taxis, minibuses and even night buses. Public transport is very comfortable and people should not feel inconvenienced. If a person drinks too much and still insists on driving, it is a selfish act because it poses a danger to himself and to other road users as well.

For the above reasons, the transport sector which I represent and I support the Government's proposal to tighten control on drink driving in order to minimize traffic accidents and enhance road safety.

In addition, the transport industry very much supports the Government's proposal to extend the passenger service licence scheme (the Scheme) to school private light buses. For many years, school private light buses have been bringing children to and from schools for their parents. However, the Government has never treated them as a form of public transport. It only regarded them as private light buses and collect from them expensive registration fees: $2,749 annually from a school private light bus with 17 seats or less, which far exceeds the amount for a public bus with more than 17 seats. But school private light buses can only carry school children, whereas public buses can carry more passengers and operate in a wider scope of business. Nevertheless, public buses only need to pay $1,339 in annual registration fees. Extending the Scheme to school private light buses, so that they come under the same type of supervision as that for public buses, should entail the same registration fees. I am glad that the Government has agreed to review this unfair situation and promised to exempt school private light buses from paying fees under the new scheme pending the outcome of the review. I hope the Secretary for Transport can confirm this in his response and promise to carry out the review as soon as possible.

With these remarks, Madam President, I support the three proposals in the Bill.

DR TANG SIU-TONG (in Cantonese): Madam President, Hong Kong is a free society. Unless there is sufficient ground to interfere with private life and social activities, the Government rarely does so. This is also one of the reasons why international professionals are attracted to Hong Kong to develop their career here. Unfortunately, the Transport Bureau proposed today to amend the limit on drink driving by tightening the control on alcohol concentration from 80 mg to 50 mg. This unnecessarily restricts the freedom of drivers and interferes with their social activities. So, the Hong Kong Progressive Alliance (HKPA) will not support the relevant amendments.

Madam President, I have three reasons my objection to the amendments.

First, the present limit for drink driving has been effective. There is no need to change for the time being. During the scrutiny of the Bill by the Bills Committee, the Government admitted that since the limit was introduced in 1995, there had not been any deterioration in the problem of drink driving. In the first two years of the implementation of the law, the number of accidents occurring at night has decreased by 7% and 3.7% respectively. In terms of figures, when we compare the fatality rate of drivers due to drink driving, we record a lower rate than those in the United States, Canada, Australia, New Zealand and many other European countries. Unless there are new data, the above figures have proved that the present limit has effectively and sufficiently controlled drink driving.

Second, reasons given by the Administration cannot support the view that "further tightening the limit is closely related to a reduction in the number of traffic accidents." First of all, Hong Kong has not conducted any tests on the relevant issue and so we cannot establish the relationship between tightening the control on alcohol concentration and the incidence rate of accidents. In addition, although the Government has listed out the research findings overseas about the effects of lowering the alcohol concentration from 80 mg to 50 mg, the research in the United States showed that with a concentration of between 50 mg to 90 mg in drivers' blood, their accident rate will be 11.1% higher than drivers who have not drunk. It therefore can be seen that tightening the limit from 80 mg to 50 mg will not drastically reduce the accident rate. Furthermore, medical associations in the United States and the World Medical Assembly have produced reports indicating accidents, when caused by drinking, relate not just to the alcohol concentration. Factors such as age, drinking habits, driving experience and reactions of the driver to alcohol also count towards the accident rate.

Moreover, although the Administration pointed out that deaths of drivers due to drink driving in Hong Kong are higher than those in some Asian countries such as Japan and Singapore, data showed that Singapore, where the fatality rate is lowest, has also set its limit at 80 mg, the same as Hong Kong. Therefore, tightening the limit on alcohol concentration can be of relevance to but cannot be a sufficient condition to accidents. Lowering the alcohol concentration limit to below 80 mg will not necessarily lower the accident rate.

Third, the marginal effect that may be brought about by the amendment may cause unnecessary nuisance to personal habits and social activities. Please note that we are debating tightening the control by lowering the limit from 80 mg to 50 mg, not 0 mg. If the amendment was for a zero concentration, the effect would be obvious and immediate and the HKPA would support it. But it is doubtful whether a slight downward adjustment in the limit will have any effect at all. So, the amendment is unnecessary and lacks good justifications. It will mean interference to private lives and social activities and adversely affect the image of Hong Kong as a free society. Given that the amendment tightens the control on the one hand but allows drivers to drink and drive on the other, the HKPA considers that a trap is set for drivers who might breach the law inadvertently, not to mention the confusion caused. Therefore, drivers will be confused. This Council should not support an amendment with high cost but low benefit.

With these remarks, Madam President, I oppose the amendment in the Bill for a tightening of the alcohol concentration limits.

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, after discussions, the Democratic Party decides to support the Government's proposal to tighten the statutory limits of alcohol concentration in a driver's blood if he drives after drinking. I will of course abide by the decision of the Democratic Party.

But I began to feel swayed today because as I came to this Chamber to vote, I was closely followed by Mr Nicholas NG's aide. As I support the Government, he followed me to the Chamber and then waved to his colleague saying "the Honourable CHEUNG Man-kwong has arrived," and his colleague put a tick somewhere to so indicate. *(Laughter)*

I do not think the Legislative Council is a police station, and Members are no suspects. We have our party decision and our free will to vote. If the voting leads to my being watched, listed or even followed, I will feel irritated. I will ask my party whip, the Honourable SZETO Wah, to allow me to absent myself from the voting. If I did that I believe many of my colleagues will follow. Please allow me to say this, Madam President, and please make sure people behave properly. I would agree to the lobbyists entering our common room, which is fair, but I would not agree to being listed, counted or followed. How can that be tolerated?

PRESIDENT (in Cantonese): Mr CHEUNG, we are on the Road Traffic (Amendment) Bill 1998. I cannot find any relevance between what you said just now and the Bill. So, please speak with reference to the Bill. You may air your views you made just now via other channels.

MR CHEUNG MAN-KWONG (in Cantonese): Thank you, Madam President. I have finished with what I wanted to say. Thank you for your indulgence. I just wanted to take this opportunity to state that our decision is not going to fall to anyone's influence. They need not do that. Thank you, Madam President. Thank you for your indulgence.

MR JAMES TIEN (in Cantonese): Madam President, several years ago, my children went to study in the United States. I was not too worried about their studies. Rather I was worried about their health, safety, and whether they would cause trouble as they travel elsewhere with their friends. When they got into university, I needed to worry about possibilities of traffic accidents when they drove to New York or Boston for sightseeing over the weekend. They might drink and drove.

In fact, drinking and driving can mean a terrible experience overseas. Indeed, many casualties have been caused by drink driving. I think many parents would be worried about the safety of their children overseas. In particular, they would be worried about whether they would drink drive. Hence, understandably, there are some who think drivers should not be allowed to drink at all. Indeed, we need to ask: Should drivers be requested not to drink at all?

Many foreign countries have amended the relevant laws. Their legislative intent was to ban drink driving. But there are two areas in which foreign countries and Hong Kong differ. First, they may not be as prosperous as Hong Kong in economic terms and people there do not usually have chauffeurs. Second, foreign countries cover vast areas. Whereas in Hong Kong one may go home within a matter of 10 minutes or so by driving, people in foreign countries cannot do so and therefore they may be more lenient about drink driving. Their limit may sway between 80 mg and 50 mg.

I have some German friends. When I drank with them, I found that they had 10 times the capacity for liquor as I do. I drink beer by the bottle but they by jar, which is about 10 cans. Does it mean they all did not drive? No, they let their wives drive. I am not trying to say the Government is trying to mislead us, and since the book was prepared by the Government it will side with the Government; but when the Government obtained the specific details, it should try to find out why the limit was changed from 80 mg to 50 mg in foreign countries. Are drivers mostly women or men at night? Indeed, in foreign countries, men are less constrained. When they drink over the limit with their friends, they let their wives drive. If the limit of alcohol concentration was set at 0 mg, the wife should not drink at all. If she sips just a little bit then both husband and wife will have to stay in a hotel instead of going home. Would that be the case? So, the limit cannot be 0 mg. Nor should the limit be arbitrarily set at 50 mg. So, if one drinks, one's spouse may drive so that they need not stay at some other place than home. So, foreign countries have their own legislative intent. Is the position in Hong Kong the same?

Madam President, I would like to declare my interest here. I like to drink, but not too much. Usually, I drink three or four glasses of red wine, that is around half to three quarters of a bottle. My capacity for liquor is regarded as low among my friends. In this Chamber, there are two Mr WONGs who can always finish two bottles of wine and stay sober, more so than me after three quarters of a bottle. Now it is proposed drivers should not drink more than a quarter of a bottle of wine, one eighth of the capacity for our Honourable colleagues, the WONGs. I am sure they can drive with a clear mind after two bottles, but is the limit of a quarter of a bottle or two small glasses overly strict?

Madam President, I note that Mr Martin LEE is here. I recall he said yesterday the Liberal Party was not representing the business sector; it was representing gigantic financial conglomerates, not small and medium enterprises. Today, I want to prove the Liberal Party is not representing gigantic financial conglomerates, because people belonging to gigantic financial conglomerates do not usually drive themselves. They have their own chauffeurs or even bodyguards. How will they breach the law after a couple of drinks? But what about those people in the small and medium enterprises, the very people whom the Democratic Party is trying to lobby for votes? Many of them are factory-owners, import/export traders, and professionals. If they are invited to discuss business deals over some evening drinks, they cannot just drink orange juice. When their clients order wine, they just cannot say: "Alas, I did not know this

morning I would be asked out for some drinks and so I have driven my car to the office. Should I leave my car in Central so that it is there to be impounded and I would go home by taxi?" As they drink, there will be lots of restrictions. They can drink only a can and a half of beer. As they drink they need to count, a can and then half a can. Beer is by no means cheap in an ordinary restaurant. It would cost about $40 per can. Should they drink one and a half can after ordering two, leaving half a can not consumed? Usually, people will finish all the beer. But, Mr Secretary, if they do finish all of the two cans they will break the law. Is the limit overly strict? Should we not take a good look at the realistic situation in Hong Kong first?

Madam President, talking about the realistic situation in Hong Kong, the Liberal Party holds this view: Safety comes first, to avoid accidents due to drink driving comes second and to avoid serious accidents leading to deaths of third parties comes third. I will respond to the part of the Honourable Mrs Miriam LAU's speech later. Mrs LAU has applied for exemption as she was speaking for her constituents. She was speaking for people who are drivers by profession. We do not think we should reduce the limit from 80 mg to 50 mg in one go, when other penalties remain the same. The Government has a system of driving offence points to tackle driving in excess of speed limits. The limit is at present 70 km per hour. Driving at 80 km per hour will incur three points; 95 km per hour, five points; and 110 km per hour, eight points. A driver will be disqualified from holding or obtaining a driving licence when 15 points have been incurred. We may put in place a similar system to tackle alcohol concentrations in drivers. The penalty for a concentration of 80 mg or below should not be changed. But if it goes up to 110 mg, should the penalty be increased? Indeed, from the data alone, there have not been too many cases of serious traffic accidents due to drivers with alcohol concentrations of 50 mg to 80 mg. Although the Government does not have the data on hand, I think most cases of serious traffic accidents involve drivers with alcohol concentrations of 120 mg to 130 mg. The drivers at fault must have drunk more than a quarter of a bottle of wine; they must have drunk a bottle or two. I think if the alcohol level is high, the penalty should be increased. We should not treat all owners of small and medium enterprises, professionals and car owners who cannot afford chauffeurs as one category.

In the document through which the Government tries to convince us, it is said: "In the past three years, 77 people died from drink driving." But the Government did not say how many of the 77 lives could have been saved if the limit was changed from 80 mg to 50 mg. Maybe the Secretary can give us some supplementary information later. Maybe among the 77 people, most had an alcohol concentration of 110 mg to 120 mg, which represented quite a lot of wine drunk. If the limit was tightened from 80 mg to 50 mg, would the number of deaths be greatly reduced?

Madam President, the Government was honest enough to tell us both the upside and the downside of its arguments. It provided a chart for us describing the position of several Southeast Asian countries. These four places are Hong Kong, Korea, Japan and Singapore. It showed, in 1996, the percentage for deaths due to drink driving were 13% for Hong Kong (that is, 13 deaths in every 100 deaths in traffic accidents are caused by drink driving), where the alcohol limit was 80 mg. Figures for Korea and Japan were 5.6% and 5% respectively, and both had a limit of 50 mg. This showed that a big variation would exist between 80 mg and 50 mg, that is, a drop from 13% to 5.6% or 6%. The Government was honest enough to tell us in the graph the percentage was 2.8% for Singapore. That is there were 2.8 drink driving deaths per 100 deaths in traffic accidents in Singapore where the limit was 80 mg. Then I need to ask: As both Hong Kong and Singapore enforce a limit of 80 mg, why do we have a rate of 13% while Singapore has a rate of 2.8%? Would tightening the alcohol concentration limit from 80 mg to 50 mg alone have such a big difference? Could that be a result of traffic flow, road design, quality of vehicles or numerous other factors? Otherwise, it is difficult to explain the respective rates of 2.8% and 13% in Singapore and in Hong Kong despite their same limit at 80 mg. As Hong Kong has a rate four times that of Singapore, there must be some reasons. Would reducing the limit to 50 mg alone achieve the purpose of greatly reducing the death toll?

Madam President, I do understand the views of professionals. People who are drivers by profession, taxi drivers or truck-drivers, may be called professionals. Truck-drivers think they would not drink if they drive; they want to observe road safety principles. They are afraid of some other drivers who drink and drive at night, thus affecting road safety. I fully understand that they hold the view that drink driving is not permissible. As regards taxi drivers, they have another view other than the view just described. They would rather people go out to drink and when people cannot drive they may get more business by taking passengers. I understand this view.

Madam President, I would like the Government to explain its chart. The chart shows that from 1996 to 1998, the police statistics recorded 15% of the drivers who drank had alcohol concentrations of 80 mg to 50 mg. Madam President, I do not think the number is important. More important is the number of drivers who recorded a concentration of over 80 mg, that is, how many of the 54% of drivers were actually involved in traffic accidents. The Government did not indicate if the number was related to the accidents. It just said that they were drivers found by the police to have drunk. I believe they were not involved in any accidents, but they were just stopped by the police and requested to be tested. Indeed the number of over 2 000 was exaggerating. I trust not many among them were involved in traffic accidents.

Madam President, these are my remarks made on behalf of the Liberal Party. We think safety should come first, but there must be a balance between the rights and liabilities of drinkers and the public. I do not think the limit should be tightened from 80 mg to 50 mg in one go. The penalties for drivers with an alcohol concentration of more than 80 mg, say 110 mg or 120 mg, should be greatly increased. Thank you, Madam President.

MR MARTIN LEE (in Cantonese): Madam President, first of all I need to declare my interest so that everyone knows whether I have a conflict of interest. I used to drink in the past, but then I had urathritis and my doctor advised me to quit drinking. The doctor also said I could drink a bit of whisky and beer, both of which happen to be what I do not like. So, I am now not drinking any more. Afterwards, as I have been extremely careful about food, even the urathritis is gone. A blood test done lately showed everything was normal. Last week, Dr LEONG Che-hung asked me to take a blood test. The test report was sent to his office several days ago, but as he needed to attend meetings in this Chamber these few days, I do not know at this moment yet what the report results are. Everything should be fine, I guess. I seldom drank over the past 10 years or so. I once said I would drink if Dr YEUNG Sum got married. He did and I drank a little bit on that occasion. After the election, the Democratic Party held a celebration and I pretended to drink. Therefore, I certainly will not kill myself or others by drink driving. However, I am afraid other people may have drunk and then drive a car to knock me down. So, I am now speaking on behalf of those people in Hong Kong, who, like me, represent a significant number.

In fact the Democratic Party has had some heated debates over this question. Due to the varied ideas within the parliamentary group, the matter even went to the central committee. One member of the committee, who was a member of the Urban Council and whose name I should not disclose, said nothing in our debates but he told me afterwards the decision was a good one. I asked why it was a good one. He said he had recently breached the relevant law and so he found it embarrassing to speak. The breach happened when one night, he had had several glasses of beer with some members of the Democratic Party and then drove. Before he got out of the car park, he had an accident. Luckily, neither he nor a third party was hurt but the repairs cost him $9,000. That was a lot for him. And he thought it was a shame. So, he did not want to tell everybody about it, but he thought our decision was certainly correct.

Just now I heard many Members say they were in favour of the Government's proposal. I thought there should not be any trouble. But then I heard the views of some Members of the HKPA and the Liberal Party, and I trust they were going to vote against the proposal. Let me talk about the HKPA first. They said it was going to be a matter of grave concern as it would affect Hong Kong's image as a free society, and may cause the number of visitors to Hong Kong to diminish. If that happened we should certainly be frightened. But have they thought about the point that if foreigners know Hong Kong people value everyone's life, including those of foreign investors so that people are not allowed to drink if they want to drive, they would find Hong Kong a good place to be, which values the lives of visitors and foreign investors and they would tend to like Hong Kong more?

Hong Kong is different from Singapore. As Mr James TIEN said, Singapore is smaller than Hong Kong. So, though Hong Kong is small, Singapore is even smaller. The distance for driving would be shorter. I think this is relevant. Indeed, many Members have cited many figures and I do not want to spend more time on this. Mr TIEN's speech sounded very touching to me at the beginning. Those of us who have children will certainly not want our children to drink and drive, or their peers to get drunk and then drive at high speed. Nor would we want them to be run into by drunken drivers driving from the opposite direction. I am afraid to see such things happening too. But with such a good beginning, why was Mr TIEN's conclusion so strange? He said he only drank half to three-quarters of a bottle of red wine. I suppose what he

drank must be the best red wine, mellow wine, but still it contains alcohol. He also talked about drinking beer. People who are not so rich should not drink more than one and a half cans of beer. He questioned whether people should be asked to drink a can and a half, leaving the other half not consumed. In fact, two people may share three cans, or one party may drink one can, but not the other half can. Or one may drink and if the limit is exceeded, one may wait a while before driving. There are in fact many options. He also said he agreed to many professional drivers' views. These drivers thought they spend most of the time on the roads. They do not drink, they do not want to hurt others, and they do not want others to hurt them through drink driving. Why should these views be peculiar to these drivers? We may drive once in a while. Legislative Council Members may drive home after meetings and the distance may not be long, but we also do not want to be knocked down by drivers who drink and drive. The reasoning is similar. Is there a big difference between professional drivers and us? So, on this matter I would rather we act with more care, under stricter rules, than taking risks.

Just now, Mr TIEN mentioned certain Members by their surname. That was not so good. He might as well say "the two Honourable Members sitting in front of me." That was sufficient. As we joked, we said we could enact a law specially for those two Honourable Members. Unlike most people, they can drink a lot and still remain more sober. This is very special. But we cannot say "the law applies with the exception of the following two Legislative Council Members". We just cannot draft the law like this. So, I hope they would bear with us and support the Bill.

The Honourable LAU Kong-wah had a sound argument. We fully agreed with what he said. But there was one phrase that he said, which I would like to amend slightly. He asked: "Which is more important: lives or drinking?" The question was not right. It should be: "Which is more important: lives or driving after excessive drinking?" Two Members said one should not drive if one wants to drink like a fish. This is correct because a fish cannot drive. So, they can drink as much as they want. We all understand this point. Lastly, I want to say this to government officials and our adorable paparazzi. They can have 13 sure votes from the Democratic Party but do not make Mr CHEUNG Man-kwong disappear.

MRS SELINA CHOW (in Cantonese): Madam President, first of all I need to correct part of what Mr Martin LEE's comments. He mentioned the voting preference of some of the Members of the Liberal Party. In fact there is no such thing as the voting preference of some of the Members of the Liberal Party. The stance of the Liberal Party is that it is against the Government's proposal. Mr James TIEN made it very clear just now. Only Mrs Miriam LAU has applied for exemption as the sector which she represented wanted her to vote for the proposal. Our party chairman has explained she had our approval for the exemption.

In fact I did not intend to speak. But after listening to the speech of Mr Martin LEE, I felt the need to speak. I think he has touched upon a major issue of principle and he very much frightened me for that. First, Mr Martin LEE said he himself does not drink alcoholic drinks and so there is no question of interest. This is not right. He does not drink alcoholic drinks and he wants others to follow suit. This certainly has to do with interest. Second, he said he does not drink alcoholic drinks but others may drink and drive and then knock him down. So, other people should not drink too. I am not sure if this is Mr LEE's principle for right or wrong or the Democratic Party's. We are not talking about drinking or not drinking. We are talking about the level of alcohol concentration in a person's blood at which danger would be caused or casualties involved. The 80 mg or 50 mg limit we have been talking about is a very low level of alcohol concentration. It has nothing to do with drinking to excess. Our party chairman has already indicated if it can be shown clearly there are levels of alcohol concentration above which casualties will be greatly increased, heavier penalties should be imposed for such concentrations. We will also support such measures. But now no one can say for sure, with data in support, the proposal to tighten the limit from 80 mg to 50 mg will induce reduced casualties, and if the proposal is not followed the situation will worsen. So, once passed into law the proposal will restrict the freedom of some people in their social activities or the choice of food they take. I think this is very important.

I can recall Members of this Council tried certain measures before, which have since become realities, and more and more Members are in favour of Mr Martin LEE. I am talking about Mr LEE's request that people should not smoke in his room. Then the request turned into the setting aside of a room for smoking. This again involved the Members by the surname WONG. It seems whatever comes up involves them ……

MR MARTIN LEE (in Cantonese): Madam President, are we talking about smoking, or drink driving?

MRS SELINA CHOW (in Cantonese): That was only an example. I think I can quote it here.

PRESIDENT (in Cantonese): Mrs CHOW, please continue.

MRS SELINA CHOW (in Cantonese): That was an example. I was using it to respond to what Mr Martin LEE said. At the time, Members who smoked were ruthlessly huddled into a room. The situation has changed again. Members who want to smoke have to go outside the building to do so. Indeed the same may be applied here. That means people are ruthlessly banned from drinking if they want to drive. I am not sure if Mr Martin LEE is one of these people. But the question is: Would the alcohol concentration level we have been talking about cause any increase in the number of accidents or serious injuries? There is no clear indication on hand to bear out the assumption. If the matter is dealt with in such a way, then when someone thinks something affects their safety or health, they may say: "You must not do that because that adversely affects me." If that was the case, the whole society would be very clean because we would be under parental protection. But just imagine: a society, in which only what is right can be done, and you cannot do what is not entirely beneficial to yourself and the public but is not yet proven harmful, and all this is banned by legislation. What kind of society is this going to be? Why do many people choose to live in Hong Kong rather than Singapore? Singapore is a healthier society and everything is clearly stated. What is not beneficial cannot be done. Even chewing gum is banned as it is not good to the community. If we look at the matter from such an angle, without doubt, our freedom would be unnecessarily restricted when there is no real evidence for the need of a restriction. For that reason, Madam President, the Liberal Party opposes the amendment.

MR EDWARD HO (in Cantonese): Madam President, first of all, Mr Martin LEE quoted data from Mr James TIEN about Singapore. I want to point out to him that was a percentage. Although Singapore has fewer residents than Hong Kong, we are talking about percentages, that is ……

MR MARTIN LEE (in Cantonese): Madam President, I said "small"……

PRESIDENT (in Cantonese): Mr LEE, you cannot interrupt like that. Mr HO, do you want to give way to Mr LEE? If you do not, I will let Mr LEE elucidate later. Mr HO, please continue now.

MR EDWARD HO (in Cantonese): Madam President, I actually heard Mr LEE said we could not compare with Singapore because it has a population half of that of Hong Kong. If he thought I was wrong, I would let him clarify now on this point.

MR MARTIN LEE (in Cantonese): Madam President, I said Singapore was a smaller place and the driving distance is shorter. I said that very clearly.

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

MR EDWARD HO (in Cantonese): Madam President, if we listen to the tape recording again, we would find he was referring to both "population and area". He also talked about roads…… but let us not argue about this.

I think what is most important is that from the data we know Singaporeans are law-abiding people. Although the limit there is the same as Hong Kong, which is 80 mg, the rate of fatal accidents there is only 2.5%. The rates in Japan, Korea and even Hong Kong are higher than that. It is an undeniable fact. So, what is in the law and whether people abide by it are separate issues. The law may be harsh but the outcome can be disappointing if people do not observe it, and if basic civil education cannot produce law-abiding citizens. When we watch television in the morning, we may see serious traffic accidents leading to

multiple deaths. Although I do not have the actual figures, I trust most accidents of this sort occurred in the early hours, say two or three o'clock in the morning. The driver could have visited a nightclub and then hanged out with his girlfriend at some places. Such people are reckless people, and they may have taken alcoholic drinks. So, that could lead to Hong Kong having a higher rate of deaths than Singapore or other countries.

Regarding safety, I believe no one will object to the employment of measures, even legislation, to protect ourselves. This is true not only of road safety but also of industrial safety, in particular safety in construction sites. We have been making efforts over many years, but still industrial safety records in Hong Kong are poorer than many other countries. Indeed the Government has done a lot in this respect, including legislation. Why then has there been little improvement? The reason is the same: people at construction sites, especially the workers, people who work on the sites, do not abide by the law. They are provided with safety belts and helmets but they do not use them. They do not abide by the law. I think we need to think about the issue.

For road safety, if one drives after drinking to excess, there is bound to be some problem. But we are talking about 80 mg. I think everyone knows that it represents a very small amount. Mr Martin LEE may not know as he does not drink. Drinking may not be the sole cause of traffic accidents. The driver at fault may be a reckless and irresponsible person, and he may break the law. He may drink and drive in excess of the speed limit, or he may speak to his girlfriend or engage in whatever activity one may imagine. All these may lead to an accident or even casualties. But there is no data to show that if the limit was lowered from 80 mg to 50 mg, these people would suddenly become model road users, go home early, and drink less. I think in enacting a law or amending the law, it is important that we take into consideration the effect on the community and we must strike a balance.

What the Honourable LAU Kong-wah said was quite right. But as he came to the end, I found he was not right because he had a conclusion different from mine. (*Laughter*) He made a good speech though and analysed the matter in a structured manner. He spoke about consideration of the effects of the law, and cited some data. Several years ago, no one mentioned the issue of raising the alcohol concentration. At any rate, I respect Mr LAU's viewpoint and that of the party to which he belongs. They think lowering the limit for alcohol concentration may enhance road safety. That is exactly the question we

need to consider. As some Members asked just now: Should we reduce the level to 0 mg? Mr Albert HO and Dr LEONG Che-hung said it was not possible to reduce the limit to zero, because chicken cooked with wine or some chocolates may contain alcohol. If we do not reduce the level to zero, can we reduce it to 5 mg or 10 mg? I cannot tell how much alcohol will go into one's blood after eating chocolate or chicken cooked with wine, but obviously, we should not reduce the limit to zero.

How should we solve a social problem? We need to tackle the matter from all aspects. We should not make a law for one problem we have spotted. Nor should we draft a stricter law to make up for the shortcomings of a law not strict enough. I do not think this is a correct way to solve social problems and for this reason I will not support the amendment. Thank you.

MR RONALD ARCULLI (in Cantonese): Madam President, I did not intend to speak but I cannot help feeling an urge to do so. As everyone knows, I seldom speak in Cantonese, but I must say something today.

Let me respond to the issue of smoking mentioned by Mr Martin LEE. He talked about the need for Members of this Council and colleagues of the Legislative Council Secretariat to smoke outside this building. I thought it was a proposal by the Democratic Party to enhance transparency. In other words, do not sneak away into a room to smoke. An honest way is to go out in the street to smoke. (*Laughter*)

MR MARTIN LEE (in Cantonese): Madam President, that was my last straw. I did not bring up the issue of smoking; it was his party member who did so. Now I am accused of bringing up the issue of smoking. But we should be talking about drink driving. Madam President, I am really very puzzled.

PRESIDENT (in Cantonese): It was Mrs CHOW who cited smoking as an example.

MR RONALD ARCULLI (in Cantonese): Mr LEE must be getting old and has become impatient. I was going to say to him if one drinks in a room there should be no problem. That is the difference.

A while ago, Mr Edward HO alluded to Mr LAU Kong-wah. From what Mr LAU said, the Democratic Alliance for the Betterment of Hong Kong acted as it did because it had the monkey on its back — the desire to be the ruling party. Apparently, it is against the amendment but eventually it has to support it. (*Laughter*) Why am I standing up here and speaking today? Because I know Mr Jasper TSANG was looking at us with a smile on his face. He must have been thinking: "At last the Liberal Party and the Democratic Party are at war!" (*Laughter*) Madam President, I will now be serious.

This policy of the Government's carries a big contradiction. As we all know, under our former tax system on alcohol, a fixed duty was imposed on a bottle of wine, whether it cost $1,000 or $100. Later the system was changed, duty is heavier for more expensive wine because duty is now charged on the cost price. I remember having expressed the opinion that I thought I understood why the law was amended. I thought the Government wanted to encourage people to drink more wine so that duty revenue was increased. At first, the duty was heavy but then it was relaxed. I really cannot tell what the Government was trying to do. Perhaps, that was where the conflict of the former Government and the present SAR Government lies. We say political parties have conflicts but then Governments also has conflicts. The Government may have thought the passing of the Bill could encourage people to drink less, but, Madam President, that is how people behave: they will do what they are asked not to do. The fact is: the Bill actually encourages people to drink more, not less. The Government should raise the limit from 80 mg to 120 mg. That would not cause any trouble.

Frankly speaking, I am really worried that, if passed, the Bill would inevitably be a blow to the catering sector. When we eat out, we usually drink some wine. Food and wine (beer included) usually go together in direct proportions. In this regard, has the Government done any assessment about the effect on the economy? Will it affect revenue, not just revenue from alcohol duty? What adverse effects will there be on the catering sector? Will the unemployment rate be affected? Will the functional constituency I represent be

getting less rent? I really do not know. Actually, the limit of 80 mg is not high at all. We must understand the capacity for liquor varies from person to person. The result of breath tests will differ. What surprises me is that under the present law, if you drive after eight o'clock in the evening, and stops in front of a red light, and a drunken driver behind runs into your car, you will also be asked to do a breath test. I do not know what kind of logic that is. The same applies when a car runs into your car from an opposite direction. The Government has never given any thought to the issue. What should we do? Even if we move an amendment it would not be approved without difficulty. In the past few days, we have been trying to move amendments, but we have failed.

Today, 10 Members of the Liberal Party are present. What about the Democratic Party? Only some of their Members are present. Why? Some of them are applying for exemption and want to vote on the same side as our party. But if their application for exemption was not approved, they had better not return for the voting. (*Laughter*)

MR ANDREW CHENG (in Cantonese): Madam President, as I will be leaving Hong Kong next Monday, and I do not want to be absent from the meeting, I have been hoping the meetings in these few days would not be dragged on for too long. Colleagues from the Liberal Party appeared to be rather excited. Although they may not have drunk any wine this morning, the more they spoke, the more excited they got. They mentioned the Democratic Party, particularly the views of Mr Martin LEE.

Just a while ago, Mrs Selina CHOW said Mr Martin LEE himself did not drink, so, as he declared interest, he said he did not drink and went further to request other people not to drink. I would like to declare my interest now. I like to drink very much and I like to drive too. I remember when I studied in Australia I worked as a waiter. The shop-owner kept on persuading me to be a bartender, not because I liked to drink but because my face would turn red if I drank just a small amount. So, he could be sure I would not drink his wine without him knowing it. I like to drink and I like to drive, and today I speak in favour of the Bill proposed by the Government. Colleagues who spoke before me, particularly colleagues from the Liberal Party, have been giving me the impression that they repeated certain viewpoints. They said the Bill make

people drink less, and restricts our freedom in social activities. Sorry, I cannot accept such an argument. The name of the Bill is the Road Safety (Amendment) Bill 1998. In my opinion, the relevant amendment seeks to impose some restriction on the freedom of driving for drivers who may be under the influence of alcohol.

Mr Ronald ARCULLI was right when he said there would not be any problem if one drinks in a room and then go to sleep. But after drinking if one's behaviour may affect others or even the lives of others, I think we need to consider whether or not to tighten our standards. The limit of 50 mg is adopted by France, Germany and Australia. What is wrong if Hong Kong follows the footsteps of these countries?

People's behaviour is very complicated. Madam President, driving behaviour is also very complicated. As colleagues from the Liberal Party said, Members with different surnames, drivers with different driving experiences may offer different explanations when their cars have an accident. But we think one of the explanations is the influence of alcohol, though no one can tell exactly whether alcohol can explain everything. So, I think the government amendment this time has to be strict rather than loose. I hope everyone understands the support shown by the Democratic Party has nothing to do with restrictions imposed on our freedom, some of our freedom in social activities and drinking. I fail to understand the argument put forward by Mrs CHOW. If her argument was correct, then she should support a 0 mg limit, not 80 mg or even 1 mg. The reason is that before we can decide whether a person is subject to the influence of alcohol, and if we think drinking may affect safety on the roads, and the effect of alcohol varies from person to person, the relevant limit should be 0 mg, not any amount other than that.

On one occasion, Dr the Honourable Philip WONG told me, as he was drinking some wine in the dining hall, how drivers are tested for alcohol in Singapore. They are asked to stand on one foot for 30 seconds, and they will be in trouble if they cannot do so. I do not know if that is true but that was what Dr WONG told me. This is like a one-foot stand. Or a walk on a balance-beam. Not being able to walk in a straight line may mean trouble. If you think the effect of alcohol on people varies from person to person, you should not accept any amount, be it 80 mg, 50 mg, or 10 mg. Perhaps I can use myself as

an example. If I have an alcohol concentration of 10 mg, I may not be able to control my car properly. So, what can I do? I think for the sake of the community as a whole, we should set a limit which is internationally acceptable and which will reduce the incidence of some traffic accidents which should have been avoided. About this point, as our party chairman told this Council, the Democratic Party has had some heated debates. But as a responsible political party, we made a decision to vote for the sake of road safety.

Therefore, Madam President, we hope people can sacrifice some of their freedom in social activities, which is freedom applicable to some only. I hope people who know they will drive on social occasions can arrange transport for themselves if they anticipate to take more alcoholic drinks than they should. Moreover, I think Hong Kong has a very efficient transport system. We have taxis, the Mass Transit Railway and night buses. People have a lot of choices indeed.

We hope everyone should be prepared to sacrifice for road safety. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Madam President, the Honourable Andrew CHENG alluded to an argument I made in my speech, which was clear enough. Let me state once again what the argument is, but it is not a new one. I only want to clarify because Mr CHENG quoted what I said. The capacity for liquor varies from individual to individual. If we make our consideration on this basis, the limit should be zero. I said clearly in my speech that if there was to be a subjective standard to assess whether one would jeopardize the safety of others as one drives after drinking, then the Government has no sufficient rationale to support the view that the 50 mg limit would induce a greater degree of safety than the 80 mg limit. This is the point I would like to clarify.

PRESIDENT (in Cantonese): We are now at the Second Reading debate. Members have expressed a number of views. I will listen carefully to Members' speeches at the Committee stage to ensure that there is no repetition.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, having heard the interesting debate participated by so many Honourable Members, I am convinced that the Government's proposal to set the alcohol concentration limit in the blood of a drink driving driver at 50 mg is extremely lenient. Look, an 0 mg alcohol concentration is already good enough to make Honourable Members a bit excited, how excited they will be if the concentration is prescribed at 50 mg? Therefore, we are very lenient. (*Laughter)* Madam President, I will be more serious.

First, I am very grateful to Mrs Miriam LAU and members of the Bills Committee for their active participation and for painstakingly and carefully examining the Road Traffic (Amendment) Bill 1998 and for the contributions they made in perfecting the Bill. The Bill covers three areas he major objectives are: firstly, tightening the statutory limits concerning the alcohol concentration in the blood, urine and breath of a driver and amend the sampling procedures to enhance operational efficiency; secondly, including school private light buses in the scope of regulation of the existing passenger service licence scheme; thirdly, specifying that the sums collected or received by operators for the Government according to the parking meter management agreements or vehicle examination centre management agreements are not part of the general revenue of the Government.

When the Bills Committee debated the Bill, Members unanimously supported the amendments proposed to the regulation of school private light buses and the remuneration payable under management agreements. I reiterate that the Government will review the licence fees for private school bus and we hope to complete a review soon. During the scrutiny of the Bill by the Bills Committee, other than unanimously supporting the amendments just mentioned, Members have divergent views as to whether the standards for drink driving should be tightened. I would elaborate on this issue and respond to the questions raised by some Members.

The existing legislation on drink driving and the provision that every 100 ml of blood can contain 80 mg alcohol was enacted in December 1995. The Government pledged at that time it would review the effectiveness of the relevant law after it had been implemented for a certain period of time. The conclusion we drew after completing the relevant review last year is that the law has been effective since implementation in combating drink driving to a certain extent, but it fails to achieved all the desired effects fully. Therefore, we need to tighten the statutory limits for alcohol concentration permitted in the blood. I would briefly discuss our views. Firstly, although the law is effective in

reducing traffic accidents at night, as compared with our neighbouring Asian countries, the casualty rate of drink driving drivers in traffic accidents in Hong Kong is still relatively high. Secondly, the problem of drink driving is still very serious. Members have mentioned the figures provided by us. From 1996 to 1998, 77 people were killed in traffic accidents involving drink driving, of which 39 were confirmed as drivers who had taken alcoholic drinks. Among the remaining 38 persons killed, six were drivers who had not taken alcoholic drinks while 19 passengers and 13 pedestrians had not taken alcoholic drinks. In other words, the ratio of drunken drivers to innocent victims who had not taken alcoholic drinks in such traffic accidents is 1:1. Thirdly, the 50 mg specified limit of alcohol concentration permitted in the blood is the standard adopted by the World Medical Association and the European Committee. When we introduced the Road Traffic (Amendment) Bill in 1995 to implement the legislation on drink driving, the Hong Kong Medical Association made a press release, strongly supporting specifying the statutory limit of alcohol concentration permitted in the blood as 50 mg in every 100 ml of blood. The Association also stated that a study had confirmed that alcohol affects the central nerve system, slows down perception, makes people react slowly and impairs their ability to perceive danger. Fourthly, foreign research results have confirmed that reducing the limit of alcohol concentration permitted in the blood from 80 mg to 50 mg is indeed closely connected with a reduction in the number of casualties in traffic accidents and car accidents. On the basis of these findings, the Government has sufficient reasons to believe that specifying the limit of alcohol concentration permitted in the blood at 50 mg will help further reduce traffic accidents at night and traffic accidents related to drink driving. Fifthly, many professional driver associations have indicated that they support the Government's proposal and they certainly hope that their members will maintain the highest professional standards when they drive. Professional drivers drive vehicles on the roads for a long time and they should be concerned about the dangerous act of drink driving and the effects on themselves and other road users.

Many Members have said that it is inevitable to take one or two glasses of alcoholic drinks on social occasions in Hong Kong, therefore, the proposal to tighten the limit of alcohol concentration permitted in the blood will certainly inconvenience the public and affect their social lives. We fully understand that after these measures have been implemented, those people who cannot drive, because of having taken alcoholic drinks, will need to make other transport arrangements and they may find it somewhat inconvenient. But comparing this inconvenience to the greater protection for all law-abiding road users, there are more merits than demerits. Moreover, there are sufficient public modes of

transport in Hong Kong providing comfortable and fast services, so those who have taken alcoholic drinks can choose the suitable means of transport they like. We hope Members will understand that we have not suggested prohibiting people from taking alcoholic drinks, but we only ask them not to drive after taking alcoholic drinks. I also believe that eating chicken or duck cooked with wine should not lead to an excessive alcohol concentration in blood, therefore, Mrs Seline CHOW should not worry that the business of chicken and duck dealers will be affected as a result of this proposal.

Madam President, the Government proposes to tighten the relevant standard to give a very simple but important message that we should not drive under the influence of alcohol and try our best to ensure road safety for it is our responsibility. To safeguard the personal safety of members of the public, I hope that Members will support this Bill to prevent more people from losing their valuable lives as a result of the insensible act of drink driving.

Madam President, I will propose amendments to this Bill at the Committee stage. The major technical amendments include the following: first, revising the effective date of the Bill's amendments in respect of drink driving and school private light buses. We must postpone the relevant effective dates because the time taken to complete the legislative procedures of this Bill is longer than originally expected. Second, as the effective date of the legislation will be postponed, we must make consequential amendments to the transitional period for including school private light buses in the passenger service licence scheme. Third, making an amendment, at the request of the Bills Committee, to clearly specify that the notice issued by the Commissioner of Police designating a certain place or vehicle as a breath test centre is not subsidiary legislation.

With your permission, Madam President, I would like to take this opportunity to explain how we, government officials, do our lobbying. In fact, we follow the principle of active non-intervention, a principle that has contributed to Hong Kong's success, with our lobbying. Madam President, other than Mr CHEUNG Man-kwong's complaint or disapproval of the "personal services" of our colleagues, I believe you have not received any complaint that the Secretary for Transport has used violence, seized Members by their arms or stopped them from voting. Thank you, Madam President.

PRESIDENT (in Cantonese): I have a feeling that it is not the wine that intoxicates but the drinker who gets himself drunk. (*Laughter)*

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Traffic (Amendment) Bill 1998 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TIEN rose to claim a division.

PRESIDENT (in Cantonese): Mr James TIEN has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): If there are no queries, the result will now be displayed.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Mr NG Leung-sing, Prof NG Ching-fai, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Miss Christine LOH, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr HO Sai-chu, Mr Edward HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Ambrose LAU, Miss CHOY So-yuk, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

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

THE PRESIDENT announced that there were 52 Members present, 32 were in favour of the motion and 19 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Road Traffic (Amendment) Bill 1998.

Council went into Committee.

Committee Stage

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

ROAD TRAFFIC (AMENDMENT) BILL 1998

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Road Traffic (Amendment) Bill 1998.

CLERK (in Cantonese): Clauses 3, 6 to 10 and 12 to 15.

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

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Clause 2.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That of clause 2(a) stand part of the Bill. Does any Member wish to speak?

MR JAMES TIEN (in Cantonese): Madam Chairman, you may rest assured that the Liberal Party opposes the amendment to clause 2. We do not support changing the limit from 80 mg to 50 mg. Members of the Liberal Party have explained our arguments during the Second Reading debate. Thank you, Madam Chairman.

DR LEONG CHE-HUNG (in Cantonese): Madam Chairman, because of the problem of alcohol, the Second Reading debate just now nearly turned into a political dispute. It is not my intention to continue the argument, but I really think that it does seem a bit like an "argument among medical doctors".

There are only two medical doctors in this Chamber. I totally support a reduction of the limit, but Dr TANG Siu-tong appears to be saying that he is not willing to do the same. I do not know whether this is due to any personal consideration of his, or to the disapproval of his party. I hope that the Hong Kong Progressive Alliance (HKPA) can allow Dr TANG to vote freely on this issue. The reason is very simple. Dr TANG mentioned several factors; he explained that a reduction from 80 mg to 50 mg might bring some improvements, but that such improvements might not necessarily be caused by a reduction of the alcohol concentration limit. He added that quite a number of other factors should be considered. Second, he said that while a decrease in the number of traffic accidents might well be related to a reduction of the alcohol concentration limit, there might not be a direct causal relationship. I agree with him entirely, but let us not forget that when it comes to a matter of life and death, very often, we should make allowance for the "benefit of doubt". So, if we think that this is really good to the whole situation, really able to protect lives, we should then do it. I hope that Dr TANG can reconsider his position. Thank you.

DR TANG SIU-TONG (in Cantonese): What I said just now was that our party was of the view that 80 mg or 50 mg would not possibly make much difference. Actually, we do not have any clear evidence showing that such levels of alcohol concentration will significantly affect the human body.

So, when weighing 50 mg and 80 mg against each other, we do not need to be too strict. The standard adopted by Singapore is already very stringent, but the concentration limit there is just 80 mg. We are of the view that since the situation is also found in other places, we should follow the example of Singapore and go along this path.

MRS SELINA CHOW (in Cantonese): Dr LEONG Che-hung called upon Members not to forget other parties and groups, not to pick on the HKPA only. If Members belonging to the Democratic Party and the Democratic Alliance for the Betterment of Hong Kong can all vote freely on this matter, I am sure that we may well win.

DR LUI MING-WAH (in Cantonese): Madam Chairman, usually, I will not speak on issues like this. But having listened to the discussions today, I really must say something. Why?

In discussions on topics like this, Members should be free to agree or disagree. They can put forward whatever arguments they like, and this is what Legislative Council debates should be all about. But has it ever occurred to us that those who drink are in the minority in our community? So, if we simply look at the interests of this minority from the perspective of the majority and then conclude lightly that stringency should be preferred to latitude, will we be unfair to the minority? Such an approach actually runs counter to conventional wisdom, but I must add that I am not trying so much to encourage people to drive under the effect of alcohol. Rather, I simply disagree to the rationale behind the arguments of the Government, because as the representative of the industrial and commercial sector, I must say that we are concerned only about practical results, not the means adopted. We must emphasize practical results.

What *prima facie* evidence does the Government have for its arguments? The Government has made many references to the relevant legislation and studies in other countries. Well, in Hong Kong, we also compile statistics and conduct surveys on traffic accidents, but the only difference is that we have not done enough, nor have we done so with any profundity. I am of the view that if we legislate on the consumption of alcohol and driving simply by referring to such *prima facie* evidence, we will be most unfair to those affected. Why? Drinking will produce many different physiological effects. I do not know whether Members are aware that most Asians will feel drowsy after drinking, and 80% of them even turn depressed and downcast under the effect of alcohol. In contrast, in the case of Europeans, 90% of them will turn excited after drinking. I used to live in Wan Chai when I was small, and I can still remember how all those navy men sang and danced everywhere after drinking. They did so because of their different physiological reaction to alcohol. Then, when I studied in Canada, I read a formal report in the *Time Magazine*, in which it was confirmed that drinking would turn most Westerners excited, but would make Asians, the yellow races, downcast and drowsy. Just look at those Members who drink. Will they sing after drinking? Well, usually, the more they drink, the less they will talk; this is the case with most of them. Besides, I also wish to talk about how alcohol affects the human body. There are indeed some studies

which point out that alcohol will affect the nervous system, leading to slow responses and clumsiness. These are of course the possible results of drinking, but are they the main causes? I do not think that they are.

Besides, many reasons can be given to explain why the incidence of traffic accidents in Hong Kong is higher than that in Singapore. There are some 800 000 vehicles in Hong Kong; in Singapore, there may not be as many, and there are fewer pedestrians too. All these factors will have a bearing on the incidence of traffic accidents. So, it really stands against any logic to draw conclusions on our own situation by making reference to the evidence of other places. If the Government really wants to solve this problem, it should ask some professionals to conduct studies on the local situation; only this can enable us to come to conclusions and comments which are fair to those who drink. I do not agree that we should rely only on the *prima facie* evidence of other places when trying to solve this problem. That is why I cast a negative vote just now.

If such an approach is really adopted, I would rather support the comments made by Mr James TIEN a moment ago. The reason is that the law is not supposed to ban drinking altogether. Rather, it is supposed to forbid some people to drive after drinking, to warn them that they should not drink before driving. So, it will be more sensible, and fairer too, to impose penalties according to the levels of alcohol concentration. This is the first point.

My second point is that drinking and driving are closely related to our social culture and civic education. The Government should really do more work in this respect, and this may well be more effective than reducing the limit of alcohol concentration to 50 mg. Besides, I really hope that when the Government puts forward similar motions in the future, it can provide some concrete evidence and conduct some in-depth studies relevant to the local context, or else it will only waste our time. Thank you, Honourable Members. Thank you, Madam Chairman.

MR JASPER TSANG (in Cantonese): Madam Chairman, when Mr Ronald ARCULLI spoke during the Second Reading debate, he said twice, "Let me say a few words with earnestness." But I am not clear, I mean, I cannot be sure which words of his were actually said with earnestness. Well, if he was really

serious after he had said "Let me say a few words with earnestness" for the second time, then the Liberal Party, which is concerned about economic affairs, should really change its position and support the Government Bill. Why? Well, as Mr ARCULLI said, "Ask people not to do something, and they will want to do it all the more." So, it follows that when they are asked not to drink, people will want to do so even more. That way, the sale of wine will increase, and so will the revenue of the Government. And, if people cannot drive after drinking, what should they do? Mr James TIEN said that since people were not allowed to drive after drinking, their only alternative was to take a taxi. Well, this will bring more income to car parks, and more business to taxi drivers as well. Is it not very good to the economy? That is why the Liberal Party should really change its mind. Unlike Mrs Selina CHOW, I will not ask political parties to give exemption or allow their members to vote freely. Rather, I will ask them to change their minds altogether, to render their support. This will do the economy all good but no harm. Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Mr Ronald ARCULLI has indeed advanced some particularly good reasons in summer, for his name in Chinese ("夏佳理") implies particularly good arguments are forthcoming in summer. But as to the question of when he is joking and when he is not, I would say that he is always joking.

Madam Chairman, several Members belonging to the Liberal Party have exaggerated the implications of my remarks. I have never said that we should stop people from drinking. I said very clearly that people should not drive right after drinking an excessive amount of wine. I even told others that people were actually free to drink like a fish. Madam Chairman, I hope that you would at least allow me to make one more point. While puffs of cigarette smoke from a smoker may affect the people around him, a person who drinks will not cause any nuisance to the one sitting next to him. These are two different things. It is only after many years of struggle that I have finally managed to make this building a smoke-free one. I can say that this has been my only achievement in more than a decade's service in the Legislative Council. For many other matters, I have not been able to achieve any success despite my wishes. So, I am really proud of this achievement. My final point. Some people say that the Democratic Party has dismissed the possibility of exemption. But I have clarified the matter with Dr YEUNG Sum, and found out that no one has so far applied for any exemption.

MR LAU KONG-WAH (in Cantonese): Madam Chairman, originally, we decided that we would just state our position and give an analysis of the issue. And, seeing the debate between the Democratic Party and the Liberal Party, we did not want to get involved either. But now, I find that I should really make some comments on the points raised by the Liberal Party.

When Mr Martin LEE of the Democratic Party commented on the remarks made by Mr James TIEN of the Liberal Party, he said that the opening part was very good, but the conclusion was not so satisfactory. In contrast, Mr Edward HO said that my analysis was quite good, but that he did not agree to my conclusion. I do not quite understand why he should oppose my conclusion while endorsing my analysis. My analysis was actually very clear, and I also mentioned the experience of Germany. Well, a person under the effect of alcohol may be killed while driving, but then others may also be killed together with him. Is it worth it? The tighter the law, the smaller will be the number of accidents. These analyses are indeed very clear. So if people support such arguments, they should also support my conclusion.

And, in a serious fashion, Mrs Selina CHOW referred to a matter of principle and advised Mr Martin LEE, "Even if you do not like doing something, you simply cannot stop other people from doing it." She cited smoking as an example to illustrate this principle. This is indeed a very serious accusation, and I think that it seems to reflect an authoritarian attitude. Well, she should perhaps have said, "Even if we do not like something, we cannot stop others from doing it." But she seems to think differently, because having listened to all she said, I find that she seems to have gone to another extreme; that is, she seems to think that one should be allowed to do whatever one likes to do, be it smoking or drinking. Mr Martin LEE said that his greatest achievement as a Legislative Council Member has been the banning of smoking in the Council premises. Well, as a matter of fact, he has not been completely successful yet. Madam Chairman, let me tell you something. Smoking is no doubt no longer found in many rooms of this building, but in washrooms, people still smoke secretly inside the cubicles. *(Laughter)* Drinking is just the same; the stricter the ban, the more people will want to drink in secret. This is only natural. So, it may not necessarily be good to move from authoritarianism to absolute freedom.

We are not talking about a total ban on alcohol consumption here. Rather, we are simply discussing the imposition of some restriction on the freedom of some people. This is only reasonable, because my freedom is also affected. So, if the arguments and logic of Mrs Selina CHOW are really justified, she should oppose all alcohol concentration limits, including the 80 mg level. Mr Ronald ARCULLI also said this, but I really do not know which words of his were said with earnestness. But his attitude at the end of his speech was certainly very serious. As pointed out by Mr Jasper TSANG, when people are not allowed to do something, they will want to do it all the more. That was why Mr Ronald ARCULLI said that it was better for us to be stricter, raising the limit from 80 mg to 120 mg. But this is not justified, right? I mean, if we want to stop people from killing others, we should legislate against murder. We possibly cannot stop people from killing others by asking them to do so, right? So, such an argument simply does not stand to logic.

Madam Chairman, I now wish to put forward some new evidence and statistics. We have collected some medical reports, and we wonder if Dr LEONG Che-hung and Dr TANG Siu-tong can confirm if these reports are correct. Here I have a graph indicating the physiological conditions of a person at various levels of alcohol consumption from 0 mg to 600 mg — at 30 mg, the person starts to talk a lot; at 40 mg, he becomes clumsy; at 60 mg, he turns extremely garrulous; at 80 mg, he becomes either irritable or numb in his senses; at 120 mg, he is dead drunk; and, at 600 mg, death, of course. Madam Chairman, some of our colleagues here are garrulous even without drinking, and this is precisely the reason why you said something to the effect that "liquor does not intoxicate; one intoxicates oneself" a moment ago. It is extremely dangerous for someone who is extremely garrulous or numb in his senses to drive. So, for the benefit of ourselves, for others, for our relatives, for the benefit of our friends, for foreign tourists and for investors, the Liberal Party should really change its position and support this Bill. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): Mr Martin LEE should be very happy now because Mr LAU Kong-wah has so surprisingly chosen to confront the Liberal Party because of him. This is indeed very rare, but Mr LEE should really treasure the whole thing. First, let me make some clarifications concerning Mr LAU's points on authoritarianism, absolute freedom and so on. The Liberal Party has never asked for any total permissiveness. We have never said anything like this. Actually Mr LAU Kong-wah should be fair in his comments, because he should have heard what we said very clearly. As also

pointed out by Mr James TIEN, Chairman of the Liberal Party, if it can be proved that alcohol concentration in excess of 80 mg would lead to traffic accidents …… but there must be statistical support and sound reasons must be given to convince people …… if it can be proved that public safety will be endangered, we will also render our support, even if heavier penalties are to be imposed. But the Government cannot produce any convincing justification to prove that a reduction of the alcohol concentration limit from 80 mg to 50 mg can really reduce the incidence of traffic accidents. So, such an argument simply does not hold.

Unlike Mr Martin LEE, my concern is the level of alcohol concentration. The physiological effects of alcohol concentration vary from person to person, and the whole thing is quite a subjective matter. But the Government is now trying to impose some objective limits on the consumption of alcohol by drivers. Some colleagues said that the intention was not so much to restrict people's freedom to drink, but to stop them from driving after drinking. However, there is no denying that this would inevitably produce the side-effect of restricting people's freedom to drink because most people are law-abiding. Well, Mr Ronald ARCULLI was certainly right in saying that some people would defy the law deliberately. But most people are law-abiding, and so, they will not dare to consume alcohol up to the 50 mg limit, because 50 mg is indeed a very small quantity. We have also heard that this level of alcohol concentration is just about one and a half cans of beer, and is indeed very small. What I am discussing is whether or not such a level is appropriate, and I also wish to point out that the level set by them is inappropriate. But then both the Democratic Party and the DAB simply keep on side-tracking the argument. They have thus gone to the extreme and turned the topic into one which is about whether or not drinking should be allowed. And, they even go so far as to say that if drinking is to be allowed, people should then consider whether or not all limits should be abolished. We have never asked for a total relaxation; please do not distort our words. Mr LAU Kong-wah wondered why Mr Edward HO had so commented on his remarks, but I must say that we should really support the viewpoint of Mr HO. Actually, Mr LAU should study his own speech again, because he criticized the Government throughout his speech. So we can actually infer logically that he should cast a negative vote. But then, having stated his criticisms repeatedly, he said at the end he was going to vote for the government proposal. That is why Mr Ronald ARCULLI said that they wanted to become the ruling party. But this is not at all easy. Thank you, Madam Chairman.

MR LAU KONG-WAH (in Cantonese): Madam Chairman, a point of order. I request Mrs Selina CHOW to point which remarks of mine are criticisms against the Government.

CHAIRMAN (in Cantonese): Members speak of their own accord, and I cannot force any Member to speak.

MRS SELINA CHOW (in Cantonese): Madam Chairman, since my name is mentioned, I may as well give a reply or else he will say that I do not respect him.

But on the point he mentioned, I think the person who could hear the criticisms most clearly was Mr Edward HO. Well, this is the advantage enjoyed by a political party *(laughter)*. Since Mr Edward HO now has a chance to speak, and he has already raised his hand, I wish to let him give a reply. *(Laughter)*

MR EDWARD HO (in Cantonese): Madam Chairman, I think this is a very difficult task, because I cannot possibly recall each and every sentence in his speech. But what I can remember very clearly is that as he spoke, I followed him attentively and very much supported his arguments. For example, I very much agreed with him that if any legislation was to be enacted, we must consider what effects such legislation would produce. I cannot recall too much now, and I do not want to stir up any political rows and party arguments. We are supposed to discuss whether or not the limit should be tightened. Many Members have expressed their views and I do not want to repeat their viewpoints now.

As I asked a moment ago, should a society seek to regulate each and every act of the people and take actions to rectify the situation only when its laws become too harsh? We are of the view that 80 mg is a very reasonable limit. Why is it that driving in Singapore is safer than driving in Hong Kong despite its larger number of motorists? The reason is perhaps that in a society like Singapore, all acts of the people are subject to control and regulation. As pointed out by Mrs Selina CHOW, it even forbids children to drink coca cola, and there are inhibitions of all kinds. So, if we want Hong Kong to become a

society like Singapore, and if we are prepared to accept government regulation in all aspects of our life, we may as well support a reduction of the limit.

I am very surprised today, but I do not want to name the targets of my criticisms. Members should know that I am referring to the political parties. These political parties always maintain that they want freedom, and will frown at the mere mention of Singapore. But then they support such an approach this time around.

CHAIRMAN (in Cantonese): Honourable Members, the debates in this Chamber are sometimes delightful, sometimes serious; there are moments of heated arguments and excitements. But I hope that Members can refrain from being long-winded.

MRS MIRIAM LAU (in Cantonese): Madam Chairman, I rarely disagree with Mrs Selina CHOW, but this time, I must really do so. I also want to call upon my colleagues belonging to the Democratic Party and the DAB not to follow their party lines *(laughter)*. I urge them not to vote on the basis of their personal preferences.

Let me give some additional information here, some information about the experience in the United Kingdom. The limit of 80 mg is currently adopted in the United Kingdom, but as early as several years ago, it already conducted some in-depth studies and it has since hoped to reduce the limit from 80 mg to 50 mg. According to a study conducted by the Transport Department of the United Kingdom, if the limit is reduced to 50 mg, then, even on a conservative basis, it can be estimated that the number of deaths in traffic accidents will drop by 50 and that for injuries will go down by 1 500. The United Kingdom Government has very strong justifications to support a reduction of the alcohol concentration limit, and it wants very much to reduce the limit. But why has it still failed to reduce the limit despite the years of efforts it has made? It has been speculated that some British Members of Parliament have some personal preferences, and these personal preferences have hindered the efforts of the government to implement what is actually a fully justified policy.

I must therefore make an appeal to Members here. This legislature of ours should base its discussions on facts; when there are sufficient justifications, we must render our support. Members must not make their choices on the basis of their personal preferences. Let me repeat here that the proposal of the Government to reduce the limit to 50 mg is not intended to restrict the freedom of anyone to drink. People can drink however much they like — 50 mg, 100 mg or even 200 mg. There will not be any problem. The only thing is that they must not drive after drinking and that they must travel on public means of transport. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): I rise to speak once again to call upon Members to support Mrs Miriam LAU, the transport affairs spokesperson for the Liberal Party. Her analysis was indeed full of insights.

Very briefly, I am going to clarify several points only. First, the debate today should have nothing to do with any inherent conflicts between people who drink and those who do not. Such conflicts are absolutely not involved. I am sure that like all of us here, Mrs Miriam LAU must have met with many people from the transport sector. Many of these people have to drive, and not only that, they also love to drink. In fact, many drivers have told me that they always love to have a couple of drinks after work before going to bed. So, as can be seen, the question is not so much that they do not like drinking, but rather that they know from their experience that excessive consumption of alcohol will affect their driving behaviour. This is precisely what they are worried about. Members will certainly appreciate that as people who frequently have to drive along the highways, they do have grounds for such a worry. So, the conflicts between drinkers and non-drinkers are absolutely not involved here. And, let me stress once again that the question in focus today should be this: Should people still drive after drinking or consuming a certain amount of alcohol?

Second, in general, drinking will certainly affect people's driving behaviour. This is a matter of common sense, and the only question is the extent of such effects. As clearly pointed out by Dr LUI Ming-wah, Asians will fall drowsy after drinking, but Europeans will turn excited. Both these two types of responses are bad to driving. If a person falls drowsy under the effect of alcohol, it will be very dangerous for him to drive; equally, if a driver turns excited and hugs and kisses his or her partner, it will also be very dangerous. Well, admittedly, if a crash thus occurs, it is impossible to ascertain whether it

has been caused by the acts of hugging and kissing or by the excitement resulting from an excessive alcohol consumption. But the fact remains that alcohol will produce a stimulating effect.

I admit that although we studied many statistics when the Bills Committee was scrutinizing the Bill, I still cannot state objectively that once the limit is reduced to a certain level, there will not be any further doubts. In other words, I have no conclusive evidence that once we reduce the limit to 50 mg, we will be able to achieve the desired results immediately. But having read so many reports, we certainly have reasonable grounds to believe that a reduction will lead to improvements. On the basis of these reasonable grounds, we think that there are justifications for tightening the relevant legislation. Though members of the public may thus have to sacrifice their freedom a little bit, we will however enhance road safety.

So, I would say that even if people should say that we are wrong, our only mistake is that we have preferred prudence to rash actions. Actually, at this stage, I do not think that anyone can quote any scientific evidence to prove that others are absolutely wrong. If however we have sufficient reasons for our worries and doubts about the problem of safety (I am sure that there will be more and more evidence in the future), then I think we should really learn from the experience of advanced countries and use their relevant legislation as our example.

As I pointed out earlier, we should not look only at Singapore; we should also look at Canada, Germany, Australia and Belgium, where the limit has been reduced to 50 mg. I am of the view that we must be cautious and must not allow any excessive latitude. I do not know why they are so successful in Singapore. Perhaps, this may have something to do with the harsh penalties there; when offenders may be given strokes of the cane, who dares to drink any more? Besides, I know that the relevant law in Singapore is enforced with a considerable degree of flexibility. During the scrutiny of the Bill, we asked for information from Singapore, and we were told in such information that though the requirements were stated in the relevant legislation, they would allow a considerable degree of flexibility in enforcement. We do not know anything about all this because the social culture of Singapore is different from ours. But on the other hand, we see that most advanced countries in general do adopt 50 mg as the standard. And, on the basis of the ongoing research on this issue, we do have sufficient justifications for our worry that an alcohol concentration of

over 50 mg in the blood of a person will affect his driving judgment to a certain extent.

I can of course appreciate the feelings of those colleagues who drink and I also understand their concern about their social life. But I still think that whenever one drinks, one should always drink as much as one likes, or else it is better not to drink at all. If one has to restrain oneself or even has to take one's pulses every now and then when drinking, can there be any fun at all? I am sure that both Dr Philip WONG and Mr Andrew WONG would very much love to drink as much as they like, without having to restrain themselves or take their own pulses every now and then.

To sum up, I hope that Members can stop arguing for the sake of arguing. They simply should not do this. I am of the view that whether people should be allowed to drive after drinking is actually a matter which involves the interests of the public. I am sure that our colleagues belonging to the Liberal Party will share the same view. And, I am also sure that they will consider this matter very seriously. Thank you, Madam Chairman.

MR MARTIN LEE (in Cantonese): Madam Chairman, I must now rise to speak again, so as to do justice to Mr LAU Kong-wah. Madam Chairman, the debates over these few days have illustrated the truth of a famous saying: As far as politics are concerned, there are neither eternal enemies nor eternal allies. *(Laughter)* Mr Edward HO said that as he listened to Mr LAU Kong-wah, he nodded in approval all along. But then, he said, when Mr LAU reached the end of his speech, he discovered that he could not agree to Mr LAU's viewpoints. Therefore, he had the feeling that Mr LAU suddenly changed his position and supported the Government after appearing so critical of it. But I had a different observation. I also listened attentively to Mr LAU throughout, and I also nodded in approval all along, and when he reached the end of his speech, I still agreed to his viewpoints.

CHAIRMAN (in Cantonese): Mr Martin LEE, would you give way to Mr Edward HO?

MR MARTIN LEE (in Cantonese): Yes, certainly.

MR EDWARD HO (in Cantonese): I did not say that Mr LAU Kong-wah was critical of the Government. I didn't make that remark. *(Laughter)*

MR MARTIN LEE (in Cantonese): Sorry, that remark was made by another Member. Well, then, the case may be that as Mr Edward HO listened, he did not agree with Mr LAU, and when Mr LAU reached the end of his speech, he was especially unhappy. I also listened to Mr LAU throughout, but I agreed even to the last part of his speech. I think Mr LAU was right, and I found a little problem with one sentence only, but having added two words to it, I managed to make it correct. To borrow a comment made by Mr Ronald ARCULLI yesterday, I would say that not even any circumstantial evidence can be established to substantiate the allegation against Mr LAU. So, I think it is very unfair for people to criticize Mr LAU Kong-wah for lashing out at the Government. Such an allegation will become particularly serious if he really wants his party to become the ruling party.

Madam Chairman, let me now talk about Singapore. We in the Democratic Party have always adhered to the principle of dealing strictly with business, without trying to pick on any particular person or place at the same time. We would not say that Singapore is entirely worthless; Singapore is indeed better than Hong Kong in many respects. But this is simply not the point here. We have decided to support the Government in not following the example of Singapore because the limit now proposed is much better, more progressive. What is wrong about this? As mentioned by Mr Albert HO, the point which we have discussed over and over today is that it is fine for one to drink a lot, provided that he does not drive immediately afterwards. I remember that Members belonging to the Democratic Party once dined and had drinks with some independent Members. On this occasion, a Member not belonging to the Democratic Party drank really a lot, and he said that he could no longer drive and must take a taxi home. I told him that I was not drunk because I did not drink. I offered to drive him home on his car. That was the first time I ever drove a Porsche. Well, that was real fun, I must say. After I had taken him home, I took a taxi and went home. This experience shows that all the related problems can in fact be solved.

Lastly, I wish to thank the Liberal Party for giving exemption to Mrs Miriam LAU. This has enabled her to make some wonderful remarks in her speeches. But Members belonging to the Democratic Party will not enjoy such freedom, because they will not be given any exemption this time around.

MR RONALD ARCULLI (in Cantonese): Madam Chairman, I shall be very brief. Whatever the voting results today may be, the Liberal Party will always be the winner. If Members support us in opposing the amendment of the Government, we will of course win. But if Members support the amendment of the Government, that is, if they take the advice of Mrs Miriam LAU of the Liberal Party — bear in mind that she is our party whip, we can still stand up and say loudly: Both the Democratic Party and the DAB have taken the advice of the party whip of the Liberal Party. Thank you. *(Laughter)*

MR JASPER TSANG (in Cantonese): Madam Chairman, well, perhaps, whenever there are any important voting in the future, the Liberal Party should really work out a division of labour beforehand, specifying who would vote in support and who would not. That way, whatever the voting results may be, they will invariably come out the winner.

Mr Ronald ARCULLI said that I seemed to be gloating over the debate between the Liberal Party and the Democratic Party. Madam Chairman, well, the truth is that I have always enjoyed listening to the debates among Honourable colleagues in this Council. The high-quality debate between the Liberal Party and the Democratic Party is certainly worthy of appreciation, but I have just found out that the debate within the Liberal Party itself is even more worthy of appreciation. I agree very much with the comments made by the party whip of the Liberal Party.

Madam Chairman, when the DAB first discussed this topic, I opposed the proposed amendment. My main argument was that the proposed amendment, if enacted, would restrict people's freedom. So, I suggested that we must have very sound justifications before taking any actions. Since I was a Mathematics major, I think that all problems can be analysed mathematically. I said at that time that a study should be conducted to ascertain the number of past traffic

accidents involving drivers with an alcohol concentration between 50 mg and 80 mg in their blood. My point was that if we could establish that many traffic accidents had occurred because the 80 mg standard had made it impossible for the Government to initiate any prosecution, but that the 50 mg standard would have prevented these accidents because the Government could initiate prosecutions, then I would think that there were cogent reasons for reducing the limit. Unfortunately, however, we have failed to get any statistics to prove that with the 80 mg standard, there would be accidents and that a reduction of the limit to 50 mg would bring enhanced safety.

However, when we discussed this problem at greater depths, a colleague advanced a point which I found very convincing. So, I relayed the point to the Liberal Party and those colleagues who opposed the amendment on personal preferences (a term used by the Liberal Party). Now that the Government has proposed to reduce the limit from 80 mg to 50 mg, if we still say that the Government cannot provide any statistics and reject the proposal (I am talking about statistics on casualties)…… if the amendment cannot be passed today because of our disapproval…… if a serious traffic accident occurs next month and the driver concerned is found to have an alcohol concentration over 50 mg but below 80 mg, how will we feel? How can we bear the responsibility? Because of this reason, after further in-depth discussions, most colleagues have agreed to support the proposal, concluding that the limit should be reduced. Thank you.

CHAIRMAN (in Cantonese): Secretary for Transport, do you wish to reply?

SECRETARY FOR TRANSPORT (in Cantonese): Madam Chairman, I did not intend to speak but I can provide Members with some data or perhaps I can clarify some doubts. Members have said that we fail to provide some explicit data or information concerning the figures that the alcohol concentration in blood of drunken drivers ranges between 50 mg and 80 mg. In the paper circulated to Members, there is a diagram at the top right hand corner of page three indicating that from 1996 to 1998, among the drunken drivers intercepted by the police, the alcohol concentration in blood of around 15% of them ranged between 50 mg to 80 mg. And from 1996 to 1998, 39 drivers died from drink driving.

According to the information we obtained through inspecting the alcohol concentration in their blood, among these 39 drivers, the alcohol concentration in blood of seven drivers ranged between 50 mg to 80 mg.

Under our new legislation, these 15% of drivers might not have defied the law or drunk and traffic accidents may not occur. Under this new standard, the seven drivers who died might dare not take alcoholic drinks and they might have evaded the tragedy. Superficially, there are about 15% to 20% casualties, not too many, but we hope that no one will be injured or killed because of drink driving. This is our ultimate wish. It is certainly hard to achieve this but we still hope that we can gradually reduce the number of accidents caused by drink driving. This is our ultimate goal.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2(a) stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Miriam LAU rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Miriam LAU has claimed a division. The division bell will ring for three minutes.

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

CHAIRMAN (in Cantonese): If there are no queries, the result will now be displayed.

Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr NG Leung-sing, Prof NG Ching-fai, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Miss Christine LOH, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr HO Sai-chu, Miss Cyd HO, Mr Edward HO, Mr LEE Cheuk-yan, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

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

THE CHAIRMAN announced that there were 53 Members present, 28 were in favour of the motion and 24 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2(b) stand of the Bill. Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2(b) stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Miriam LAU rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Miriam LAU has claimed a division. The division bell will ring for three minutes.

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

CHAIRMAN (in Cantonese): If there are no queries, the result will now be displayed.

Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr NG Leung-sing, Prof NG Ching-fai, Mr CHEUNG Man-kwong, Miss Christine LOH, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Miss Cyd HO, Mr Edward HO, Mr LEE Cheuk-yan, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

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

THE CHAIRMAN announced that there were 53 Members present, 27 were in favour of the motion and 25 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Clause 5.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 5 stand part of the Bill. Does any Member wish to speak?

MR JAMES TIEN (in Cantonese): Madam Chairman, clause 5 seeks to amend the level of alcohol concentration relating to breath tests. Since this clause relates to a specified reduction of the alcohol concentration limit from 80 mg to 50 mg, the Liberal Party will oppose it.

CHAIRMAN (in Cantonese): Secretary for Transport, do you wish to reply?

(The Secretary for Transport indicated he did not wish to reply)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Miriam LAU rose to claim a division.

CHAIRMAN (in Cantonese): Mrs Miriam LAU has claimed a division. The division bell will ring for three minutes.

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

CHAIRMAN (in Cantonese): If there are no queries, the result will now be displayed.

Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr NG Leung-sing, Prof NG Ching-fai, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Miss Christine LOH, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Miss Cyd HO, Mr Edward HO, Mr LEE Cheuk-yan, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Ambrose LAU, Miss Emily LAU, Miss CHOY So-yuk, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

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

THE CHAIRMAN announced that there were 54 Members present, 28 were in favour of the motion and 25 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Clauses 1, 4 and 11.

SECRETARY FOR TRANSPORT (in Cantonese): Madam Chairman, I move that clauses 1, 4 and 11 be amended as set out in the paper circularized to Members.

Proposed amendments

Clause 1 (see Annex IV)

Clause 4 (see Annex IV)

Clause 11 (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 4 and 11 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ROAD TRAFFIC (AMENDMENT) BILL 1998

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

Road Traffic (Amendment) Bill 1998

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Amendment) Bill 1998 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Ronald ARCULLI rose to claim a division.

PRESIDENT (in Cantonese): Mr Ronald ARCULLI has claimed a division. The division bell will ring for three minutes.

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

PRESIDENT (in Cantonese): If there are no queries, the result will now be displayed.

Mr Albert HO, Mr Michael HO, Dr Raymond HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Mr NG Leung-sing, Prof NG Ching-fai, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Miss Christine LOH, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong and Mr TAM Yiu-chung voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Mr Eric LI, Dr LUI Ming-wah, Miss Margaret NG, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Ambrose LAU, Miss CHOY So-yuk, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Miss Cyd HO, Mr LEE Cheuk-yan and Miss Emily LAU abstained.

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

THE PRESIDENT announced that there were 55 Members present, 29 were in favour of the motion, 22 against it and three abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Road Traffic (Amendment) Bill 1998.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Insurance Companies (Amendment) Bill 1999.

INSURANCE COMPANIES (AMENDMENT) BILL 1999

Resumption of debate on Second Reading which was moved on 28 April 1999

PRESIDENT (in Cantonese): Does any Member wish to speak? Please press the "Request to Speak" button and wait for your turn to speak.

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Insurance Companies (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Insurance Companies (Amendment) Bill 1999.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

Council went into Committee.

Committee Stage

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

INSURANCE COMPANIES (AMENDMENT) BILL 1999

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Insurance Companies (Amendment) Bill 1999.

CLERK (in Cantonese): Clauses 1, 2, 3, 5 and 10.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr Deputy, I move that clause 4 be amended as set out in the paper circularized to Members.

The object of the Insurance Companies (Amendment) Bill 1999 is to enhance the regulation of the operation of Lloyd's in Hong Kong and require insurers to provide more and updated information to improve the effectiveness of the insurance industry regulation system.

Clause 4 of the Bill contains regulations for compliance by Lloyd's and its object is to bring Lloyd's under regulation similar to that on insurers. Following the advice of the Legal Service Division of the Legislative Council Secretariat, clause 4 is amended to improve its drafting and to bring into consistence with the legislative intent of clause 4 of the Bill. Items (a), (c) and (d) are technical amendments to state more explicitly and specifically that Lloyd's and its members as mentioned in the clause originally proposed refer to any members of Lloyd's or the members of Lloyd's taken together.

Item (b) proposes to amend section 50B(4) originally proposed. The section sets out the procedures for the removal of an authorized representative of Lloyd's when the Insurance Authority considers that he is no longer fit to take up the position. Following the advice of the Legal Service Division of the Legislative Council Secretariat, we have made the appeals procedures more specific. The proposed addition mainly states when the notice of opposition issued by the Insurance Authority will come into effect, and that the notice is still valid during the appeal period. The representative concerned should vacate office on the date specified in the notice. Should the appeal succeed, Lloyd's may reinstate the representative concerned.

Thank you, Mr Deputy.

Proposed amendment

Clause 4 (see Annex V)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 4 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

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

(Members raised their hands)

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

(No hands raised)

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

Council then resumed.

Third Reading of Bill

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

INSURANCE COMPANIES (AMENDMENT) BILL 1999

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

Insurance Companies (Amendment) Bill 1999

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

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Insurance Companies (Amendment) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Insurance Companies (Amendment) Bill 1999.

Resumption of Second Reading Debate on Bill

DEPUTY PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Occupational Retirement Schemes (Amendment) Bill 1999.

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1999

Resumption of debate on Second Reading which was moved on 16 June 1999

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

MISS CHAN YUEN-HAN (in Cantonese): Mr Deputy, in the past, there was no mandatory occupational retirement scheme in Hong Kong, and the retirement schemes voluntarily operated by employers for their employees have been subject to regulation by the Occupational Retirement Schemes Ordinance (ORSO). When the Mandatory Provident Fund System (MPF System) was first established, exemption was granted to all those occupational retirement schemes set up on or before 15 October 1995, so that retirement schemes set up in the past could be retained and allowed to continue their operation. There is nothing particularly wrong with using a particular date as the dividing line. But the formulation and scrutiny of legislation on MPF System has dragged on for many years, and, what is more, we still have to wait until next year, that is, late 2000, before the MPF System can actually be implemented. So, inevitably, over

these four or five years, some necessary adjustments have been introduced to the various occupational retirement schemes, so as to cope with the changing circumstances brought about by the passage of time.

I notice that in this Bill, the Government is actually trying to clarify the areas which require adjustments to cope with the changes brought about by the passage of time, and, it is also because of this reason that the amendments are put forward. The Hong Kong Federation of Trade Unions (FTU) and the Democratic Alliance for the Betterment of Hong Kong (DAB) support this amendment exercise. I rise in support of this, and some of the remarks that I am going to make are also connected with this.

We understand that the MPF System would need to make change with the passage of time. But as we also know, the discussions on the MPF System have been going on for four to five years. So I think many of the issues which we have been discussing and arguing about during this interim should also require some adjustments now. Unfortunately, so far, the Government has failed to make any adjustments. For example, when we examined the MPF System, we discussed the problems of stocks lending and the ratio of fund investments. The original legislative intent was that the ratio of local investments to overseas investments should be 3:7, but we already expressed our disagreement at that time. Besides, more and more local workers are now employed on a daily rate, but in the principal Ordinance, an employee will qualify as a member of an MPF System only after he has worked for the same employer for at least 60 days.

Mr Deputy, we support the amendments proposed by the Government to the ORSO today, but at the same time, I wish to point out one thing to the Government. The MPF System will be implemented next year, but we must still pay attention to all those related issues which we have been arguing about. In fact, many of these problems have become all the more obvious in the wake of the financial turmoil. For example, the problems of stocks lending and fund investments ratio have yet to be solved. Another problem is that because of our economic restructuring, more and more workers are now employed by their employers on another basis, that is, on a daily rate. I remember that when we discussed the various problems relating to the MPF System in the past, I also brought these problems to the attention of the Government in this Chamber. I hope that the Government can give us some concrete answers.

I must stress once again that the FTU and the DAB do support the amendments to the ORSO, but we also wish to ask the Government this question: When is it going to put forward amendments to address the problems discussed in the past and all those other problems exposed by the financial turmoil, so as to tie in with the implementation of the MPF System next year? I hope that the Government can give us a concrete answer in this Chamber today.

Thank you, Mr Deputy.

DEPUTY PRESIDENT (in Cantonese): Secretary for Financial Services, do you wish to reply?

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): As far as I understand it, I do not need to speak but now that Miss CHAN Yuen-han has made some remarks, I would make a brief reply. Although this Bill is not directly related to what Miss CHAN just said, I fully understand her concern and am extremely grateful to her for her support. I hope that she will continue to support the MPF System.

Miss CHAN has made two main points. The first point concerns investment. In fact, the investment guidelines have touched upon many investment issues and I will reflect to the Board of Directors of the MPF Miss CHAN's views and the relevant investment guidelines given during past debates of the Legislative Council, in particular, the stocks lending and borrowing, and the proportion of Hong Kong dollar assets to foreign currency assets. At an appropriate time (there is a fairly long time before the implementation), I think we can conduct a review. Just as Miss CHAN has said, after the financial turmoil, do we need to evaluate the relevant situation again? It is worth doing so and the Board of Directors should consider this. I will raise this issue then.

The second point concerns daily rated employees. This is an essential problem. From my perspective as the Secretary for Financial Services, I think that we must have detailed data and conduct a detailed survey before drawing a conclusion as to whether it is necessary to change this basic requirement before the implementation of the MPF System. Frankly speaking, as this is a

significant change, unless there are definite reasons supported by a survey, otherwise, I am not inclined towards making the change. We will ask the Census and Statistics Department to continue to collect data and we will not forget Miss CHAN's suggestions. But I am very sorry that I cannot make any pledges now.

Thank you, Mr Deputy.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Occupational Retirement Schemes (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Occupational Retirement Schemes (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1999

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Occupational Retirement Schemes (Amendment) Bill 1999.

CLERK (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1999

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr Deputy, the

Occupational Retirement Schemes (Amendment) Bill

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

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Occupational Retirement Schemes (Amendment) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Occupational Retirement Schemes (Amendment) Bill 1999.

Resumption of Second Reading Debate on Bill

DEPUTY PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Factories and Industrial Undertakings (Amendment) Bill 1999.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1999

Resumption of debate on Second Reading which was moved on 27 January 1999

DEPUTY PRESIDENT (in Cantonese): In accordance with Rule 21(4) of the Rules of Procedure, I have given Mr Ronald ARCULLI, Chairman of the Bills Committee on the Factories and Industrial Undertakings (Amendment) Bill 1999, permission to address this Council on the report of the Bills Committee.

MR RONALD ARCULLI: Mr Deputy, as Chairman of the Bills Committee on the Factories and Industrial Undertakings (Amendment) Bill 1999, I wish to report to Honourable Members the major issues discussed by the Bills Committee on this Bill.

The purpose of the Bill is mainly to provide for mandatory safety training for persons employed in the construction and container handling industries. The Bill also empowers the Commissioner for Labour to make regulations for the introduction of a safety management system in selected industrial undertakings, after the Bill has been enacted.

Under the Administration's proposal, proprietors and contractors of construction and container handling operations can only employ workers who have attended recognized safety training courses and have obtained the certificates, which are commonly known as "green cards". To satisfy this new requirement, these workers must carry with them the valid certificates while at work, and must produce the certificates, upon demand by the proprietor or his agent, or by the occupational safety officer.

The Bills Committee has noted that non-compliance with the above requirements will be an offence under the Bill, and the maximum penalty will be a $50,000 fine for proprietors, or a $10,000 fine for workers. To cater for cases where workers have genuinely forgotten to bring or have lost their certificates while at work, the Bills Committee has suggested that a reasonable period of time should be allowed for workers to produce their certificates.

Members have also advised the Administration to put in place a simple and convenient system for workers to report loss and to obtain replacement of their certificates.

The Administration has accepted the Bills Committee's suggestion and has agreed to move Committee stage amendments to this effect. However, as the initial amendments proposed by the Administration did not cover cases where the demand was made by the proprietor, I have subsequently discussed with the Administration and the industry on this issue. I am glad to say that, as a result of the discussion, the industry and the Administration have now agreed that a reasonable period of time should also be allowed for production of certificates upon demand by the proprietor or his agent. Relevant amendments will be moved by the Administration to incorporate this new arrangement.

On the renewal of certificates, the Administration has advised that workers can apply for refresher training and renewal of certificates six months before the expiry of their certificates. The Administration has also agreed to introduce an amendment to provide a defence for the proprietor who has reasons to believe that the certificate of his worker has not expired.

In view of Members' concern that a proprietor may have to terminate the employment of a worker whose certificate has expired, the Administration has clarified that there is no such intention. The Bill only requires that the worker cannot be employed at the undertaking, on the expiration of one month after the appointed date, in a post requiring the safety training certificate.

To allay Members' concern that other types of industrial undertakings may also be added to the Fourth Schedule for the purpose of the mandatory safety training requirements, the Administration has agreed that such changes will be subsidiary legislation subject to positive vetting of the Legislative Council.

Regarding the introduction of a safety management system in designated industrial undertakings, some members of the Bills Committee have questioned the rationale of the proposed three-tier system. The Bills Committee is also concerned whether the Administration can enforce a safety management system which is to be developed and maintained by the companies themselves.

In response to members, the Administration has explained the policy objective of self-regulation of the industry, and has agreed to take into consideration the views expressed by the Bills Committee and representatives of the industry, trade associations and professional bodies, before finalizing the proposed Safety Management Regulation. The Administration has also agreed, in response to our suggestion, to empower the disciplinary panel to impose a fine, in addition to other disciplinary powers, on registered safety officers. In this regard, an amendment will be moved by the Administration.

Mr Deputy, I am glad that the Administration has taken on board many of the suggestions put forward by members of the Bills Committee. Members will also address those issues relating to the operation of the safety management system when the Regulation is introduced into the Council.

With these remarks, and subject to the agreed amendments to be made by the Secretary for Education and Manpower, I commend the Bill to this Council. I would also like to say that on occasion. It has not been an easy Bill to scrutinize, but I am very grateful to the Administration for a fairly open-minded dialogue that we had during our deliberations, indeed, both inside and outside this building.

Thank you, Mr Deputy.

DEPUTY PRESIDENT (in Cantonese): Does any other Member wish to speak? Please press the "Request-to-Speak" button and wait for your turn.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, I will vigorously support all legislative and administrative measures which can improve industrial safety, because it is my conviction that the lives of workers are much more important than anything else.

Construction sites have long been the areas "worst-hit" by industrial accidents. From the papers, we often read many reports on appalling accidents in construction sites. And, from the papers today, we can also read reports on a serious industrial accident which happened just yesterday. An unfortunate

construction worker who was working at heights fell to the ground and sustained serious head injuries upon impact. He was certified dead before being rushed to hospital. He was survived by a wife and two children aged 12 and 17 respectively.

It was commented a moment ago that many industrial accidents had been caused by workers' failure to use safety equipment. But I must point out that for this type of accidents, and for many other accidents involving working platforms and builders' lifts, even if the workers concerned have complied with all the required safety measures, once any accident occurs, it will still be impossible for them to protect their own lives. Worse still, some employers do not even provide any safety equipment for their workers.

Mr Deputy, when compared with the relevant figures of other countries and places with a similar level of economic development, the number of industrial accidents in Hong Kong is extremely, extremely, extremely high. This is somewhat "a disgrace to the prosperity of our society". Over the past two years, the number of industrial accidents in Hong Kong has been increasing incessantly, rising from some 50 000 cases in 1995 and 1996 to some 60 000 in 1997 and 1998. Of all these accidents, the number of construction site accidents has been the highest. Worse still, the consequences of construction site accidents are very often the most serious, as evidenced by the especially large number of resultant deaths. Last year, for example, the number of deaths resulting from construction site accidents increased by 20% over the corresponding figure in the preceding year.

I hope that Members will not look only at the size of the figure. If we add up the number of people involved in the various accidents and also the number of deaths, we will probably have a queue stretching from Central to Shau Kei Wan. I think we should not focus only on the size of the figure; more importantly, I hope we can all note that construction site accidents have already taken the lives of many workers, inflicted both psychological and physical harm on them and shattered their families.

Mr Deputy, I certainly support the safety training course commonly known as the "green card system". But I must point out categorically that the "green card system" can at best achieve a very limited effect on improving industrial safety. How can a one-day safety training course of seven hours' duration be expected to achieve much? I am sure that Honourable colleagues here today can all see this point. And, what is more, practically all workers taking the course will be issued with the certificate. So, we simply should not think that once a worker is issued with the "green card", he will be safe forever.

I must point out clearly to the Secretary for Education and Manpower that the "green card system" should never be allowed to become an excuse for employers to stop providing any further safety training for their employees. I am of the view that the Government must draw up specific in-service safety training requirements for individual job types at construction sites; and, for those types of jobs which are more important, a system of professional examinations must be established.

Mr Deputy, I also wish to take this opportunity to discuss once again how I look at the attitude of the Government towards industrial safety. Whenever any serious industrial accident occurs, whenever the Government tables any bill on industrial safety before this Council, the Government will invariably say that industrial safety is very important. But I still have reservations about the importance which the Government attaches to industrial safety.

I have always wondered whether industrial safety is really an important issue to the top echelons of the Government, to the Bureau Secretaries and even to the Chief Executive. Have we in fact paid any attention to the statistical trends of industrial accidents and sought to ascertain their effects on employees? Are we going to set down any specific objective under which, for example, we aim to reduce the industrial accidents this year by a certain proportion? Are we going to set down an objective of "zero-death" for industrial accidents, so that we can formulate various effective measures to achieve our goals?

Mr Deputy, human lives are of paramount importance, and it is the unshirkable duty of the Government to reduce the number of industrial accidents. I so submit.

MR CHAN WING-CHAN (in Cantonese): Mr Deputy, the incidence of industrial accidents in Hong Kong has remained very high, and the number of casualties caused by these accidents is the highest among all types of injuries and deaths at work. The tears and blood behind all these accidents really make our hearts sore, and the container handling industry has seen a higher rate of industrial accidents and injuries. So, the Federation of Trade Unions (FTU) and the Democratic Alliance for the Betterment of Hong Kong (DAB) will support the Bill put before this Council by the Government this time around, which seeks to make it mandatory for the employees of the two industries mentioned above to receive basic safety training and for employers to employ workers who have received such safety training. The reason is that, as revealed by statistics, the accident rate for workers who have received safety training can be reduced by as much as 70%.

The "green card system" has actually been implemented for quite some time. But only a handful of people or workers engaged in the construction industry have obtained the "green card", showing that the employees concerned do not really attach much importance to the system. Since the possession of the "green card" by construction site workers has not been made a mandatory statutory requirement so far, and since employers simply do not bother to provide any safety training for their workers, there has been a general lack of safety awareness. For this reason, it is justified to make it mandatory for employers to employ workers who have received safety training, workers who can produce their "certificates". This will work far more effectively than relying solely on publicity. So, there is a real need for enacting legislation, so as to vigorously promote safety training.

Besides, we must enhance the safety awareness of both employers and employees. But we must also note that this alone is not enough to ensure safety. A couple of days ago, a container truck loaded with used motorcycles exploded. This is not simply an occupational safety problem. It involves something far more complicated, such as customs declaration, rules of goods transportation and supervision. So, if the Government wishes to reduce the number of industrial accidents and resultant casualties, it will have to take actions in different aspects, provide full-scale support and conduct a thorough review.

As regards safety management, four years has passed since the Government published a consultation paper entitled "Safety Management System" in 1995. As stated in the latter part of this Bill, the safety management system proposed by the Government will only apply to organizations each employing more than 50 people, and organizations each employing fewer than 50 people will still be exempted. We naturally agree that some measures have to be implemented step by step. But the Government must note that the matter should not drag on for too long, because the potential dangers faced by all employees are not much different, whether they work in large organizations or small organizations. And, it must also note that most private sector organizations in Hong Kong are small and medium companies each employing fewer than 50 employees. I hope that the remaining part of this Bill can be implemented as soon as possible.

With these remarks, Mr Deputy, I support this Bill on behalf of the FTU and the DAB. Thank you.

MR ANDREW CHENG (in Cantonese): Mr Deputy, I am going to speak for the Democratic Party on the resumption of Second Reading debate on the Factories and Industrial Undertakings (Amendment) Bill 1999.

Mr Deputy, the construction industry and the container handling industry can be classified as high-risk industries because of their high incidence of industrial accidents. This is especially the case with the construction industry, which recorded as many as 15 380 industrial accidents in just the first three quarters of 1998. Of all these accidents, worse still, 43 were fatal ones, and this is indeed a very alarming figure. So, the Democratic Party considers that the Government is going in the right direction by proposing to introduce mandatory safety training, that is, the "green card system", for the workers in the construction and container handling industries, and by requiring the proprietors and contractors of the relevant industries to develop a safety management system,

The provision of basic safety training for workers will help enhance their safety awareness and reduce the incidence of industrial accidents. However, in the long run, the scope of mandatory safety training for workers should be

expanded, and such training should not be limited to private sector organizations only. Government works projects and works sites should also be subject to regulation by the Ordinance. The Government has explained that since this Bill is under the Factories and Industrial Undertakings Ordinance, its scope of application should not cover the Government. The Democratic Party considers such an explanation not at all reasonable. On many different occasions, and also in its reply to my written question, the Government has made it clear that the Government has no plan to apply the Factories and Industrial Undertakings Ordinance to the Government. It has also emphasized that Regulation 700 of the General Regulations applicable to civil servants already requires civil servants to observe the Ordinance. But the fact is that although the number of occupational injuries sustained by civil servants has risen from 2 452 cases in 1996 to 2 801 cases in 1998, the Government has never, over the past three years, taken any disciplinary actions against any civil servants for violating Regulation 700 of the General Regulations. That being the case, has the internal code of practice of the Government really achieved any great effect? If the Government really wants to do more in occupational safety, it should take the lead in applying the relevant regulations to civil servants, so as to make the Government liable to appropriate legal penalties.

I also want to raise one specific point on the "green card system" proposed by the Government, and my point involves the matching of mandatory safety training courses and the needs of the industries concerned. As the Bills Committee already pointed out in the course of its scrutiny, owing to the high mobility of container handling workers, the number of workers who actually need to obtain safety training certificates may be far greater than the Government's estimate. So, if the number of available safety training places cannot meet actual demands, the operation of the relevant industries will be directly affected. The Government has of course replied that there will not be any problem. But the Democratic Party still thinks that the Government should closely monitor the demands of the relevant industries; it must not treat this matter lightly.

Another aspect of this Bill is on expanding the powers of the Commissioner for Labour, so that he can make the Factories and Industrial Undertakings (Safety Management) Regulations and require proprietors and contractors to implement a safety management system. The Government

proposes to establish a three-tier regulatory system: for the first tier, construction sites or industrial undertakings employing 100 workers or more and with contracts each worth $100 billion or more are required to comply with 10 out of the 14 requirements stipulated in the safety management system; the relevant organizations each employing a workforce of 50 to 90 people are required to comply with eight out of the 14 requirements; organizations employing fewer than 50 people are exempted for the time being.

The Democratic Party is of the view that this proposal is marked by loopholes, both in terms of logic and practical operation. First, standards of occupational safety should not be based on the number of employees and the value of contracts; attention must be paid to safety regardless of the number of workers employed. As revealed by the Report No. 31 published by the Audit Commission late last year, 36% of the industrial accidents which occurred in the 120 industrial undertakings covered by the survey actually involved small companies employing fewer than 50 people. But under the safety management system proposed by the Government, these small enterprises will be exempted, and medium and large organizations are the only targets. Such an objective is simply incorrect. Moreover, in terms of practical operation, the proposal of the Government may well induce some companies to split themselves into small companies each employing fewer than 50 people, so as to avoid regulation and supervision. How is the Government going to plug this loophole? So, the Democratic Party urges the Government to delete the exemption provision as quickly as possible and require all organizations to implement a safety management system, so as to raise the standards of occupational safety. At the same time, the Government should also set down some objective criteria on safety inspection and the performance of safety officers. And, the results should be used to assess the effectiveness or otherwise of the safety management systems implemented by individual companies.

Mr Deputy, I now wish to turn to the composition and responsibilities of the Safety Committee mentioned in the Factories and Industrial Undertakings (Safety Management) Regulations. The proposed Safety Committee will be responsible for giving advice on occupational safety measures and to review such measures adopted by industrial undertakings on an ongoing basis. The Democratic Party is of the view that the Committee is an important segment in the implementation of safety management systems. For this reason, its terms of

reference should be clearly stipulated in the Regulations, so as to enable its members to discharge their duties really well. If not, that is, if the proposal of the Government is adopted and its terms of reference is simply set out in an non-binding code of practice, members of the Committee may be denied access to the relevant information or simply be barred from inquiring into the occupational safety conditions of the relevant workplaces. When this occurs, the Committee may well become a largely useless body which fails to achieve the desired results.

Mr Deputy, finally, I wish to discuss whether or not workers should have the right to refuse to work under some circumstances which may pose serious danger to their safety and health. So far, the Government is only willing to define the circumstances which may endanger workers' safety and health and to deal with workers' refusal to work in the code of practice under the Regulations. The Democratic Party maintains that this proposal cannot possibly give adequate protection to workers, because the legal force of the code is after all not clear enough, and may lead to the opposite result of arousing disputes. The Government should incorporate the relevant criteria and workers' right in the Regulations. That way, when workers face any dangerous circumstances, they can resort to the law for protection.

Mr Deputy, I so submit.

DR RAYMOND HO: Mr Deputy, industrial safety is a particular area that we need to put in more efforts to make improvement. Compared to other advanced countries, our records in this aspect have not been too impressive. Appropriate legislation is required to enhance our industrial safety.

Basically, this Bill serves the purpose. However, I would like to draw the Administration's attention to some aspects in the proposed regulations. In the early stage of their implementation, many workers will be required to undergo training. Both qualified instructors and approved training courses should therefore be readily available for workers. It is equally essential that arrangements for workers to attend refresher courses for renewal of the relevant certificate should also be considered for the subsequent maintenance of the system.

With regard to the responsibility in complying with the proposed regulations, it is very imperative that there should be a clear delineation of duties between a proprietor and his employees. More often than not, the employers are penalized because they are an easy target. A demarcation of duties will be of assistance to the implementation of the safety regulations. There is already wide concern that, while the Government fails to appropriately penalize construction workers in certain circumstances, very often, the employers become the scapegoats. It is grossly unfair.

On the other hand, the Administration needs to clarify the areas of responsibilities of various departments concerning the implementation of the regulations. According to the Bill, the Labour Department is primarily responsible for enforcing the proposed regulations. However, the Bill will apply to construction sites which are subject to other regulations enforced by other departments under the Works Bureau too. Vis-a-vis the proposed regulations to be enforced by the Labour Department, there is a "Draft Code of Practice for Site Safety Supervision" under the authority of the Buildings Department. Clarification in this aspect is needed for effective implementation of relevant safety regulations.

I would also like to urge the Administration to clarify whether the definition of "construction work" in the Fourth Schedule covers activities conducted at places other than construction sites. If so, the impact and effects of the new requirements on the practitioners of the construction industry will be much greater and wider. This situation might call for more discussions and consultation with the industry. For perfecting the Bill, the Administration should consider setting out in detail definitions of "relevant person" and "relevant safety training course" as used in the draft.

With these remarks, I support the passage of the Bill. Thank you.

THE PRESIDENT resumed the Chair.

MR JAMES TIEN: Madam President, I rise to speak in support of the Factories and Industrial Undertakings (Amendment) Bill 1999. Both the Liberal Party and the Hong Kong General Chamber of Commerce support the introduction of this Bill, especially in the construction and container industry area. On the point of industrial undertakings for other areas, such as manufacturing industries in industrial buildings, the Government has already addressed Members' concerns that these undertakings may be added to the Fourth Schedule for the purpose of the mandatory safety training requirement. The Administration has agreed that such change would be subsidiary legislation subject to positive vetting of the Legislative Council.

We agree that industrial safety is very important for all industries in Hong Kong. But in recent years, industrial accidents mostly occur in construction sites or in the container industry, not so much in the manufacturing or the traditional manufacturing industries, such as textiles, garment making or toys and so forth. However, we do bear in mind that those industries still have a substantial presence in Hong Kong and the industrial safety on the part of the management should be improved. But we do hope that the Government, when submitting the subsidiary legislation concerning the manufacturing side to this Council, will give Members a chance to debate further on this.

On the point that is raised by the Honourable Andrew CHENG on workers' right to refuse dangerous work, I think that we need to strike a right balance. On the employers' side, they should provide safe working place and safe working equipment. But on the other hand, if the employers have achieved doing that, it would be improper if the workers use reasons of industrial safety to refuse work, because there are certain areas in construction that can be regarded as dangerous. And if workers have the right to refuse work on that particular part, the subsequent work will be delayed or simply could not be carried out. In that sense, how then would a building be actually completed?

In regard to the manufacturing industry, we also have similar problems that during a chain of operations, there may be one or two areas which are regarded as dangerous. And the employer would admit that those job specifications could be and should be regarded as dangerous. But on the other hand, if workers should have the right to refuse work after the employer has provided enough safety measures and equipment and has given enough caution, it would pose a problem of actually having the project or product completed, and therefore would also affect the job prospects of workers that are involved in the whole sector.

With these remarks, Madam President, the Liberal Party and the Hong Kong General Chamber of Commerce will support this Bill.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, the FTU and I will support this Bill.

Life is the most important of all. Press reports both in the past and now all tell us that serious industrial accidents are common in some particular industries such as the construction and container handling industries. Whenever I read such reports, I cannot help asking, "Why does the community at large not do more in this area?" Just a couple of months ago, a young man fell from the boatswain's chair in which he was working and died. Some workers told me that the accident was caused by the victim's mistake in buckling, and he buckled the rope in the wrong direction. So, when something went wrong with the boatswain's chair, he fell from it immediately, because the chair was buckled in the wrong direction and thus could not provide sufficient support. In the end, he fell onto the ground.

Similar accidents frequently occur, and I do not rule out the possibility of carelessness on the part of workers. But I still want to ask, "For all those industries which frequently see so many accidents, such as the construction industry, can the Government in fact be more meticulous in its work of promoting industrial safety?" I asked Mr CHAN Wing-chan a moment ago, "How detailed is the proposed safety management system?" And, whenever there are any problems with boatswain's chairs, hand-dug caissons, other types of construction sites or other types of construction works, I will ask the Government, "Since we do not have any safety officers, should the Government then draw up a more specific and elaborate safety management system? I would not deny that the work currently done by the Government is very important, but I still think that the Government should conduct more detailed research on some particular areas as quickly as possible.

Some 10 years ago, when we started to promote industrial safety and requested construction site workers to wear safety helmets and pay attention to their own safety, they responded rather negatively by saying, "How can I possibly work after putting on such a clumsy helmet?" Or, they would complain that their movements would be very much hindered after putting on the safety belt. However, after some 10 years of hard work, we have managed to

change their attitude. That is why they also support the "green card system" under discussion today. The Government has of course made a lot of efforts, and so have trade unions. The community at large has become increasing concerned about industrial safety, but every day, we still read many press reports on industrial accidents. Can the Government do more work, more detailed work, in this area?

I think we have already achieved some progress. But even with such progress, when we learn of all those sad news stories every day, we will still feel very uncomfortable. And, it is particularly heartbreaking to learn of how the families of the victims suffer.

For such reasons, we fully support the "green card system". But I still hope that the Government can do more work, more detailed work, in this area. In particular, it must listen to the views of trade unions. The various trade unions of the construction industry have already put forward many good opinions, and they have also agreed to promote the publicity work on industry safety, so as to win the acceptance of all workers.

At first, I did not intend to speak. But having listened to my colleagues' remarks, I felt compelled to describe how I felt when I approached the families of the victims following some industrial accidents. I think we should now implement some proposals which are more specific in nature. For example, as I asked a moment ago, when workers have to work on boatswain's chairs, or when they have to take builders' lifts, should we require them to follow a complete set of safety procedures?

Madam President, that reminds me of my driving lessons now. Whenever I am in the driver's seat, my instructor will tell me to recall three steps, the three steps which I must follow. I regard these three steps as a complete set of procedures. Therefore, should the Government really make more detailed efforts, instead of sticking to the old ways? If it seeks to pick on a particular industry once it finds that that industry is involved in comparatively more accidents, it will only break the rice bowls of the workers concerned and create a distorted picture that workers do not treasure their own lives. That is not the truth, because workers do treasure their own lives; but, they too need to keep their rice bowls. Please do not break their rice bowls. The question is therefore how we are going to strike a proper balance.

I hope that on the basis of its long years of industrial safety promotion, the Government can keep on working in a more detailed and specific manner. For the procedures I mentioned just now, whenever workers want to take builders' lifts, they should be supervised by people especially assigned by construction sites for the purpose, so as to ensure that they follow the whole set of procedures. This should also apply to workers having to work in boatswain's chairs. I hope the Government can provide us with more detailed information when it submits its proposed safety management system later on.

Madam President, the FTU and I fully support the Bill. Thank you.

MR RONALD ARCULLI: Madam President, I rise to speak in support of the Bill and also to welcome the introduction of a mandatory training programme for the construction industry. Indeed, I think that it is well known to the Administration that the "green card system" which is now adopted by the Bill was first introduced by the Hong Kong Construction Association some years ago. But at that stage, it was a voluntary programme introduced by the industry. It was really through many years of hard work and education that part of the construction workforce is actually undertaking safety training at a voluntary level. But I think time has long past for the introduction of mandatory safety training and hopefully, this will go some way towards reducing the number of injuries in that particular industry.

Talking about the number of injuries in the industry, I hope that the Government will be able to at least either confirm or look into the situation of what I am about to say. From the statistics that we have seen in the past concerning injuries in the construction industry, presupposing that the workforce in the industry is round about 70 000, the numbers look particularly bad. But I am told that for the workers in what I call the decorating industry, their injuries are also included in the sector of the construction industry. But the number of workers in the decorating industry is not included, and I am told that there are about 130 000. So, if you look at a workforce of 200 000 as opposed to 70 000, the numbers would look quite different. So, I think it would be interesting for us to know this figure before the commencement of the compulsory safety training programme, so that we can really and truly follow what improvement there is. Because what I would hate to see is that a change of yardstick after the

introduction of this training scheme might then project a picture that may not be true, if we then later on added in the decoration workers into the construction industry workforce.

The second point that I would like to make is that some Members have spoken about an exemption of firms that have less than 50 employees and this was indeed raised in the Bills Committee in discussions with the Government. I put forward an idea to the Government that if they want to expand the safety management requirement to firms of less than 50 employees, there must be a number below which it would be impractical to expect safety management committees and so on and so forth. If we want to help the smaller firms, let us just pick a number, say 20 or 15, it does not matter what number it is. One idea is to have a centralized service where we can put together a unit and you can privatize this, it does not have to be a government service. These smaller operations or businesses, instead of being forced out of business because of inability to comply, can actually hire a service for people to advise them. So, I would like the Government to think about whether that is possible. But it is all very well introducing these mandatory safety training programmes. In fact, the enforcement subsequently is based on current practice. And for current practice, as Members all know, there are many many more prosecutions of employers as opposed to employees. If there are 1 000 summonses issued for an employer, I would be surprised if there is one issued for an employee. So, after the mandatory programme commences, I think the Administration, as far as I am concerned, should actually look at it. But after that, some of the arguments that we have previously heard about the difficulty of identifying workers and all that should really fall away. Since this Council consistently advocates a level playing field, enforcement of law, rights and all that, it would be a good direction to go for the enforcement side to actually look at the possibility of enforcing the law not just on the employers, but also on the employees.

That brings me to the next point and that is a development that has been, as I have noticed, happening in the last five years. When the Government finds that it has either no control, lost control or is unable to control certain activities in our community, two things happen. First, the buck is passed to the employers, no matter big or small. Secondly, it is passed to the professionals, like for instance, my colleague, the Honourable Eric LI, who has been consistently complaining about turning auditors who have a very special relationship with clients into a whistle blowing exercise, if there is something

slightly untoward in the activities of a commercial organization. And there is a very unique relationship between auditor and the client, but they have tended to turn lawyers and accountants into a private police force, if I can put it that way, to assist the Government. Architects and engineers, too, are to assist the Government in enforcing the law. We are to blow the whistle on our own clients. That is not enough. If that is the case, that is one aspect. But the tendency also is to criminalize all sorts of activities. For the slightest mistake you make, you are exposing yourself to a criminal prosecution. And it is not just the actual offender, we now have the tendency that this criminalization extends to the board and management level. I do not think that I will be saying anything unfair if I say that the management obviously has a responsibility. But for someone to be guilty of a criminal offence, there has got to be some form of active participation in that activity or a deliberate ignoring of responsibility. The latter class is very unusual. I hope that the Government will seriously think about this, particularly in the construction industry and in the container handling industry. Passing the buck does not help and I can only remember on one incident that I was able to persuade the Democratic Party to actually stand together with myself and with representatives from the architecture, surveyors and engineering fields, where we were able to use the same yardstick and said to the Government, "Look if you want to criminalize this for the private sector, criminalize it for the public sector as well." And I think everybody agreed, including our union leaders present in this Council.

Madam President, when that happened, they withdrew that provision. It would be a very odd situation where an architect, if he was responsible for a private sector site, would be subject to criminal sanction, while an architect from the public sector or from the government side was not, although the wrongdoing might have been identical. As to this issue of a level playing field, I really want to emphasize it and I hope that colleagues will bear this in mind. All of us value life, value safety, and there is no question about it. But all you need to do is to walk around a construction site and look up. If you walk in a construction site, and the employer or contractor does not provide safety equipment, prosecute him. But if there is safety equipment there, you have got to look at the workers.

And that brings me to my last point and that is, the Honourable Andrew CHENG mentioned about a worker's right to refuse potentially hazardous and dangerous work. Chairman of the Liberal Party, the Honourable James TIEN, has already mentioned it, so I will only deal with it very briefly. There are intrinsically jobs that are dangerous. If a worker voluntarily undertakes that

work, whilst we have to find a balance, we need to make sure that all the safety systems, as best we can, are provided for his protection. But my question is, if he undertakes an inherently dangerous or hazardous job, can he take it up and then turn around and say, "Sorry, I am not working, I do not like climbing scaffoldings or working at 30 storeys up from the ground"? So, I think that to find that balance is not easy. But we must try to pursue that. And obviously, we cannot blindly follow examples that are taken from other countries or jurisdictions because certainly, as far as the construction industry and the cargo handling industry are concerned, it is an entirely different situation from elsewhere. We have a sub-contracting system in Hong Kong and sub-contractors who employ workers should not be absolved from their own responsibility for their workers. The responsibility should not just be passed on to the main contractor and be left at that.

Madam President, with those remarks, I hope that Members will support the Second Reading of this Bill and ultimately this Bill, but I can say that some of the remarks that I have made are scratching the surface of the regulations that will be introduced subsequently.

MR HO SAI-CHU (in Cantonese): Thank you, Madam President.

As far as I know, Legislative Council Members are rarely members of the Labour Advisory Board (LAB). But it so happens that I am a member of the LAB, and also a member of its Safety Committee.

We are all very clear about the provisions of the Bill, because we have discussed it in great detail. So, I only wish to say a few words on Mr Andrew CHENG's proposal to remove the exemption to be granted to organizations each employing fewer than 50 people.

We have actually considered this matter very seriously. I hope Members can understand that if we really remove the exemption for companies each employing fewer than 50 people, then most companies in Hong Kong will be subject to regulation. If we set down a requirement like this, nearly 80% of all the organizations in Hong Kong will find it hard to comply with the requirement on the one hand and maintain their competitiveness on the other. The reason is that the implementation of a safety management system will involve a lot of manpower. For example, a lot of manpower will have to be spent on setting up

a safety committee, and the total manpower required may well be greater than the total number of employees of a company. In Hong Kong, most enterprises usually have an establishment of 20 staff members only. So, if all these people are engaged in safety work, can there be anybody left for the actual production work? I hope Members can appreciate this point. We must strike a balance and we must not blindly pursue the ideal of having no accident at all; very often, there is bound to be a discrepancy between ideals and realities. I hope Members will support this Bill. Thank you, Madam President.

MR KENNETH TING (in Cantonese): Thank you, Madam President. On behalf of the Liberal Party and the Federation of Hong Kong Industries, I wish to express support for the Bill, because we think that the safety records of the construction and container handling industries have been far from satisfactory. But we do not accept the saying that there has been no improvement to the occupational safety condition in the manufacturing industries over the past few years. We support the Bill put forward by the Government. In other words, while we agree that we must deal with those areas where problems are detected, we should not try to apply any uniform treatment to all industries. Thank you, Madam President.

MR LEE CHEUK-YAN (in Cantonese): Madam President, Mr LAU Chin-shek has already expressed support for the Bill on behalf of the Confederation of Trade Unions. So, I would just add a few points now.

First, the idea underlying the whole Bill is what is known as self-regulation. In other words, employers are required to establish some safety management systems for themselves. But what is the potential danger of such an idea? Well, an employer may draw up a good safety management system, but such a system may appear good on paper only. And, when it is put into practice, it may prove itself to be entirely empty. Of course, a lot will have to depend on whether or not the idea of safety committee can work, on whether or not workers are thus enabled to supervise the operation of the whole safety management system. We can discuss these issues later. But I wish to remind the Secretary for Education and Manpower that we are all very much afraid that the Government may simply fail to do its work of supervision well enough. I am especially worried after listening to what some Labour Department officials told me. According to them, the authorities have actually set down some targets for

enforcement, known also as inspection targets. For example, some targets have been set down regarding the number of factories and construction sites which should be inspected. But in some areas, the number of actual inspections has fallen short of the target by 50%. I hope that the Secretary can look into this matter and inform me of the investigation results later. Since this matter was disclosed to me by government officials, I have reasons to believe that the Government has actually fallen behind the targets it set down for inspections and visits.

Second, I wish to talk about workers' right to refuse dangerous work, an issue mentioned by quite a number of Members just now, including Mr Ronald ARCULLI and Mr James TIEN. I think that there must have been some misunderstanding here. According to Mr James TIEN and Mr Ronald ARCULLI, if a worker has previously and expressly agreed to perform certain specific dangerous work, it would be very unreasonable of him to refuse to do such work later on. But I think we are just referring to the circumstances under which workers should have the right to refuse dangerous work. We are not saying that a worker should still be allowed to refuse to carry out his contractual duties, even though he has previously agreed to be employed to perform such duties with a full awareness of the dangers involved. We are actually referring to those changes in his work environment which may lead to unexpected dangers arising from the execution of his duties. And, we are not saying that he is going to be the only one to judge whether there are any unexpected dangers; other bodies such the future safety committees can also be invited to do so. Our point is that if a worker knows clearly that there are obvious dangers, as when he sees that a bamboo scaffolding is not secured enough, and if his employer still instructs him to climb onto the bamboo scaffolding for work, he should then have the right to refuse to work. We are certainly not saying that a worker who knows fully well that working on bamboo scaffoldings is part of his duties can still refuse to do so anytime he does not feel like working. We are not talking about anything like this. I am only referring to some unexpected changes. And, in cases like this, workers should have the right to refuse to work. I hope that when we discuss this matter in the future, I can get the support from many Members representing employers' associations.

Thank you, Madam President.

MR ERIC LI (in Cantonese): Madam President, I shall be very brief. I very much welcome the Government's tabling of this Bill before this Council, not least because the Public Accounts Committee has expressed a wish in its Report No.31 that the Government should enact some legislative amendments as quickly as possible to reduce the dangers faced by workers at work.

Although we do support the broad principle and direction of this Bill, I must still point out, as did Mr Ronald ARCULLI and Dr Raymond HO, that the Government must handle the formulation of the relevant regulations with extreme care and caution. This should especially be the case with the Government's inclination towards the imposition of criminal liability on those professionals and management personnel who have made erroneous judgments. The justifications concerned are extremely dangerous. Mr Ronald ARCULLI has explained why, and I am also strongly opposed to such an inclination of the Government. Though the Government has taken the correct direction, it must still proceed with a fair hand. Laws must of course be enforced, but should people who have made erroneous professional or management judgments, for example, be thus made criminally liable? Many professionals have approached me, saying that many policy decisions and judgments made by the Government will affect the entire community far more than any other management decisions. That being the case, will our government officials welcome any laws which require that government officials should be put behind bars after they have made any erroneous policy decisions and judgments, or political judgments? I am convinced that no government official will like to see this.

On the imposition of criminal liabilities, we must all adopt a more equitable perspective; we must not agree to the imposition of criminal liabilities because we want to facilitate government regulation or to make it easier for it to shirk its responsibilities. I wish to state my position on this very clearly to the Government here. I hope that when the Government puts forward the details, it will consider this very seriously. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr James TIEN, we are now having the Second Reading debate. You have already spoken.

MR JAMES TIEN (in Cantonese): Madam President, Mr LEE Cheuk-yan has probably misinterpreted the remarks I made in English just now. Can I make a point of clarification now?

PRESIDENT (in Cantonese): Yes, you may do so.

MR JAMES TIEN (in Cantonese): Madam President, on the point of dangerous work, it seems that having listened to the translation of my remarks, Mr LEE Cheuk-yan has got an impression that..... He therefore asked to this effect: Suppose a worker has been in a certain post for a long time, and suddenly, he detects some changes which make him feel that his working environment is no longer safe, can he then refuse to work? I did not mean anything like this when I delivered my remarks in English just now. I was simply saying that we should strike a balance between workers' views about dangerous work and those of their employers.

I am of the view that even if the work concerned involves dangers, somebody must still do it somehow, and workers simply cannot refuse such work. I maintain that as long as employers have put in place all appropriate safety and management measures and have fulfilled all legal requirements, workers should not be allowed to refuse work, or else..... I mean, for example, if workers suddenly refuse to work when the construction of a building reaches a certain stage, do we then have to call a complete halt to the construction works? And, when that also occurs to manufacturing industries in the middle of the process, do we again have to call a complete halt to the production? That was what I really meant.

PRESIDENT (in Cantonese): Secretary for Education and Manpower, do you wish to reply?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Firstly, I would like to thank Mr Ronald ARCULLI, Chairman of the Bills Committee and other members of the Bills Committee for their scrutiny and support of the Bill. I am grateful to Members for expressing their concern about occupational safety and I will carefully consider their views. However, I also want to take this opportunity to respond briefly to some points.

First, the Government will continue to make efforts to improve occupational safety and it will pay particular attention to the high incidence rate of construction industry accidents. In this respect, I can confirm that the statistics we have concerning the construction industry do include decoration workers. I am pleased to discuss the effects on the statistics if duration workers are included or otherwise. We will gladly discuss with Members methods to improve occupational safety on suitable occasions such as at the meetings of the Legislative Council Panel on Manpower. I wish to stress that the Government does attach importance to occupational safety in respect of legislation and funding, including funding for the Occupational Safety and Health Council. As far as I know, the Occupational Safety and Health Council has recently acquired new office premises and we have increased the manpower of the occupational safety unit of the Labour Department. Facts and figures can prove that the Government has made the relevant work one of the key areas of priority or funding.

I also want to say that we follow several general directions in respect of occupational safety, namely, legislation, enforcement and giving publicity to safety knowledge. We are now considering how to enhance safety management, self-planning or self-regulation and provision of basic safety training to workers. These measures reflect that the Government is duty-bound in respect of occupational safety and employers, employees and professionals should bear certain responsibilities. As to the question of how a balance can be struck, we have to do so through discussions and studies very often. For instance, Mr LEE Cheuk-yan and Mr James TIEN have different views on whether workers can refuse to work under dangerous situations. But I think that there should be a basis on which various parties will accept that certain work really has potential danger and is more likely to cause accidents not of human error. Under certain very special circumstances, workers may have reasons to believe or judge on the basis of certain procedures or criteria that it is really not suitable to work. But how should such criteria be prescribed? Who should make the judgment? If legislation will be enacted, will enforcement bring about another bureaucratic

framework that will make it difficult to implement the legislation despite the good original legislative intent? We should leave these matters for future discussion.

Concerning this Bill, we basically propose that mandatory safety training should be provided to employees in the construction industry and container handling industry as well as expanding the powers of the Commissioner of Labour to make regulations under section 7 of the Factories and Industrial Undertakings Ordinance, to facilitate his making of subsidiary legislation on safety management systems in future. Since its establishment in March this year, the Bills Committee has held many meetings and the trades and groups concerned have expressed their views. Having considered the views and suggestions of the Bills Committee and the groups concerned, the Government agrees to amend clauses 2, 3, 5, 6, 7, 9, 16 and 17 of the Bill. I will propose the relevant amendments supported by the Bills Committee at the Committee stage.

Lastly, I would like to thank the Bills Committee again for scrutinizing the Bill and I would like to thank Members for their support.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Factories and Industrial Undertakings (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Factories and Industrial Undertakings (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Factories and Industrial Undertakings (Amendment) Bill 1999.

CLERK (in Cantonese): Clauses 1, 4, 8, 10 to 15 and 18.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 6, 7, 9, 16 and 17.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that clauses 2, 3, 5, 6, 7, 9, 16 and 17 be amended as set out in the paper circularized to Members.

The Government proposes to delete the redundant elaboration on "keeping" in the definition of "container handling" in clause 2(c) of the Bill and state clearly that "maintaining" includes "repairing".

The Government proposes that the addition of section 6BA proposed in clause 3 of the Bill should be deleted and substituted by section 6BA as amended. I would like to explain the major proposed amendments to section 6BA.

We propose to amend section 6BA(2)(a)(ii) to specify clearly that safety training courses are offered only to construction workers or workers working in the container handling industry, not including office workers.

The Bill proposes that from a date to be appointed by me, any construction industry or container handling industry proprietor cannot employ a person who has not been issued or does not hold a valid certificate. We propose to amend section 6BA(5)(b) to grant:

(i) persons employed immediately before the appointed date who do not hold a certificate or hold an expired certificate; and

(ii) persons employed on or after the appointed date and whose certificate has expired within the employment period;

a one-month grace period upon the expiry of which they should cease to be employed in the relevant industrial undertakings without a valid certificate.

The Government proposes to amend section 6BA(6) to specify that the certificate should be valid for not less than one year and not more than three years.

We propose to amend section 6BA(7) and add subsection (7)(c) to specify that if any employee fails to produce to the relevant employer or his agent a valid certificate, the employee shall make a statement in records kept by the employer that he has been issued with a certificate and the certificate is still valid. If on the immediately following day, the employee requests to make the relevant

statement again because he fails to produce the certificate, his request will not be entertained. The Government also proposes to add subsection (7)(d) to specify that if an employee fails to produce his certificate as required by the occupational safety officer, the occupational safety officer shall be empowered to request the employee to produce the certificate at a place and within a time limit that is reasonable under all circumstances.

In relation to the amendment to section 6BA(7)(c), the Government also proposes to add subsection (8) to specify that the relevant employer shall set up and keep records in the form specified by the Commissioner for Labour and shall not delete the statement from the record before the expiration of 18 months from the date the statement stated in subsection (7)(c) is made.

The amendment to section 6BA(9) specifies that an application for the replacement of a certificate that has been lost, defaced or destroyed may include or specify the attachment of a statutory statement on the loss, defacement or destruction of the certificate.

We propose adding a new section 6BA(13) to provide for a disclaimer clause in respect of an employer who has committed an offence under the proposed section 6BA(12).

Pursuant to the proposed amendments to sections 6BA(7)(c) and 6BA(7)(d), we propose adding subsections (14) and (15) to specify that if the statement made by a relevant person under the proposed subsection (7)(c) is untrue, or if he fails to produce his certificate at the place and within the time limit specified by the occupational safety officer according to the proposed subsection (7)(d), he commits an offence.

The last major proposed amendment to section 6BA is the addition of new subsection (19) to state clearly that otherwise than in accordance with the provisions of the Employment Ordinance (Cap. 57), the proposed subsection 6BA(5)(b) shall not operate to entitle an employer to terminate the contract of employment of an employee.

Moreover, we proposed to amend subsection 7(1)(oc) proposed under clause 5 of the Bill to state clearly that the performance of a person stated in the proposed subsection 7(1)(ob) shall be assessed by the Commissioner for Labour. Moreover, we propose to amend subsection 7(1)(od)(ii) proposed under clause 5 of the Bill to empower the disciplinary board appointed in accordance with the regulations to levy a fine of not more than $10,000 apart from other powers of discipline.

Lastly, we propose to amend clause 6 of the Bill to specify that the Commissioner for Labour shall exercise his power to amend the Fourth Schedule only with the permission of the Legislative Council.

Other Committee stage amendments proposed to clauses 7, 9, 16 and 17 are simple technical or consequential amendments. As I said at the resumed Second Reading debate of the Bill, the proposed Committee stage amendments are supported by the Bills Committee.

Madam Chairman, I beg to move.

Proposed amendments

Clause 2 (see Annex VI)

Clause 3 (See Annex VI)

Clause 5 (see Annex VI)

Clause 6 (see Annex VI)

Clause 7 (see Annex VI)

Clause 9 (see Annex VI)

Clause 16 (see Annex VI)

Clause 17 (see Annex VI)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 6, 7, 9, 16 and 17 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1999

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, the

Factories and Industrial Undertakings (Amendment) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Factories and Industrial Undertakings (Amendment) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Factories and Industrial Undertakings (Amendment) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): This Council shall now resume its Second Reading debate on the Lingnan University Bill.

LINGNAN UNIVERSITY BILL

Resumption of debate on Second Reading which was moved on 23 June 1999

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

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, the Democratic Party supports the passage of the Lingnan University Bill in this Legislative Session, so that the Lingnan College can be upgraded to a university in the coming academic year. This is not only because the College is now already qualified for upgrading, but also because we want to look after the interests and strong demands of its teaching staff and students. Having said that, in this debate today, I still wish to state my expectations and demands on improving university management, both to the Lingnan College, which is about to be upgraded to university status, and to all the seven existing universities.

First, I am very pleased to see that the Lingnan College authorities have responded positively to the aspirations of the community. Amidst the strong demands for more elected staff representatives in university management, the College authorities have of their accord proposed to increase the number of elected staff representatives on the Council and the Court. Specifically, it is proposed to increase the number of elected staff representatives on the Council from two to three, and to increase the number of elected staff representatives on the Court from one to two. With these changes proposed by the Lingnan College itself, and with the one student representative already provided for in the Bill, the students and the junior staff will at least have a chance to voice their opinions; and their views can thus be reflected and given some basic recognition in the highest decision-making body of the College. Talking about this matter in general, I of course still hope that in the Council of Lingnan and other university councils, especially those with no elected staff representatives at all, the number of elected staff and student representatives can be increased still further. That way, the monopolization of university council seats by appointed

and *ex officio* members can be changed, and staff and students alike will thus be able to give reasonable expression to their rights.

Naturally, I also hope that our universities can increase the transparency of their management. This will involve not only an increase in the number of elected staff representatives, but also a recognition of these elected representatives' right to consult and report to their colleagues. Therefore, Lingnan, and other universities too, should actively consider this idea: elected staff representatives should be allowed as far as possible to disclose to all their colleagues the discussions items and papers of the Council and the Court, as long as such disclosure does not infringe upon privacy, or as long as the Council President does not find it necessary to keep the relevant information confidential. If elected representatives are rigidly required to keep all meeting contents confidential, they will be denied the very basic right of consulting and reporting to their electorate. This is indeed very absurd. I do not want to see a situation under which elected staff representatives are plunged into isolation and conflicts and even become a façade of democracy, because their representative function is subject to unreasonable and unwarranted constraints.

Madam President, what Lingnan and other local universities have to deal with now are the impacts of reduced funds allocation. Problems like dismissals, layoffs, non-renewal of contracts, forced retirement and so on have emerged one after another, dealing heavy blows to staff morale. But in the Legislative Council meeting in mid-May, when the Secretary for Education and Manpower answered my oral question on university management, he still insisted that since no complaint about unreasonable dismissal had been received from any university staff, there was no need to amend the relevant legislation. I must say that his assertion was both irresponsible and subjective, because when I consulted the staff of Lingnan and other tertiary institutions on this matter, they all expressed many grievances, complaining, among other things, that they had been treated unfairly by university management. What is more, many of them even said that they had no channel of complaints at all. And, at a meeting of the Education Panel in May, a vast majority of those university staff who were present all voiced many complaints and grievances. Their responses tally with the findings of my own consultation work. Even very recently, I still receive many requests for assistance and complaints from university staff. These university staff said that the management of their universities had deprived them of their legitimate rights in handling problems like dismissal, refusal to offer contract renewal and complaint procedures. And, some of them even said that

some tertiary institutions simply did not bother to follow the stipulated complaint procedures. Madam President, I am not asking the Government to take up individual complaints. But I must say that both the Education and Manpower Bureau and the University Grants Committee (UGC) do have an unshirkable responsibility of ensuring that all our publicly-funded universities are able to perfect their operating mechanisms. This includes the formulation of a set of fair, reasonable and widely accepted criteria and procedures to handle matters like appraisal, dismissal, contract renewal and complaints, so as to realize one of the major educational objectives of upholding social justice.

At present, Lingnan and other universities are adopting different complaint mechanisms, but we can still identify some common defects: complaint mechanisms are mostly blocked and difficult to activate, lacking in adequate staff and outside representatives, thus making it hard to achieve fair and equitable arbitration. The fact is that in quite a number of universities, whenever a staff complaint is received, their top-level administrative staff will have to screen it first. So, a staff member lodging a complaint has to overcome many administrative obstacles before he can have any hope of activating the complaint mechanism. How can such inaccessible complaint mechanisms ever ensure that staff complaints will not be subject to administrative intervention and brushed aside altogether? The Education and Manpower Bureau and the UGC even allow some universities to ignore the requirements set down by the authorities on the handling of complaints; in these universities, the people under complaint or those supervisory personnel whose interests are directly at stake are more often than not put in charge of handling complaint cases. Madam President, as the conscience of society, and as halls of justice, universities should really set a good example; their administration and management must not only be genuinely fair and reasonable, but must also be seen as such by members of the public. I now request the Government to urge Lingnan and other universities to institutionalize their complaint mechanisms, so that the aggrieved staff members can lodge their complaints directly under the complaint mechanism, without having to do so via any executive authorities or to wait for the decisions of any individuals on whether or how to activate the complaint mechanism. Besides, they should also consider the idea of incorporating a system similar to the jury system into their complaint mechanisms. A typical "jury" should be made up of the elected representatives of executives and academic and other staff, as well as community figures with credibility. The jury should conduct a hearing on the justifications and evidence offered by both management and staff, and to mediate or arbitrate. Staff members should also be permitted to attend hearings with their

representatives. In addition, I agree with the staff of Lingnan that their complaints mechanism should be extended in scope, so that in addition to complaints on dismissal and contract termination, it can also deal with other major personnel matters such as promotion, change of job titles, applications for permanent employment and determination of terms and conditions of contract renewal. That way, university staff can be treated fairly in terms of the right to appeal. I hope that Lingnan will pay heed to and address these demands of its staff while it is being upgraded to university status.

Madam President, the problems with our universities have become a focus of conflicts in the education sector. The Education and Manpower Bureau and the UGC must seriously perform their monitoring roles instead of evading their responsibilities and turning a blind eye to the problems. I urge all the universities, including Lingnan, to respect the legitimate rights of their staff and to review their administrative and appointment mechanisms. I also urge them to adopt a liberal-minded attitude and listen fully to the views of their staff on matters relating to university development, administration, staff appraisals and even personnel appointments. I am sure that appropriate communication will instead reduce conflicts and resolve crises. I do not wish to see university staff being plunged into panic because of closed management mechanisms and blocked complaint channels, nor do I wish to see conflicts between the two sides either brought before the court or reported in the mass media. This will do no good to both sides.

Finally, Madam President, I wish to make one more point here. Because of public interest, I have been urging the Government to ask other publicly-funded universities to follow the examples of the University of Hong Kong and the Chinese University and include representatives elected by and from among Legislative Council Members in their councils. My justification is that since university councils are vital bodies responsible for monitoring the administration and resources management of universities, their accountability should be enhanced. In particular, tertiary institutions should be subject to a reasonable degree of public supervision, so as to ensure that they can respond to the aspirations of society. But the Government has not incorporated any relevant provision into the Bill, and it even says that if Members should put forward any amendment aimed at introducing representatives elected by and from among Legislative Council Members to the Council of the Lingnan College, it would withdraw the Bill. I have asked the Government for a reason. Why does it have to stop the Legislative Council from exercising its power of amending

legislation? The reply of the Government is something like this: This is the decision of the supreme leader, who thinks that such an amendment will violate government policies, and that being the case, its submission is not permitted under the well-known Article 74 of the Basic Law except with an express approval from the Chief Executive, TUNG Chee-hwa. Madam President, what is meant by "government policies"? Since representatives elected by and from among Legislative Council Members are already sitting on the Councils of the University of Hong Kong and the Chinese University (I am also such a representative on the Council of the Chinese University), we can actually conclude that the addition of such representatives to university councils does not really violate any government policies. Why then should the Government oppose our amendment? Is the Government adopting contradictory policies, or double standards? What angers people most is that the Government has been trying to intimidate the Legislative Council by threatening to withdraw the Bill if any amendment is proposed. If it really does so, Lingnan will be unable to upgrade to university status, and its students will be unable to become university graduates. The Government's attempt to use Lingnan students' interest as a means of threatening the Legislative Council is really shameful and ignoble, and such an attempt reveals once again its executive hegemony. However, ecause we really attach the greatest importance to the interests of all the staff and students of the Lingnan College, and, in particular, because we are concerned about the harm which Lingnan graduates this year may suffer, we have decided to put aside our proposal for the time being despite our reluctance. But I must condemn the Government for its inglorious tactic. Although the Government has agreed to appoint individual Legislative Council Members to the Council of the Lingnan University in their personal capacity, I must still say that there is going to be a difference in mandate, and the role played by the appointees is bound to be different from the role that Legislative Council Members can play. Therefore, I will continue the struggle, and I will also move a Members' bill on that, so as to include representatives elected by and from among Legislative Council Members in the councils of all the eight universities. That way, university councils will be able to play a genuinely independent role in monitoring the universities.

Madam President, I so submit.

MISS EMILY LAU (in Cantonese): Madam President, it is with the utmost reluctance that I have decided to support this Bill. Madam President, as you also know, the House Committee has discussed this issue many times before. I am most dissatisfied with one particular point, and that is, that the Secretary has never given Members any adequate time to scrutinize the Bill. I once raised this matter to the Secretary on a private occasion. I think that when it comes to the scrutiny of any bill, the Government should always at least recognize the fact that Members will need time for scrutiny; it simply should not rush in a bill at the last minute, urging us not to set up a Bills Committee on the ground that time is running out. Naturally, Mr Edward CHEN, the President of the Lingnan College, is very concerned, and so are the lecturers, because if this Bill cannot be passed, their students will be unable get a degree. We appreciate their concern, and also think that we need to be fair to them. So, after repeated discussions in the House Committee, and with much reluctance, we have finally decided not to set up a Bills Committee. Had we asked for the setting up of a Bills Committee, we would not have been able to discuss this Bill today. Madam President, you also know about all this. Members have been forced to do this, and I really think that the Secretary for Education and Manpower should be held largely responsible, because it was him who actually forced Members into such a difficult situation. The Secretary did not submit the Bill until the very last minute; so, if we had insisted on setting up a Bills Committee, we would not have been able to discuss the Bill today. If the students thus fail to get a degree, they will of course blame the Legislative Council and the Secretary. I am sure that if this really happens, Members will certainly not feel happy. That was why Members had no alternative but to compromise, and they agreed not to set up a Bills Committee, so that the Bill could be enacted as quickly as possible.

But I am very worried because we have not scrutinized the Bill in detail, and if there should be any problems in the future, we will all need to shoulder the responsibility. Why have we been plunged into such a situation? I think the Secretary must give us an answer later on and he must give us the reasons. Was it because the Secretary did not have enough staff support? Or, was it because he was not competent enough? Why did he submit the Bill at so late a time? Or, was it because the Secretary thought that this Council was a very efficient rubber stamp which could finish the Three Readings of any bill, at any time, just within a matter of one single day? Was this the mentality of the Secretary at that time? This Bill is indeed not controversial, but it is certainly very

complicated, especially when we consider the points raised by Mr CHEUNG Man-kwong a moment ago. So, some Members really want to propose amendments. But the Government has not given us any time at all, and it even says that if we ever move any amendment, it will simply withdraw the Bill. This is nothing but executive hegemony.

Madam President, I am very worried about one thing, but before I talk about it, I must make it very clear that I very much respect the academic autonomy of the universities, and I am not asking the executive authorities and the legislature to supervise the universities. Frankly speaking, we would not have the time even if we wanted to do so. Well, some even say that we cannot even manage our own business well enough, because we have to hold a three-day meeting. Having made this very clear, I then wish to point out that the universities must put in place a mechanism which is seen by the public, students and teachers as fair, open and transparent, and such a mechanism should be subject to proper supervision. One very important aspect of such a mechanism is of course the university council. We have been discussing this matter for many years already, and the Education Panel of the Legislative Council has held many meetings on it (one such meeting will be held again on the 28th of this month). Mr CHEUNG Man-kwong raised the point that legislative provisions should be enacted to require the presence of Legislative Council Members on university councils. But is this proposal the panacea? I do not really think so. To be very honest, Madam President, you should also know that while some of our colleagues are very hardworking, others are probably not; and, some indeed never speak at all. So, all will depend on which Members are appointed to university councils. What is more, even if a legislative provision on this is really enacted, we will still have to elect our representatives from among ourselves. So, perhaps, the major political parties may simply make their own deals, and reach agreements on who should be chosen. You never can tell, really. Madam President, later on, in the House Committee, I will put forward a proposal on requiring our elected colleagues to report regularly to the House Committee on their attendance in university councils, so as to show their commitment. That way, at least, we will be able to monitor the work of our elected representatives.

Nevertheless, can we possibly solve all problems simply by sending Legislative Council Members to sit on university councils? Not necessarily, I think. I think it depends on the kind of candidates chosen by the Secretary and the Chief Executive. I think this is very important. If we look at the membership lists of the various university councils now, we will see that they have invariably chosen those people whom they trust, those who are of high integrity and credibility, so to speak. Very often, these appointees are each appointed to 10, 20 and even 30 committees; or they may each own six, seven, 12 and even 200 companies. Most of them come from the commercial sector, and they cannot usually spare any time for meetings. But still they are appointed to university councils. I do not think that such a situation is at all satisfactory. I hope that when the Secretary considers the appointments of university council members in the future, he will look for some people who have a genuine concern for education, people who know our universities well, and people who have both the time and the sense of commitment required for the work in university councils.

But how can the public monitor the work of university councils? At present, the meetings of university councils are not open, and I hope that they can hold open meetings in the future. I know that some issues are sensitive in nature, and so, they should not of course be disclosed. However, universities are the very institutions which train up our next generations, and, for this reason, many people are concerned about their development. Why is it impossible for university councils to hold open meetings? I hope the Secretary will seriously consider the idea of requiring all universities to disclose the contents of all their meetings, except those which involve personnel matters, financial affairs and sensitive commercial subjects.

Madam President, I am also concerned about another matter — the attendance rates of university council members. Madam President, we have noticed over the past few days that because this Session is drawing to an end, many journalists are busy taking statistics on the attendance rates of Members. Similarly, we would also like to know the attendance rates of university council members. Madam President, last Thursday, you did not go to the dinner held at the Mandarin Hotel. Had you done so, you would have heard a university council member telling me that they had to spend as long as one whole hour on discussing whether or not their attendance rates should be released. The reason, he explained, was that while some did not want to disclose the relevant statistics, others, however, saw no problem in doing it at all. Well, they had to spend one

whole hour on a matter like attendance rates. Is that just a bit too much? Some of the university council members in question even made reference to the Personal Data (Privacy) Ordinance (I know this Ordinance only too well because I am having a lawsuit with the Xinhua News Agency). They maintained that under this Ordinance, all information should only be provided for the purposes specified. So, they argued, since it was not specified at the time of their appointment that their attendance rates would be disclosed, they could choose not to disclose the relevant statistics. I find such an interpretation of the Ordinance rather strange.

I hope the Secretary can think about this matter once again and then tell all university council members that the public is very much interested in knowing their attendance rates. Many Members of this Council are university council members, and Mrs Sophie LEUNG here is one of them. Perhaps, they may like to tell us something about their attendance rates later at this meeting. I hope they will not talk about attendance rates in university council meetings only; some people say that this is not fair enough because the many sub-committees under university councils are also making a lot of contributions. Fine enough, and so, they may perhaps also disclose the attendance rates of sub-committee members for our information. Madam President, I am not saying that attendance rates mean everything. But if a university council member has never ever attended any council meeting, and if people still tell me that that member is working very hard for the council, I will simply say, "Just stop cheating me."

Madam President, I hope our universities can put in place a mechanism which, in the words of Mr CHEUNG Man-kwong, will entertain complaints and appeals in a fair, open and transparent manner. I hope the Secretary can make an undertaking here that he will start with the Lingnan University and then extend the whole thing to other universities. Besides, I hope that in the future, when the Secretary submits other bills to this Council, or when Mr KWONG or Miss YUE submits any bills to this Council, they will always allow enough time for Members' scrutiny and the setting up of Bills Committees. They must not do it all in a rush and ask us to pass their bills within a week or two. We are extremely unhappy about this.

Thank you, Madam President.

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, "a proper title is an absolute necessity". The upgrading of Lingnan College to university status is precisely a move to give it a proper title and should thus be welcomed. The reason is that the Lingnan College has long since been a tertiary institution funded by the UGC, and in fact, over the past few years, it has been awarding university degrees to its students. So, its upgrading to university status is really something which is only natural, something which is in line with the interest of its students and the long-term interest of the institution itself. But, in the course of upgrading, attention must be paid to the democratization of university management, so that more representatives of its teaching staff can take part in policy-making. This will bring in enhanced transparency and accountability, and will also be in line with the interest of the institution itself. The Democratic Alliance for the Betterment of Hong Kong (DAB) hopes that the council of Lingnan can handle the relationship between the two properly.

Madam President, the DAB is rather more concerned about the general standards and quality of university students. Upgrading has given the institution a proper title, but this cannot possibly solve the problem of declining academic standards. The community at large is now rather fed up with university students who cannot live up to the standards expected of them; the community at large is even more fed up with the ever deteriorating standards of university students. Some lay the blame on the over-expansion of university places, saying that deteriorating standards are almost inevitable as a result. But the DAB cannot agree to such an analysis.

We think that there are many reasons for the declining standards among our university students. One reason, we think, is that the former government did not pay sufficient attention to basic education, nor did it ever allocate sufficient resources to basic education. The Government of the Hong Kong Special Administrative Region (SAR) should now make a determined effort to correct this mistake. As the saying goes: "A high building must be built on a firm and solid foundation." So, without good basic education, how can we expect to have quality university students?

Although the SAR Government has allocated more funds to education over the past two years, the provision for basic education still falls short of the expectations of fellow workers in the field of basic education. We hope that the Government will address this problem properly. Since the Secretary for the Treasury is here today, I would like to ask her to appropriately increase the

funding for basic education. The DAB will continue to fight for more funds for basic education, so that all our students, be they university students or students educated up to the level of basic education, can live up to the standards expected of them.

The DAB supports this Bill, and may we also wish Lingnan further success in making fresh contribution to our tertiary education after its upgrading to university status.

Thank you, Madam President.

MRS SOPHIE LEUNG (in Cantonese): Madam President, recently, several motions on youth affairs have been moved in this Council. There is in fact an intent behind this Bill today, one which concerns why there has to be an ordinance like this.

I very much want to accord respect to all my colleagues in this Council. But apart from those Members who belong to the same political party as mine, I can respect just a few of them, and Miss Emily LAU is one. In particular, I respect her dedication. I am also very dedicated to my work. Sometimes, my degree of dedication or attitude may well be different from hers, but still, I respect her dedication.

I am a member of a university council. I am pleased that I have been invited to do the job. I also wish to thank all those who have shown confidence in my ability. Whenever I am invited to do any job, whether by the Government, universities or other organizations, I will first consider what contribution I can possibly make in doing the job. I have constantly been reminding myself that I must never do any meaningless work in order to angle for praise, because this will waste my valuable and others' valuable time. I hope that before Members agree to render any public services in the future, whether in their personal capacity or in the capacity of Legislative Council Members, they will also adopt such an attitude. I think our universities are right now at a crossroads, and the setting of a proper direction is extremely important.

I also wish to point out that our Government and the community have in fact injected a lot of resources into our universities. This is in marked contrast with the treatment which foreign universities receive. Foreign universities have to raise funds from the wider community by showing their concrete academic achievements; and even so, there is no guarantee that they can always get any resources. I think this is also a problem which they need to consider. But I also think that when it comes to the management of our own universities, we should refrain from playing the role of a "hard-liner" who cries out for supervision all the time. The point is that we have given our universities huge resources to employ their presidents, vice-presidents and so on. So, if we still have to play the monitoring role, then I really cannot help thinking that the resources expended by the Government and the community have all been wasted. If so, we had better stop injecting any resources further.

Besides considering what contribution we can make, we also need to ask ourselves what leadership we can provide to our universities in terms of development directions and accommodating the needs of society.

I remember that at the end of 1996, Prof TIEN Chang-lin was in Hong Kong to deliver a talk. That was the first time that I had ever listened to his talks. The topic of his talk was the difficulties confronting our universities and tertiary institutions in the 21st century. I might have already talked about this in this Council sometime ago. He made four points, but, unfortunately, I can remember only two of them, and I have mentioned these two points many times before. He asked us to note these two experiences of other tertiary institutions in the world. First, he talked about "immigrants". He said that in the University of California, for example, over 90% of the students he used to teach came from California. So, at that time, when he talked about the weather, he only had to talk about the weather of California. Later, however, as the University of California started to admit students from all over the country, he had to look far beyond California and talk about the weather in New York, in Canada, and near the border with Mexico. He said that some 30% of the student population of the University of California now came from many different places all over the world. So, whenever a war broke elsewhere in the world, he had to pay notice and find out which countries were at war, and who had been thrown into prison and so on. This tells us that we must adopt a wider perspective.

The second point he raised was about the process of democratization. He said that American universities had been waving the torch of freedom and democracy around, but, only God knows, when all that clamour was over, they lost their 100% subsidy from their government and had to "share" the limited resources allocted to them; the American government had reduced the subsidy from 100% to less than 30%. He said that this actually gave the universities a chance to communicate with the wider community; from then on, they realized that apart from knowledge and wisdom, they also had to know the needs of society. Only this, he said, could enable the universities to provide the kinds of instruction and education suited to the needs of society.

Miss Emily LAU wanted me to say something. In response, I wish to tell her that we should look at things from a wider perspective. We should always adopt a wider perspective, whether for our work in university councils, schools, universities or even any other institutions.

On the importance or otherwise of attendance rates, I would not say that attendance rates are not important. They are certainly important. But we need an ability to feel the pulses of society far more badly than mere physical presence. And, the quality of intellectual input is equally important.

Madam President, I so submit.

PRESIDENT (in Cantonese): Secretary for Education and Manpower, do you wish to reply?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, first, I would like to thank Members of the House Committee for supporting the resumption of Second Reading debate of the Bill without scrutiny by a Bills Committee and allowing the Bill to be passed within this Legislative Session so that graduates in 1999 can be awarded degrees by the eventual Lingnan University.

The Lingnan University Bill proposes to retitle Lingnan College as "嶺南大學" in Chinese and "Lingnan University" in English to acknowledge the efforts made by the university over the years to upgrade academic standard and improve its internal quality assurance mechanism. The Bill also establishes for the university a management framework similar to that of other local universities and empowers the Council of Lingnan University to formulate statutes governing the administrative and other affairs of the university.

During the scrutiny of the Bill by the House Committee, the Council of Lingnan colleage proposed an addition in the number of members of the Council and Court of Lingnan University elected from among eligible staff after considering various views, and the Government has accepted its proposal. Later I will move the relevant amendment at the Committee stage.

Moreover, I will move a few technical amendments to improve certain wordings in the Chinese text of the Bill and make consequential amendments to the Legislative Council (Amendment) Bill 1999 that has already been passed.

Madam President, before closing, I wish to respond to the views just expressed by Mr CHEUNG Man-kwong and Miss Emily LAU.

Firstly, I would like to put on the records very clearly that when I talked with Mr CHEUNG Man-kwong, I did not say that should he propose to amend this Bill to add provisions similar to those in the ordinances governing the University of Hong Kong or the Chinese University of Hong Kong and specify that the Council of Lingnan University should comprise a representative elected from among Legislative Council Members, the Government would withdraw the Lingnan University Bill. I must clarify this.

If Members discuss matters with me on unofficial occasions, they are most welcomed to bring tape recorders. I do not mind if they will listen to the recordings once before making condemnations or criticisms at serious and formal meetings of the Legislative Council.

The main point of my discussion with Mr CHEUNG is that I admit that the ordinances governing the University of Hong Kong and the Chinese University of Hong Kong permit representatives elected among Legislative Council Members to sit on the councils of the two universities. However, is this the current policy of the Government? This is not the policy of the present Government because after the Chinese University of Hong Kong was upgraded, all proposed bills for upgrading institutions as universities, that is, from the University of Science and Technology to the Lingnan College, do not include this clause. This clearly shows that after the passage of the ordinances of the Chinese University of Hong Kong and the University of Hong Kong, we think that this is not a government policy and it is not necessary to include the said clause. Therefore, if Members should propose relevant amendments, I think that they would violate Article 74 of the Basic Law as it is related to government policies. If it is related to government policies, the procedures for passing the Bill may take longer time. For example, we will submit our view to the President of the Legislative Council for her ruling as to whether the amendment involves Article 74 of the Basic Law. If it involves Article 74 of the Basic Law, will it be endorsed by the Chief Executive? That is why it will take some time.

I also said that as the Lingnan University Bill had passed through internal policy-making bodies such as the Chief Executive in Council before submission to the Legislative Council, this could be described as the supreme instruction to a certain extent (I was kidding). But I did not mention "supreme leader". We certainly have a supreme leader but if I have not mentioned his name but Members said so out of a sudden, I consider it unfair. In that case, I am afraid the Lingnan University Bill will not be passed within this Session of the Legislative Council and it will have to be postponed to the next Session, that is, after October this year. It will be a great pity because graduates in 1999 will not be awarded degrees by the "Lingnan University".

If my memory has not failed me, I actually added that if Mr CHEUNG should stick to this principle, that is, the future ordinance of the relevant university must contain this clause and representatives elected from among Legislative Council Members must join the Council, he may move a private Member's bill after the passage of this Bill. At that time, we may debate whether this bill is related to Article 74 of the Basic Law and whether it should be approved by the Chief Executive.

Therefore, I have to explain clearly that I have not mentioned that I will withdraw this Bill under certain circumstances. Normally speaking, Members can hardly imagine that I will make such a foolish remark that I will withdraw this Bill. Therefore, I must explain this very clearly. I also hope that the Hansard reporters will note down this very important point that is related to my integrity. I may have to warn my colleagues that they have to be very specific and careful when they talk to Legislative Council Members in future. As I have just said, if Members would like to talk with me in future, they can remind me of this. If they bring along recorders, I will not mind if they record all our dialogues.

On the contrary, I can confirm that what Miss Emily LAU has said she had talked to me in private is totally correct. Indeed we were not talking in private as other Members were present. She told me that she was dissatisfied with what we did. I respect her views but I also wish to make an explanation here.

Firstly, whether or not a Bills Committee should be set up for a specific Bill is entirely a decision of Members of the Legislative Council. As far as I know, the House Committee makes the decision. The Government will surely state its position and if it is avoidable, it hopes that a Bills Committee will not be established so that this Bill will be passed before the end of this Legislative Council Session.

In fact, the Bill was indeed subject to scrutiny during the interim. As far as we understand, the Legal Adviser of the Legislative Council has given some views on certain clauses of the Bill and briefed the House Committee of the Legislative Council. We have also contacted the legal advisers of the House Committee and adopted their suggestions. I will propose some technical or textual amendments at the Committee stage later on.

Moreover, we wrote to the Legal Adviser on 29 June this year explaining our views on the Bill. For example, we have adopted the suggestion of the Council of Lingnan College and referred to other views. We also pledged that when appointing members of the Council of Lingnan University in future, we will recommend to the Chief Executive that one to two Legislative Council Members should join the Council of Lingnan University in their personal capacity.

After the discussion with Miss Emily LAU, I returned to my office to find out more about the situation, and my colleagues then wrote to the Legislative Council on 12 July explaining the so-called transitional arrangement again, and that if the Bill could be passed in this Legislative Session then the new Council of Lingnan University would be established before the end of October. As a result, Lingnan College would be able to award degrees to the graduates in 1999 in the name of Lingnan University.

In my discussions with other Members, I also mentioned that apart from the clauses to which Mr CHEUNG Man-kwong referred in the ordinances governing the University of Hong Kong and the Chinese University of Hong Kong, the Lingnan University Bill was very similar to past bills providing for the upgrading of tertiary institutions to university status in other aspects. The information collected by us indicates that (if Legislative Council Members have different information, I would like to listen to their views) when tertiary institutions were upgraded to universities in the past, the bills were not scrutinized by Bills Committees. However, I certainly have to stress that, as I have just said, the decision on whether a Bills Committee should be established falls within the terms of reference of the Legislative Council. While the Government can express its views, it cannot make any inhibition or decision.

Mr CHEUNG and Miss LAU have mentioned the relationship between the Education and Manpower Bureau, the UGC and various academic institutions, the appeals mechanisms for the recruitment and dismissal of staff or complaints, the question of whether the attendance rate of council members at meetings of university councils be disclosed as well as the role to be played by the Government in supervising universities. Actually, Members already expressed their views on these issues at the last meeting of the Panel on Education. I believe we will still have many opportunities to continue the respective discussions in future. If we have a discussion now, it may take fairly long time, therefore, I hope that we will discuss this matter again on other suitable occasions.

Yet, I must point out that we certainly need to consider a point. While we say that we highly respect academic autonomy and universities' rights to act on their own accord, we are asking the Government to supervise the universities. How can a balance be struck? Government officials and Members must

carefully consider this issue in future. This is not a question of us shirking our responsibilities. However, if we really respect that universities should be managed on their own, universities should have their rights and responsibilities. If they have rights, they should bear responsibilities, and be accountable to the public including the Legislative Council. Does the Government need to co-ordinate everything such as making public the attendance rate or other matters? Should it handle matters on behalf of universities? I should discuss this with Members again in future.

That is more or less what I would like to say. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Lingnan University Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Lingnan University Bill.

Council went into Committee.

Committee Stage

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

LINGNAN UNIVERSITY BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Lingnan University Bill 1999.

CLERK (in Cantonese): Clauses 1 to 8, 10, 11, 13, 15, 18 to 22, 24 to 36 and 39.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 9, 12, 14, 16, 17, 23, 37 and 38.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that clauses 9, 12, 14, 16, 17, 23, 37 and 38 be amended as set out in the paper circularized to Members. The amendments can be divided into three parts.

The first part comprises amendments to clauses 9, 12 and 23. They seek to expand the composition the Court and the Council of the Lingnan University respectively by one member each elected from among eligible staff. To avoid affecting the membership of the Court and the Council, the one member seat of these two bodies elected from among Professors and Chair Professors as originally proposed shall be deleted. These amendments are made in response to a proposal by the Council of Lingnan College.

The second part comprises technical amendments to clauses 14, 16, 17 and 38. They seek to improve certain wordings of the Chinese text of the Bill to give greater clarity to the meaning of clause 38.

The third part covers consequential amendments to the Legislative Council (Amendment) Bill 1999. The Bill makes consequential amendments to the Legislative Council Ordinance and the order of the amended clauses has been changed by the Legislative Council (Amendment) Bill 1999 just passed. To make consequential amendments to this Bill, clause 37 will be deleted and I will later on move the addition of new clause 40 to replace clause 37.

Thank you, Madam Chairman.

Proposed amendments

Clause 9 (see Annex VII)

Clause 12 (see Annex VII)

Clause 14 (see Annex VII)

Clause 16 (see Annex VII)

Clause 17 (see Annex VII)

Clause 23 (see Annex VII)

Clause 37 (see Annex VII)

Clause 38 (see Annex VII)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 37, that is, deleting the clause, has been approved, clause 37 will be deleted from the Bill.

CLERK (in Cantonese): Clauses 9, 12, 14, 16, 17, 23 and 38 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Heading before New clause 40 Legislative Council (Amendment) Ordinance 1999

New clause 40 section added.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that the heading before new clause 40 and new clause 40 be read the Second time as set out in the paper circularized to Members.

As I have said earlier, this new clause is added to replace the deleted clause 37 to make consequential amendment to the Legislative Council (Amendment) Bill 1999 already passed.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the heading before new clause 40 and new clause 40 be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Heading before new clause 40 and new clause 40.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that the heading before new clause 40 and new clause 40 be added to the Bill.

Proposed additions

Heading before new clause 40 (see Annex VII)

New clause 40 (see Annex VII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the heading before new clause 40 and new clause 40 be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam Chairman, I move that Schedules 1 and 2 be amended as set out in the paper circularized the Members.

As I have said, after an increase in the number of members of the Court and Council of Lingnan University elected from among qualified staff, the seat of a respective member of these two bodies elected from among Professors and Chair Professors as originally proposed shall be cancelled to avoid affecting the total membership of the Court and Council. The object of the amendment is to delete the items in Schedules 1 and 2 concerning these two seats.

Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex VII)

Schedule 2 (see Annex VII)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 2 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

LINGNAN UNIVERSITY BILL

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, the

Lingnan University Bill

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Lingnan University Bill be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Lingnan University Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Adaptation of Laws (No. 18) Bill 1999.

ADAPTATION OF LAWS (NO. 18) BILL 1999

Resumption of debate on Second Reading which was moved on 23 June 1999

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws (No. 18) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Adaptation of Laws (No. 18) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 18) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws (No. 18) Bill 1999.

CLERK (in Cantonese): Clauses 1, 2 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 6.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ADAPTATION OF LAWS (NO. 18) BILL 1999

SECRETARY FOR INFORMATION TECHNOLOGY AND BROADCASTING (in Cantonese): Madam President, the

Adaptation of Laws (No. 18) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (No. 18) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Adaptation of Laws (No. 18) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Supplementary Appropriation (1998-99) Bill 1999.

SUPPLEMENTARY APPROPRIATION (1998-99) BILL 1999

Resumption of debate on Second Reading which was moved on 23 June 1999

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (1998-99) 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Supplementary Appropriation (1998-99) 1999.

Council went into Committee.

Committee Stage

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

SUPPLEMENTARY APPROPRIATION (1998-99) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (1998-99) Bill 1999.

CLERK (in Cantonese): Clauses 1 and 2.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

SUPPLEMENTARY APPROPRIATION (1998-99) BILL 1999

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

Supplementary Appropriation (1998-99) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (1998-99) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Supplementary Appropriation (1998-99) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Adaptation of Laws (No. 4) Bill 1999.

ADAPTATION OF LAWS (NO. 4) BILL 1999

Resumption of debate on Second Reading which was moved on 10 February 1999

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws (No. 4) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Adaptation of Laws (No. 4) Bill 1999.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NO. 4) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws (No. 4) Bill 1999.

CLERK (in Cantonese): Clauses 1, 2 and 3.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 2, 3 and 5 to 9.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 4 and 10 to 15.

SECRETARY FOR WORKS (in Cantonese): Madam Chairman, I move that sections 1, 5, 12 and 22 in Schedule 4, section 12 in Schedule 10 and section 1 in Schedule 11 to 15 be amended as set out in the paper circularized to Members.

The Government proposes that regardless of whether the formulation of subordinate legislation is involved, all references to "Governor" shall be changed to "Chief Executive". Besides, the Government proposes to substitute "the rights enjoyed by the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws" in the savings of the Bill for "the rights enjoyed by the Central People's Government or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws" as originally proposed. This proposal is made in accordance with item 10 in Schedule 3 of the decision of the Standing Committee of the National People's Congress for handling the original laws of Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Thank you, Madam Chairman.

Proposed amendments

Schedule 4 (see Annex VIII)

Schedule 10 (see Annex VIII)

Schedule 11 (see Annex VIII)

Schedule 12 (see Annex VIII)

Schedule 13 (see Annex VIII)

Schedule 14 (see Annex VIII)

Schedule 15 (see Annex VIII)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 4 and 10 to 15 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

ADAPTATION OF LAWS (NO. 4) BILL 1999

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

Adaptation of Laws (No. 4) Bill 1999

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (No. 4) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Adaptation of Laws (No. 4) Bill 1999.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will now resume the Second Reading debate of the Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999.

DISCIPLINED SERVICES WELFARE FUNDS LEGISLATION (AMENDMENT) BILL 1999

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999.

Council went into Committee.

Committee Stage

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

DISCIPLINED SERVICES WELFARE FUNDS LEGISLATION (AMENDMENT) BILL 1999

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999.

CLERK (in Cantonese): Clauses 1 to 9.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 10.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the reference in clause 10 of the Bill to personal property be deleted. Clause 10 of the Bill seeks to confirm the real or personal property transactions that the Commissioner of Police or his representative has completed in the past for the police welfare fund. However, as the Commissioner of Police does not hold any personal property for the police welfare fund, the respective reference is not necessary. We take the advice of the Legal Service Division of the Legislative Council Secretariat that the reference in clause 10 of the Bill to personal property should be deleted.

Proposed amendment

Clause 10 (see Annex IX)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 10 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 to 8.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

DISCIPLINED SERVICES WELFARE FUNDS LEGISLATION (AMENDMENT) BILL 1999

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

Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999

has passed through Committee with 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 Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Disciplined Services Welfare Funds Legislation (Amendment) Bill 1999.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under the Pharmacy and Poisons Ordinance.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Madam President, I move the motion which has been printed on the Agenda. The objective of the motion is to amend the Poisons List Regulations and the Pharmacy and Poisons Regulations.

At present, the sale and supply of pharmaceutical products are regulated through the implementation of a registration and inspection regime formulated under the Pharmacy and Poisons Ordinance. The Poisons List Regulations and the Pharmacy and Poisons Regulations, both made under the Ordinance, have set out a poisons list and several schedules. Through the listing of medicines in the poisons list and different schedules, we can provide for the sale requirements and keeping of records with respect to pharmaceutical products to exercise control of different degrees.

To safeguard the health of the public, certain pharmaceutical products must be sold in dispensaries under the supervision of registered pharmacists. Details of the sale of certain pharmaceutical products should be properly recorded, including registering the sale date, name and address of purchasers, name and quantity of medicines and the purpose of purchase. Some other pharmaceutical products can be sold only upon production of a prescription by a registered medical practitioner, registered dentist or registered veterinary surgeon. Certain pharmaceutical products should comply with special labelling requirements.

The amendment regulation tabled before Members seek to amend the poisons list of the Poisons List Regulations and several schedules of the Pharmacy and Poisons Regulations so as to impose control on some medicines and update regulation on these medicines.

One of the proposed amendments is to add 102 medicines to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations so that pharmaceutical products containing any of them must be sold in dispensaries under the supervision of registered pharmacists and in their presence and with the support of prescriptions.

Another four medicines are added to Part I of the Poisons List so that pharmaceutical products containing any of them must be sold in dispensaries under the supervision of registered pharmacists and in their presence, but no prescriptions are required.

It is also proposed that control on two other medicines be strengthened while control on three others be relaxed. The name of a medicine will be amended so as to comply with the nomenclature commonly adopted by the international community. The amendment regulation also proposes to exempt two medicines from compliance with the related statutory labelling requirements.

On the other hand, the Pharmacy and Poisons (Amendment) Regulation 1999 also includes an amendment, which provides that the sale details of the relevant medicines should be stated more clearly and properly recorded in accordance with section 22 of the Pharmacy and Poisons Ordinance.

The abovementioned amendments have been proposed by the Pharmacy and Poisons Board, which was set up under section 3 of the Pharmacy and Poisons Ordinance. The Board is a statutory authority responsible for the registration and control of pharmaceutical products. Its members are drawn from the pharmacy, health care sector and academic sector. The above mentioned amendments related to the control of medicines are based on the efficacy, toxicity and potential side effects of the relevant medicines.

Madam President, I so submit.

The Secretary for Health Welfare moved the following motion:

"That the following Regulations, made by the Pharmacy and Poisons Board on 25 June 1999, be aproved -

"(a) the Pharmacy and Poisaons (Amendment) Regulation 1999; and;

(b) the Poisons List (Amendment) Regulation 1999.

PHARMACY AND POISONS (AMENDMENT) REGULATION 1999

(Made by the Pharmacy and Poisons Board under section 29 of the Pharmacy and Poisons Ordinance (Cap. 138) subject to the approval of the Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Pharmacy and Poisons Board by notice in the Gazette.

2. Regulation substituted

Regulation 3 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg.) is repealed and the following substituted -

"3. Application of section 22 restricted to the First Schedule

Section 22 shall only apply to those poisons included in Part I of the Poisons List as set out in the Schedule to the Poisons List Regulations (Cap. 138 sub. leg.) which are also included in the First Schedule but not included in the Third Schedule.".

3. Substances falling within the Poisons List to which special restrictions apply under regulations 3 and 5

The First Schedule is amended in Part A -

(a) in the entry relating to "Antihistamine substances" by adding -

"Fexofenadine";

(b) by repealing the entry of the substance "Atellin";

(c) in the entry relating to "Contrast media" by adding -

"Iomeprol";

(d) in the entry relating to "Etoposide" by adding "; its esters" at the end;

(e) by repealing the entry of the substance "Omeprazole";

(f) in the entry relating to "Prostaglandins" by adding -

"Latanoprost";

(g) in the entry relating to "Suprarenal gland" by adding after "1%" -

"and except beclomethasone and its salts when contained in aerosol dispensers";

(h) by adding -

"Abciximab
Acamprosate; its salts
Acemetacin; its salts
Aciclovir; its salts
Adapalene; its salts; its esters
Aldesleukin
Anastrozole; its salts

Atorvastatin; its salts
Atovaquone
Basiliximab; its salts
Benserazide; its salts
Bicalutamide; its salts
Brimonidine; its salts
Broncho-Vaxom
Candesartan; its salts; its esters; their salts
Carbidopa; its salts
Celecoxib; its salts
Cerivastatin; its salts
Chlofenamic acid; its salts
Chloroquine; its salts
Cidofovir; its salts
Ciprofibrate; its salts
Cisatracurium besylate
Clopidogrel; its salts
Corticorelin; its salts
Dalteparin; its salts
Dapsone
Dihydroergotamine; its salts, simple or complex
Distigmine; its salts
Donepezil; its salts
Enoxaparin; its salts
Entacapone; its salts
Famciclovir; its salts
Flumethrin; its salts
Gemcitabine; its salts
Glimepiride; its salts
Granisetron; its salts
Grepafloxacin; its salts; its esters
Hydroxychloroquine; its salts
Ibandronic acid; its salts
Imidapril; its salts
Imiquimod; its salts
Irbesartan; its salts
Irinotecan; its salts
Lamivudine; its salts
Lanreotide; its salts

Letrozole
Mangafodipir; its salts
Meloxicam; its salts
Mibefradil; its salts
Moexipril; its salts
Montelukast; its salts
Muromonab-CD3
Mycophenolic acid; its salts; its esters
Naratriptan; its salts
Nefazodone; its salts
Neostigmine; its salts
Nevirapine; its salts
Nimesulide; its salts
Nisoldipine
Olanzapine; its salts
Orlistat; its salts
Penciclovir; its salts
Pentamidine; its salts
Pizotifen; its salts
Pramipexole; its salts
Primaquine; its salts
Proguanil; its salts
Pyridostigmine; its salts
Pyrimethamine
Quetiapine; its salts
Rabeprazole; its salts
Raloxifene; its salts
Reboxetine; its salts
Remifentanil; its salts
Repaglinide; its salts; its esters
Reteplase
Reviparin; its salts
Riluzole; its salts
Rivastigmine; its salts
Ropinirole; its salts
Ropivacaine; its salts
Saquinavir; its salts
Sodium aurothiomalate
Tacrolimus

Tazarotene; its salts
Tiludronic acid; its salts
Tinzaparin; its salts
Tirofiban; its salts
Tolcapone; its salts
Tolterodine; its salts
Topiramate; its salts
Topotecan; its salts
Trimetrexate; its salts
Trovafloxacin; its salts; its derivatives; their salts
Valaciclovir; its salts
Valsartan; its salts
Vinorelbine; its salts
Xylazine; its salts
Zafirlukast
Zolmitriptan; its salts".

4. Articles exempted by regulation 8 from the provisions of the Ordinance and of these regulations

The Second Schedule is amended in Part A of Group II, in the entry relating to "Sodium fluoride" by repealing "dentifrices containing not more than 0.3% of sodium fluoride" and substituting "dentifrices containing not more than 0.33% of sodium fluoride".

5. Substances required by regulation 9 to be sold by retail only upon a prescription given by a registered medical practitioner, registered dentist or registered veterinary surgeon

The Third Schedule is amended in Part A -

(a) in the entry relating to "Antihistamine substances" by adding -

"Fexofenadine";

(b) by repealing the entry of the substance "Atellin";

(c) in the entry relating to "Contrast media" by adding -

"Iomeprol";

(d) in the entry relating to "Etoposide" by adding "; its esters" at the end;

(e) by repealing the entry of the substance "Omeprazole";

(f) in the entry relating to "Prostaglandins" by adding -

"Latanoprost";

(g) in the entry relating to "Suprarenal gland" by adding after "1%" -

"and except beclomethasone and its salts when contained in aerosol dispensers";

(h) by adding -

"Abciximab
Acamprosate; its salts
Acemetacin; its salts
Aciclovir; its salts
Adapalene; its salts; its esters
Aldesleukin
Anastrozole; its salts
Atorvastatin; its salts
Atovaquone
Basiliximab; its salts
Benserazide; its salts
Bicalutamide; its salts
Brimonidine; its salts
Broncho-Vaxom
Candesartan; its salts; its esters; their salts
Carbidopa; its salts
Celecoxib; its salts
Cerivastatin; its salts

Chlofenamic acid; its salts
Chloroquine; its salts
Cidofovir; its salts
Ciprofibrate; its salts
Cisatracurium besylate
Clopidogrel; its salts
Corticorelin; its salts
Dalteparin; its salts
Dapsone
Dihydroergotamine; its salts, simple or complex
Distigmine; its salts
Donepezil; its salts
Enoxaparin; its salts
Entacapone; its salts
Famciclovir; its salts
Flumethrin; its salts
Gemcitabine; its salts
Glimepiride; its salts
Granisetron; its salts
Grepafloxacin; its salts; its esters
Hydroxychloroquine; its salts
Ibandronic acid; its salts
Imidapril; its salts
Imiquimod; its salts
Irbesartan; its salts
Irinotecan; its salts
Lamivudine; its salts
Lanreotide; its salts
Letrozole
Mangafodipir; its salts
Meloxicam; its salts
Mibefradil; its salts
Moexipril; its salts
Montelukast; its salts
Muromonab-CD3
Mycophenolic acid; its salts; its esters
Naratriptan; its salts
Nefazodone; its salts
Neostigmine; its salts

Nevirapine; its salts
Nimesulide; its salts
Nisoldipine
Olanzapine; its salts
Orlistat; its salts
Penciclovir; its salts
Pentamidine; its salts
Pizotifen; its salts
Pramipexole; its salts
Primaquine; its salts
Proguanil; its salts
Pyridostigmine; its salts
Pyrimethamine
Quetiapine; its salts
Rabeprazole; its salts
Raloxifene; its salts
Reboxetine; its salts
Remifentanil; its salts
Repaglinide; its salts; its esters
Reteplase
Reviparin; its salts
Riluzole; its salts
Rivastigmine; its salts
Ropinirole; its salts
Ropivacaine; its salts
Saquinavir; its salts
Sodium aurothiomalate
Tacrolimus
Tazarotene; its salts
Tiludronic acid; its salts
Tinzaparin; its salts
Tirofiban; its salts
Tolcapone; its salts
Tolterodine; its salts
Topiramate; its salts
Topotecan; its salts
Trimetrexate; its salts
Trovafloxacin; its salts; its derivatives; their salts
Valaciclovir; its salts

Valsartan; its salts
Vinorelbine; its salts
Xylazine; its salts
Zafirlukast
Zolmitriptan; its salts".

6. Indication of statement prescribed by regulation 15 for the purposes of section 27(c) of the Ordinance

The Fifth Schedule is amended in item 8 by adding "Cetirizine, Fexofenadine," after "Astemizole,".

Chairman

25 June 1999

Explanatory Note

This Regulation repeals and substitutes regulation 3 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg.) to clarify the application of section 22 of the Pharmacy and Poisons Ordinance (Cap. 138).

2. The Regulation also updates various Schedules to the principal Regulations which update includes -

(a) in the First and Third Schedules -

(i) adding a number of new substances;

(ii) upgrading the control of "Etoposide" by including also its esters;

(iii) substituting "Muromonab-CD3" for "Atellin" in order to tie with the internationally accepted nomenclature for that substance;

(iv) relaxing the control of "Omeprazole";

(v) relaxing the control of "beclomethasone and its salts when contained in aerosol dispensers" (an active principle of "Suprarenal gland");

(b) in the Second Schedule, relaxing the control of "Sodium fluoride" so as to allow dentifrices containing not more than 0.33% of "sodium fluoride" to be sold to the public without any restrictions; and

(c) in the Fifth Schedule, exempting "Cetirizine" and "Fexofenadine" from the relevant statutory labelling requirement.

POISONS LIST (AMENDMENT) REGULATION 1999

(Made by the Pharmacy and Poisons Board under section 29 of the Pharmacy and Poisons Ordinance (Cap. 138) subject to the approval of the Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Pharmacy and Poisons Board by notice in the Gazette.

2. The Poisons List

Part A of Part I of the Schedule to the Poisons List Regulations (Cap. 138 sub. leg.) is amended -

(a) in the entry relating to "Antihistamine substances" by adding -

"Ebastine
Fexofenadine";

(b) by repealing the entry of the substance "Atellin";

(c) in the entry relating to "Contrast media" by adding -

"Iomeprol";

(d) in the entry relating to "Etoposide" by adding "; its esters" at the end;

(e) in the entry relating to "Omeprazole" by adding "; its salts" at the end;

(f) in the entry relating to "Prostaglandins" by adding -

"Latanoprost";

(g) by adding -

"Abciximab
Acamprosate; its salts
Acemetacin; its salts
Aciclovir; its salts
Adapalene; its salts; its esters
Aldesleukin
Anastrozole; its salts
Atorvastatin; its salts
Atovaquone
Basiliximab; its salts
Benserazide; its salts
Bicalutamide; its salts
Biperiden; its salts
Brimonidine; its salts
Broncho-Vaxom
Candesartan; its salts; its esters; their salts
Carbidopa; its salts
Celecoxib; its salts
Cerivastatin; its salts
Chlofenamic acid; its salts
Cidofovir; its salts

Ciprofibrate; its salts
Cisatracurium besylate
Clopidogrel; its salts
Corticorelin; its salts
Dalteparin; its salts
Dapsone
Dihydroergotamine; its salts, simple or complex
Distigmine; its salts
Donepezil; its salts
Enoxaparin; its salts
Entacapone; its salts
Famciclovir; its salts
Flumethrin; its salts
Gemcitabine; its salts
Glimepiride; its salts
Granisetron; its salts
Grepafloxacin; its salts; its esters
Ibandronic acid; its salts
Imidapril; its salts
Imiquimod; its salts
Irbesartan; its salts
Irinotecan; its salts
Isosorbide; its nitrates
Lamivudine; its salts
Lanreotide; its salts
Letrozole
Mangafodipir; its salts
Meloxicam; its salts
Mibefradil; its salts
Moexipril; its salts
Montelukast; its salts
Muromonab-CD3
Mycophenolic acid; its salts; its esters
Naratriptan; its salts
Nefazodone; its salts
Neostigmine; its salts
Nevirapine; its salts
Nimesulide; its salts
Nisoldipine

Olanzapine; its salts
Orlistat; its salts
Penciclovir; its salts
Pentamidine; its salts
Pizotifen; its salts
Pramipexole; its salts
Primaquine; its salts
Proguanil; its salts
Pyridostigmine; its salts
Pyrimethamine
Quetiapine; its salts
Rabeprazole; its salts
Raloxifene; its salts
Reboxetine; its salts
Remifentanil; its salts
Repaglinide; its salts; its esters
Reteplase
Reviparin; its salts
Riluzole; its salts
Rivastigmine; its salts
Ropinirole; its salts
Ropivacaine; its salts
Saquinavir; its salts
Sodium aurothiomalate
Tacrolimus
Tazarotene; its salts
Tiludronic acid; its salts
Tinzaparin; its salts
Tirofiban; its salts
Tolcapone; its salts
Tolterodine; its salts
Topiramate; its salts
Topotecan; its salts
Trimetrexate; its salts
Trovafloxacin; its salts; its derivatives; their salts
Valaciclovir; its salts
Valsartan; its salts
Vinorelbine; its salts
Xylazine; its salts

Zafirlukast
Zolmitriptan; its salts".

Chairman

25 June 1999

Explanatory Note

This Regulation updates the Schedule to the Poisons List Regulations (Cap. 138 sub. leg.) which update includes -

(a) adding a number of poisons to Part I of the Poisons List;

(b) upgrading the control of -

(i) "Etoposide" by including also its esters; and

(ii) "Omeprazole" by including also its salts; and

(c) substituting "Muromonab-CD3" for "Atellin" in order to tie with the internationally accepted nomenclature for that poison.""

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health and Welfare, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Health and Welfare, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Dutiable Commodities Ordinance.

PROPOSED RESOLUTION UNDER THE DUTIABLE COMMODITIES ORDINANCE

SECRETARY FOR THE TREASURY: President, I move the resolution standing in my name on the Agenda.

The resolution seeks to amend Schedule 1 to the Dutiable Commodities Ordinance to exempt from duty certain quantities of alcoholic liquors and tobacco which are sold to arrival passengers at entry points in Hong Kong. It aims at implementing the proposal of allowing duty-free shopping on arrival. Let me explain briefly the background of this resolution.

At present, the Dutiable Commodities Ordinance already exempts from duty certain quantities of dutiable goods which are imported into Hong Kong by passengers of ships, aircraft, trains or vehicles for their own use. However, such exemption does not apply to goods which are purchased on arrival. As such, we have not allowed the sale of duty-exempt goods at entry points to arrival passengers.

We estimate that about 20% to 30% of arrival passengers carry with them duty-free goods with an estimated value of about $1,200 million a year. Since at present we do not allow the sale of duty-free goods on arrival, all such goods are bought outside Hong Kong. Following requests from the Kowloon-Canton Railway Corporation and the Airport Authority, we have considered whether the duty-free concessions we have already provided for arrival passengers should be extended to cover goods purchased on arrival by such passengers.

We believe that allowing the purchase of duty-free goods on arrival would partly replace the purchase of such goods from equivalent outlets outside Hong Kong. As the quantities of and restrictions on duty-free concessions are not adjusted, the proposal should not have any revenue implications. But the proposal would bring some economic benefits to Hong Kong. This would be expressed in terms of value-added or income to be generated from the increased retail, wholesale, and import and export activities in duty-free concessions. Assuming that 30% of the $1,200 million worth of duty-free goods brought into Hong Kong annually would be bought in the arrival concessions, we estimate that the value-added directly generated in the retail, wholesale, and import and export trades will amount to about $80 million each year.

Besides, the proposal should not significantly affect the sale of similar duty-paid goods in Hong Kong as it will mainly be made use of by those who would otherwise have bought such goods before arriving in Hong Kong. In addition, allowing the sale of duty-free goods on arrival is an international practice. Hong Kong should seek to remain competitive.

We note that in implementing the proposal, there are two important operational considerations, namely, crowd control in Lo Wu Railway Station, particularly at busy times, and the possibility of abuse of the allowances and arrangements. On the crowd control issue, the relevant government departments will work out with the respective operators suitable arrangements for operating the concessions and will prepare alternative arrangements for peak seasons. We will aim to work out an arrangement which would least affect passenger flow in the Lo Wu Railway Station and would not compromise customs and immigration controls. On the possibility of abuse, the Customs and Excise Department will conduct more frequent checking of passengers, airport and railway staff. The resources involved in this respect should not be significant and would be absorbed by the Customs and Excise Department.

In the light of the economic benefits that the proposal could bring to Hong Kong and with the provision of appropriate crowd control and enforcement

measures, we hope that Members would support the sale of duty-free goods to arriving passengers.

President, I beg to move.

The Secretary for the Treasury moved the following motion:

"That the Dutiable Commodities Ordinance be amended in Schedule 1 -

(a) in Part I -

(i) in paragraph 1, by repealing "Duty" and substituting "subject to paragraph 3, duty";

(ii) by adding -

"3. (1) Subject to this paragraph, duty payable on liquor bought at designated premises by a passenger entering Hong Kong for his own use is waived provided that the quantity of liquor for which duty is so waived does not exceed the designated quantity applicable to that passenger.

(2) If that passenger, at the same time, imports into Hong Kong liquor which is exempt from duty under regulation 12(1) (e) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.), the designated quantity of liquor for which duty is waived under subparagraph (1) shall be reduced by the quantity of liquor so exempt.

(3) For the purposes of this paragraph -

"designated premises" (指定處所) means premises which are -

(a) located at a place approved by the Commissioner in the arrival area at various entry points in Hong Kong; and

(b) a licensed warehouse;

"designated quantity" (指定分量) means the quantity which is equivalent to that in relation to imported liquor as the Commissioner may determine and publish in the Gazette for which duty is exempt under regulation 12(1) (e) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.).";

(b) in Part II -

(i) in paragraph 1, by repealing "Duty" and substituting "Subject to paragraph 3, duty";

(ii) by adding -

"3. (1) Subject to this paragraph, duty payable on tobacco bought at designated premises by a passenger entering Hong Kong for his own use is waived provided that the quantity of tobacco for which duty is so waived does not exceed the designated quantity applicable to that passenger.

(2) If that passenger, at the same time, imports into Hong Kong tobacco which is exempt from duty under regulation 12(1) (e) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.), the designated quantity of tobacco for which duty is waived under subparagraph (1) shall be reduced by the quantity of tobacco so exempt.

(3) For the purposes of this paragraph -

"designated premises" (指定處所) means premises which are -

(a) located at a place approved by the Commissioner in the arrival area at various entry points in Hong Kong; and

(b) a licensed warehouse;

"designated quantity" (指定分量) means the quantity which is equivalent to that in relation to imported tobacco as the Commissioner may determine and publish in the Gazette for which duty is exempt under regulation 12(1) (e) of the Dutiable Commodities Regulations (Cap. 109 sub. leg.)."."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for the Treasury, as set out on the Agenda, be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for the Treasury, as set out on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Honorable Members, this Council is going to discuss the proposed resolution under the Immigration Ordinance. The Court is now dealing with some cases related to the right of abode. Although the contents of the resolution are not specific to any of the cases, for caution's sake, I would like to remind Members of Rule 41(2) of the Rules of Procedure which provides for: "Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case". I understand that it is very difficult for Members to understand or decide what you are going to say involves a case pending in the Court. But I hope Members can exercise care in their speeches to avoid causing unnecessary suspicion.

PRESIDENT (in Cantonese): Proposed resolution under the Immigration Ordinance.

PROPOSED RESOLUTION UNDER THE IMMIGRATION ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

First of all, I would like to explain why we have proposed to amend the Immigration Ordinance. On 26 June, the Standing Committee of the National People's Congress (NPCSC) gave an interpretation on the legislative intent of Article 22 para 4 and Article 24 para 2(3) of the Basic Law. According to the NPCSC's interpretation, "people from other parts of China" as referred to in Article 22 para 4 of the Basic Law refers to people from various provinces, autonomous regions or municipalities directly under the Central Government, including persons of Chinese nationality born in the Mainland to Hong Kong permanent residents. Regardless of their reasons for coming to Hong Kong, they should apply to the relevant authorities in the Mainland for approval beforehand. In addition, by virtue of Article 24 para 2(3) of the Basic Law, persons of Chinese nationality born outside Hong Kong to Hong Kong permanent residents can acquire the right of abode (ROA) only if at least one of their parents is a person as referred to in Article 24 para 2(1) or (2) of the Basic Law at the time of their birth.

In addition, the NPCSC expressed that the interpretation would, in no way, affect the ROA given to the relevant litigants of the cases ruled by the Court of Final Appeal (CFA) on 29 January this year.

The NPCSC's interpretation has the same legal force as the Basic Law. The Basic Law is both a national law and a law of the Hong Kong Special Administrative Region (SAR). Since the NPCSC interpretation is part of Hong Kong laws, we do not need to amend the local laws to implement the interpretation. Nevertheless, as the CFA has, in making its ruling on 29 January, deleted some of the contents as contained in the Immigration Ordinance, its Schedule 1, Form no. 12 of the Immigration Regulations, and contents related to the procedures of applying for a Certificate of Entitlement (C of E) as gazetted by the Director of Immigration, we consider it necessary to make amendments. In doing so, we can remove any doubts that members of the community might have with respect to the CFA ruling and the NPCSC interpretation. This is my main purpose of moving this resolution.

I would also like to take this opportunity to make a technical amendment to correct an inadvertent error made in Schedule 1 of the Immigration Ordinance. Just as the CFA pointed out in its judgment, it is wrong for paragraph 2(c) of Schedule 1 to mention the term "right of abode" for the term was not introduced into the Immigration Ordinance until 1 July 1987. In mentioning the "right of abode" in the provision, it will inadvertently deprive those persons who were born before 1 July 1987 of this right. In fact, paragraph 2(a) of Schedule 1 has also made the same mistake. We agree with the views advanced by the CFA. Therefore, we hope to correct the technical drafting error by replacing the term "right of abode" by some appropriate wordings to ensure those persons who were born before 1 July 1987 can also acquire the ROA.

As such, the resolution was drafted to achieve the following effects:

First, to implement the decision of the CFA in respect of persons born out of wedlock;

Second, to remove any doubts as to the text of Schedule 1 of the Immigration Ordinance in respect of the categories of persons who have the ROA, following the CFA ruling and NPCSC interpretation;

Third, to correct an inadvertent error relating to the use of the term "right of abode" in Schedule 1 as I mentioned earlier.

Upon my submission of the resolution on 28 June, this Council immediately set up a Subcommittee to scrutinize the resolution, and the Subcommittee held four meetings in only two weeks' time. I would like to take this opportunity to thank the Chairman of the Subcommittee, Mr Ambrose LAU, and other members, who have scrutinized the resolution submitted by me very seriously and put forward a lot of constructive amendments. We are willing to accept some of the recommendations. As such, the Secretary for Justice will later on move some technical amendments to my resolution so as to make the text of the relevant clauses in the amended Schedule 1 more precise. I hope Members can support both my resolution and the amendments to be moved by the Secretary for Justice.

I would also like to take this opportunity to respond to some of the queries raised by members of the Subcommittee in the course of deliberation. First, I wish to respond to a question raised by a Member: Will the provisions in Schedule 1 and our proposed amendments violate the Basic Law? In the course of deliberation, the Subcommittee spent a lot of time on discussing Schedule 1 with respect to the categories of persons who have the ROA and whether our proposed amendments are in violation of the Basic Law. A Member pointed out that Article 24 para 2(1) of the Basic Law had only stated that permanent residents of the SAR shall include Chinese citizens born in Hong Kong before or after the establishment of the SAR. It had not, however, specified whether either one of the person's parents was settled or had the ROA at the time of his birth or at a later date. A Member also questioned whether the abovementioned wordings as appeared in the Immigration Ordinance, that is, the footnote added by the local legislature to the original clauses in the Basic Law, or by quoting the adjective used by Mr Philip DYKES, SC, the legislative gloss we added, were in compliance with the Basic Law and where the legal basis lay. Of course, this problem does not only affect para 2(a) of Schedule 1. There are also similar footnotes in a number of other provisions in para 2 of Schedule 1. Since the reunification, it has become a focal point of argument in legal proceedings as to under what circumstances children born outside the territory of Hong Kong by virtue of para 2(c) of Schedule 1 will be eligible for ROA. There is no need for me to go into further details for I believe Members are well familiarized with them. But I wish to point out that a number of Legislative Council Members did, in their capacity of Members of the former Legislative Council, study the abovementioned footnotes in detail and express their support in the debates held by the former Legislative Council.

The situation at that time was: In April 1997, following an overall introduction of policies promulgated in relation to the nationality and ROA of Hong Kong residents by a spokesman from the Hong Kong and Macau Affairs Office of the State Council, the then Director of Immigration delivered a speech to the Legislative Council Panel on Security on 14 April 1997, stating that both the British and Chinese sides had reached a consensus on the interpretation and most of the implementation measures with respect to Article 24 of the Basic Law. The consensus reached included the following main points: First, in accordance with Article 24 para 2(1) of the Basic Law, "Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region" will acquire the ROA. This means that a Chinese citizen born in Hong Kong can acquire the ROA only if his parents or one of them has acquired the ROA in Hong Kong or has been granted unconditional stay at the time of his birth or at any later time. In addition, by virtue of Article 24 para 2(3), "persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2)" will acquire the ROA. These persons refer to Chinese citizens born outside Hong Kong and their parents or any one of them must be a Chinese citizen having the ROA in Hong Kong at their time of birth.

One month later, that is, on 14 May 1997, Miss Margaret NG moved a motion debate in the former Legislative Council to urge the Administration to introduce a bill on the ROA for enactment by the Council before 1 July 1997. Miss Margaret NG delivered the following speech at that time: "We are told that China and Britain have reached consensus on nearly all the issues on how Article 24 is to be implemented after 1 July. The areas of consensus have been published by each side on its own. There are only a few gray areas where no agreements have been reached, and we have been told precisely what they are. That so much consensus has been reached is of course encouraging. But policy, even widely announced, is not enough. The matter needs legislation because only the law can establish rights; because only the law is binding on the Government. Only the law can give real protection by giving the individual a clear basis for his claim." The speech delivered by Miss Margaret NG fully illustrates that she was in support of the consensus reached by both the British and Chinese sides in relation to the interpretation of Article 24 para 2 of the Basic Law, as well as supporting an early enactment of legislation and implementing the principle of the Basic Law through local legislation.

That day, a number of Members also shared the same view. For instance, Miss Christine LOH made the following remarks: "I will support such a Bill so far as it reflects the consensus reached in the Joint Liaison Group. The Honourable Miss Margaret NG cogently explains the legal basis of the Government's responsibility to put such a Bill forward. There is also overwhelming public demand to fix the right of abode in law before the handover. That demand reflects the difficult situation in which Hong Kong people are being placed. No matter how much the Government tells us otherwise, and I am sure that they do know better, the right of abode will not be certain or secure until it is established by law." When Mr Andrew CHENG spoke in support of Miss NG's motion, he also made the following remarks: "Article 24 of the Basic Law provides for the principle only and the implementation of the principle will depend on other detailed subsidiary legislation. That is how the public may abide by the law and comply with rules. Now Hong Kong always claims having the advantage of a sound system of rule by law. But if the right of abode is ambiguous, how can we convince others that our territory will continue to be ruled by law?" Consequently, Miss Margaret NG's motion was passed by 23 votes. Those who supported the motion, including those who object to seeking an interpretation of the Basic Law today, were Mr Martin LEE, Mr SZETO Wah, Mr CHEUNG Man-kwong, Mr Michael HO, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung and Miss Margaret NG.

These historical facts illustrate that a number of Members, at that time, never doubted the consensus reached by both the British and Chinese sides with respect to the interpretation of Article 24 para 2 of the Basic Law. Neither did they ever doubt the principle of Article 24 para 2 of the Basic Law as enshrined in the consensus and the addition of footnotes for the specific implementation of the provisions locally. Some Members are now casting doubts on whether these footnotes are in compliance with the Basic Law with respect to the relevant clauses in Schedule 1 of the Immigration Ordinance and the issues raised with respect to our proposed amendments. Are their arguments founded on an objective and reasonable basis? A common point shared by the situation today, two years after, and the situation at that time is that the ROA issue is still annoying the local community. With the endless litigation cases, the number of mainland visitors or illegal immigrants claiming to have the ROA and asking to settle in Hong Kong is rising continuously.

Following the NPCSC interpretation on 26 June, the number of people approaching the Immigration Department to claim their ROA has risen to nearly 10 000, including at least 400 illegal immigrants and 3 000-odd overstayers. Among these people, more than 4 000 have yet to be ascertained by the Immigration Department as to what their real identities are. In other words, it is not sure whether they were still residing in the Mainland and they had asked their friends or relatives to lodge applications on behalf of them or they had already sneaked into Hong Kong illegally. What worries us most is the increase in the ratio of illegal immigrants, illustrating that the ambiguity of the local law with respect to the ROA clauses has attracted more and more illegal immigrants from the Mainland to come to Hong Kong to apply for the ROA. This has exerted an increasingly enormous pressure on our immigration control. The increasing number of overstayers has also posed definite difficulty on our future repatriation work.

If we compare the situation today with the situation two years ago when the former Legislative Council debated the same issue, it is now more urgent to set out in the Ordinance what persons have the ROA so as to remove the doubts harboured by people of various sectors in the community. Therefore, I hope that all Members — including those who indicated that they might oppose today's resolution — can support the resolution introduced by me today with the same spirit they had in supporting the early enactment of the ROA issue in years past.

The issue I am going to raise is whether the Government's proposed amendments to para 2(a) of Schedule 1 contravene the Opinions on the implementation of Article 24 para 2 of the Basic Law adopted by the Preparatory Committee for the SAR of the National People's Congress in 1996. Members of the Subcommittee have also pointed out that the Government's proposed amendments to para 2(a) of Schedule 1 have added 1 July 1987 as a watershed. Chinese citizens born in Hong Kong before this date have the ROA as long as they can show that their place of birth was Hong Kong. But after that date, Chinese citizens born in Hong Kong will be eligible for the ROA only if one of their parents has settled in Hong Kong or has acquired the ROA. These are not provided for in the Opinions on the implementation of Article 24 para 2 of the Basic Law as endorsed by the Preparatory Committee on 10 August 1996. Therefore, some Members questioned if our proposed amendments were in violation of the Opinions of the Preparatory Committee. However, as I explained earlier, we need to amend para 2(c) of Schedule 1 because the term "right of abode" did not appear in Hong Kong legislation until 1 July 1987. For

the same reason, we need to amend para 2(a) of Schedule 1. We need to as well introduce appropriate wordings to ensure that those persons born before 1 July 1987 can acquire the ROA.

In examining the choice of words, we have taken into account the fact that, before the British Nationality Act 1981 came into effect on 1 January 1983, the Immigration Ordinance of Hong Kong at that time was more generous. Chinese citizens were given the Hong Kong belonger status and the right to land provided they were born in Hong Kong. But after 1 January 1983, such category of persons can acquire the Hong Kong belonger status and the right to land only if one of their parents is a British Dependent Territories citizen or has settled in Hong Kong. We note that before the establishment of the SAR, the Hong Kong Government had a practice of, in amending legislation relating to Hong Kong belongers and the right to land, preserving the rights originally enjoyed by such persons people of that status. This guiding principle is also understood by the British and Chinese governments and those people responsible for drafting the Basic Law. Therefore, in deciding to draft the amendments to para 2(a) of Schedule 1, we were aware that we should preserve the rights previously enjoyed by such persons before the amendment of the legislation. It is therefore appropriate to take 1 July 1987 as a watershed because the term "right of abode" was not introduced into the then Immigration Ordinance until 1 July 1987. Members of the Subcommittee generally agreed that this approach was more generous.

As to the question of whether our proposed provisions violate the Opinions of the Preparatory Committee, I wish to point out that although our proposed wordings are different from those adopted in the Preparatory Committee's Opinions, they are consistent with the legislative intent of the Basic Law. As was pointed out by Prof Albert CHEN to the Subcommittee, although the Preparatory Committee's Opinions had a definite legal status, the Opinions themselves were not law. Therefore, we could not expect the choice of words of the Opinions to be as precise as that of a legal clause. Although our proposed clauses are different from the Preparatory Committee's Opinions in terms of the relevant wordings, we cannot thus regard the provisions as violating the Preparatory Committee's Opinions or the legislative intent of the Basic Law.

Some members of the Subcommittee also doubted whether our objective of asking this Council to pass the resolution is to enable the Government to win the relevant litigations. I wish to point out that under the independent judicial

system in Hong Kong, all litigations have to be judged by the Court at the end. But judges also need specific legislation to help them make their judgments. According to a news report, in dealing with a recent case involving an overstaying appeal lodged by a mainland woman, Mr Justice P CHAN, Chief Judge of the High Court, said that a number of events in connection with the ROA issue had taken place recently and it could be said that tremendous changes had taken place in a flash of time. Following the CFA ruling and the NPCSC interpretation, this Council is now discussing with the Security Bureau of the Administration with respect to the new arrangements. Even the judge himself was not clear about the relevant new arrangements and legal criteria. This has made it difficult for him to judge immediately as to whether the applicant has a legal basis to lodge the appeal. We can thus see that following the CFA's amendments to the local legislation, there is a lack of complete provisions for the Court's reference and this has caused a lot of confusion to the administration of justice. Therefore, it is imperative for this Council to pass the resolution submitted by me so as to give Schedule 1 of the Immigration Ordinance complete and specific provisions to define what categories of persons can have the ROA.

Finally, I should to reiterate that the passage of my resolution can bring forth the following benefits: First, Schedule 1 of the Immigration Ordinance will have specific and complete provisions to define what persons can acquire the ROA; second, once my resolution is passed, the Government will gazette the procedures for application for C of Es as agreed upon by the Director of Immigration and the Minister of Public Security of the Mainland expeditiously so as to resume the acceptance of C of E applications by mainland residents. I believe Members are aware that the Immigration Department has been unable to promulgate a set of complete application procedures since 29 January for the relevant applicants. As the application procedures have now been confirmed through the relevant discussions, the early passage of my resolution can help ROA claimants to lodge their applications in accordance with the designated procedures as early as possible, as well as implementing the CFA ruling with respect to children born out of wedlock. Although it is predicted that litigations relating to the ROA issue will linger for a while, the passage of my resolution will represent a big step forward in reducing confusion and greatly help resuming the well-tested order for mainlanders to come to Hong Kong. Therefore, I urge Members to give me their support. As for the consequential amendments to the Immigration Ordinance and the Immigration Regulations, we will table them to this Council expeditiously for Members' scrutiny when this Council resumes in October.

During the Subcommittee's deliberations, some Members raised some doubts in relation to the legal status of the gazette notice promulgating the procedures for application for C of Es. I want to point out that judges responsible for hearing the cases relating to the ROA issue have never said that the notice is unlawful. They have only raised some doubts about the fact that the notice is not a piece of subsidiary legislation despite its legal effect. Putting this issue aside, I should stress that the Government has never refused providing draft notices for Members' perusal. In fact, on the previous Monday (5 July), we tabled a paper to the Subcommittee to explain the procedures for application for C of Es. This Monday, immediately upon the agreement reached between the Immigration Department and the Exit and Entry Management Bureau of the Ministry of Security, we responded to the request of the Panel on Security by tabling our draft notice and attended the Panel meeting on 13 July to answer Members' questions. We have also considered seriously some of the proposed amendments put forward by Members and the Legal Adviser of this Council with respect to the notice.

With these remarks, Madam President, I urge this Council to amend Schedule 1 of the Immigration Ordinance by resolution in accordance with section 59A of the Immigration Ordinance. Thank you, Madam President.

The Secretary for Security moved the following motion:

"That Schedule 1 to the Immigration Ordinance (Cap. 115) be amended:

(a) in paragraph 1(2), by repealing sub-subparagraphs (a) and (b) and substituting -

(a) of a parent and child, between a person and a child born to such person in or out of wedlock;";

(b) by repealing paragraph 2(a) and substituting -

"(a) A Chinese citizen born in Hong Kong -

(i) before 1 July 1987; or

(ii) on or after 1 July 1987 if his father or mother was settled or had the right of abode in Hong Kong at the time of his birth or at any later time.";

(c) by repealing paragraph 2(c) and substituting -

"(c) A person of Chinese nationality born outside Hong Kong of a parent who, at the time of the birth of that person, was a Chinese citizen falling within category (a) or (b).".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Security, as set out on the Agenda, be passed.

The Secretary for Justice will move an amendment to this motion, as printed on the Agenda. In accordance with the Rules of Procedure, the motion and the amendment will now be debated together in a joint debate.

I now call upon the Secretary for Justice to speak and move her amendment.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I move that sub-paragraph (c) of the motion moved by the Secretary for Security in accordance with section 59A of the Immigration Ordinance be amended as set out in the paper circularized to Members.

My amendments seek to replace sub-paragraph (c) to make three technical amendments. Members of the Subcommittee scrutinizing the motion moved by the Secretary for Security have expressed valuable opinions with respect to the wordings of the motion. These three amendments have been moved in light of the opinions given by them. The first amendment is to replace "born of" in the English version with "born to", so as to make the wording of the proposed new paragraph 2(c) of Schedule 1 of the Immigration Ordinance consistent with paragraph 2(e) of the Schedule; the second amendment is to amend the term "中國籍人士" in the Chinese version into "中國籍子女" to reflect the wording in corresponding provisions in the Basic Law; the third amendment is to specify "before or after the establishment of the Hong Kong Special Administrative Region" in the element related to birth. In the interpretation given by the NPCSC on 26 June, the time element was mentioned. Some Members

therefore consider it essential to reflect this element in the Ordinance to avoid unnecessary doubt. We share this viewpoint.

Madam President, these three amendments do not actually involve the substance of the Ordinance. But with respect to such an important matter, as some Members fear that the original wordings might give rise to doubt, the Government believes it is most appropriate to make such technical amendments. Thank you, Madam President.

The Secretary for Justice moved the following amendment:

"That the motion to be moved by the Secretary for Security under section 59A of the Immigration Ordinance (Cap. 115) at the Legislative Council sitting of 14 July 1999 be amended in paragraph (c) by deleting the proposed paragraph 2(c) and substituting:

"(c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).""

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment moved by the Secretary for Justice be made to the Secretary for Security's motion.

MR AMBROSE LAU (in Cantonese): Madam President, as Chairman of the Subcommittee on resolution under the Immigration Ordinance, I rise to speak on the motion as moved by the Secretary for Security.

The Secretary for Security gave notice on 28 June 1999 to move a motion to amend Schedule 1 to the Immigration Ordinance. A Subcommittee was formed immediately to study the proposed resolution, of which the background and purpose have just been explained by the Secretary. The Subcommittee held four meetings with the Administration and has considered views from the two legal professional bodies and legal academics.

In considering the amendments proposed to Schedule 1 of the Immigration Ordinance, members of the Subcommittee are particularly concerned about the proposed amendments to paragraph 2(a) of the Schedule. Under the existing paragraph 2(a), a Chinese citizen born in Hong Kong before or after the establishment of Hong Kong Special Administrative Region (SAR) is a permanent resident of SAR if his father or mother was settled or had the right of abode in Hong Kong at the time of birth of the person or at any later time. The Administration proposes to amend paragraph 2(a) to the effect that a Chinese citizen born in Hong Kong:

(i) before 1 July 1987; or

(ii) on or after 1 July 1987 if his father or mother was settled or had the right of abode in Hong Kong at the time of his birth or at any later time,

is a permanent resident of the SAR.

The Administration explained that this is a technical amendment to correct an inadvertent error relating to the use of the term "right of abode" in Schedule 1.

Some members of the Subcommittee point out that Article 24 para 2(1) of the Basic Law provides that Chinese citizens born in Hong Kong before or after the establishment of SAR shall be permanent residents of the SAR. There is no requirement that either one of the person's parents was settled or had the right of abode in Hong Kong at the time of his birth. They question whether the proposed wording of paragraph 2(a) is consistent with the legislative intent of Article 24 para 2(1) of the Basic Law, particularly in respect of the condition required of the parents. With the absence of the "was settled" element in new paragraph 2(a)(i), they also question whether the proposed new provision would in effect widen the scope of the existing provision, and hence a change in the policy.

The Administration explains that prior to 1 January 1983, a Chinese national born in Hong Kong was a "British subject" under the British Nationality Act 1948 by birth in Hong Kong. He was a Hong Kong belonger under the then Immigration Ordinance and had the right to land in Hong Kong. The British Nationality Act 1981 came into force on 1 January 1983. Under this Act, a

Chinese national born in Hong Kong was a British Dependent Territories citizen (BDTC) if at the time of birth, his father or mother was a BDTC or settled in Hong Kong. A Chinese national born in Hong Kong after 1 January 1983 had to satisfy the condition of having a parent being a BDTC or settled in Hong Kong before he had the Hong Kong belonger status under the Immigration Ordinance and had the right to land in Hong Kong. On 1 July 1987, the terms "right of abode" and "Hong Kong permanent resident" were introduced to the Immigration Ordinance. In discussing the implementation of the relevant provisions of the Basic Law, the Sino-British Joint Liaison Group had considered the then immigration policy of the United Kingdom and the People's Republic of China, the usual practice and the then local legislation in respect of immigration control. The Administration is of the view that the present formulation reflects the legislative intent of Article 24 para 2(1) of the Basic Law.

As at present, a Chinese citizen born in Hong Kong to parents both of whom are illegal immigrants or Two-way Permit holders could not acquire the ROA by birth in Hong Kong. Under the proposed new paragraph 2(a)(i), Chinese citizens born in Hong Kong before 1 July 1987 to parents both of whom were illegal immigrants or Two-way Permit holders would be eligible for the ROA. The Administration envisages that a small number of such persons would benefit from the proposed new paragraph 2(a)(i). The proposed provision is more generous than the existing one.

Some members point out that the proposed paragraph 2(a) is more generous than the existing provision. However, when compared with the provision in Article 24 para 2(1) of the Basic Law, it is more restrictive as there is no parentage requirement in the Basic Law. They also point out that according to the Opinions of the Preparatory Committee for the SAR on the Implementation of Article 24 para 2 of the Basic Law, Chinese citizens born in Hong Kong as provided in Article 24 para 2(1) of the Basic Law refer to people who are born during which either one or both of their parents were lawfully residing in Hong Kong, but excluding those who are born to illegal immigrants, overstayers or people residing temporarily in Hong Kong. They question whether the provision in proposed paragraph 2(a)(i) is consistent with the true legislative intent as there will be no prescribed condition of the parents of those persons born in Hong Kong before 1 July 1987.

In the Administration's view, the difference in the wording of the proposed paragraph 2(a)(i) from that in the Opinions of the Preparatory

Committee does not imply that the proposed provision violates the original legislative intent. The wording of Article 24 of the Basic Law was reproduced from Annex I to the Sino-British Joint Declaration. Annex I is an elaboration of the basic policies of the People's Republic of China regarding Hong Kong. The Governments of the People Republic of China and the United Kingdom when drawing up the Joint Declaration fully understood the immigration policy and legislation then in force in Hong Kong. The proposed date of 1 July 1987 as a dividing line is to reflect the introduction of the ROA concept on that date. In the past, when legislative amendments were made to the British nationality legislation, a "grandfathering clause" was provided so that any rights previously enjoyed would remain unaffected. The proposed provision is consistent with the legislative intent of the provision of the Basic Law.

Madam President, the Subcommittee has deliberated on the need for urgent amendments to Schedule 1. Views are divided among members of the Subcommittee. Some members agree with the Administration that the resolution should be passed as soon as possible to bring certainty and clarity to local legislation as to the categories of permanent residents of the SAR pursuant to the NPCSC interpretation. Some members hold a different view. They consider that the proposed amendments to Schedule 1 should be studied together with a package of proposed amendments to the Immigration Ordinance and the Immigration Regulation together with a draft gazette notice, to be issued by the Director of Immigration, on application procedures for the Certificate of Entitlement (C of E). I shall leave it to my colleagues to elaborate on their considerations.

Madam President, I so submit.

PRESIDENT (in Cantonese): We shall now proceed to the debate.

MR ALBERT HO (in Cantonese) Madam President, the motion of the Administration today aims to make three amendments to the definition of permanent residents of Hong Kong as laid down in the Schedule of the Immigration Ordinance.

These three amendments naturally involve the interpretation as to how the various categories of permanent residents as set out in Article 24 of the Basic

Law are defined. In fact, what puzzles me is that after the Basic Law became effective, the definition of permanent residents should be provided in the Basic Law. Though the Legislative Council can further legislate to implement such provisions, as the provisions regarding the definition of ROA involve important constitutional rights of the individual, why do we have to take a simpler course to insert the above definitions into a Schedule, instead of introducing new provisions into the principal legislation of, say, the Immigration Ordinance? The reason I raise this point is that any amendment to the principal ordinance has to go through three readings, and not by way of the simpler procedure of a resolution. I hope that the Director of Immigration would consider if this is better done by way of amending the principal ordinance.

Each of the three amendments each has its own reasons, as the Administration has explained. Firstly, it is the definition of children of the individuals, and any difference that has existed as a result of being born in or out of wedlock will be eliminated after the amendment. This of course is in line with the judgment of the recent CFA precedent.

In fact, with the enactment of the Parent and Child Ordinance in 1993 in Hong Kong, the difference of legal status between children born in and out of wedlock was long ago removed. This fully meets the objective of eliminating any discrimination against children born out of wedlock as required by the international convention on human rights.

Why did the Provisional Legislative Council passed these discriminatory laws? Is the interpretation of such discriminatory laws in line with the legislative intent of the Basic Law? Why did the Government interpret it in such a way when amendments were made in 1997? Did not the Government say that they were able to grasp the legislative intent of the NPCSC?

When the judgment of the CFA began to become the target of attacks by those in the community who supported an interpretation of the Basic Law by NPCSC, many people vocally blamed the CFA, saying that the judgment encouraged citizens to go to the Mainland to take a "second wife", or even produce illegitimate children. Many other people also condemned the judgment for violating the spirit of the Basic Law. However, after the Government made its decision, such condemnations are no longer heard. Naturally, I hope that those who supported the NPCSC interpretation of the Basic Law changed their mind because they have come to understand that rights should be respected, and

not because they jumped on the bandwagon with eyes closed or simply turned with the wind.

Of course, we think that children born out of wedlock must not be discriminated against and we also absolutely support the CFA ruling. If not for the reasons I am going to elaborate, I believe we should support this amendment. However, whether we support it or not, I believe the CFA ruling is binding, and it is something the Government must respect and implement.

Another amendment proposed concerns Article 24 para 2(3) of the Basic Law, regarding the definition of the children of Chinese nationality born outside Hong Kong to Hong Kong permanent residents. According to the Government, this amendment is to implement the NPCSC interpretation in respect of Articles 22 para 4 and 24 para 2(3) made on 26 June this year.

The Democratic Party is wholly against the move of the SAR Government and the Chief Executive to take the initiative of approaching the NPCSC for an interpretation in order to overturn the CFA ruling made based on the Court's own interpretation of the relevant provisions of the Basic Law, a move that dealt a blow to our rule of law and to the authority of the CFA. The Democratic Party also thinks that to interpret Article 24 of the Basic Law in respect of the definition of permanent residents of Hong Kong is to interfere with the internal affairs of the SAR, to trample on the "high degree of autonomy" of Hong Kong, and to violate the "one country, two systems" concept as well as the basic policies and spirit embodied in the Basic Law. We think that it is absolutely unacceptable.

Further, when the Government was arguing its case before the CFA, it specifically stated through its counsel that Article 24 fell with the limits of the "high degree of autonomy" of Hong Kong. However, it changed its position after it lost the case, and asked the Central Government and the NPCSC to interfere, and in the course of doing so, changed its stand and said that Article 24 involved the relations between the Central and the SAR. We opine that this act of the Government is an attempt to confuse the right and the wrong. Therefore we solemnly protest against such act of the Government and condemn the Government for doing so. For these two reasons, we will vote against the resolution today. This will also serve to show our protest and condemnation.

The third amendment involves the interpretation of Article 24 para 2(1) of the Basic Law. On the face of it, this amendment relaxes the existing provisions in the Schedule to the Ordinance by removing certain extra conditions on Chinese citizens born in Hong Kong before 1987, such as that requiring their father or mother to have the ROA in Hong Kong at the time of their birth, as is the present requirement. The Secretary for Security stated just now, as the judges of the CFA pointed out that this a concept did not exist prior to 1987, the implementation of this provision would make it impossible for Chinese citizens born in Hong Kong before 1987 to meet the conditions of Article 24 para 2(1). However, I must point out that the mistake might not be the result of the fact that there was no such distinction before 1987, it could precisely be the result of the extra condition added. Therefore, the more fundamental question is: For what reason are the Chinese citizens born before or after 1 July 1987 required to fulfill the extra condition set out in the Schedule of the current Immigration Ordinance, a condition not found in Article 24 para 2(1) of the Basic Law? That very article only states that Chinese citizens born in Hong Kong, whether before or after the establishment of the SAR, have this right. Then why do we have the power to add this condition? The present law was approved by the Provisional Legislative Council, they naturally had that power, but the question is: Did they have the power to limit a right bestowed by, and affirmed in writing in, the Basic Law?

The Secretary for Security referred to a debate in 1997. She said that many Members at that time supported the motion moved by Miss Margaret NG requesting the Government to introduce a bill as quickly as possible to clearly define permanent residents and to implement the legislation once approved. We admit this is a fact. The Panel on Security Affairs of the former Legislative Council did discuss a resolution proposed by the Sino-British Joint Liaison Group. When we supported the resolution at that time, our principal rationale was that we could then legislate in that respect as soon as possible, and we would scrutinize the matter carefully in the process of legislation. I admit that we really did not study in detail at that time whether the addition of the extra condition complied with the Basic Law, and whether the relevant power could be effectively and lawfully constrained. We actually did not point out this problem at that time. However, with later development and the deliberation by the Court, we think that the problem is clearer now. Our failure to point out the irregularity at that time was perhaps because we could not scrutinize that resolution in a comprehensive way, and no bill was tabled and no committee was formed for the purpose at that time.

In any case, even the Secretary for Security pointed out our mistake, I think that I would not too strongly refuse to admit such a mistake. If there was really a mistake, Members from the Democratic Party or I myself would agree that we could have studied the issue in greater detail at that time. However, after the case was argued in Court, after the CFA made its 70-odd to 80-page long judgment, and with the many interpretations from jurisprudence points of view, we are given to understand that Article 24 of the Basic Law bestows a right. Therefore, the correct way is to understand the issue with as generous a frame of mind as possible and with as lenient an interpretation as possible. For this reason, we cannot but query the lawfulness and appropriateness of the resolution of the Sino-British Joint Liaison Group proposed in that year.

The Government also mentioned the resolution of the Preparatory Committee. But this time, it did not state if the legislative intent was reflected. As a matter of fact, the authority of the Preparatory Committee in interpreting the Basic Law has apparently been greatly enhanced, because in making the interpretation, the NPCSC did not tell us how it found the legislative intent; the decision of the Preparatory Committee was the only thing it mentioned. Therefore, the Preparatory Committee has now "gained a tenfold fame by jumping over the Dragon Gate". But in the course of studying this piece of legislation we discovered that the Secretary for Security did not totally rely on the recommendations of the Preparatory Committee, because the recommendations of the Preparatory Committee did not distinguish between those born before 1987 and those after. To the Preparatory Committee, that was not an issue; in that case, how did they come to an understanding of the legislative intent? Therefore, to grasp the legislative intent is one puzzling matter.

We have carefully and repeatedly read the document published by the NPCSC on 26 June following its interpretation of the Basic Law, but we have failed to find any guideline to help us understand and identify the legislative spirit.

Therefore, we can see that the Government would rely on the Preparatory Committee whenever it suits its purposes, but would not do the same when the Preparatory Committee does not fit into its scheme of things, saying then the Preparatory Committee is not precise enough and it is not the legislature. What is the base for the Government's arguments? If the Government says that it can best grasp the intent of the NPCSC, then how should the intent of the NPCSC be

grasped? Up to now, I think that the legislative intent of the NPCSC is really something awfully unfathomable. If the Government say that we must closely follow the instructions and ideas of the central leadership, then only the Chief Executive or the Government can have an implicit understanding of the legislative intent, and when the Preparatory Committee did right.

Madam President, it is obvious that when the NPCSC drew up Article 24 para 2(1), no distinction was made between those born before 1987 and those after, nor were there any extra conditions added. I must repeatedly stress that the Preparatory Committee itself made no reference to that respect. Therefore, I really do not know on what basis the Government is telling us it can introduce such amendments. Besides, on what basis does the Government add the extra conditions to restrict the definition of permanent residents as provided under Article 24 para 2(1)?

Madam President, I am very much worried if the SAR Government could arbitrarily tighten the provisions of the Basic Law and add the restrictions to the definition of permanent residents. As a matter of fact, does the text of the Basic Law still have a meaning? If a right as we interpret and understand it can be changed from being unconditional to being conditional, if something can be created out of nothing, does it mean that the Government can easily place itself above the law and override the stipulations of the law?

Lastly, I would offer a small piece of advice to the Government. Do not disregard the long-term interest that comes with the dignity of the law and the legal system for executive efficiency or some short-term benefits.

With this remarks, I oppose today's motion.

MISS MARGARET NG: Madam President, I wish to repeat my declaration of interest made on other occasions relating to the ROA issue. I am one of the lawyers representing mainland resident applicants in various proceedings before the Court.

I oppose the motion of the Secretary for Security and the amendment of the Secretary for Justice.

Everybody knows what this motion is all about. It is the Government's first step to remove the effect of the landmark judgments of the Court of Final Appeal (CFA), with the sole exception that the ruling on the rights of children born out of wedlock will not be disturbed. However, even this exception is not out of acceptance of the CFA ruling, but obedience to the authority of the Central Authorities in Beijing, who told the Government of the Special Administrative Region (SAR) that in China itself, discrimination against illegitimate children had been out-lawed decades ago.

The substance of the motion is to amend Schedule 1 of the Immigration Ordinance which defines who are the permanent residents of the SAR and have the ROA in Hong Kong.

It is the Basic Law which confers the ROA, and it does so in Article 24, which sets out six categories of people who have this right. Schedule 1 is plainly different from Article 24 para 2, not only in wording but also in substance, in that someone who is qualified under the Basic Law may fail under Schedule 1. This is why there is so much litigation.

Take, for example, category (1) under the Basic Law. All it requires is that you are a Chinese national, and that you were born in Hong Kong. Yet, under the unamended para 2(a) of Schedule 1, this is not good enough. You must be born of at least one parent who was settled, or had the ROA in Hong Kong before or after your birth.

The amendment now proposed to para 2(a) is said to be more generous than the unamended version, in that it divides people into two lots: If you were born before 1 July 1987, no requirement is made on the status of your parents, but if you were born on or after that date, the requirement stands as before. In other words, it is still different from the Basic Law, and it is not more generous than the Basic Law.

So what is the justification for putting in a restriction one cannot find in the Basic Law?

The Administration claims two kinds of basis. First, it relies on the "views" endorsed by the Preparatory Committee in 1996. But it is plain that the proposed amendment differs from the relevant parts of these "views". The unamended version is, in fact, also different, and as admitted by the Administration, "technically wrong" into the bargain.

Secondly, the Administration relies on the law and practice under the British Administration. Madam President, this is a fundamental error, not only in law but also in policy.

To state the obvious, no principle is stated in the Basic Law that people who were Hong Kong permanent residents at the establishment of the SAR are permanent residents of the SAR. As a matter of fundamental policy, the conferment of the ROA under the Basic Law is a reflection of Chinese sovereignty over Hong Kong. China resumes her exercise of sovereignty over Hong Kong. She therefore confers, on this new basis, the ROA. Chinese nationals must have special privilege, because this is Chinese soil. So the first three categories attend to the position of Chinese nationals. If you are a Chinese national, and if you were born here or have settled here, you have the ROA here. And so do your Chinese national children, even if they were born outside Hong Kong. For non-Chinese nationals, the requirements are more stringent.

It has been the subject of studies of the Basic Law that the categories are defined "from scratch". Dr LIN Feng, a scholar in Chinese constitutional law, told a panel of the Legislative Council that this is also his view. Of course, the existing situation before 1997 would have been studied and taken into consideration. Naturally, some features would be accepted and other features rejected. It is the conclusion that counts, once the decision is made.

Madam President, I am quite unable to accept the Administration's adherence to the past, and assumption of the validity of past practice against clear, right-giving law. Any proposal made on that basis is questionable. Before the Basic Law is in force, the Hong Kong Administration could give what rights and with what restrictions it saw fit. After 1 July 1997, we are governed by a written constitution.

There are two other amendments proposed. One of these relates to children born out of wedlock. Here, the Administration is a victim of its own folly. The Basic Law never discriminated against those children. It was the SAR Government which put discrimination into Hong Kong legislation. The courts will not have it. Beijing will not have it. As a matter of good practice, the law should have been tidied up as soon as the CFA has ruled, to remove these unlawful provisions from the Ordinance. We do not need an affirmation of non-discriminatory treatment, as is presently proposed. This is ridiculous and makes a laughing stock of the SAR.

The other amendment is to para 2(c), by adding a restrictive Article 24 para 2 category (3). Namely, for a Chinese national born outside Hong Kong of a parent under category (1) or (2), his parent has to have that status at the time of his birth.

Again, this restriction does not appear in the Basic Law. So what is the basis? Madam President, one is struck with the unreasonableness of the requirement if one compares this with para 2(a) of Schedule 1 which we have just considered. There, if you are a Chinese national born in Hong Kong, it does not matter whether your parents became settled in Hong Kong (or acquired the ROA) before or after your birth. Yet if you were born outside Hong Kong — in fact, in the Motherland, it became crucial when your parent has acquired the status. It would only count if the status was acquired before you were born. What can be the sense of such a thing? Remember, one is talking about the ROA here, not nationality.

Now, the Administration relies on authority: the Standing Committee's "interpretation" of Article 24 para 2(3), and the "views" of the Preparatory Committee which now seems to have acquired special authority because it is referred to in the "interpretation" as "reflecting the true legislative intent".

The exact legal status of the Preparatory Committee's "views", even after this reference, is still uncertain, even according to the opinion of so progressive a scholar as Prof Albert CHEN. I would strongly advise this Administration to be cautious in relying on this document as a source of law.

The Secretary for Security claims, in her speech introducing the motion, that "The interpretation of the Standing Committee of the National People's Congress (NPCSC) has the same legal force and validity as the Basic Law. The Basic Law is both a national law and a law of the SAR. The NPCSC interpretation has thus already become part of our domestic law". These are very bold claims. Even Mr Ian WINGFIELD of the Department of Justice has advised a panel of this Council that the legal effect of the NPCSC "interpretation" is a matter of interpretation of the Hong Kong courts.

I am exceedingly concerned that today's motion is only a first step. Indeed its urgency as stated by the Administration is that this is the preparatory step necessary to the reinstatement of the pre-CFA judgment verification scheme. The CFA had delinked the Certificate of Entitlement from the One Way Permit

(OWP) system because the link is unconstitutional. The Administration is set to re-link the two on the strength of the NPCSC "interpretation". The Administration has been warned by people other than myself that there is ambiguity in the NPCSC "interpretation" of Article 22 para 4. This can only be clarified by the Court.

Madam President, on 29 January, I urged the Administration to tidy up the law and to put in place a new, constitutional process of verification. I warned that with every delay, the pressure on litigation would increase. At that time, the Administration saw no urgency to amend the law. It also took nearly five months to come up with no progress for a new process. There was then no allegation that the CFA's decision was unclear. Rather the opposite. Yet, as soon as the NPCSC has reversed the CFA's decision in favour of the Government, the Administration now says that the time-lag is unsupportable, and the law must be amended to remove doubt. I must confess that I find this disingenuous.

I will not connive. And I urge Honourable colleagues not to support the motion. The proposed amendments do not help anyone. On the contrary, they may mislead and cause new hardship and confusion.

The Secretary referred to my speech in 1997. I am prepared to be corrected by the CFA. She prefers to play games with rhetoric.

No matter what my personal views are of the NPCSC "interpretation", I will have to take its legal effect or the lack of it from the decision of the Court. This is our law. But I would be foolish beyond permission to take it from this Administration whose blunders to date are already legendary, and whose interest in the issue before this Council is hardly less than mine as the other party of the same litigation before the Court.

Thank you, Madam President.

MISS CHOY SO-YUK (in Cantonese): Madam President, the ROA for Hong Kong citizens' children born on the Mainland has given rise to too much controversy, endless controversy. This has created a negative effect on the economic development of Hong Kong and on our international image. Having understood public sentiments and to properly resolve the issue, the SAR

Government has, pursuant to the stipulations of the Basic Law, approached the NPCSC to interpret the relevant provisions in the Basic Law. This decision is reasonable and sensible, and has safeguarded the continued prosperity and stability of Hong Kong. It merits our support.

However, it is hoped that the Government would understand that having had the law interpreted does not mean that the issue involving Hong Kong citizens' children in China could be easily solved. In particular, attention must be paid to certain legal arguments following the interpretation of the Basic Law. I received not long ago a complaint letter from a Mr CHOI to which we could very well refer. Mr CHOI said that though the five members of his family live in two places, he never planned to have his two daughters smuggled into Hong Kong, but has been waiting patiently for the mainland authorities to process their OWP applications. However, the result is that those who ignore the laws and rules of the SAR and over-stay in Hong Kong can obtain the ROA so long as they managed to come to Hong Kong before 29 January and registered with the Immigration Department. Law-abiding people like him who respect the Chief Executive and the SAR Government have been neglected by the Government and cannot get the ROA. "Where is fairness? Where is justice? What good is to abide by the law?" I have no answers to these serious questions asked by Mr CHOI so helplessly.

There are really too many cases like Mr CHOI's. I have also received numerous calls and complaint letters. The Government might have a legal basis to use 29 January as the threshold, but can such a dividing line in law convince people? And is it genuinely fair? I therefore think that the Government must explain the matter to the public in better detail, and also set out clearly its approach and the underlying principle it adopts in handling the issue, so as to avoid the misconception that law-abiding people would become the victims while those who over-stayed and kicked up a scene would get what they wanted. It is hoped that whatever criteria the Government is going to adopt in the future, careful consideration must be made to ensure such criteria will not give rise to incessant arguments.

Madam President, I support the Government in amending the Immigration Ordinance. But I also hope that the Government would also go one step further and consider compassionately the situation of the large number of people who are waiting in mainland China for reunion with their husbands, children and parents in Hong Kong. I hope that the Government would care more about such people,

and when reasonable circumstances permit, suitably increase the present daily quota of 150 people entering Hong Kong on OWPs, and arrange for them to reunite with their families in Hong Kong in a fair and reasonable manner. I believe this is the common wish of many citizens, particular those who, like Mr CHOI, who are affected in the present incident.

Madam President, with these remarks, I support the motion.

MISS CHRISTINE LOH: Madam President, the Secretary for Security quoted an old debate back to us. She quoted what I said in particular, so let me start by responding to that.

Let us just remind ourselves of what that debate was about. The Honourable Miss Margaret NG was asking the colonial administration to legislate on who has the ROA. That was, of course, right and proper. And as the Honourable Albert HO reminded us, no bill was ever brought. So, we never had a proper and lengthy discussion. But time has moved on and what do we have now? We have the Immigration Ordinance of the Government of the Special Administrative Region (SAR) passed in July 1997, we had court challenges and there are yet many more to come, and we have the decision of the Court of Final Appeal (CFA).

The Secretary for Security quoted the old debate in order to show, I believe, that some of us are being unreasonable. Perhaps had she been the Secretary for Security at that time, she would have found us equally unhelpful by raising the debate at all. The fact is that we now see that the Basic Law was perhaps too loosely drafted to express what was supposedly the diplomatic agreement between Britain and China. It was the Basic Law drafters who did not adequately express whatever was the legislative intent. The Standing Committee of the National People's Congress (NPCSC) has given an interpretation on aspects of Articles 22 and 24 of the Basic Law. Whilst the Secretary for Justice told the Hong Kong people to move with the times and try to understand the mainland legal system, there remains serious concerns that there was something wrong with how the NPCSC's power of interpretation under the Basic Law was used.

The issues involved are genuinely complex, I cannot claim to understand every single aspect of it, but I have tried to understand them from different perspectives, of course, including the one proposed by the Government. The Secretary for Justice was surely right to urge us to learn more about the mainland legal system. I have tried to do so by learning from mainland legal scholars. Indeed, what has become a keen area of study amongst local lawyers is the mainland legal, constitutional and political systems. The more I dig into the issue, the more I think that there really are some problems. The question is: Do we choose to close our eyes to them for the sake of expediency? Firstly, just exactly what powers does the NPCSC have on interpretation? And secondly, under what circumstances can they be used?

Mainland scholars believe that the Basic Law is quite clear, the NPCSC only interprets when the CFA makes a pre-judgment referral asking for an interpretation. This view makes sense, otherwise, Hong Kong courts would not enjoy the power to interpret the Basic Law as they have been specifically empowered to do so under Article 158. Furthermore, that would depart from China's stated policy that the Hong Kong CFA enjoys the power of final adjudication on areas within its autonomy.

Madam President, my conclusion here is that the referral by the SAR Government remains suspect in law as well as a matter of sound policy. Secondly, having been asked to interpret, how should the NPCSC do its job? Should it use its powers under the Chinese Constitution or exercise its powers under the Basic Law? This is important because there is a world of difference. The NPCSC's interpretation power under mainland law is to clarify aspects of the law or to make what is effectively supplemental legislation. However, if Article 158 is to reflect Hong Kong's own judicial system, as was the intention of national policy, the NPCSC should use the common law to construe the meaning of a provision. I wonder if the Secretary for Justice and the Secretary for Security can confirm whether they agree with this view. My conclusion is that in fact, the NPCSC used its power to make supplemental legislation, going beyond construction. So what do we do? These issues, whether the Government likes it or not, are hotly discussed and debated among legal circles in Hong Kong and, I suspect, among legal scholars on the Mainland.

Today, the Government asks us to pass a resolution "to put beyond doubt" the NPCSC interpretation, even though the Secretary for Justice said in her speech that no amendments are necessary in law. Let us then see whether

passing this resolution in its present form improves things or not. There are integral matters which are still unclear as were discussed in the Subcommittee. It had been suggested by Members that the Government should bring to this Council at the same time, legislative amendments to the Ordinance and the regulations as well as the application procedures for the C of E, before asking this Council to vote on anything. That would appear to be sensible, Madam President, I wonder what is the haste? In this whole business about the ROA, the Government seems to have just rushed along. Has that helped clarity of the issue? Well, I am not sure. I am not sure that by passing this resolution today, indeed it serves the declared purpose that things will be put beyond doubt. Is the Government trying to pre-empt the Court's own interpretation? Is it going to reduce potential litigation? I fear not.

Madam President, I continue to remain extremely uncomfortable about the whole affair.

MISS EMILY LAU (in Cantonese): Madam President, I speak against the resolution to amend Schedule 1 of the Immigration Ordinance moved by the Secretary for Security in pursuance of the Immigration Ordinance.

Mr Albert HO of the Democratic Party already said a lot just now. I very much agree with him. Madam President, some of his words I will not repeat because I do not wish to waste everybody's time. We have after all had meetings for three days. But I still have to talk a little about history. I will not be long-winded, but I must say something for the record. Right from the very beginning, we in the Frontier have not supported the executive authorities' way of handling the issue of the ROA by going to the State Council to ask the NPCSC to interpret the Basic Law. This is because this matter involves whether this should be done, whether the Basic Law allows the executive authorities the right to do so, what the proper procedures are; all these are subject to grave doubt. Therefore we completely disagree with all the matters. The resolution moved by the Secretary for Security today is the step after the interpretation of the Basic Law. Surely we cannot support it.

Madam President, this act of the Chief Executive, we in the Frontier are very much against it. One of the very important reasons is of course that he overturns the ruling handed down by the CFA on 29 January. The Government was then greatly displeased with the ruling, and therefore took no action to

amend the law. Now, as Miss Margaret NG just said, after the interpretation by the NPCSC, the relevant provisions became something that pleases it, thus the urgent amendments to the law. I believe this selective way of doing things can hardly win the approval of the public, and can hardly convince the public that this is a fair and selfless government which will honestly enforce the law and implement all the proper policies. Madam President, we do not approve the overturning of the CFA ruling, though we understand that the population increase worries many people. As a matter of fact, in the past years in this Council or in the former Legislative Council, I often said that we need to think of some ways to control our population growth. I appreciate that Hong Kong is a tiny place, and I well understand this. However, once the CFA made its ruling, the ruling became part of the laws of Hong Kong, and those people were given the right. We must not deprive them of their right through other, and in our opinion improper, means.

Madam President, I do not wish to dwell on any lengthy argument to explain our opposition. We are nevertheless against asking the NPCSC to interpret something that rightly falls within the limits of our autonomy. Article 158 of the Basic Law unequivocally stipulates that the courts of Hong Kong are authorized to interpret the provisions which are within the limits of our autonomy. Just now it was mentioned that Prof Albert CHEN, member of the Basic Law Committee initially also said that the ROA involved in Article 24 fell within the limits of our autonomy. Only that some people changed their minds in a very short time and spoke with a different tone. He later accepted that Article 24 could be interpreted. But we in the Frontier will not change. Madam President, we do not approve of this change of his.

The Secretary and a Member mentioned that the provisions as interpreted by the NPCSC now have the same legal effect as the Basic Law and have become part of the local laws. I share the view of some Members who just queried if this could really become a fact. Madam President, we must wait and see before we know for sure. Mr WINGFIELD may also know because he has to go to the courts in future to see how the courts will rule. Previously some judges of senior courts said that they would see if the whole thing was in line with the proper procedure, they would only accept it if it was, otherwise it would be thrown to the dustbin. Therefore, if the Secretary or other officials think that the storm stirred up by this affair has subsided, I believe this could only be the beginning of it.

Madam President, as members of the Hong Kong legislature, we certainly do not wish to see any grave assault on our judicial system. This could make many citizens lose their confidence, and we do not want to see it happen. However, if we think that something is wrong, is unacceptable, then we must raise it for discussion. I think that we are not bad-mouthing Hong Kong. Madam President, we have not bad-mouthed Hong Kong over this matter here in Hong Kong or abroad. But if things are this complicated, this difficult, I believe the voters who elected us as Members of the Legislative Council will expect us to stand up and properly discuss the mater. Naturally, we hope that we can make people understand that the truth becomes more manifest with debate.

Madam President, the Secretary raised the point whether the wording of the amendments she has now proposed would violate the Basic Law. This was mentioned by many Members just now. The Secretary also said that we had discussed the matter at the Subcommittee eight times. I would like to say a few words on this. At that time, the Secretary said that we should not only look at the wording of the Basic Law because the Basic Law, being a constitutional document, could not have certain things written in great detail. The Secretary told us, and she also said the same just now, that when the Sino-British Joint Liaison Group discussed how the Basic Law should be implemented, the immigration policies and practice and the laws on immigration control then in force in Britain and China were considered. Some Members said earlier that the proposed amendments of the Government truly reflect the legislative intent. Madam President, I am no lawyer, but when we have meetings here, we have heard the views of legal professionals on how the laws of Hong Kong should be interpreted. How do the courts interpret the law? They do so by reading the wording of the provisions, by looking at the way they were written. Now that the Secretary has raised so many things, I wish to ask her, or perhaps her legal advisors, do you have to dig into the vast historical background whenever the Basic Law is to be interpreted in future so as to find out the true legislative intent? If that is the case, it will be very wrong. Madam President, what we say here is also part of the legislative intent, but if the legislative intent of the immigration policies of Britain and China were to be sought, and if the same were to be done in respect of their practices prevailing at the time in question, then I would really be at a loss. I do not know what our legal profession and our judges would think. But, Madam President, this really worries me. I hope that the Secretary would later explain this.

Madam President, I also wish to touch upon a point made by a Member just now, and that is, there would be a requirement on attaching the C of E to the OWP. And there was also a query as to whether the interpretation of the NPCSC was worded in not too clear a way. I have also read the document. Madam President, if you have also read it, you would also think that it was not written that way. That document mentioned certain things, but the Secretary argued that they meant that the certificate should be attached to the permit. The Secretary said that following the interpretation by the NPCSC, they had to make consequential amendments to the Immigration Ordinance and the Immigration Regulations so as to clearly set out such arrangements. But the question is, we have not had those amendments. The Secretary said that such amendments would be introduced after the summer recess. I agree with those Members who said that the principal ordinance should be tidied up first. But what we are doing seems to be the other way round. Therefore, I have to ask: Now we are doing this the other way round; if they want to pass this legislation today, they are sure to be able to do so because they have a sufficient number of rubber stamps here; and then they can publish the notice and begin receiving applications; but we have not completed our legislative work, have we? I also wish to say something regarding Director Lee who just visited the Mainland and issued a joint press release with the immigration control authorities in China, saying to the effect that: To ensure that the children (legally entitled ones) of permanent residents of Hong Kong can settle in Hong Kong in an orderly manner, the OWP issued by the public security authorities in mainland China and the C of E issued by the Immigration Department of Hong Kong will be issued simultaneously, and the C of E will be attached to the OWP. This is what mainland China said. I wish to ask the Secretary, hoping that she would later reply, do we have to legislate to give effect to that arrangement? Though that is what mainland China will do, that is, to stick the C of E to the OWP, the problem is that all such legal documents are yet to be properly completed and now they are talking about publishing a Gazette Notice to notify the applicants. That is only the first step, what about the second step? Is it that the second step will certainly not be taken before the necessary amendments to the law referred to by the Government are all done? Mainland China would of course not be restricted by our laws. But if Hong Kong also agrees that the certificate should be attached there, at least this should be stipulated in our own law. The Secretary just explained repeatedly that the present practice would not lead to chaos. But if such a simple thing is not properly done before the notice is gazetted, before applications are accepted, then what procedures are there to follow?

Madam President, I also wish to raise two other points. One point that was discussed in the Subcommittee was about the application procedures on the Mainland. Madam President, the Secretary told us that the application process was now not that rife with corruption, and those people who have the C of E in particular would not see any problem with their applications. Another point is about the points system. I hope what the Secretary said was right, and I also hope that the Secretary and the Director would continue to tell the relevant authorities in China that we the people of Hong Kong are greatly worried, and very much concerned, because we have often heard that corruption and malpractices have rendered those who wish to apply to come to Hong Kong unable to form a proper waiting list; some people who could bribe certain people came to Hong Kong quickly after paying money, others have waited for years and still have not got their turn. I believe many Hong Kong citizens find this unacceptable. We hope that the executive authorities would keep us informed. When those with C of E will have no further problems, what about those without such certificates, spouses wishing to apply to come to Hong Kong, for example? Could the Secretary tell us there would also be in place a system that is clear and free of corruption? We are also very concerned about this. If they wish to apply to come to settle down in Hong Kong, I hope the Secretary would tell the Chinese authorities about our worries. Of course we have no way to regulate how things are done in China, I still hope that the Secretary would convey our sentiments to the Chinese Authorities.

Madam President, there is another thing which I wish to say, and I did mention it just now. I hope the executives authorities would consider as soon as possible increasing the quota for OWP. Now that the ruling of the CFA is overturned, but many people actually have such a right. What I am referring to are not those who wish to come here as immigrants, but the children of Hong Kong people who have been deprived of their right because the Government of Hong Kong asked the NPCSC to interpret the Basic Law. However, I still hope that the OWP quota could be increased as soon as possible, that is, to over 150 persons daily, so that those who enjoy the right can come as soon as possible. Naturally, the number of the people we are talking about is very large, but they have been waiting for a long long time, and Madam President, I believe however we look at it, we should do our best to help these people, help them to know clearly that there is a waiting list, know when they should put their names on that list, where on the list they are, and that we have increased the quota to enable them to come as soon as possible. I further hope the Government would consider proposing an amendment to Article 22 of the Basic Law to give the SAR

the authority to examine and approve the applications to enter Hong Kong submitted by mainland people. This is very important and I hope the Government would do its best. The Government should know very well that many people are very disappointed and frustrated with the Government over the present issue. Many Members of this Council also do not approve of what the Government is doing. Therefore, Madam President, we in the Frontier will oppose the resolution proposed by the Secretary.

MRS SELINA CHOW (in Cantonese): Madam President, just now the Honourable Miss Emily LAU said, "particularly they have a sufficient number of rubber stamps here", I wish to request the President to rule whether, according to Rule 41(4) of the Rules of Procedure, what Miss Emily LAU said constitutes offensive and insulting language about Members of the Legislative Council.

PRESIDENT (in Cantonese): Let me check the video tape before I give you a reply. The meeting is now suspended.

3.48 pm

Meeting suspended.

4.25 pm

Council then resumed.

PRESIDENT (in Cantonese): Honourable Members, just now, a Member asked me to rule whether a remark made by Miss Emily LAU in her speech is offensive.

I went back to my office to review that part of the video tape and go through what Miss Emily LAU said again. I consider the remark made by Miss LAU in breach of Rule 41(4) of the Rules of Procedure for Members hearing the remark would feel offended. Of course, in this Chamber, many Members have, on past occasions, made offensive remarks. What makes it different is no Member had asked me to make a ruling. This is because only colleagues sitting

in this Chamber have the deepest feeling as to what other colleagues said is offensive or insulting to them.

I now rule that Miss Emily LAU has contravened Rule 41(4) of the Rules of Procedure. Just now, I asked Miss Emily LAU in my office if she was willing to withdraw her remark. But Miss LAU indicated that she was not willing to do so. I also told Miss LAU that I would make it clear to Members in this Chamber formally that I consider her in breach of our order and not in compliance with the Rules of Procedure. Such conduct is unnecessary, inappropriate and should not be encouraged. I hope Members can look after the feelings of other Members in making speeches in the future.

MRS SELINA CHOW (in Cantonese): A point of order. If the President rules that the remark of Miss Emily LAU is in contravention of Rule 41(4) of the Rules of Procedure, should the President demand Miss LAU to withdraw her remark?

PRESIDENT (in Cantonese): According to Rule 41(4) of the Rules of Procedure, "It is out of order to use offensive and insulting language about Members of the Legislative Council." I have already demanded Miss Emily LAU to withdraw her remark, but she indicated that she would rather let me formally reprimand her in this Chamber for her impropriety than withdraw her remarks. Therefore, I have already formally reprimanded Miss LAU.

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

MR MARTIN LEE (in Cantonese): Madam President, actually at the beginning of this debate on the resolution, the Secretary for Security named us all. I felt like we had become the defendants in a court case, almost all Members from the Democratic Party were named as defendants. The seating plan here is roughly that one side is prosecuting the other side. But what wrong did we do? Or what mistake did the CFA make? This is in fact worth our study.

What did our Government do since the CFA ruled on 29 January this year? Was it really prepared to enforce the ruling of the Court? The information we got shows, the Government told this Council at the end of last March, that is, two months after the CFA ruling, that calculated according to the provisions in Article 24 of the Basic Law, 64 000 people had the right to come to settle down in Hong Kong; the figure was 66 000 previously, and 44 000 had already arrived. I took it that only 20 000 were left. But not long later, the figure became over 1.6 million. What the Government did during that little time in between, we do not really know. Later it transpired that the Chief Executive, pursuant to Article 43 and Article 48 of the Basic Law, referred the two articles of the Basic Law, namely, Article 22 para 4 and Article 24 para 2 already interpreted by the CFA, to the NPCSC for re-interpretation. So we have this resolution here today. However, I wish to remind Honourable Members that one article in the Basic Law suits our purpose better, and that is Article 4 which stipulates that "The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of Hong Kong Special Administrative Region and other persons in the Region in accordance with law." The "other persons" obviously include those children born on the Mainland to Hong Kong residents. Has the SAR Government done that? Has the Chief Executive honoured this obligation?

Why do we have this resolution today? It is because the NPCSC has recently made an interpretation. And why this interpretation? It is because the Government said that the CFA made a wrong ruling. How wrong is the ruling? It is because it is not in line with the legislative intent. Where can this legislative intent be found? Well, it should be found among the views expressed by the members of the Preparatory Committee in 1996. I checked for such a view, and it turned out it was really called a "view". The relevant part of the text reads as follows: "Article 24 para 2 of the Basic Law of the SAR of the People's Republic of China makes provision regarding the issue of permanent residents of the SAR. In order to implement the said provision, the following view is put forward for the reference of the SAR when the details of implementation are drawn up." Nowhere was it said that this was the legislative intent of the NPCSC when it promulgated Article 24 of the Basic Law, nothing in that respect was written down. Of course, members of the Preparatory Committee are members only, they do not have the authority, nor are they so qualified, to interpret the provisions of the Basic Law or the legislative intent in

accordance with the Chinese Constitution. Therefore, that view is in fact such, merely a view. However, as Mr Albert HO said, this view was specifically referred to when the NPCSC made the interpretation, and the importance of that view has therefore been enhanced by several folds. I would like to remind Honourable Members, when the NPCSC made the interpretation, one sentence in the final part of the document is written this way — this here is the interpretation proper as made clear in the first and the second paragraphs — one of the sentences says, "The legislative intent as expounded in this interpretation and the other legislative intents of Article 24 para 2 of the Basic Law of the SAR of the People's Republic of China, are to reflect the view approved by the 4th Plenary Meeting of the SAR Preparatory Committee of the National People's Congress on 10 August 1996 in respect of the implementation of Article 24 para 2 of the Basic Law of the SAR of the People's Republic of China ……", that is to say that the other legislative intents of Article 24 para 2 are reflected in the view. This could be the reason why a media report I read said that the Government had asked High Court judges to refer to that view when an attempt is made to interpret the provisions of the Basic Law even at the beginning of a case, and the reason used in the argument of the Government is that they would sooner or later have to refer to that view; so, as that view would be referred to when the matter reaches the NPCSC, they might as well refer to it now.

This is very strange indeed, because, has this view become part of the laws of Hong Kong? In fact, there was argument before the CFA about this view, and submissions were made by both sides to the litigation, and it was eventually not accepted. Why? It was because under the legal system of Hong Kong, that is under the common law system, the 1996 documents could not be used to help the Court interpret what the legislative intent was at the time the Basic Law was promulgated, that is, on 4 April 1990, or before. The view was put forward six years late, and there is no reason to refer to it. In accordance with the original laws of Hong Kong, it should not be submitted as a document that could be considered. That was why it was not referred to at that time. But the present practice is different, it must be referred to. Could this be regarded as one new discovery in the legal system of Hong Kong? The Basic Law in fact stipulated very clearly that our laws shall be the Basic Law plus the laws previously in force, including the common law. Unless that view was listed in Annex III as part of the national law in accordance with Article 18 of the Basic Law, and is accepted by our courts, it should not be referred to. But this is not

the case now. What documents do we have to refer to in the future? Do we also have to refer to the articles written by Mr XIAO Weiyun? Do we have to refer to all the writings of Prof Albert CHEN that the Government finds suitable? Of course, any and all put forward by Martin LEE must not be referred, because they are not suitable for the ears. So hereafter what our judges should rightly refer to? And what they should not refer to? This way of doing things is like boring a hole in the common law, and nobody knows how big this hole is, and how many people would fall into it. The merit of the common law is that we know beforehand what the law will be like, we can anticipate how the judge would rule, and on what precedent would the judgment be based. Now we know there is a hole, but we do not know in what way we might fall into that hole. Therefore, there is no longer any standard, no longer any certainty.

Madam President, when the provision in the Basic Law regarding the power of interpretation of the NPCSC was first drafted, many Members, I believe, did not read it. What did that provision look like in the first draft of the Basic Law, that is the draft to invite public comments? As I was a member of the Drafting Committee, so I know what it was like in the first draft. In the first draft, that provision, not numbered as Article 158, but Article 169, was written this way, "The power of interpretation of the Basic Law shall be vested with the Standing Committee of the National People's Congress" — this is exactly the same as the one in the present Basic Law — but the second paragraph that followed read this way, "When the Standing Committee of the National People's Congress makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee of the National People's Congress. However, judgments previously rendered shall not be affected." This part you all may be very familiar with, but it is in the end of Article 158 of our present Basic Law. Initially, it was clearly stipulated that the power of interpretation of this Law was vested with the NPCSC, and if the NPCSC made an interpretation, the courts of Hong Kong had to follow. That gave people the impression that the NPCSC could interpret the Law any time it liked. At present, though these provisions are still there, the positions where they appear are different, with some provisions added in between. The first sentence is the same, stipulating that the power of interpretation of the Basic Law is vested with the NPCSC, and the paragraph goes on to say that the NPCSC authorizes the courts of the SAR to interpret on their own, in adjudicating cases, the provisions of this Law which

are within the limits of the autonomy of Hong Kong. That is to give the Hong Kong courts the power to interpret on their own the provisions which are within the limits of the autonomy of Hong Kong. The paragraph goes on to say that the courts of the SAR may also interpret other provisions of this Law in adjudicating cases. That is to say, the Hong Kong courts may interpret on their own those provisions within the limits of autonomy, and also interpret those outside such limits, when adjudicating cases. However, before adjudicating the final appeal, there comes the restriction, the power of interpretation must be handed back to the NPCSC, and before the conclusion of the appeal case, that is to say, there is no such need for the first trials and even the Court of Appeal cases, the courts may still interpret on their own; it can also be said that provisions within and outside the limits of autonomy may be interpreted by Hong Kong courts on their own. However, when it comes to the final adjudication by the CFA, if the provisions needed to be interpreted concern affairs which are the responsibility of the Central People's Government, or concern the relationship between the Central Authority and the Region, then these two categories of provisions must not be interpreted by the SAR, and must be referred to the NPCSC for interpretation. And after the NPCSC makes an interpretation, the courts of Hong Kong shall follow. In fact, here we can see the two different ways of writing that article. Obviously, the present version, that is, the later version, has given our courts ample space to manoeuvre, space to interpret the Basic Law. The NPCSC does have the power to interpret, but our courts have been authorized to exercise that power, only when the cases go to the final appeal and before the final adjudication, certain specific provisions may not be interpreted by the CFA, and when the CFA may not interpret, the provisions will be referred to the NPCSC for interpretation.

What the Government is saying is alarming. Some government officials studied the issue with us. When we asked them when the NPCSC would interpret the Basic Law, the answer we got was that it could do so at any time: before a case goes to court, in the middle of a trial, or even after a judgment is handed down. As to who can seek an NPCSC interpretation, the answer was an individual person could do so. What provision to interpret? All provisions. This is something of enormous import. Should a case happen, say a major one involving the Bank of America and the Bank of China, and provisions of the Basic Law are involved, in which the Bank of America wins in the first trial and the Bank of China naturally appeals, but if the Bank of China under appeal

approaches the NPCSC for an interpretation of the relevant provisions with a request for overruling the interpretation of the provisions by the judge in the first trial, and if the NPCSC accedes to such a request, then the Bank of China can say that it will surely win on appeal, or there is even no need to go to the CFA, because when the appeal goes to the CFA, it will still certainly win. Even before the case goes to court, it can ask the NPCSC to make an interpretation on what the Bank deems not right or is of importance, then all the judges must follow the new interpretation. Now that the Government is creating a precedent and has offered such explanations, it is really alarming. Does it know that this will scare foreign investors away. What would they think? Well court cases in the SAR in the future would be something like this. Of course, at least theoretically, when the Bank of America loses in the first round, it also could seek out the NPCSC to interpret the relevant provisions. However, everybody knows that to seek a NPCSC interpretation, an application has to be made to the State Council, and it is up to the State Council to help, or not. Though it is claimed that an ordinary citizen can also seek a NPCSC interpretation of the Basic Law, and when an ordinary citizen enters into litigation with the Government and does not like a certain interpretation of the provisions of the Basic Law, he could seek a NPCSC interpretation. The question is: How likely will the State Council help you?

The Government is now creating such a precedent. When the CFA handed down a ruling, very clearly interpreting the provisions of the Basic Law, but the Government not only does not enforce the ruling, instead, as a defendant (in the present court case, the Government is the defendant), it does not like the ruling and manages to overturn that interpretation; now it comes to this Council and ask us to approve a resolution, with a view to reviving some provisions that the CFA has already declared invalid and violating the Basic Law. Therefore, the Democratic Party cannot support the Government. We also very much hope that the Government could as soon as possible, or even forthwith, arrange for the Chief Executive to announce that the present application to the NPCSC for an interpretation is something very special, and will not be repeated in the future. It is a pity that the Government has not done so. I have heard the replies of the Secretary for Justice during an interview. When she was asked what cases would require an application for interpretation, she replied that it was not decided yet. When asked would such possibility be ruled out, she replied that it would not be. What did she imply? That is to tell the Judges of the CFA,

"You have to know, if your interpretation is to my liking, naturally I will not seek an NPCSC interpretation; if not, such possibility is not ruled out." Does not such present practice undermine our rule of law? Does not it threaten our courts as to what they can do? Are not the judges being asked to dance to the tune of the Government in the future, to refer to a document when the Government says it is important, or later follow the writing of an academic when the Government thinks the interpretation by that academic is important? In a nutshell, it cannot be wrong if you listen to the words of the Government. Is it that the Courts are required to serve as rubber stamps? I am referring only to courts, not Honourable Members.

Madam President, we are very angry with what the Government has done. We are sure to oppose this resolution. Thank you.

MR TAM YIU-CHUNG (in Cantonese): Madam President, first of all, I would like to respond to certain arguments of Mr Martin LEE. He quoted the first draft of the Basic Law. He said that had participated in the drafting of the Basic Law, but I think it is a pity that he quit half way, and therefore could only argue on strength of the first draft. This of course does not work, because the Basic Law had several drafts before the present one was adopted.

Though Mr LEE is a Senior Counsel, I still think the example he just quoted was not entirely suitable. He invented the commercial dispute between China and America to support his argument about seeking an interpretation from the NPCSC. That is an inapt example, a misleading one as well. As to "to the liking of the Government", I opine that the most crucial question is whether the matter is in line with the relevant provisions of the Basic Law. Only this is the most important thing. If not, the Government must consider this.

Let me now share with Honourable Members some of my views. In the past two days, we have often heard slogans chanted by those fighting for the ROA outside the Legislative Council Building. I appreciate their situation, and I also hope that eligible people can reunite with their families in Hong Kong in a reasonable, lawful and sensible way.

The storm surrounding the ROA issue in the past several months has shown us that if we ignore the provisions of the Basic Law, ignore the legislative intent, not only will social stability be undermined, but there will also be irreparable psychological disturbance for the thousands of families that are hoping for family reunion.

The NPCSC made an interpretation of Article 22 para 4 and Article 24 para 2(3) of the Basic Law on 26 January, reiterating that children born on the Mainland to Hong Kong residents are permanent residents of Hong Kong only if on the date of their birth, either of their parents was a Chinese citizen who had the ROA in Hong Kong pursuant to Article 24 paras 2(1) and 2(2) of the Basic Law. This interpretation is exactly the same as the definition of permanent residents as I understood it when I took part in the drafting of the Basic Law several years ago. This also reflects the legislative intent of the Basic Law. The NPCSC interpretation eliminates the disastrous consequences brought to society by the mistaken ruling of the CFA, and safeguards the rights of those who enjoy the ROA in Hong Kong according to law.

Some people have said that the NPCSC interpretation of the Basic Law has deprived those children born on the Mainland to Hong Kong residents of the right of coming to settle in Hong Kong, saying that if they are deprived of their rights today, we could be deprived of ours tomorrow. This is merely scaremongering. Their aim is to confuse the people. Children born on the Mainland to Hong Kong residents, according to the Basic Law, do not have the ROA in Hong Kong if at the time of their birth, neither of their parents had the ROA in Hong Kong. As they do not have such right, what right of theirs has been deprived of?

To blame the request for NPCSC interpretation as a discrimination against new arrivals to Hong Kong and as a means to prevent family reunion is very much unfair to those who insist on upholding the legislative intent of the Basic Law. Let us honestly ask ourselves, can Hong Kong support an increase of 1.67 million to our population? According to the CFA ruling, the children are allowed to come to Hong Kong, but their parents do not enjoy similar rights and will have to wait for an indefinite period of time before they can also come to Hong Kong. This is what they say "accepting the children but not their mothers". Is this human? Is this good for the families? The burden that the 1.67 million new arrivals will put on Hong Kong is a fact, not a fabrication in any case. The responsible forecast made by the Government regarding the

various basic services for these 1.67 million people has been blamed to be divisive. If the CFA had ruled in accordance with the provisions of the Basic Law, we would not have this trouble.

Madam President, many Hong Kong people married and gave birth to children on the Mainland. It is only too natural for them to wish to have their families with them. But to obtain the ROA for the children, they must observe the provisions of the law. To accuse the present immigration system of breaking up families is to fail to understand the legal origin and basis of the long-established immigration policies of Hong Kong. The OWP system in the past did have room for improvement. In the past several years, the Democratic Alliance for the Betterment of Hong Kong conveyed our views as well as proposals for improvement on many occasions to the Public Security Ministry in Beijing and the immigration control authorities, with a view to enhancing the fairness, openness and transparency of the system, and to preventing corruption given rise by quota distribution. The relevant authorities on the Mainland accepted some of our proposals, including the setting up of the points system to determine the priority of the applicants. The Director of Immigration revealed the other day that the SAR Government has successfully convinced the public security authorities on the Mainland to do away later with the policy of giving priority to young children. One year from now, all adult children can apply to unite with their families in Hong Kong on a first-come-first-served basis. We welcome this measure. Though the number of children born on the Mainland to Hong Kong people is huge, we believe that with strengthened communication, co-operation and continued improvement to the relevant application procedures which will serve to put the minds of the applicants at ease, the issue will eventually be resolved.

With these remarks, I support the resolution and the amendment.

MR AMBROSE CHEUNG (in Cantonese): Madam President, in respect of the resolution proposed by the Administration today, I would like to first of all make clear my position. I have all along opposed the Administration's request for an interpretation of the Basic Law. I think that amending the Basic Law is a better way out. Having made my position clear, I would like to examine if we should support or oppose today's resolution from the perspective of the Administration.

Let me first make the assumption that the interpretation by the NPCSC is legal and that interpretation is part of the Basic Law and part of the laws of Hong Kong. Let us now look at the resolution proposed by the Administration this time. Firstly, on legal principle, there is no need to amend Schedule 1 as there is no such urgency. What new problems would arise if we amend Schedule 1?

On the question of legal principle, which the Administration and the Secretary have made very clear, after the NPCSC has made an interpretation, the interpretation itself will have effect equivalent to law. Basic Law is national law, and is also the laws of the SAR. The interpretation made by the NPCSC shall be part of the laws of Hong Kong. We do not have to amend any legislation to implement the interpretation. This is the position of the Administration. On legal principle, therefore, the Administration thinks that there is no need to amend any law. In fact, the Bar Association and the Law Society also think that it is very clear in legal principle. As to whether to make the amendment, it is a technical question, which should be clarified. The Administration therefore also expresses that one of its objectives is to make use of this opportunity to make a technical amendment. Under such a situation, the reason of legal principle is very clear, and in principle there may not be a need for it.

On the question of urgency, my conclusion is that it is not urgent. The law is very clear already, and apparently Members are all very clear about that law and understand the implication of an interpretation by the NPCSC. It is therefore not urgent. The Administration had also expressed that it was not at all urgent. Since the CFA handing down its judgment on 29 January, and up to 26 June when the NPCSC made its interpretation, the Administration also thought that there is no need for an urgent technical amendment. However, after the NPCSC made its interpretation on 26 June, the Administration thought that there is urgency for a technical amendment to be made on 16 July. I am not with the Administration on this, for I do not see the urgency here.

Thirdly, if we were not to make this technical amendment, would the procedure for people applying for ROA be affected? Would the notice be affected? Would the discussion between the Director of Immigration and the Chinese Authorities, and the subsequent procedure be affected? As far as I know, the application procedure would not be affected.

Fourthly, what would come out of our passing this resolution today? I feel that it would give rise to two problems on interpretation. We are all very clear that Hong Kong follows the common law system, and the concept of separation of powers is enshrined in the Basic Law. Separation of powers means that the executive and the Judiciary are independent of each other. The executive is in charge of administrative work, while the Judiciary has the responsibility to interpret the law, and the legislature is responsible for law-making. Of course, there are areas of overlap among the three. Many provisions in the Basic Law also show that there are areas of overlap among the three. However, we cannot refute the concept of separation of powers because of these overlaps. The power and responsibility of interpreting the law rests with the courts. In interpreting the laws, the courts should have the protection of an independent Judiciary, which, in fact, is the major concept of the rule of law. Of course, on top of this we should also add the concept of "equality for all before the law".

Now let us come back to the resolution of the Administration. The Administration even allows its executive authorities to take up a responsibility, which should be the court's, and perform one of the major functions of the Court, which is to interpret the law. Why do I say this? Let me quote two examples. In section 2(a)(i) and 2(ii) of Schedule 1, the Administration tries to interpret under what circumstances can the ROA be acquired before 1 July 1987. The interpretation is inconsistent with the wording of the interpretation made by the Preparatory Committee in August 1996 in respect of Article 24 para 1(2) of the Basic Law.

We have to look at what legal status the opinions of the Preparatory Committee have. The Administration told us that that is the legislative intent, and also told us that on this occasion when the NPCSC was to make the interpretation, the opinions of the Preparatory Committee would be recognized. We therefore have to first ask the Administration what legal status the legislative intent of the Preparatory Committee would be when that intent was to be recognized. Why section 2(a)(i) and (ii) of Schedule 1 and the Preparatory Committee has a difference and conflict in wording? Would this give rise to another debate on interpretation? This is my first worry.

Secondly, in making its interpretation, the NPCSC made the date 29 January the watershed. The wordings used at that time were: "This interpretation would not affect the right of abode acquired by the relevant litigating parties as a result of the judgment made on 29 January this year by the Court of Final Appeal in respect of the relevant cases." This was the interpretation of the NPCSC. Generally, such wording should be left to the interpretation of the Court in Hong Kong when it interprets "the relevant litigating parties" with specific judgment for the cases. This would be the most cautious approach. Of course, another cautious approach is for the Administration to ask the NPCSC again for an interpretation. As the Administration has not taken this approach, a more cautious approach is for the Court to give an interpretation. However, the Administration now tells us that it will do the interpretation itself, and it has also listed three situations. First, the Administration thinks that the test case already covers those people who registered with the Immigration Department on 29 January and they should come under the definition of the relevant litigating parties, which number around 3 000. There are more than 2 000 people who are in situations similar to these people; the only difference is that they have not registered with the Immigration Department. The Administration has decided to exclude this group of people.

Where does the third danger lie? The Administration's interpretation has not taken care of the legal status of those people with similar situation during the period between 29 January when the CFA handed down its judgment and that the law of Hong Kong was still in force, and 26 June when the NPCSC gave its interpretation to revoke the original practice (that is, the vacuum between 29 January and 26 June). The Administration of course is very clear that this group of people do not have ROA, but how would the courts in Hong Kong view the situation? How would the CFA view the situation? The Administration is engaging in the very dangerous act of performing the function of the Court. The Administration is interpreting the Basic Law. Not only is the NPCSC interpreting the Basic Law, the SAR Administration is also interpreting the Basic Law.

Can the Administration hand this problem back to the Court? I feel that the Administration should do so. On this last point, I feel that a more cautious approach is not to pass the resolution on Schedule 1 today, as the Schedule itself also involves the issue of interpreting the law and we have not been able to see all

the amendments the Administration want to make to the Immigration Ordinance and Immigration Regulations. After all, the Administration has also expressed that it cannot submit them to this Council until only in October. I therefore feel that it would be more cautious for us to leave the matter until October when the Administration submits the whole amendment bill. Moreover, we should consider the Administration's position on the Preparatory Committee's view in 1996 and its legal status, why the Administration still accepts that it is not a problem when the wordings in section 2(a)(i) and (ii) of Schedule 1 and the opinions of the Preparatory Committee are inconsistent, and whether the definition of the relevant litigating parties of 29 January was made fairly and cautiously. It would be a more cautious approach if all these were considered before passing the whole piece of legislation. If we were to handle it separately, I am afraid that we would be getting into an unknown realm, whereby in the future we would be forced to interpret the Basic Law even if we do not want to. On legal principle, I really do not think there is the need, and the urgency, that the application procedure should be affected. Under such a situation, I cannot support the passage of the resolution today. Thank you, Madam President.

MR JASPER TSANG (in Cantonese): Madam President, Mr TAM Yiu-chung has already expressed the position of the DAB. We support the resolution proposed by the Secretary for Security and the amendment proposed by the Secretary for Justice.

Madam President, having heard many of my colleagues speak, I can see a general pattern: Those oppose passing the resolution today are also those who opposed the Government of the Hong Kong Special Administrative Region (SAR) submitting a report to the State Council, asking the NPCSC to interpret the Basic Law. Simply put, those of us who were against an interpretation by the NPCSC would also be against the passage of the resolution today. No matter how many arguments Mr Ambrose CHEUNG put forth just now, my feeling is that if our colleagues lambasted the Administration for dragging its feet on enforcing the CFA ruling after it was made on 29 January, then it seems now they would not like to see the legal consequence of the NPCSC interpretation being realized immediately.

We all know that the DAB has earlier expressed its support for an interpretation of the Basic Law by the NPCSC. We think that there is only one reason for our colleagues not to accept this, which I also understand very well. I think it is very hard for my colleagues, including many people in the legal sector, to accept the concept that an agency other than the courts can have the final authority in interpreting our laws. However, the fact remains that we have the Basic Law, which makes Hong Kong, though a common law jurisdiction, different from other common law jurisdictions. It is because they do not have a Basic Law. The Basic Law is the law of Hong Kong, which some people refer to as Hong Kong's mini-constitution, and it is also part of the national law. It does not only have binding effect on Hong Kong, it has also effect across the country including the Central Government and each of the local governments and the people on the Mainland. Under such a situation, it is not possible for us not to recognize the contradiction that exists in Article 158 of the Basic Law; and I have kept an eye on it all the time. While the Basic Law vests the power of final appeal in the courts of the SAR, it also leaves the power of interpretation within the hands of the NPCSC. In fact, this is also a contradiction with the "one country, two systems" arrangement. When we are faced with such contradictions, I would very much like to see that the problems can be resolved rationally through practice, and that the theory of the "one country, two systems" can be developed and enriched in the process when such contradictions are being resolved. I feel that we should take this approach. However, it may be because cases about the ROA involve wide-ranging interests that right from the beginning we feel that the discussion might be very emotionally charged. Even today, right in this Chamber, we can still hear that morality should be the yardstick for judgement, say, on the acts of the Administration. For example, the Administration should be selfless. As to win or lose, what would it be if it were a loss? What would it be if it were a loss? We would like to ask what is the meaning in a win or a loss? Who wins? Who loses?

I greatly respect Miss Margaret NG, who is a barrister by profession. Every time she talks on this, she always declares her interest that she is representing her clients in the case. Maybe from her perspective, winning or losing is a very clear concept. I would like to ask if the Administration is really so mean that it cannot accept losing, that it will let lose its frustration out on losing the case. Is the SAR Government not do anything, just as remarked by some of our colleagues in this Chamber, to see to it that the ruling is faithfully implemented? The CFA made its ruling on 29 January. Who is the loser? Many of our colleagues here, especially our friends from the Democratic Party,

often work with the public and the grass-roots. They know very well that, if the ruling of the CFA were faithfully implemented, who the loser would be, who would object and whose interests would be jeopardized. Just now Mr Martin LEE referred to Article 4 of the Basic Law, saying that the SAR shall, in accordance with law, protect the rights of the residents of Hong Kong and of other people. That is right. The SAR and the SAR Government should protect the rights of Hong Kong residents and other people in Hong Kong. However, how should such rights be protected? I believe that Mr Martin LEE, showing a great rage just now, would not think that a full implementation of the ruling of the CFA could protect the rights of Hong Kong residents. This is exactly the reason why our friends from the Democratic Party all go for amending the Basic Law. What objectives do they want to achieve and what results do they want to produce? What they want is not a full implementation of the ruling of the CFA. We think that after the CFA has made a ruling, the Administration and anyone alike should respect that ruling. However, in enforcing that ruling, we might face problems that are impossible to solve, and in fact we do have such problems. This is because the CFA differs from the Mainland in interpreting the Basic Law. The CFA, in passing the judgment, said that it might not have the same legal effect on local governments in China. If we were to implement this ruling without the co-operation of the local governments of China, there is no way that this can be done. We have seen this from the very beginning, and we do not need to see that the Secretary for Security and the Director of Immigration at their wits' end to know that this is impractical. If the ruling were enforced, that would cause unacceptable hardships to the SAR and our society. If the SAR Government just faithfully enforces the ruling of the CFA without doing any other work, I do not think it would be a responsible government.

The DAB therefore has earlier pointed out, and stated publicly, that the Administration must take some actions. Of course, we have to do it in accordance with the law, and in full compliance with the constitution, the Basic Law, and resolve, in accordance with the law, the problems caused by the ruling of the CFA. We think that this is the fair and reasonable and legal approach. However, how should we go about it? The DAB has also explored the question of amending the Basic Law. Today I do not want to rehash the arguments we have gone through in our discussions over the past few months, at least since the end of May, regarding a NPCSC interpretation of the Basic Law. Put simply, we think that the proposal that asks for an amendment of the Basic Law by the NPCSC is infeasible. It is because a group of local deputies to the NPC have

already expressed that they would not support this, and according to legal principles, we also think that it is not feasible. Put simply, Article 159 of the Basic Law has already clearly stated that any amendment to the Basic Law should not deviate from China's fundamental policies towards Hong Kong. This basic policy cannot be any clearer and is also included in Annex I to the Joint Declaration on the definition of Hong Kong permanent residents. If the CFA's interpretation of the Basic Law had complied with the fundamental policies, then the interpretation should not be changed. If, however, its interpretation deviates from the fundamental policies or the meaning of the original provision, then it should be changed. After careful consideration, we cannot see how an amendment of the Basic Law can solve our problem.

On a interpretation of the Basic Law by the NPCSC, I have said just now that we have made an assessment of the responses that various sectors of society may make. We have also contacted the two legal professional bodies and listened to their views. I have also personally reflected some of the strong views of the legal sector to the Secretary for Justice. Having considered all these views and the actual situation, the DAB thinks that we should ask the SAR Government to seek a NPCSC interpretation of the relevant provisions of the Basic Law so as to solve the problem at hand. On this problem, so, ……

PRESIDENT (in Cantonese): Mr Ambrose CHEUNG, is it a point of order?

MR AMBROSE CHEUNG (in Cantonese): Mr Jasper TSANG has referred to my speech in his speech, and I would ……

PRESIDENT (in Cantonese): This is not a point of order. You are seeking an elucidation. Mr Jasper TSANG, would you like to give way to Mr Ambrose CHEUNG? Or do you wish to continue?

MR JASPER TSANG (in Cantonese): I will give way.

MR AMBROSE CHEUNG (in Cantonese): Actually I would very much like to let Mr Jasper TSANG finish with his speech before I give my clarification. Referring to my speech, he said that some Members oppose the amendment, and those who oppose an interpretation of the Basic Law will also be oppose the resolution today. They hope that they can stall or do not want to see that the NPC ……

PRESIDENT (in Cantonese): Mr Ambrose CHEUNG, you have asked to be allowed to clarify the part of your speech which has been misunderstood, so you cannot continue with the debate here. Please clarify the part of your speech which has been misunderstood.

MR AMBROSE CHEUNG (in Cantonese): I said very clearly in my speech that the interpretation made by the NPCSC has become part of the laws of Hong Kong and there is no need for any amendment to our laws to make it part of the laws of Hong Kong.

Mr Jasper TSANG's appears to suggest that we are trying to stall the NPCSC from making an interpretation to enable this law to be implemented in Hong Kong. In fact, we do not want to stall, we recognize that it is law.

PRESIDENT (in Cantonese): Mr Ambrose CHEUNG, you have explained the misunderstanding. Mr Jasper TSANG, you may continue.

MR JASPER TSANG (in Cantonese): Thank you, Mr Ambrose CHEUNG.

Fortunately with our speeches, we are the highest interpretative authority ourselves of our speeches. I am all with Mr Ambrose CHEUNG's explanation. According to my understanding, under the same reasoning, after the CFA made its ruling on 29 January, that judgment has become part of the laws of Hong Kong. However, subsequently do we have to amend our laws accordingly? It is on this question that why I said I have great respect for Miss Margaret NG. She displays a greater degree of consistency. At that time, she thought that a consequential amendment should be made in accordance with the ruling of the CFA. And she did reiterate this position of hers when the NPCSC made the

interpretation. We are also very clear that an interpretation of the NPCSC would give rise to doubts amongst our colleagues here and in the legal sector. However, we think that there is no other practical way out.

I have been an optimist. I feel that this has actually given us an opportunity to find ways to develop our own legal system under "one country, two systems". Some people said that this would become a precedent; I hope that this would not be a bad one. I do not believe that this would be a precedent for the Central to interfere in affairs of the SAR. People having such thinking, like Mr Martin LEE said just now, have already made the presumption that the NPCSC would differ from the CFA, that the courts in Hong Kong would act impartially, while the NPCSC would be different. The NPC Standing Committee would interpret in the way that the SAR wants. If the Bank of China lost its case with another party and asked the NPCSC for an interpretation, the NPCSC would also interpret in a way that is in accordance with the interest and wish of the Bank of China, so he said. In other words, the NPCSC is a rubber stamp for the SAR Government, Bank of China, or whatever Chinese organizations that Mr Martin LEE has in mind, or even the DAB. If anyone should harbour such thoughts, then nothing can help. Article 158 of the Basic Law has already stipulated that the NPCSC shall have the power of interpretation. But to some people, the NPCSC does not deal out justice, and is unreasonable and partial, and it would wield its power to interpret the Basic Law according to its wishes, especially in cases where the losing party is one of them, so that the courts of Hong Kong would be stripped of their power of adjudication. If we had such a presumption, it is impossible for us to have any confidence in "one country, two systems". After all, "one country, two systems" also needs the Basic Law for its implementation. Please do not forget that the Basic Law was passed by the National People's Congress. Thank you, Madam President.

PROF NG CHING-FAI (in Cantonese): Madam President, the motion proposed by the Administration today is in fact a continuation of the debate over the past few months, and this is also the third debate of this Council on this issue. What should be said should have already been said. I have risen to speak just to add a little supplementary material.

To all Members, it is very common for us to declare our position or make an appeal on a certain issue. However, I think that the topic under discussion today, as I said previously, is not a very happy one. 1.67 million people,

whether their parents were already Hong Kong residents when they were born, are definitely Hong Kong belongers. We should find no comfort in managing to stop these 1.67 million people from coming to Hong Kong. There definitely is no reason for us to feel happy just because we can stop them from coming.

Mr TAM Yiu-chung put it very nicely just now. What about their spouses? From a humanitarian point of view, what should be done? What would the situation be like if we only take the children but not the parents? I therefore think that if anyone wants to be on moral high ground, no one here can.

I often say that to solve the problem, we must do our best by running our economy even better, so that those who want to come, as long as they have relatives here, be they their children or brothers, can all have the chance.

I would therefore say the same thing: why not do our best!

I agree very much with Mr Jasper TSANG in that the "one country, two systems" concept has only been implemented for two years. If we can take things at ease, we definitely can gradually hit out our own path. We should open up our minds, instead of insisting on our own prejudice.

I am very happy today. I feel that many Honourable colleagues have already toned down their arrogance in their speeches, though there is still some prejudice.

Madam President, I have been invited to observe the whole process of making an interpretation of the Basic Law by the NPCSC. I can very responsibly tell Members here that the NPCSC would not turn on their interpretation machine lightly.

As to Mr Martin LEE's question that if this incident would make the Administration ask for an interpretation at every turn of an event, I cannot speak for the Administration, but I believe that it is only because of the CFA's failure to refer to Article 158 that the Administration has seen fit to seek an interpretation. This power the Administration would not use lightly. Of course, I am not expecting that similar incidents would happen.

After returning to Hong Kong, and for the purpose of giving an account to the public, I published an article in the *Hong Kong Economic Journal* just one day before the interpretation was declared. The article was entitled "君子之過如日月之食". (The wrongdoings of a gentleman are obvious like solar and lunar eclipses.) I feel that it really deserves some of our deeper thoughts as even ZI Gong could say such words to his respectful teacher Confucius.

Do not think that we are always right. We are challenged by new things every day. We are led into new environment, which may require us to learn new things.

Madam President, I so submit.

MISS CYD HO (in Cantonese): Thank you, Madam President. For those of us here, whether or not we agree that those children born in China to Hong Kong residents should have the right to come to Hong Kong, or whether or not we think that the Hong Kong population would drastically increase in a short period of time, we would believe that many people are very dissatisfied with the Administration in its unscrupulous way of trying to achieve its own objectives. Last week, I pointed out that the University of Hong Kong had conducted a survey, which had been continuing for more than three months. The survey asked people whether they believe in the figures published by the Government. These figures include the number of children born in China to Hong Kong resident and the additional $710 billion the Administration would have to spend to cover the costs of social security and other services to meet the needs of the new arrivals. The result shows that the percentage of people who thought that the Administration was lying rose from 22% in March and April to close to 40% in June. We are facing a dangerous situation, which we certainly would not like to see happening. We hope that, instead of rushing through a piece of legislation within a short time, the Administration should adhere to proper procedures, be open and just, be reasonable and fair and through the due process of law, to resolve the problem. The whole procedure is so riddled with impropriety that people begin to show their dissatisfaction with the Administration, and this would give rise to a lot of problems in its governance in future.

Actually, during May and June, arguments for or against the move have been voiced innumerable times by the public. This Council has also done its very best by holding many house meetings, with academics and the legal profession invited to put forth their views. Therefore, Madam President, today I am not going to repeat what had been said, rather I would talk about what would happen.

Irrespective of our support or otherwise for an interpretation by the NPCSC, I would like to point out the consequences which such an interpretation would give rise to. I hope that the officials would later comment on what they think they should do with respect to what took place in the past two weeks.

Firstly, Mr Justice GODFREY wrote to the *South China Morning Post* expressing his thought about a NPCSC reinterpretation. He wrote about what a judge should do if the procedure for seeking an interpretation was proper, and what the situation would be if the procedure was improper. I would not comment on this. What I would like to talk about is what Mr Justice GOFFREY said to the reporters, which caught my attention. He said that he had written that letter with the hope that the public would not be misled by the Administration. This undoubtedly is a very serious criticism against the credibility of the Administration.

Secondly, Madam President, it is the comment of Mr Justice P CHAN, who expressed on 7 July that he was at a loss as to what he should do.

Thirdly, the Heung Yee Kuk, disappointed by the Court's decision on village election, expressed that they would seek an interpretation by the NPCSC of Article 40 of the Basic Law.

Fourthly, on the definition of relevant litigants, the Administration is obviously contradicting itself. The figure as known so far is very small. There were only 17 who appeared before the Court that day, but is the figure being represented now is 85 or 176 or, as the Administration said, 3 700 who claimed to have the right of abode before 29 January? In fact, in the common law tradition, there can be no limit to the number of litigants to a case, and one would only have a specific answer after a court has ruled in the next similar case or has overturned the present judgment. The Secretary expressed just now that within the next one or two weeks, 5 000 people would apply for legal aid. How is this problem to be tackled? What causes these 5 000 people to apply for legal aid?

Fifthly, the Chief Executive has expressed that 29 January can be used as the threshold. This would also lead to endless litigations. It has been reported that these cases would have to wait till October or November before they would go to the CFA; that means, before the CFA rules on them, we will continue to be troubled by this incident.

We definitely have paid a very huge price for controlling our population. Some people think that it is worth it, some thinks otherwise. Paradoxically, while we are amending the laws to drastically reduce the number of people born in China but having the right to come to Hong Kong, we are promoting the import of people with special skills. What exactly is our attitude towards population growth? We have asked the Secretary whether the import of people with special skills would constitute any pressure to society. He said that it would not. I have referred to the assessment made by the Administration in respect of social services, including medical service, required if the 1.67 million people were to move to Hong Kong. After they have moved to Hong Kong, these skilled people, being identity card holders, would only have to pay 2% to 3% of the medical cost, and we still have to provide the 97% subsidy. Though they may not need public housing, they still have to have private housing, and the Administration also have to open up more land for housing construction. By then how many Tseung Kwan Os do we need? I also hope that Hong Kong can attract a lot of skilled people, but can we have land as big as three Tseung Kwan Os to accommodate them? Like us, they also need sewerage service. I hope that the Secretary would not tell me that they do not need to go to the toilet. They would also bring about these problems.

However, the Administration has set down double standards. It does not carry out similar assessment with these skilled people, as they are able to help develop the Hong Kong economy. We cannot help but ask why the Administration has to adopt two different standards in respect of people born to Hong Kong residents and those who were not, though they are also human beings.

I would like to make myself clear that I do not oppose attracting skilled people. I also hope that more such people would come to Hong Kong, so as to engender greater competition among our students and the employees, and spur them on to work harder for the further economic development of Hong Kong.

Madam President, I would like to ask about the queuing mechanism. In our discussion about the new amendment two weeks ago, the Secretary revealed that from the current daily quota of 150 OWPs, 65 permits would be allocated to people born in China to Hong Kong residents. After the NPCSC interpretation, this group of people has been reduced to 170 000. With 65 people coming to Hong Kong every day, it would take seven and a half years for this group of 170 000 to all move to Hong Kong. Is a period of seven and a half years reasonable? The Secretary had time and again said at the meeting that of the 1.67 million, 690 000 would be of the first generation and had to be arranged to come to Hong Kong within three years, otherwise the Administration would be sued. Now by repegging the OWP with the C of E, is it also reasonable for the 170 000 people to come Hong Kong in seven and a half years? The Administration has presented us a worst-case scenario. After finding a way to escape from shouldering this responsibility, it just treats things as having never taken place. With a daily quota of 65 people, it would take seven and a half years for all the 170 000 people to come to Hong Kong. The Administration never has the intention of enforcing the CFA ruling.

I hope that the Secretary can explain to this Council how this queuing mechanism would work. Of course, I should thank the Secretary for having taken on board our views, like the application must be made in duplicate and that there must be a serial number for easy reference, so that the applicants in China will know that the queuing is fair. If the Secretary could continue enhancing the transparency by making the situation as clear as possible, we would continue to put forth our views, hoping that the Secretary would continue to listen to us.

In fact, regardless of the number of votes for or against the resolution, and whether the legislation will be passed, this is still a very sad motion. Given that the interaction between Hong Kong and the Mainland is increasing, more and more people would start their families in China. We still have hundreds of thousands of people applying for the so-called "singleton certificate". This would be a never-ending problem.

Under such a gloom, maybe I should say something enlightening. I must extend my praise to the 10 or 20 students from the University of Hong Kong and the Chinese University of Hong Kong for helping these residents from China to register. Working under a situation where neither help nor finance is

forthcoming, they conducted the registration work for the thousands of people in an orderly manner, which was better than the Legal Aid Department. I think that with such a group of students, Hong Kong still has hope.

MR NG LEUNG-SING (in Cantonese): Madam President, on the resolution proposed by the Administration today, I have views as follows. Together with other colleagues, I joined the Subcommittee that examined the Immigration Ordinance resolution. Within the eight days from 30 June to 8 July, we held four meetings and invited a number of legal academics and representatives of legal professional bodies to express their views on the resolution. The Subcommittee finished the examination within a short period of time, thanks to the hard work of the members of the Subcommittee. In the course of our examination, members were gravely concerned about the imminence of the problem and the importance of the legal issues involved. This showed that most of the members were very clear about the effect this resolution might have on society.

On the other hand, there is also the actual need for the Administration to put forth the resolution within such a short time. After the NPCSC delivered its interpretation of Article 22 para 4 and Article 24 para 2(3) of the Basic Law, the legal definition of permanent residents of the SAR has been clarified, and the actual legal situation has also become clear. However, if the relevant provisions of the Immigration Ordinance are not amended in accordance with the interpretation of the NPCSC and the content of the CFA ruling, the textual representation of the law will still confuse the public even though the actual legal situation has become clear. There is therefore an actual need for prompt actions.

Moreover, the resolution is mainly made for enforcing the ruling of the CFA, which recognizes the ROA of people born out of wedlock. The resolution also seeks to provide for an amendment that reflects the technical accuracy of the term "right of abode" in paragraph 2(a) and (c) of Schedule 1, as used by the CFA. As legislators, we are responsible to clarify the terms used in our laws so that without referring to the cases, the public can still have an easy comprehension of the actual situation of the law.

One more point. In the course of our examination, colleagues were concerned if the to paragraph 2(a) of Schedule 1 in relation to the residence or ROA requirement of the parents of people born in Hong Kong was in compliance with Article 24 para 2(1) of the Basic Law. The Administration has already given its reasoning on this issue. I think that for the purpose of adaptation and continuity of the SAR laws, its reasoning is acceptable. As it is a very complex problem, I believe some details may best be left for the future when we have more time for discussion. I think that it certainly would be the best option if we can discuss and resolve all the problems in the Immigration Ordinance in one go, but because of the urgency of the problem, it would also be realistic and acceptable if the technical and simpler part is dealt with first so that textual consistency can be achieved as far as possible. The Secretary for Security expressed to the Subcommittee that further legislative work in relation to the Immigration Ordinance would be conducted in the future. Members of this Council would still have the opportunity to have further discussions on the legal aspects of the Immigration Ordinance.

Finally, some Members have asked if investment or commercial activities would be affected by the NPCSC interpretation. I can point out here that of all my friends in business and investors with whom I have contact, none has lost confidence in Hong Kong because of the NPCSC interpretation. With these remarks, Madam President, I support the resolution.

MR JAMES TO (in Cantonese): Madam President, I would like to take some more medicine for my nasal allergy, just to prevent me from rambling into mumble jumble later. My conditions are not very good now.

Recently, a Japanese television station team came to interview me. They asked me why so many people wanted to come to Hong Kong. I said that since they had been stationing in Hong Kong for quite some time, they should know the answer. Why did they want the answer to come from me? I said that I did not want to be too critical of the Mainland, and I would also like to see it develop for the better. They said that this was also a very important problem, and asked me to tell the Japanese audience in front of the camera. I was purposely keeping a low key. I said, sometimes, they might not be able to have a family reunion, or even the children had to be separated from their parents, they still

wanted to come to Hong Kong. It was because they felt that the system in Hong Kong was freer, there is a larger space for development. I concluded with these remarks, without saying anything further.

Recently, I watched WONG Chi-wa's stand-up comedy — Squaring accounts before Autumn on laser disk, in which he cynically remarked, "Why is it that the greatest point of the one country, two system is that the Central Government has to admit that there are still many areas in the mainland system that are still very backward and require a lot of improvement?" Prof NG Ching-fai said just now that if we really wanted to help, we should do our best to run our economy well so that we could take in all those eligible to come. I think this may not be where the key to the problem lies. I would rather think that the basic solution lies in improvement in the mainland economy, rule of law and human rights. By then, Hong Kong people swarming back to China would not be purely for the cheaper prices there, but for a better place to live and work. I believe that is the real solution to the problem. Prof NG Ching-fai also said that the whole process of interpretation by the NPCSC was very fair and normal and rational. But how many members of the NPCSC were invited to attend? Even Mr Allen LEE was not able to go though he wanted to. There was no way for any dissenting idea to be voiced, and it is here where the greatest problem lies. The greatest problem is that the NPCSC is the Standing Committee of the NPC. They do not interpret the Basic Law in terms of the common law, but the civil law. We are particularly worried when they use such thinking in interpreting provisions related to Hong Kong.

Many Members have already spoken on the specific content of the amendment, and I would not repeat them here. What I want to say is that firstly, we oppose interpretation by the NPCSC and on this we have spoken a lot and I do not want to speak any further. We oppose this proposal mainly on the thinking that the effect of any interpretation requires the Court to make a judgment. There are also areas where there are still endless disputes. Firstly, as one of the litigating parties, can the Chief Executive ask the State Council for an interpretation? Secondly, has a request for an interpretation of the provisions of the Basic Law that are related to matters within the autonomy of the SAR violated the meaning of Article 158? Can the effect of a NPCSC interpretation really achieve what the Administration expects to achieve, for example, if 29 January was made the effective date, would it cover the part that was proposed for passage under the resolution?

The second point which I would like to talk about is that after this incident, the Administration needs to consider if it is appropriate to use the year 1987. The reason why the Administration finds itself in such a predicament is that it has to follow the past policy, as this has been the usual practice. However, if it really did so, it would give rise to the situation referred to by Miss Margaret NG. Basically the Basic Law is an enabling legislation, and there is no mention that the party that has been so empowered would have continuous authorization. If the Administration prefers to act in accordance with the Basic Law, then it sticks with the Basic Law; but if it goes for an interpretation, then it sticks with the interpretation; and if it goes for the views of the Preparatory Committee, it does according to those views. So doing means in fact that there is duplicity in standards. If the Administration could at will restrict or relax the power conferred on it by the Basic Law, our confidence in the Administration would be affected.

Another reason why we raise our opposition is that we are worried that cases that are still pending would be affected. The Secretary for Security said just now that they think it would make things clearer, not more confused, to the judges if they have this legislation. My view is just the opposite. Mr Ambrose CHEUNG has already talked about this point and I am with him. We certainly doubt the move of seeking an interpretation from the NPCSC. Legally, it does not matter whether it should be or should not be, as long as a legal provision has been interpreted by a competent authority and that interpretation has legal force, then in fact it is already effective even without our passing a resolution. I have heard that Mr Justice P CHAN has raised his doubt, saying if we had this additional legislation, it would be even harder to ascertain how much more or how little this legislation has enforced the NPCSC interpretation, or if this legislation is in compliance, exceeding or restricting that interpretation. If the provision that has been interpreted had any legal effect, had it exceeded, amended or restricted the views of the Preparatory Committee? If the views of the Preparatory Committee reflected the legislative intent, and if the legislative intent could be the basis for the NPC's further interpretation in the future, then would our having this additional legislation cause them more trouble?

We clearly understand that the relevant litigation will begin soon. At a time when we are about to face this litigation, why do we have to add further uncertainty to the law? At the Subcommittee meeting, the Administration said that it did not intend to snatch a win in the coming litigation by having this legislation or an additional legal basis. I ask the Administration to stress this

point again now or on any occasion later. However, the question is it is one matter whether the Administration has the intent or motive, and it is another if, objectively, the litigation would be affected. The Legal Adviser to this Council could not say for sure if there would be any effect, and the government counsel also could not boldly say that there would not be any effect. They only said that they had no intention of so doing and no intention to add a further legal basis. If the litigation process has already begun, or about to begin, and that the NPCSC interpretation already has that legal effect, then why do we now have to do all this? This has to do with how urgent the matter is. Miss Margaret NG has already said that the Administration conducts itself in a sham way. In the months between 29 January and now, it has not done anything and said that there is no urgency in it. But now after the interpretation, it said that it is urgent. At the Subcommittee, the Administration also said that if the resolution was not passed, it could still implement a new examination system by virtue of an agreement it had entered with the Central Government. I would like to make one point that shows even more how sham the Administration is. Part (a) of the resolution concerns children born out of wedlock. If the Administration had not decided to ask the NPC to interpret the right of those children born out of wedlock so as to revoke that part of the ruling of the CFA, the Administration could in fact from that second on submit this part (a) to the Legislative Council. What I am referring to are things a couple of months ago. The Administration has not done so, I do not know why.

Moreover, I would like to talk about the legal notice on the application procedure in the future. In his judgment on the case in relation to these 17 people, Mr Justice P CHAN doubted the legal status of such a notice. The Administration's interpretation on whether it is subsidiary legislation or principal legislation was also not very clear. However, by reading between the lines, I have come to the view that so doing contravenes the Basic Law, or it can be said that it violates our constitutional tradition.

I would like to talk now about some snippets that I have seen or heard. I have heard just now that the treatment for those abandoned babies is much better than those who have parents. According to our current law, those abandoned children who look like Chinese, or born with Chinese blood, are presumed to be permanent residents and meet all residence requirements. However, those born with parents who come under the description in (6)(ii) of the resolution then the parents must be settled or have the ROA in Hong Kong at the time of their birth before those children can qualify for ROA. I understand that the

Administration would argue that so treating those abandoned babies was to reduce statelessness, and it is humanitarian for it to do so. But in comparison, do we feel that it is absurd? If we are to take this example for our comparison, that means if an abandoned baby that looks like a Chinese citizen would be presumed to have been born in Hong Kong, can you see that we are adding a restriction to Article 24 paras 1 and 2 of the Basic Law?

I would like to express my views on linking the OWP with the C of E as required by the legal notice. I have expressed this at the Subcommittee. According to my understanding, despite that those provisions that have been interpreted by the NPC may have legal effect, the C of E and the OWP may not be linked together, especially with the OWP which is subject to a quota system, and the quota may not, within a reasonable time, fit the time of some people who are given the ROA for them to come to Hong Kong. I believe that linking the issuance of OWP with a quota system would lead to a series of litigation.

Finally, a few more snippets. Firstly, because the Administration does not recognize the legal effect and rules of game of test cases that have been traditional in common law, it has thus prompted a large number of people applying for legal aid. The result is not only seen in the case on this occasion, it may extend to any litigation that the Administration may have. I believe that this would give rise to a lot of problems. Secondly, I believe that a series of proceedings would be instituted against the Government by those people who were not affected originally but have now become affected after the NPCSC interpretation. Earlier, the Immigration Department did not register these people, but many of them who claim that they have the ROA have not been registered. There were also different procedures at different times. Though thousands of people have been registered, the registration was in fact done through a myriad of different ways. It is because when the Immigration Department did not register them and verify their C of E, they went to the District Offices to declare that they had ROA. Some people went to the Legal Aid Department to apply for legal aid. Despite that the Legal Aid Department is not the Immigration Department, as the Government said, but from my analysis, these people think that they have already lodged their application to the relevant authority, which is the Legal Aid Department, a government department. Their making an application is obviously trying to institute litigation for their claim to ROA. I believe there must be a lot of such cases.

With these remarks, Madam President, I oppose the resolution.

MR RONALD ARCULLI: Madam President, I would like to say at the outset that the Liberal Party has always held the view that when it comes to the interpretation of the Basic Law, there are two ways to do it: One is for the Standing Committee of the National People's Congress (NPC) and the other is for the NPC itself. Right from the outset in this whole tragic unfortunate affair, we have always said that we prefer the amendment route, but that was not to be. Despite that, we support the action taken by the Government. Some of my colleagues said today that they did not want to go back and look at the past, but they would like to look to the future. However, I think that when you look at the future, sometimes looking at the past and seeing whether there are any lessons we need to learn will be helpful as a guide as to what we do and how we decide to do things in the future.

This whole affair started with the decision of the Court of Final Appeal (CFA) on 29 January this year. On 30 January, the next day, the acting Chief Executive, Mrs CHAN, had this to say, and I think this was the Government's first response, "We respect the CFA's decision and will act accordingly, but undoubtedly, the judgment of the CFA will increase the number of persons eligible for the right of abode in Hong Kong and, in the longer term, we believe, will put pressure on our services." On 2 February, also as acting Chief Executive, she said that they realized there was a lot of public concern but that the Director of Immigration had gone to Beijing to discuss with the relevant authorities possible follow-up actions, in particular, to get a better idea of the potential pool of eligible people who can come to Hong Kong. She then also announced that the Government had decided to set up a special task force and I quote, "……to assess the numbers involved and also, in particular, to look at the demand on various services and how we are going to plan and cope with the influx of people. Our objective is to ensure that people will come in in an orderly fashion."

On 5 February, in a press release entitled "Steps to implement CFA's judgment", the Secretary for Security had this to say, "Necessary steps are being taken by the Hong Kong Special Administrative Region Government to implement the ruling of the CFA ……". On the same day, the Chief Secretary for Administration met with the media after the first meeting of the task force and she said, "I want to stress that I have set up this task force in order to implement and to comply with the CFA's judgment as regards the Certificate of Entitlement Scheme. We also wish, through this task force, to carry out a careful assessment of the implications of the CFA's ruling on the demand on various

services." I think she told us, at the same time, that the report will probably be available at the end of July. In other words, theoretically, as of this moment, the report does not exist yet.

On 26 February, amidst a little controversy, the Government, through the Secretary for Justice, went to the CFA for clarification. I only mention this because this is one of the key milestones of this whole saga. The Liberal Party supported that course of action. What the CFA said is a matter of record and I do not need to repeat it. But suffice it to say that it respected and could not and would not be able to challenge the legal authority of the Standing Committee or, indeed, the NPC itself, which is entirely right. On 28 April, there was a motion moved by the Honourable LAW Chi-kwong, subject to an amendment by my colleague, the Honourable Mrs Selina CHOW. It was there for the first time that the Secretary for Security revealed all the numbers, and the total number estimated at that time was 1.67 million.

Several days later, the Chief Executive, Mr TUNG, said, "The figures need to be reviewed and we will do so sometime next week. After we have had a look at the figures, we will then decide how to go ahead." On 4 and 5 May, the Chief Secretary for Administration said, on each occasion, that the Government had not made up its mind. On 6 May, Honourable colleagues will recall that the Chief Executive made a statement in the Legislative Council and he said that no final decision had been made. Members know that we started our Special House Committee meeting on 6 May and it culminated in the final and ninth meeting on 18 May, with the government motion to take the matter to the Standing Committee of the NPC on 19 May, which was passed.

Why have I set out all these? And why are we supporting the Government? I have set out all these to really say that: Have we in fact gone through a fair and due process? Have we given the community and this Council time to adjust and to examine such a difficult question? Time cannot always be given in terms of what we, as a Council, would like. And we, as a Council, obviously in these special circumstances, reacted. Between 6 and 18 May, we had nine meetings. So, there we are. I think the Chief Secretary for Administration also said on 19 May that she was aware we had perception problems of the rule of law and perhaps our autonomy might be eroded. She said that we would need to carry on to explain our position and our case. I think that she is entirely right. But what I am really trying to say to Members and to people whom are affected in this whole process is that, we had several months of

a lot of busy activities between Hong Kong government officials and officials from the Central Government, but Hong Kong itself had a very short period of time to deal with the problem. So, when some of my colleagues appear annoyed, when some members of the public appear to criticize the Government, for myself, I think I can perfectly understand that. Because, obviously, in such an important matter as the rule of law and as the future of possibly millions of children of Hong Kong residents being affected, two weeks are not a very long time for people to decide such an important issue.

But we did not have the luxury of time because the Government chose the fastest route to solve the problem. I think, in fairness to the Government, that there was a fair bit of outcry from the public who were obviously concerned about the huge influx. I do not think that I have heard a voice in this Chamber to say that we welcome each and every one of the persons who might have been entitled, and I emphasize "might have been entitled", to come and live in Hong Kong. So, we should really be honest with ourselves and honest with the people who think that they still have a dream and that they might still be entitled to come. If we cannot afford to sustain that, and I remember at the first meeting I said to the Secretary for Security, "Maybe, if we have to take everyone, we will have to use some form of lateral thinking." I mentioned the possibility of Macau as a choice. If people wanted to go to Macau voluntarily, Macau would have been one possible solution. Not a solution to the whole problem because I do not think Macau can take 1.6 million either, but it would have been an alternative. It would have been a choice.

Anyway, Madam President, I do not really want to delay today's proceedings too long and I will close with these words. I do not know what passing of today's resolution will bring in terms of litigation. You have quite rightly pointed us in the right direction to say that we must not say anything that might prejudice the position of any of the litigants in this matter. Maybe what we do, maybe what the Standing Committee of the NPC has done, will hold in our courts, maybe it will not. Maybe the NPC might yet have to intervene by way of an amendment, I certainly hope not. Because, as a community, we have gone through fairly heavy buffeting, both in terms of the economic situation and in terms of the legal situation in Hong Kong. I hope that we will get a little respite and I hope that although there is no perfect solution to this tragedy, at least there is a solution.

With those words, Madam President, I repeat that the Liberal Party will support today's motion.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, though my speech today does not aim at the content of today's discussion, it does aim at the process leading to the content of the motion today. I hope that all the Chinese within and without this Chamber would all say the same words: "We are all in the same boat, and we are all descendants of the Dragon." Outside the Legislative Council Building is a group of children born to Hong Kong residents. We are all together. I hope that we can look at the problem with a cool calm attitude. Some people, especially those outside this Council, may think that it is strange that why some people, who have been working with the grass-roots, can hold views so different from theirs on this problem? I hope that they would not have any misunderstanding.

As early as the '70s, '80s or even as early as the '60s, many of the grass-roots workers, unable to find a partner to get married here in Hong Kong, went to China to get married. At that time, a lot of problems existed in the situation between Hong Kong and China. Many people therefore had to apply for a certificate to certify that they were single. China also authorized the National Federation of Labour Unions to issue such certificates. We had also helped filled in a lot of such certificates. In other words, many members of Federation of Trade Unions (FTU) member unions came from China. As a Member of this Council from such labour unions, I think that all Chinese outside this Council are like us. So, why do we have this problem today? Is it that we have different views? I believe this is exactly the sort of dilemma this Council has to face. Such dilemma does not emerge today, in fact, I have witnessed the cropping of such problems since the '80s, '90s, throughout the whole drafting process of the Basic Law.

We know that the drafting of Article 24 of the Basic Law had encountered a lot of difficulties. We all understand that when the State declared that it would take back Hong Kong, many people in Hong Kong did not have any confidence in the implementation of "one country, two systems", as capitalism is practised in Hong Kong, and for China, it is socialism. Because of this, we can see that in the Basic Law, there are a lot of grey areas, places that are lacking in clarity. Such unclear areas do not crop out today. They have been there all the time, which can be seen by members of the Drafting Committee and

Consultative Committee, including me. We had time and again raised this problem in our various meetings. When the Basic Law was promulgated, our group, including the Democratic Alliance for the Betterment of Hong Kong (DAB), finally felt that there was a need to discuss the problem with Beijing, as we thought that the grey area under Article 24 was too great, which, if a court was to pass a judgment on this, would give rise to a lot of problems. Because of the many questions we raised, the Preparatory Committee that was in charge of the establishment of the Government of the Hong Kong Special Administrative Region (SAR) also came to be aware of the problems. They therefore prepared a report and submitted it to the NPCSC, which endorsed the report but did not include it as an annex to the Basic Law. I want to tell you, both friends outside this Council and Members here, that it is exactly this situation that gives rise to our problems today.

Some people may ask that since the problem had been spotted, why was it not taken care of at that time? We have thought about this, but you should be aware of the kind of relationship between the British and Chinese Governments before the reunification. If we did anything on this matter, it might bring about more buffeting to the whole transition period. After the reunification, we hoped that the SAR Government would, as soon as possible, do something about the problem. However, some people told us that if anything was done immediately, it might also give rise to another crisis. That is to say if, immediately after the reunification, anything was done with respect to the problem, it might cause some other disputes about the "one country, two systems" arrangement and the "high degree of autonomy". These are the difficulties, and it may also be said it is unfortunate for Hong Kong. If it was not because of the ups and downs we have experienced in the implementation of the"one country, two systems" and during the transition period, and if it was not because of the many problems the former government had created for us, that made it difficult for us to go through the transition period co-operatively, we would not be in such a predicament. Many of our problems could have been resolved earlier. Certainly, this is not arranged. How could it be? Under such a situation, how should we resolve all these difficulties?

Madam President, I always go to the residents meetings of various districts and am in great agreement with the residents on a great many issues. However, I have very different views from theirs on two issues: Comprehensive Social Security Assistance (CSSA) recipients and the treatment of new migrants. Very often I would tell them that we are all migrants, only that it is our fathers, grandfathers who moved here earlier. When they first came here, they also

encountered difficulties. Through care, they helped each other tie over the hardship. We should not discriminate against the new migrants or people who are to come to Hong Kong. They are all residents of Hong Kong. It is on this that I have very different views from the residents. However, despite my hard work, the contradictions involved are getting more and more serious. Since the ruling of the CFA, such contradictions became all the more serious. Many people have all sorts of opinion about me. I always feel that we should not pick on the new migrants. They are also part of us. Why do Hong Kong people hold such an attitude toward them? Especially after the financial crisis, this attitude has become all the more apparent. This may be due to the fact that life has become harder, and work is hard to find. All the pent up emotion is vented on those CSSA recipients and the new migrants, blaming them for all the ills. As directly elected Members, we can see that such contradictions are getting more and more serious. We have a certain degree of mandate behind us as we are all elected by them, but on these problems, there is a great difference between us. Sometimes, we would get into a shouting match, and some people even said that they did not know what I was doing.

I want to tell everyone, both within and without this Council, that we are in face of some difficulties. Whether we believe in the figure of 1.67 million given by the Administration or not, these difficulties are real. Some people think that this is an exaggerated figure (sometimes I also cannot accept the way the Government goes about with certain issues, the handling of the unemployment problem is one such example). Some people think that the figure should be far greater, given that in the '70s and '80s, the FTU had issued a lot of those "singleton certificates", which I have already mentioned, and today we are still issuing such certificates. Those who applied for such certificates may be the parents of these people, and the older ones may have already passed away. The figure therefore is difficult to calculate. However, believe it or not, even if we discount the figure of 1.67 million by 50%, we still have some 800 000, which may only include those of the first and second generations. I have also had the thought of putting up with the crowdy condition so that we could all live together. But on further thought, more people would keep on coming. With these people keep on coming to Hong Kong, and like a family tree that grows, how are we going to handle the situation?

Mr Jasper TSANG has also said just now that we have studied the provisions of the Basic Law. I am one of those advocating for an amendment of the Basic Law. However, we are also very clear about the difficulty involved in

amending the Basic Law, as it cannot be amended as we wish. With respect to the provisions of the Basic Law, the Central Government thinks that there is nothing wrong with the provisions, and if there is any problem, it is a matter for the Court of Final Appeal of Hong Kong. That is what they said, and they really thought so; and we were the ones asking for an amendment. We all know that amending the Basic Law must be done in three parts. Then what should be done? On one occasion, we had a debate — not a debate — we invited some experts to a discussion. At that time, Mr Daniel FUNG mentioned "a frog down at the bottom of a well", which led to a new round of debate. I said at that time we all knew very well the reason for all these problems was that the two places belonged to two different jurisdictions. Such kind of debate was a matter of course, and I felt that it was natural. The problem was how we could keep a cool calm attitude to find a way out of the predicament. Fortunately, at the end, we found the solution — interpretation. From China's point of view, it is also not an easy matter to conduct a interpretation. Since the establishment of the Republic, there have been seven times, and this may be the eighth or ninth times.

Of course, some people of the legal profession do not think that an interpretation is lawful, and they do not agree to such a move. However, from China's legal point of view, it thinks that there is legal basis for her to do so. I feel that we need to look at both sides' problem from the other side's angle. If we just stuck to our ground, frankly speaking, Hong Kong would be affected at the end.

Well, having come to this point, I would like to tell people outside this Council that I definitely would not subscribe to the view, which some people often hold, that the 1.67 million people are coming here to snatch the rice bowls, housing and education opportunities from us. I have openly said on television, radio, and even in live radio broadcast in Canada that I do not agree that they are coming here to snatch what we have from us. They are also one of us. The problem is on Hong Kong's ability to take them on, that is, our ability to support them. We should work together to solve the problem. I have even jokingly said that this is no big deal. I have been to Shenzhen asking people there if they want their children to come to Hong Kong. I pointed out that they might not be able to have the same sort of living condition in Hong Kong. They said that even if they could not have the same living condition, they would like to come, even for once, at least they had been to Hong Kong. I fully understand this sort of thinking, which is the same as that held by our forefathers when they longed for going to countries like England and America. The situation in which these

people find themselves is the same as our forefathers'. If we could look at the problem from a wider perspective, then there would not be any antagonism and contradiction. We can then work together to solve the problem before us today.

I therefore hope that we should tackle this problem with flexibility, and also hope that we can look at the difficulties with a cool head. Do you think that, as things unfold to such a stage, there is any fairness? On this I have my view. On the way to handle the two dates 29 January and 26 June, I also have my view. I have asked the Administration if it would give any consideration to the problem of the date 26 June. We have mentioned this, but also understand that there are a lot of technical problems involved.

Some Members said that the situation today has led to six, seven or eight problems. I would like to say something on this. This actually is a dilemma. During the transitional period, nothing was done so that the method for dealing with such problem would also stay after the transition. At that time, such problem could not be solved too. There is no way for us to raise it for discussion; that was the objective situation. Now the problem has developed to such a stage that a solution is required. But are there only six, seven or eight problems? We have a lot of problems in front of us. We can only tackle them with a steady hand, and can only unite with our children in China to face and tackle the problem together. Only by so doing can Hong Kong continue to develop and prosper, as this is a very important factor.

Madam President, I am speaking on behalf of the FTU. I also want to point out that people in the protest area outside the Legislative Council Building are not expressing any antagonism. Our current situation only shows that different parties are looking at things from different angles, and they are all looking at the same problem. This problem is the result of the failure of the British to honour its undertaking under the Joint Declaration to maintain the status quo and continued prosperity in Hong Kong. I hope that friends within and without this Council would show some understanding to us, that they know that we are in fact working to open up people's minds in how to view the problem. I also hope that we all see that why people in Hong Kong have such a view is mainly because we are finding ourselves in the worst economic situation Hong Kong has ever seen. This has given rise to much worry. Finally, I hope that we can show some understanding to, instead of trampling on, each other.

Madam President, I so submit. Thank you.

MR LAW CHI-KWONG (in Cantonese): Madam President, thanks for your patience. I believe that it is not a very good experience sitting here for three days on ends. I would try to be as brief as possible.

There are not many words in this motion, and the content is very simple. If this amendment was one to be submitted to the NPC on an amendment to the Basic Law, I believe that the Democratic Party would look at it very seriously. However, now it is not an amendment to the Basic Law, nor to the principal legislation. What is to be amended is a Schedule of the Immigration Ordinance, and the amendment is effected through the passage of this motion. The Democratic Party therefore finds it hard to express any support. I would like to take this opportunity to respond to some of the views expressed by other Members just now. In referring to Mr Martin LEE's view on an interpretation by the NPCSC, Mr Jasper TSANG said that Mr Martin LEE had already presumed that the NPCSC would very likely be acting with a biased view. Well, other things aside, I think that he is putting his words into other's mouth. I hope that Mr TSANG can try to refrain from using this practice. Mr Martin LEE makes no such presumption, and he does not need to make such a presumption. I believe that the key is in the system itself. This is not a question of whether the NPCSC would be acting in a fair way or not, rather it is a question of whether the system would prevent as far as possible the emergence of any unfair situation. This is exactly what we have been arguing over these months, it is a question about two different legal traditions. Sadly, the SAR Government, on its own initiative, makes use of this process, through China's legal system, to knock down the common law system that Hong Kong has been practising. This is a very sad situation.

Another point I want to mention is the question of the separation of powers that Mr Ambrose CHEUNG has also mentioned. Yesterday, we saw that besides the executive power, the Administration also possessed the legislative power, as only the Government could propose motions, which Members might only vote against but not amend. In these few days, we have seen that besides exercising its executive power, the Administration has also taken on it the legislative power. Things that happen today are about the interpretation. When the Administration is not satisfied with the judgment of the court, it would take the matter to the NPCSC for an interpretation. Indirectly it has also taken on it half of the power of the Judiciary. If things go on like this, we are in fact not talking about the three powers, or a three-legged stool, but one-legged stool. Mr TAM Yiu-chung said just now that the interpretation of the NPCSC was the

same as his understanding of the provision when he was on the Drafting Committee, so the interpretation of the NPCSC was consistent with the legislative intent. I therefore wish all members of the Drafting Committee a long life, including Mr Martin LEE and Mr SZETO Wah, as both of them had also been on the Drafting Committee for a while.

I so submit, Madam President.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

DR LUI MING-WAH (in Cantonese): Mr Deputy, problems arising from the ROA have developed into the most serious problem that Hong Kong has to face after the reunification. It has such far-reaching and divisive effect that it may promote the unstable factors in the society. It must therefore be resolved as soon as possible.

Mr Deputy, Chinese show great attachment to the family and see having the whole family together as the norm, as the highest principle. I have great sympathy for the plight of these people, and earnestly hope that separated families can be reunited as soon as possible. However, we also have to look clearly at the reality and tackle the problem rationally. The realistic situation in Hong Kong is that we cannot take in 1.67 million migrants. Not only is its geographical environment does not permit it to do so, its economic situation also does not permit it to take in that number of people. Mr Deputy, undoubtedly the law always serves the majority of the people. A great majority of the people in Hong Kong is in support of controls that will prevent a drastic increase in population growth. To seek an interpretation of the Basic Law is to provide a legal basis for the courts to resolve the problem of having 1.67 million of new migrants. What is wrong with it?

Mr Deputy, the commercial sector and the people in Hong Kong all hope that the problem of ROA of people born in China in Hong Kong residents can be resolved as soon as possible. Letting the problem drag on would only destabilize society, making foreign investors less willing to invest in Hong Kong, and local investors hesitant in investing here. This is extremely detrimental to Hong Kong. Would there by any future for Hong Kong then? What use would there be with the population growth? I therefore hope that those

Members who oppose an interpretation of the Basic Law should cast their sight further and wider, instead of concentrating only on legal arguments or engaging in endless arguments for the human rights of some people. If they are really having the welfare of 6.5 million people and the future of Hong Kong in their hearts when they speak, then what they do will be more constructive and for the good of the 6.5 million people in Hong Kong. Thank you.

MRS SELINA CHOW (in Cantonese): The Liberal Party's view and position on reinterpretation has been expressed by us in detail on 26 May, and a number of Members have also had the opportunity to detail their position on this resolution. Since we are discussing this resolution today, I would also like to briefly stress that we are looking at Hong Kong as a whole but not only at the Hong Kong Government. We are facing a very difficult situation and crisis. How are we going to tackle it?

We are not being disrespectful to the CFA, in fact, we have great respect for the CFA. I believe no one Member, whether he is for or against interpretation, if asked of his view, would show anything different. But the problem still needs to be tackled. Any society, and even any responsible person, would not take lightly or neglect the pressure and impact caused by a drastic increase in population within a short period of time.

I have wanted to give the views of the commercial sector on this problem. When we first heard from the Government that more than a million people would come to Hong Kong within a short time, some of us even expressed welcome, as this could immediately solve the problem of high labour cost or lack of competitiveness. Yes, some people in the commercial sector had really advanced such a view.

However, the Liberal Party did not concur with such view. We think that it is the responsibility of every legislator, councillor, people within the establishment or of the Government to promote the healthy development of society as a whole. We think that society needs to have the opportunity for even development. We would not support such a move just because it would benefit a particular sector of society, if we know that it would only cause great impact to society. Any act like this should not be tolerated. We think that this is not desirable, and therefore, do not concur with such a view.

We think that people with far sight in the commercial and industrial sector would not just hanker for some short-term convenience or benefit and disregard the long-term healthy development of society as a whole.

Though we all feel that an interpretation of the Basic Law may not be the best option, at least it is a practicable way out. When we consider this problem, we have to consider the issue of practicability in addition to the question of legality. As to other solutions, though they may also be legal, they may not be practicable. What I am referring to is the problem of "amending the Basic Law". Right at the outset, we as a matter of course thought of amending the law, as this is one thing we are most familiar with. But is this a practicable solution?

Whereas with interpretation, is it practicable? Though it is not the most desirable option, it is practicable, and the most important thing about it is that it is legal. The views we have gathered, even those from our friends in the legal profession, also tell us that deep down in their consideration is whether it is the most desirable. They also expressed that interpretation could not be considered unlawful.

Back to today's resolution, the Liberal Party supports it. I have carefully listened to the views of our friends in the legal profession. I have asked them some specific questions, of which the most important is whether they have any objection to this resolution. I have explored the views of the legal profession on this resolution, especially those of Mr Philip DYKES. I am very clear about his position and his views on interpretation. Showing no bias, he stated that people within the legal profession do have different views. Their greatest objection is on the issue of interpretation, but he thinks that this resolution is not the focus of the arguments.

Let us not consider the issue of interpretation for a while, but look only at the resolution. We really cannot object to it greatly. I think it is fair for me to say that some Members do feel that this resolution is coming at a rush. However, from the Administration's response, we understand why the Administration needs to set down some clearer legal requirements as soon as possible.

We think that instead of rushing through this resolution, it certainly would be much better if we had more time to study it. The question, however, is: One, is there such a need; and two, is the provision acceptable? If it is, I believe that we should give our support. It is on this basis that the Liberal Party supports the resolution.

But I think the Administration still has to deal with one more thing, which is the doubt or worry that some people, especially those in the legal profession, have about interpretation. Some people have also expressed that they have no idea when the Administration would ask the NPC to give another interpretation. Would it ask the NPC to do it at the drop of the hat? If it were so, then there would not be any autonomy for Hong Kong. I therefore think that in order to dispel this public doubt, the Administration needs to explain to the public that such a move would only be taken under extremely exceptional circumstances, and it would not be used lightly or with any frequency.

I believe that society already understands that it is under extremely exceptional circumstances situation that the Administration has taken such a move. In fact, we can see that many statistical figures have shown that society in general is supportive of the Administration in taking such a move to tackle the problem before us now. The only reason for it to do so is that there seems to be no other option.

With these remarks, Madam President, I support the resolution on behalf of the Liberal Party.

MR ANDREW WONG (in Cantonese): Madam President, originally I did not intend to speak, but having heard the Liberal Party say that it would support today's resolution, I have thought again if this resolution is worthy of our support. At first, I remember the Administration to have said that if this resolution were not put into effect, the most powerful, and also the most thrilling, argument was that if we opposed it and if our opposition were successful, the Administration would not implement the policy, would not accept any application, and would not allow family reunion in Hong Kong. That is, it would not implement the ROA policy. Those who oppose it would then become the arch-criminals, finding themselves bearing all the blame. As the Secretary for Security said at the end of her speech, though on the surface the wordings looked very beautiful, in fact each one of them carried a threat behind it, like if you are unwilling to do this, we would not be able to accept applications.

Mr James TO said that there seemed to three items pending. In fact, two of them need not be dealt with, because with one of them, even if Schedule 1 of the Immigration Ordinance were not amended, it could still be done. And that is the implementation of the judgement of the Court of Final Appeal (CFA) in respect of children born out of wedlock, which is the first item. Another item is to correct the inadvertent error in the definition of "right of abode". This has been clarified by the judgment of the CFA on 29 January, which said that it should be the intended meaning. Thus, in effect, it has already been amended. Now what remains to be implemented is this resolution.

In that section in the document submitted by the Secretary for Security — well, it does not matter which section, I mean the one in items (a), (b) and (c) — it says that after the CFA has made its judgment and the NPCSC delivered its interpretation, any doubt surrounding the text of the Immigration Ordinance regarding which type of person is entitled to the ROA is removed. That doubt in fact is very simple. It is because of some problems caused by subsection 12 of the Form. It is about whether the C of E and the travel document should be dealt with separately. According to the NPCSC interpretation this year, Articles 22 and 24 of the Basic Law are related, so a relationship can be established between them. If the interpretation of the NPCSC on the legislative intent has become part of the Basic Law, that means it is also law of Hong Kong, then the procedure that the C of E must be attached to the travel document can already be implemented. So even without this resolution, it can still be done as long as you have the confidence. Of course, we can say that should this be done, it could lead to a lot of legal disputes. However, if we still stick to first passing the law, that is this resolution, then amend Schedule 1, then issue the documents and distribute the forms and take applications, also with the requirement that the two must be attached together, this would also give rise to legal disputes, which are unavoidable. I therefore think that the proper way to go about with this is not to rush it through. It is possible for these doubts to give rise to disputes in courts. But, whether you do it this way or the other way, both would lead to disputes. So, why the hurry? After all, we still need to have an amendment bill to amend the Immigration Ordinance before the decision can be implemented. What I am saying today is based on this resolution. I do not want to refer to things in the past. Our motion is whether today's resolution is so urgent and important that it must be passed today? For the sake of striking a balance, and after weighing the pros and cons, I hope that — and also appeal to — the Liberal Party can change its position and vote against the resolution. Thank you, Mr Deputy.

MRS SELINA CHOW (in Cantonese): Mr Deputy, I wish to make a clarification. Why does Mr Andrew WONG say that we oppose the interpretation? We have not said that we oppose the interpretation.

DEPUTY PRESIDENT (in Cantonese): Mr Andrew WONG, do you want to explain?

MR ANDREW WONG (in Cantonese): Mr Deputy, I am not referring to the views of the Liberal Party on interpretation. What I was saying is that the Liberal Party thinks that this is a very important matter, which, I think, is also very important. However, does it need to be dealt with with such urgency? Must this resolution be passed today? It is on the basis of these arguments that I appeal to them to change their position.

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

(No Member responded)

DEPUTY PRESIDENT (in Cantonese): Secretary for Securtiy, you may now speak on the amendment moved by the Secretary for Justice.

SECRETARY FOR SECURITY (in Cantonese): During the debate, Honourbale Members have raised a lot of legal questions such as what legal effect the interpretation by the Standing Committee of the National People's Congress (NPCSC) has on Hong Kong, what legal effect and status the views given by the Preparatory Committee in 1996 have in Hong Kong, how we can affirm the legislative intent, and what documents can prove the legislative intent.

Many Members have also advanced views on the abovementioned questions. Of course, I have on hand some opinions given by legal academics on these questions. But I am afraid, regardless of the explanation we give, it may be difficult for us to convince Honorable Members. I also believe the Court will eventually need to make a ruling on these issues. I hope Members can understand that the Hong Kong Special Administrative Region (SAR) has

been established for two years only. The Basic Law is also at its preliminary stage of implementation. The fact that the Mainland's laws, for instance, sub-paragraph 4 of Article 67 of the Constitution of the People's Republic of China and Article 158 para 1 of the Basic Law, have conferred on the NPCSC the power of legislative interpretation is novel to Hong Kong. Therefore, I think the Court will eventually need to make a ruling on how Hong Kong is going to implement the legislation. For these reasons, there is no need for the Government to give a generalized response with respect to these legal issues today.

In fact, today's question aims at discussing the resolution moved by me and the amendment moved by the Secretary for Justice. However, as a lot of Members have mentioned the history of the interpretation incident, I also wish to take this opportunity to reiterate the position held by the Government. To start with, in response to the speeches delivered by Mr Martin LEE and other Members, I should point out that the Government has absolutely no intention to play a numbers game to mislead the public in this incident. Mr Martin LEE raised the point that he did not understand why the Government would have suddenly changed the number of right of abode (ROA) claimants from 64 000 to 1.6 million. I would like to explain that the figure we mentioned previously was actually 66 000 rather than 64 000. The figure, 66 000, we mentioned at that time referred to the number of eligible children, of 20 years of age and under, who were born to Hong Kong permanent residents, as was estimated by the Government on 1 July 1997. This figure is definitely exclusive of the categories added as a result of the Court of Final Appeal (CFA) ruling, that is to say, children, including those who are aged over 20, and those born to a person in or out of wedlock before that person becomes a Hong Kong permanent resident. Because of the addition of these categories, the number of eligible claimants have increased substantially. It was based on the CFA ruling and the implementation of the ruling that the number of eligible claimants of two generations is estimated at 1.6 million. We have no intention at all to mislead the public.

In connection with Mr Martin LEE's repeated reference to whether the NPCSC interpretation is lawful and whether the Government's policy is proper in requesting the NPCSC to make an interpretation, I would also like to give my response here. The Secretary for Justice has reminded me that such issues as whether the National People's Congress (NPC) has the power to make interpretation and whether the Government should approach the NPCSC for an

interpretation have in fact been debated in this Council for numerous times. The Government has also repeated many times that, according to sub-paragraph 4 of Article 67 of the Constitution of the People's Republic China and Article 158 para 1 of the Basic Law, the NPCSC has such power. The Government will also not rashly approach the NPCSC to exercise such power. This is because, as evident from the history of our country, over the past few decades since the establishment of the People's Republic of China, the NPCSC has only on a few occasions exercised such power. Moreover, the top hierarchy of the Administration has stated a number of times that we would approach the NPCSC to exercise such power only under exceptional circumstances. Therefore, the Government will never rashly make a request for interpretation to resolve commercial disputes. Furthermore, the NPCSC's power of interpretation will be restricted to national laws only, including the Basic Law.

I would also like to respond to the point raised by Miss Emily LAU as to how we see the issue pertaining to entry into Hong Kong by way of OWPs. I have said in the Subcommittee that the Mainland has made a lot of improvement in managing the OWP system in accordance with our regulation. As for how we are going to follow up the matter, I want to reiterate that, as we have said publicly, in the course of co-operating with the Mainland, we have noted that since the implementation of a "points system" in May 1997, the transparency of the exit system has been greatly enhanced. This gives mainlanders an objective points system which they can follow and, according to the system, they will know whether they have a chance to come to Hong Kong. Although this system is not applicable to children with the ROA, the Immigration Department would be closely involved with the application for C of E by mainland children born to Hong Kong people with ROA. As I have explained a few days ago in a meeting held by the Legislative Council Panel on Security, we have reached an agreement with the Public Security Bureau in the Mainland on the new application procedure. In future, the application for C of E shall be made in duplicate and given a serial number and the date of application. The Immigration Department can follow up the applications, by tracing these application forms to ensure that they are being dealt with properly. According to our records, more than 50 000 children born to Hong Kong people have, over the past two years, come to Hong Kong through the C of E system. We have not found any unreasonable delays of applications. Nor have we received complaints regarding corruption.

Earlier in the debate, some Members mentioned that our request for an interpretation of the Basic Law seemed to deprive some Hong Kong people's children of their right and what we did was inhumane. I want to point out here that, first of all, we have no intention to, using this as an excuse, prohibit family reunion or close the door to prevent Hong Kong people's children or other relatives from coming to Hong Kong. As I have repeatedly said on many public occasions, Hong Kong's policy towards family reunion for mainlanders is to accommodate 55 000 persons, approximately 0.8% of our total population, each year. In terms of the population ratio, the number of family reunions accepted under our scheme is higher than those in the United States, Canada and Australia. In fact, our arrangement is consistent with the international practice and, that is, young children and spouses will be accorded priority in coming to Hong Kong. This practice is the same as that adopted in the United States, Canada and Australia, which differentiates between the so-called "immediate family", "core family" and other relatives. As for grown-up children, they will need to wait in line for the purpose of lodging family reunion applications to host countries of immigrants, regardless of whether they are aged 18, 20 or over 21. According to our immigration policy, we will uphold the principle of according priority to applicants' spouses and young children. As for their relatives, they can only come to Hong Kong through a waiting system so that we can make arrangements to enable them to settle in Hong Kong in an orderly manner, thus making it easier for Hong Kong to accommodate them. Therefore, there is absolutely no question of inhumanity with our immigration policy.

A few Members also queried the Government's rationale of setting 29 January as a dividing line. I should to reiterate that our rationale is of course based on Article 158 of the Basic Law. The NPCSC interpretation will in no way affect the cases on which ruling was made in the past. The NPCSC has also explained that the relevant litigants will not be affected. The CFA has made a ruling on two cases — cases relating to *CHAN Kam-nga and NG Ka-ling*, in which approximately 85 people were involved. We have adopted the most generous treatment by grouping those with similar situations together, that is, those people who, according to the records of the Immigration Department, were in Hong Kong during the period from 1 July 1997 to 29 January 1999 and have lodged their ROA claims with the Immigration Department, the Legal Aid Department or the Security Bureau. We will, in accordance with the CFA ruling, verify their identities. This is going to be our legal basis.

Will this be unfair to other people? Actually, like Miss CHOY So-yuk, the Government has received numerous letters from the public. The view they put forward to the Government is, just like those put forward to Miss CHOY So-yuk, how we should see fairness. They have a feeling that those who have actually overstayed in Hong Kong illegally will be given priority treatment if they made their requests to the Government or exert pressure on the Government. But those who abide by the law and have, upon the Government's advice, returned to their own villages or wait for the Government's reply in their villages will not be given priority treatment. In their opinion, this is not fair. Under such a difficult situation, we should not send a message to mainlanders that would make them think that although they have violated the law for having overstayed in Hong Kong, they will be benefited as long as they put forward their requests. Therefore, we cannot postpone the dividing line again, for instance, to 26 June. If we do so, some people may say: Why do we not postpone it to 16 July, that is, the day the resolution is passed? As there will always be accusations on unfairness of the dividing line, we think the best solution is to handle the matter in accordance with the provisions of the Basic Law and the NPCSC interpretation.

I think the most important question raised by Members is whether there is a real urgency for me to move the resolution. Just now, Mr Andrew WONG has made it very clear that what I ask for is to make three amendments to Schedule 1 only. The first amendment aims at confirming that children born out of wedlock can also enjoy the ROA; the second amendment aims at stipulating that a child born outside Hong Kong to Hong Kong people can acquire the ROA only if one of his parents has already acquired the ROA at the time of his birth; while the third amendment aims at correcting a technical mistake.

Take a glance at these three amendments, and Members will realize that if we do not amend certain wordings in Schedule 1 of the Immigration Ordinance (Schedule 1 sets out who are entitled to the ROA and who shall be considered as permanent residents) to give children born out of wedlock the ROA, how can we implement the CFA ruling? Of course, some Members will ask: Why do we not implement the ruling a few months ago? But this has become history. If we do not make the amendments now, will it be impossible for us to implement the CFA ruling? As so many months have already lapsed, I think it is now time to implement the ruling.

The second point concerns how we are going to define whether children born in Hong Kong to Hong Kong people have the ROA. Just now, Mr Ambrose CHEUNG mentioned the point, a point also mentioned by the Government before, that the NPCSC interpretation already carried legal effect. Therefore, there is no need to amend legislation to implement the NPCSC interpretation. I absolutely agree with this view. As a matter of fact, we did say something like that on past occasions. Although we said that we did not need to amend local legislation to implement the NPCSC interpretation, we need to, however, amend local legislation to reflect the NPCSC interpretation. This is because, subsequent to the CFA ruling, the wordings of Schedule 1 have basically become fragmentary. In other words, a judge referring to Schedule 1 for the purpose of judging a case will find that some wordings have been deleted and the Schedule reads incomplete. It is therefore difficult for the judge to, in accordance with the provision, determine who can have the ROA and who are permanent residents. As for the technical mistake, I have explained earlier that as such wordings as "having the right of abode only before 1 July 1987" will give rise to technical mistakes. So there is an urgent need for the wordings of Schedule 1 to be amended.

Of course, some Members mentioned earlier that as the Government had not yet amended the principal legislation to enable OWPs to be linked with C of Es, why should we amend Schedule 1 hastily? The answer is, as I said earlier, if we fail to amend Schedule 1, we will not be able to let the Court or the people of Hong Kong, or even mainland residents, know clearly who shall be considered as Hong Kong permanent residents.

If we do not specify clearly who are eligible, how can we accept applications? Mr James TO held the view that there was no requirement in law that we had to define who should be considered as permanent residents before we could accept C of E applications. It may be so in law. But actually, if the Government fails to announce who should be considered as permanent residents and accepts applications before specific requirements have been laid down in law, will that give rise to greater confusion? For instance, if the Government chooses to pass this resolution in October instead of today and announces its acceptance of applications through the Gazette tomorrow, will it give rise to another problem? And as a result, more mainlanders, though not qualified, will think that as the Government has started to accept applications, it will have to

give them the ROA during the period between 16 July and October before the passage of the principal legislation is enacted. So based on these considerations, we see it imperative for the Government to expeditiously define who should be considered as Hong Kong permanent residents in law and who can acquire the ROA before taking the next step, that is, to publish Gazette notices to announce the application procedure for C of Es to let the relevant people, that is mainland residents, to make their applications at an earlier date.

Members should bear in mind that we have, starting from 29 January, stopped accepting C of E applications. Many mainland residents and their relatives in Hong Kong are now waiting anxiously to lodge their applications. Prohibiting them to do so will give rise to many legal proceedings. Therefore, today, we urge Members to pass the resolution moved by me as well as the amendment moved by the Secretary for Justice in order to provide local legislation with complete provisions for the purpose of defining who should be considered as permanent residents. After that, we can announce the application procedure for C of Es through the Gazette. As far as clarification of local laws is concerned, we have taken a very important step forward in so doing.

Of course, as I said earlier, it is anticipated that the litigation cases will last some time. We are also aware the Court will eventually need to make a ruling on numerous issues. I believe it will take some time, after the Court's ruling, before legislation on the ROA becomes completely clear. However, if we refrain from taking the first step, we will find it impossible to thoroughly resolve the ROA issue. Neither can we allow the relevant people, mainland residents and their relatives in Hong Kong to apply for the ROA in accordance with the specified procedure.

Mr Deputy, I would like to urge Members once again to support my resolution and the Secretary for Justice's amendment.

THE PRESIDENT resumed the Chair.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

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

PRESIDENT (in Cantonese): Voting shall now start.

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

Mr Kenneth TING, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr MA Fung-kwok, Mr HUI Cheung-ching, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Gary CHENG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the amendment.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the amendment.

Miss Christine LOH abstained.

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

THE PRESIDENT announced that there were 57 Members present, 35 were in favour of the motion, 20 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): Secretary for Security, do you wish to reply?

(The Secretary for Security indicated she did not wish to reply)

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

(Members raised their hands)

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

(Members raised their hands)

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