

# OFFICIAL RECORD OF PROCEEDINGS

**Thursday, 2 December 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.

DR THE HONOURABLE DAVID LI KWOK-PO, 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 KWOK-KEUNG

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

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.

**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 MICHAEL SUEN MING-YEUNG, G.B.S., J.P.

SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR DOMINIC WONG SHING-WAH, J.P.

SECRETARY FOR HOUSING

MR DAVID LAN HONG-TSUNG, J.P.

SECRETARY FOR HOME AFFAIRS

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

MRS LILY YAM KWAN PUI-YING  
HEAD, TASK FORCE ON REORGANISATION OF MUNICIPAL  
SERVICES

**CLERKS IN ATTENDANCE:**

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

MR LAW KAM-SANG, J.P., DEPUTY 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, Honourable Members. At the start of a long meeting today, I would like to inform Members that the Secretariat has prepared lunch and dinner for you. Members may go to the Dining Hall upstairs for food. So Members don not have to worry about food or go through the meeting without food.

The Second Reading debate of the Provision of Municipal Services (Reorganization) Bill may now continue. Does any Member wish to speak?

**DR LEONG CHE-HUNG:** Madam President, having missed the fun yesterday, I have to reflect the views of the medical profession on the problems that have been encountered in the last few years. During the last few years, there have been repeated incidents in the handling of food and food-borne infectious diseases that has bothered the medical profession profoundly. These occurrences are what we consider as a result of system failure and negligence. If we allow that to continue, it will produce devastating effects on the health of the population, not only in the short-term, but also in the long-term future.

Let me elaborate. In early 1997, when Hong Kong was on the verge of a cholera outbreak, it dawned on the Government that some food factories and restaurants were in the filthy state. True enough, some food factories were found to use well water to prepare their products when the wells were only at arm's length from latrines. It transpired that while the Municipal Councils were the licensing authority to these factories and unhygienic restaurants, monitoring was not sufficient and a lot was left to be desired. Worse, once a licence has been issued, there was hardly anything that the two Councils could do subsequently. Ironically, the hands of the Department of Health, presumably the guardian of public health, were tied until diseases were actually obvious. It is no laughing stock that no department was willing to be accountable when asked why the wells were allowed to be sited in those filthy surroundings. The height of the farce occurred with the avian flu saga, and numerous bureaux, departments and councils were apparently involved. For example, the Economic Services Bureau and the Agriculture and Fisheries Department under this Bureau were involved in the importation of fowls; the Municipal Councils and Departments involved in market and farm hygiene and sanitation; the Health and Welfare Bureau and the Department of Health were

involved in the disease control. I could simply put that there was no department or bureau which had complete control of the situation. While the Department of Health claimed that all chickens were fit for human consumption, the Economic Services Bureau proclaimed that all chickens had to be killed. The two Municipal Councils took on the job as executioner, regrettably, half-heartedly in the full view of the public. Then the Environmental Protection Department grumbled that they had inadequate facilities for dumping the carcasses, and some of these were actually only half-dead.

Why did all these happen? Following the reconstitution of the Urban Council in 1973, the Municipal Councils had been devoid of input from professional team with medical knowledge and experience in public health. Regrettably, the standard of food safety, especially in food premises, and environmental hygiene has fallen considerably.

On the operational side, as discussed, it is obvious that there is a lack of leadership in the overall improvement of food safety and environmental hygiene. Hong Kong has witnessed the forever reactive attitude and at best the knee-jerk responses taken by the relevant bodies after the outbreak of infectious diseases. There has never been a proactive approach.

On the policy side, there is a lack of a central body responsible for policy formulation of food safety and environmental hygiene. This shameful and deplorable management of the avian flu, the cholera, and subsequently the red tide highlighted the embarrassment that Hong Kong has witnessed a lack of co-ordination at its best.

It is for this reason, Madam President, that we feel that a formation of a central bureau and a central department to look after food and environmental hygiene is a step in the right direction. We therefore support the Second Reading of the Bill.

Thank you.

**MR JAMES TO** (in Cantonese): Madam President, Miss CHAN Yuen-han from the Democratic Alliance for the Betterment of Hong Kong (DAB) appeared to be quite excited as she spoke yesterday. She thought Mr Andrew CHENG had misunderstood her or even distorted her ideas. She also said she had done some research, but I found her research perplexing. First, Miss CHAN said their position should not be regarded as a 6-4 split. Since more than 10 years ago, the Hong Kong Federation of Trade Unions (FTU) has supported a two-tier structure, and this remains their view on district organizations. But if that was the case why would DAB members, namely Mr WONG Kwok-hing, Mr LAM Man-fai and Mr WAN Choy-bon who are also members of the Urban Council vehemently oppose the Government's proposal to "scrap" the two Municipal Councils and support the "one Municipal Council, one department" proposal? If the FTU was clearly for a two-tier structure, it would have no reason to support a structure with the Urban Council and the Regional Council in the middle. Their core members, especially Mr WONG Kwok-hing, who everyone knows is a leading member within the FTU, should not have strongly supported the "one Municipal Council, one department" proposal. According to Urban Council Members from the Democratic Party, Mr WONG was absolutely for the "one Municipal Council, one department" proposal. While accusing the Government for the immoral proposal to "scrap" the two Municipal Councils, Mr WONG was very excited, as excited as Miss CHAN. This was perplexing. Have they changed from their former position of supporting a two-tier structure to one of opposition recently? Or has a divergence of views emerged among their members? Now due to some reasons the members who are both FTU members and Urban Council Members have stopped talking about this any more? Maybe, everyone knows why already without saying it.

Second, during a debate about the "one Municipal Council, one department" proposal on 29 July 1998, Mr Fred LI added in his amendment a phrase to support the "one Municipal Council, one department" proposal. At that time Miss CHAN Yuen-han, Mr CHAN Wing-chan and Mr CHAN Kwok-keung voted for the amendment, that is, the "one Municipal Council, one department" proposal. 1998 was only a year ago. If the FTU supported a two-tier structure more than 10 years ago, they should not have voted for the "one Municipal Council, one department" proposal a year ago. On the contrary, they should be clearly against it. At that time, the only FTU member who voted against the proposal was Mr TAM Yiu-chung. Mr TAM did not speak in the debate, and he voted against the proposal because, I believe, as a member of the Executive Council he had to vote like the rest of his colleagues on the Executive Council. That I understand as it was a matter of roles.

Third, usually if members of a political party, such as the Democratic Party or the DAB, have to apply for exemption in voting, they are doing so because they need to consider an issue from the viewpoint of another organization. Mr LAU Chin-shek who is sitting next to me, or Mr Michael HO, who represents the nurses, sometimes does so. Hence, Members may apply for exemption because of the position of the sector they represent or the interest of another group. In this connection, I understand that several Members are concurrently members of the FTU and the DAB. Common sense would tell us if they want an exemption they are doing so from the point of view of the FTU or the interest of the workers. I find it strange because if in doubt they should first consider the matter from the point of view of workers before deciding whether to oppose the "scrapping" of the two Municipal Councils. Then they should study ways to straighten out the structure. Does the streamlining of structure have anything to do with the interest of workers? The streamlining is obviously related to the "scrapping" of the two Municipal Councils. The Government wants to retrieve the power of members directly elected by the people. The Government wants a collective ministerial system, not an individualistic ministerial system. For example, from the existing cultural and recreation committee or the libraries committee, a collective ministerial system is used to retrieve the power given to the members who are returned through direct elections, and the new system operates through an office under a relevant department. Obviously, when we compare the representation of public opinion of the two Municipal Councils and the Government, the latter has less of it. Of course the Government would argue that powers are distributed among the two Municipal Councils, the district boards, and the Legislative Council. In fact, the degree of democracy in the Legislative Council insofar as election is concerned is lower than that in the two Municipal Councils. The Government thinks if a certain structure is politically translucent or over which it has insufficient mobilization power, the only solution is to retrieve powers from it. The Government is thus using this opportunity of "streamlining" to retrieve the powers and develop in this direction. Maybe it thinks the popularly-elected Members of the two Municipal Councils are not determined enough to support the streamlining. However, a question of balance is involved. Miss CHAN Yuen-han quoted from Mr WONG Kwok-hing, who in the Urban Council fought very hard to protect the interest of the workers. This is because he is popularly-elected. He understands there should be balance in the community. We should not look at efficiency alone. Indeed, members who are popularly-elected will find it more difficult to arbitrarily or hastily propose cutting certain posts or restructuring certain grades because dismissals will be involved. I think if our

friends in the FTU do want to protect the interest of the workers, they should support a proposal only if they are certain that it will not affect the interest of workers. Otherwise they should oppose it. If this stance is held, they would apply for exemption only for workers' interests. But the present proposal to "scrap" the two Municipal Councils will affect the jobs of the workers; it is a questionable proposal. Why do they not apply for exemption? As an outsider, I find this perplexing, although this is obviously an "internal affair" of the DAB.

I personally think that if a political party acts as the royalist, it would certainly get some benefits, with a price tag. This depends on whether the Government would facilitate its graceful step down, or just leaving it to fend for itself on some specious arguments. It would be very sad if a political party is manipulated by the Government over and over again, particularly at a time when the DAB has begun to gain more acceptance by the public evident in the elections last Sunday. I think it is sad if, despite the improvement the DAB has made, it goes on to toy around with the support given to it by the public. Why has it degraded to such an extent?

Miss CHAN Yuen-han alluded to an occasion on which Mr Albert HO said the two issues should be treated separately when he received a group of petitioning staff from the Urban Services Department. I have checked the records. Mr Martin LEE was present then and he stressed over and over again that figures indeed showed some workers would be dismissed after the "scrapping" of the two Municipal Councils. Miss CHAN Yuen-han fully understands this. However, at that meeting, Mr Albert HO reiterated the two might not be related and the case must not necessarily be viewed that way. So, the position is very clear and records from the Government also prove that was the case.

Lastly, Miss CHAN Yuen-han said that since a long time ago Mr WONG Kwok-hing has been fighting in the Urban Council to protect the interest of workers in respect of policies that are related to urban services and would affect the resources for the workers. In fact, since as early as 1991, Mr Fred LI has been saying that all contracting out work should employ local workers rather than imported ones. This is clearly on record. Of course, I agree that Mr WONG Kwok-hing did make such points but Mr Fred LI joined the Urban Council earlier than him. Such a position was stated by Mr Fred LI when he first joined the Urban Council. Thank you, Madam President.

**DR LUI MING-WAH** (in Cantonese): Madam President, I have hurried back to say a few words. A district administrative structure is set up in consideration of the administrative environment, efficiency and cost-effectiveness. Owing to historical reasons, Hong Kong was separated many years ago into two parts to facilitate administration. Thus we had the two Municipal Councils. At that time, the separation did have merits. But with the development of the New Territories, the difference between urban areas and the New Territories have become increasingly small. As we have seen, in the past few years, there are overlappings and deficiencies in the administrative structure of the two Municipal Councils. So, a proposal for restructuring by the Government fits the principles and theories of modern management, for the benefit of better management and service delivery. Therefore, in principle, I absolutely support the decision of the Government. What I do not understand is why some people, out of the consideration for the interest of a small group of people, should oppose the change in structure. As Members of this Council, we must consider the overall interest of Hong Kong. We must not act just for the interest of some people who have vested interests. Thank you, Madam President.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, the Provision of Municipal Services (Reorganization) Bill was read the First time in this Council on 28 April 1999. Its main object is to implement the plan proposed by the Government to reorganize the provision of municipal services. Specifically, it aims to transfer the existing property, functions, rights and obligations of the two Provisional Municipal Councils to the Government and other statutory bodies; to repeal the ordinances relating to the two Municipal Councils; to eliminate the inconsistencies between the bylaws of the two Municipal Councils; and, to repeal a number of out-dated legislative provisions.

The Bill contains 13 clauses and seven Schedules, and each Schedule spells out all the details relating to the repealing, amendment and renaming of relevant statutes necessitated by the transfer of functions. Some 60 ordinances and more than 100 items of subsidiary legislation are affected, and nearly 1 000 provisions contained therein have to be amended. The work of scrutiny was therefore very heavy. So, I must take this opportunity to thank the Bills Committee Chairman Mr Andrew WONG, the other 16 Bills Committee members, the Legislative Council Secretariat and its Legal Adviser for their detailed scrutiny of the Bill and the improvement proposals and amendments suggested by them.

In the past six months, the Bills Committee held a total of 29 meetings, and in the course of scrutiny, Members put forward many useful and constructive opinions. Many of these opinions have been accepted by the Government, and it has thus prepared 160 Committee stage amendments with a view to further improving the Bill. Besides, I also wish to mention the amendments proposed by Mr LEE Wing-tat, Mr Ambrose CHEUNG and Mr Fred LI. Five of these amendments, proposed by Mr LEE Wing-tat and Mr Fred LI, do not violate our principle, so we will raise no objection to them, and we also hope that Members can render their support. But for various reasons (which I am going to explain later on), we will oppose the rest of the amendments proposed by Members.

During the debate that went on last night and earlier today, most Members talked about what they referred to as underlying principles and rationale. However, I do not think that most people, including me, can actually understand what these major principles are all about. And, some Members said that they would do something, but they simply stopped short of giving the specific details. In any case, I think the Government is obliged to explain its relevant views in detail and for the record. Ever since the Government decided to dissolve the two Municipal Councils or reorganize the delivery of municipal services upon the expiration of the current terms of the two Municipal Councils at the end of this year, different sectors in the community have been voicing many different views. The remarks made by Members have also reflected precisely all these views. I wish to explain once again the rationale behind the proposal of the Government to reorganize the provision of municipal services.

First, let me reiterate that the Government definitely recognizes the past achievements of the two Municipal Councils in promoting people's participation in public affairs and in the provision of services relating to food hygiene, environmental sanitation, culture and recreation. We have never bad-mouthed the two Municipal Councils, nor have we ever even attempted to do so, for we definitely recognize their achievements. However, with the development of representative government over the past decade or so, the political functions of the two Municipal Councils have very much faded, because, with their elected elements, the Legislative Council and the District Councils are now much better able to monitor the Government. Besides, many political commentators and Members have been expressing the view that in such a tiny but densely populated place like Hong Kong, a three-tier representative government will inevitably result in duplicated functions and therefore low efficiency. Therefore, they have been advocating that the structure should be rationalized

to become a two-tier arrangement. We began our review on the structure of district organizations in late 1997. In the course of the review, we noted the outbreak of the avian flu in late 1997 and a series of food hygiene incidents had highlighted many problems brought about by the fragmented responsibilities and poor co-ordination for food safety and environmental sanitation among several organizations. I must say that this is not just the problem of the two Municipal Councils; there is also the problem of internal co-ordination within the Government itself. So, in order to address the concern of the public, we propose that the Government should assume direct responsibility for food safety and environmental sanitation, so as to enhance co-ordination, improve service delivery and strengthen our ability to deal with food safety incidents.

In connection with the proposed reorganization scheme, we carried out an extensive public consultation exercise, and the detailed findings were set out in the consultation report released in October last year. The findings indicate that the proposal on giving the Government direct responsibility for food safety and environmental sanitation are widely supported by the general public and the medical sector. And, in the course of the consultation exercise, we also noted that the cultural and arts sector and the sports sector were very concerned about a number of problems with the existing framework, including fragmented responsibilities, the lack of effective co-ordination, the absence of an integrated policy with clear orientation and the ineffective utilization of resources. All these opinions have led us to consider setting up a new framework for arts, culture, sports and recreation, so as to achieve the aim of promoting the participation of professionals and members of the public, the effective utilization of resources and the formulation of a sound integrated policy. In the course of the review, we also took account of the Basic Law provisions on district organizations. Article 97 of the Basic Law is actually written with a considerable degree of latitude. Under this particular Article, district organizations which are not organs of political power may be established in the Special Administrative Region (SAR), to be consulted by the Government of the SAR on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation. And, the SAR Government is allowed to make its own decisions regarding the structure, functions and composition of these district organizations. We are of the view that the reorganization proposal of the Government is entirely in line with the requirements of the Basic Law.

Despite our proposal to reduce the number of tiers in our representative government from three to two, we can assure Members that people's right to participate in public affairs will not thus be curtailed. Members of the public can continue to participate in affairs relating to municipal services through the Legislative Council and the 18 District Councils. To a greater extent than before, the Government will hold itself accountable to this Council in matters relating to food safety, environmental hygiene, culture and recreation. And, in terms of policy implementation and the formulation of expenditure items and infrastructure projects, the monitoring role of this Council will also be enhanced. Besides, we will also take on board the proposals of the Bills Committee on enhancing the role of the Legislative Council in vetting fees and charges for municipal services. The Bill proposes that all fees and charges for licensing and regulatory schemes on food safety and environmental hygiene should be prescribed by regulations and subject to the approval of the Legislative Council by way of negative vetting. Later on at this meeting, we will also move a number of Committee stage amendments under which the fees and charges relating to some recreational and cultural facilities/venues widely used by members of the public are to be subject to the approval of the Legislative Council by way of negative vetting. As for other fees and charges, such as those relating to programmes, events of a commercial nature and various organizations, a larger degree of flexibility is required, and for this reason, the future Director of Leisure and Cultural Services will be allowed to make his or her own decisions subject only to the approval of the Financial Secretary. At the district level, the role of the 18 District Councils will be enhanced, and more resources will also be made available to them.

The first District Councils Election of the SAR was held last Sunday, and when compared with the district boards before 1997, the District Councils now have more elected members. On 1 January next year, when the first District Councils are formally set up, the various proposals on enhancing their functions and allocating more resources to them will be implemented. These proposals are as follows. First, District Council Chairmen and Vice-Chairmen will become members of their respective District Management Committees, and they will take part in co-ordinating the community services and prioritizing the facility planning within their respective districts. Second, there will be an increase in the accountable allowance for District Council members for the purpose of assisting them in renting offices and employing personal assistants and in enhancing their services to residents. Third, the Department of Food and Environmental Hygiene and the Leisure and Cultural Services Department

due to be set up will consult District Councils on matters relating to environmental hygiene services and leisure and cultural services planning and facilities. And, regular briefings will be given to District Councils with a view to raising the level of their participation and monitoring. Fourth, starting from the next financial year, we will suitably increase the funding for District Councils, so that they can improve the environment of their districts and organize more district-based cultural and leisure activities. Fifth, the Home Affairs Department will deploy more manpower to assist District Councils in their work.

In the debate yesterday, some Members asked whether we would consider the possibility of enhancing the status and role of District Councils. I can only say that we do not rule out such a possibility. But I cannot say that the Government has arrived at any positive views in this respect, nor can I say that the Government has already drawn up any timetable. But here I can assure Members that we will continue to explore this issue as an ongoing concern. Members will understand that we will have to proceed stage by stage, and we have only just made a start. But how long will it take us to complete the work of this present stage? I cannot possibly give any definite answer to Members, but I do hope Members will understand that we do have to prioritize things when it comes to political development. In other words, we will need to attend to issues of greater importance. Having said all this, I must reiterate that we have never said that we are not going to look into this possibility. We will consider the idea at a later time.

During the scrutiny of the Bill, Mr Fred LI proposed that District Council Chairmen and Vice-Chairmen should be allowed to sit on the new Municipal Services Appeal Board, so as to enable District Councils to play an enhanced role in the new delivery framework of municipal services. I support Mr LI's proposal, so following the establishment of the Municipal Services Appeal Board, we will appoint District Council Chairmen and Vice-Chairmen to the Board in their personal capacity. And, as far as possible, we will make sure that District Council Chairmen and Vice-Chairmen can take turn to participate in every hearing.

Some Members have mentioned the concern of the United Nations Human Rights Committee over the dissolution of the two Municipal Councils, and some even said that their abolition violates both the International Covenant on Civil and Political Rights (ICCPR) and the Basic Law. I must reiterate the position of the Government by making it very clear that the Bill does not violate

the ICCPR and the Basic law. The decision to dissolve the two Municipal Councils has been reached after two years of comprehensive consultation, following extensive public discussions. The community has in fact reached the consensus that the existing framework for the delivery of municipal services should be improved, so that we can introduce reforms, set down new policies, achieve co-ordination in policy implementation and increase the cost-efficiency of services. The United Nations Human Rights Committee no doubt expressed concern over the dissolution of the two Municipal Councils in the conclusion of its report, but it did not say that their abolition would violate the ICCPR. As I explained a moment ago, the reorganization will not reduce people's opportunity to take part in public affairs, because they can continue to take part in such affairs directly or indirectly through different channels such as the Legislative Council and District Councils. Details of the new framework for delivering municipal services were already given by the Head of Task Force on Reorganisation of Municipal Services at the Bills Committee meeting held on 26 October. Following the enactment of the Bill, we will submit the relevant papers to the Establishment Subcommittee and the Finance Committee of the Legislative Council for scrutiny and approval. During the scrutiny of the Bill, we responded to the requests of Members and introduced a number of improvements and amendments to the provisions of the Bill. We also amended some out-dated provisions, and having considered the views of Members, we also withdrew the provision which would empower the licensing authority to appeal to the Municipal Services Appeals Board in case it was not satisfied with the decision of the Licensing Appeals Board.

During the debate last night, quite a number of Members proposed the establishment of a new territory-wide municipal council to take charge of the delivery of environmental hygiene as well as leisure and cultural services, and they also proposed that the Government should assume responsibility for matters relating to food safety. We have actually examined in detail the "one Municipal Council, one department" proposal advanced by the two Municipal Councils and have come to the conclusion that such a proposal is not desirable. The proposal on "one Municipal Council, one department" has the following weaknesses: First, the proposed territory-wide municipal council will require a total establishment of 26 000 staff members, representing one seventh of the total civil service establishment. Such a gigantic establishment will render management extremely difficult. Besides, with respect to the proposal on separating the responsibilities for food safety and environmental hygiene and passing them respectively to the Government and the proposed territory-wide

municipal council, we think that it cannot possibly solve the problem of fragmented responsibilities and poor co-ordination now plaguing food safety and environmental hygiene matters. This proposal cannot therefore ensure food safety, nor can it possibly ensure good hygiene in the various segments of the food chain, such as food establishments, markets and cooked food hawkers. The handling of food safety matters and environmental hygiene issues by two separate authorities will inevitably hinder co-ordination and effectiveness, and this will also make it difficult for the authorities to handle food safety crises effectively. Finally, with respect to arts and sports matters, the proposed municipal council will probably duplicate the functions of the Home Affairs Bureau, the Arts Development Council, the Sports Development Board and the proposed Culture Commission. This is not conducive to integrated policy co-ordination and the efficient use of resources.

Lastly, I wish to talk about public opinions — opinion polls. Yes, many organizations have conducted opinion polls on this matter, and as far as we are aware, there is no clear evidence which can tell us whether public opinions are in favour of abolishing the Municipal Councils. But at the same time, we are also very clear that public opinions do not oppose such an idea. And, I must say that in any opinion poll of this type, the support or otherwise of the respondents does in fact depend very much on how the questions are phrased. Yesterday, some Members quoted different kinds of statistics, but I also have some statistics to hand which show that many people are in support of abolishing the two Municipal Councils. Members may still recall that two studies were conducted after the Chief Executive had announced the proposal to dissolve the two Municipal Councils in his policy address last year. The first study was conducted by the Hong Kong Institute of Asia-Pacific Studies of the Chinese University, and it was actually divided into two parts. The first part was conducted before the announcement of the policy address and the other part after its announcement. In both parts, the same question was asked, namely, whether people were in support of the abolition of the two Municipal Councils. Well, before the announcement of the policy address, the rate of support and the rate of disapproval were tied at 50%. And, following the announcement of the policy address, the rate of support rose to 57% and the rate of disapproval dropped to 29%. The second survey was conducted by the Social Sciences Research Centre of the University of Hong Kong on 7 October. The same question was asked. Fifty-four percent of the respondents were in favour of the idea and 24% were against it. I think all this shows that the outcome is very much dependent on the timing and wording of questions.

Why do I say that we do not notice any strong views from people? And, why do I think that they do not have any strong opposition to the dismantling of the two Municipal Councils? When it comes to the gauging of public opinions, Members should be better able than us because they have experience in standing in elections. So, they should know that if people really have any strong views about an issue, we will invariably hear, observe and feel such views. As in the case of a typhoon, if the winds blowing to Hong Kong are not hot, we will know that the typhoon will not possibly attack Hong Kong head-on, because there is not any energy at all. But if the winds are hot, we will know that there is the presence of huge energy. That way, we will know that the typhoon will probably attack Hong Kong head-on. Similarly, when it comes to social issues, if people have any strong views about an issue, we will all be able to feel them even without conducting any opinion polls, for we will often hear such views on the radio every day; and, in the streets, people may even complain to us or ask us questions. This will also enable us to know their opinions. On matters like this, I think Members will have more insight than us because they are much more experienced.

So much about public opinions. Let me now make some concluding remarks about the decision to reorganize the framework for delivering municipal services. This decision is actually the product of the comprehensive consultation and extensive discussions held over the past two years. And, the matter was discussed many times in several relevant Panels of the Legislative Council. In the process, the Legislative Council has in fact scrutinized and passed the District Councils Bill and the Legislative Council (Amendment) Bill. The latter actually involves the abolition of the functional constituencies made up by the two Municipal Councils and their replacement by two new functional constituencies constituted respectively by District Councils and the catering industry. So, we have already entered the final stage of reorganizing the framework for delivering municipal services. I sincerely hope that Members can support the passing of the Bill, so that the preparatory work for the new framework can be smoothly implemented before the end of this year. As we enter the new century, we hope to provide better and more cost-efficient municipal services to the community. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Provision of Municipal Services (Reorganization) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for three minutes.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop.

**PRESIDENT** (in Cantonese): The result will now 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 David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, 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, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

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, Miss Christine LOH, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Mr LAU Wong-fat, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong 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 58 Members present, 36 were in favour of the motion and 21 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): Provision of Municipal Services (Reorganization) Bill.

Council went into Committee.

### **Committee Stage**

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

### **PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Provision of Municipal Services (Reorganization) Bill.

**CLERK** (in Cantonese): Clauses 1 to 4, 6, 7, 12 and 13.

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, as regards clauses 1 to 4, 6, 7, 12 and 13, clause 3 seeks to repeal the Provisional Regional Council Ordinance and the Provisional Urban Council Ordinance. On behalf of the Democratic Party, I would like to reiterate our stand. We oppose this proposal.

Just now, Mr Michael SUEN, the Secretary for Constitutional Affairs, gave a detailed account on the streamlining and reorganization of services and the relevant public opinions. I would like to say a few words in response to these two points. Mr SUEN quoted a very good example on public opinion. He said that it was not necessary to conduct an opinion poll in order to gauge public opinion. That may give the Government a very good excuse in dealing with important policies relating to people's livelihood as it would no longer be necessary for it to conduct opinion poll any more in the future. What it has to do is just to listen to what people say or to see if any people in the street complain to it. But I do understand that Mr SUEN is a busy man. Unlike the general public who usually take minibuses or the Mass Transit Railway to their workplaces, Mr SUEN goes to his office at around 7 am in the morning in a government car driven by government chauffeur. I wonder how he could listen to public opinion. Besides, he only works with his colleagues in his Bureau and he seldom has spare time in the evening, except weekends and Sundays when he goes to parties with his wife. Occasionally, we can see pictures of Mr and Mrs SUEN on some entertainment magazines. Those who join the parties are mostly people coming from the upper class. In gorgeous attire, they converse about stocks and fashions with a glass of champagne in hand. What are their views? We all know what they can be. So, when Mr SUEN said that he could grasp public opinion without conducting an opinion poll, I then realized what views he had listened to. Those are the views of his colleagues in the Government and party patrons in beautiful evening attire with glasses of champagne in hand.

Mr SUEN also said that public opinion was just like a gust of wind. When it was strong, he could feel the heat. Once I happened to be on the street when typhoon signal No. 10 was hoisted. What I felt was the pinch of the cold wind instead of the heat. In fact, what Mr SUEN meant is that public opinion is just like a puff of wind brushing past the ear. If typhoon signal No. 1 or No. 3 is hoisted, you will only hear the wind noise and nothing else. I once told Mr SUEN that public opinion could float or sink the Government. When there is a mistake in the policy, the public will grumble at the

Government's blunder. I do not want Mr SUEN to take public opinion as a puff of wind brushing past the ear. Mr SUEN has failed to understand that apart from the two opinion polls indicating support for the Government as quoted by him, most of the opinion polls conducted over the past year indicated the otherwise. This is nothing new though. When I was much younger, an opinion poll concerning whether direct elections should be held in 1988 was conducted under the leadership of Mr John CHAN. According to other opinion polls, the majority of the public supported the implementation of direct elections in 1988. But the findings of the official exercise indicated the otherwise since the interviewees were given a number of options which had led to a very low rate of support. That was not the first time when public opinion was distorted and twisted. Nevertheless, I was surprised by Mr SUEN's conclusion. The Democratic Party strongly opposes the repeal of the Provisional Regional Council Ordinance and the Provisional Urban Council Ordinance proposed under clause 3. We opine that the "one Municipal Council, one department" option is feasible and favourable. We do not think this option is undesirable because, according to an in-depth study done by our colleagues in the two Municipal Councils, hundreds of millions of dollars can be saved annually for the Government under this option. Besides, public works programmes would still be scrutinized by the Public Works Subcommittee and the Finance Committee of this Council in future. I think this would also help to save a lot of money. As there is a strong public demand for improvement and the continuous pressure from the Administration that their efficiency is low, I believe they will try their very best to improve their financial management and operation.

After the two Ordinances have been repealed under clause 3, the biggest problem is that the powers to implement policies will be centralized in the future. I think colleagues have talked little about this point. Many think that the repeal of the two Ordinances are a trivial issue as the two Municipal Councils are only responsible for collecting refuse, organizing cultural activities, providing recreational venues and so on. Honourable colleagues and the public have failed to recognize that areas covered by the legislation enforcement and policies pursued by the two Municipal Councils are in fact very wide, not to mention the ambit of their powers. This can be illustrated by an amendment we will move later on. It is related to 10 000 stalls now operating in the complexes under the two Municipal Councils. At present, stall rentals are determined by the two Municipal Councils through an open discussion process. If the stall operators are dissatisfied with rate, they can appeal. This is the right of these numerous small operators with small capital. The two Municipal Councils also determine fees and policies concerning cultural and recreational activities patronized by tens of millions of people every year. We may be unaware of the fact that the two Municipal Councils

have laid down very clear policies on swimming pools, libraries, cultural centres and many other recreational venues. A very steady level of subsidies is also provided by the two Councils. The aim of the subsidization is to ensure that the majority of the public with an average income do not have to pay a very high fee when they participate in sports, cultural and recreational activities. I believe the Administration will very soon increase the fees and charges on the pretext of cost recovery or reducing the level of subsidization in the absence of elected Members' monitoring.

The people of Hong Kong see it very important that the formulation of cultural policies is not subject to government intervention. This appears not to be a very important point. However, we were subjected to intervention from time to time in the colonial era. Let me simply take the Hong Kong International Film Festival as an example. Sometimes a film is a mirror of people's thoughts and sometimes a film may displease those in power. In many undemocratic or autocratic countries, cultural activities are subject to a lot of constraints. Hong Kong enjoys an advantage whereby cultural activities are normally not subject to government intervention. In the colonial era, however, some films shown in the Film Festivals often made a satire on the closed politics and different forms of oppression by the mainland authorities. Different viewpoints are also expressed in these films. The most famous film is certainly the "Yellow Earth". The then Chinese Government expressed discontent after the film "If I were for real" played by Mr Alan TAM had been shown. Films which would otherwise have been banned by the Chinese Government are shown in Hong Kong almost every year. Mr Fred LI knows it quite well that Members of the Urban Council had a hard time in making a decision on this question every year because they must pay heed to the concern and views of our neighbouring regions in the colonial era. Nowadays, we have to pay attention to the views of the Chinese Government on Hong Kong's Film Festivals. At present, it is the elected Members of the two Municipal Councils who are responsible for examining and discussing whether certain films should be shown or not. I believe a very high degree of transparency and accountability is required of them. If the job is assumed by the Leisure and Cultural Services Department or some other consultative committee in the future, the first problem is low transparency and a possibility of "closed shop" operation. If some films are banned in the Film Festivals in the future, the way of handling the situation would be very simple. What the Department has to do is to follow the instruction of its superior. Will this cause a lot of interference to the cultural activities in Hong Kong? We often hear many patriots comment that education on patriotism is not sufficient in Hong Kong and more efforts should be put in this aspect. What is education on patriotism then? In what way should it be implemented? Through what channels should

it be pursued? Will the Leisure and Cultural Services Department become an organ responsible for instilling cultural concepts into the people just like what the Ministry of Culture and the authorities responsible for propaganda are doing in China? This is not an obvious phenomenon yet, but it will surface gradually.

At present, the two Municipal Councils are providing many services. In what way should their establishment be reshuffled? In what way should their services be contracted out? Yesterday, Miss CHAN Yuen-han mentioned that the interests of the Hong Kong Federation of Trade Unions (FTU) were her great concern. As a matter of fact, she should not support the proposal of "scrapping" the two Municipal Councils since the prospect of workers in the municipal services departments would be adversely affected if the newly established Leisure and Cultural Services Department speedily contracts out a substantial amount of its services. There will be no more elected Members to act as a channel of redress for them. They are then at the mercy of the Director. Of course, colleagues in this Council can still discuss the matter with the Director but they do not have the final say. It is the new Director who calls the shots. Just now I have made a brief discussion on four to five areas. The repeal of the Provisional Regional Council Ordinance and the Provisional Urban Council Ordinance proposed under clause 3 is not a simple matter or a matter which has nothing to do with the general public. Interests of the minority, such as exhibitions in museums of art or other museums, may have nothing to do with the daily lives of the majority. However, when we hope that Hong Kong will become a city like New York in the United States or London in England, we find that the promotion of cultural or museum activities in Hong Kong are not very successful. One day, we may find that we have over-emphasized economic success and ignored development in this aspect. I would like to reiterate that the repeal of the two Ordinances will take away many of the rights, protection and interests which are closely related to the people, particularly when the newly established department will no longer be subject to monitoring by elected Members. The Government can do anything it likes. Even worse, it is not accountable to members of the public and there will be no more appropriate redress channels for them.

On behalf of the Democratic Party, I oppose the inclusion of the clause. Thank you, Madam Chairman.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, I would like to express my opposition to clauses 1 to 4, 6, 7, 12 and 13 proposed by the Government. I would like to raise a few arguments.

First of all, I would like to say something about public opinion. The Secretary for Constitutional Affairs has just quoted the findings of one or two opinion polls. In fact, if it is possible, I would like the Secretary to tell us more about the findings of polls which are in support of the "scrapping of the two Municipal Councils", or maybe he could even quote the public opinions which are collected by the Government itself. In fact, from the findings of the polls conducted between June 1998 to March 1999 (I got the findings of 14 such polls at hand), we learned that: only one of those polls was in support of the "scrapping"; and the findings of another poll was 50:50 for and against the "scrapping"; while the findings of the other 12 polls supported the retention of this tier and opposed the "scrapping". From the findings of these polls, we could see that the most members of the public supported a merger of the two Municipal Councils. Moreover, from the findings of various other polls, we could see that over 40% of the members of the public supported a merger and most people supported a retention of this tier of the representative system. The findings of a number of polls also showed that over 50% of the members of the public shared the same view. Only the findings of one poll, and that is about 11% to 32% of the respondents, were in support of the "scrapping". Therefore, though Mr SUEN may only quote the findings of one to two opinion polls, it would be better if he could also quote the findings of other polls, so that we could have a more complete and accurate picture.

Of course, the Secretary may only quote the findings of the polls which support the Government. The Government told us that not many members of the public have expressed their opinions in relation to this issue. This is because it has only quoted certain information and such information has not been verified. If the Government feels that it has not heard from the public, I would like to ask it to look at the findings of more surveys for many of them are scientific surveys. The findings of the polls conducted by the Government itself, including the views of district board members and those of Area Committee members were reflected in the questionnaires designed by the Government, and the findings of those questionnaires showed that most people oppose the "scrapping".

Madam Chairman, I would like to talk about clauses 3 and 4. Clause 3 seeks to abolish the two Municipal Councils, while clause 4 seek to transfer the property, rights and liabilities of the two Municipal Councils to the Government after their abolition. I would like to point out that vesting the liabilities in the Government is tantamount to not vesting all the responsibilities of the two Municipal Councils in the Government for it is vested with the legal liabilities only.

Let me cite one or two examples. In the past few years, the Urban Council has drawn up a five-year rolling programme for the provision of certain services and facilities and an application was submitted for a three-year grant. Up till now, the Provisional Urban Council has policy-wise endorsed 60-odd such projects over the past five years, and after extensive consultation with district boards, residents and members of the public, decided to launch those projects gradually. Now, we are just waiting for funding. Once we get our funding from the rates, we will adhere to our timetable and launch the projects as scheduled. However, there are no provisions in this Bill which require the Government to assume this responsibility. Though the Government has claimed that it will maintain the present standard or even enhance the existing level and quality of municipal services, I do not think the Government is up to this task.

Madam Chairman, I have requested the Government to make a very basic undertaking to submit the 60 outstanding projects valued at \$9 billion to the Legislative Council, so that decisions could be made by the Legislative Council on whether to approve these projects, and priorities could be set. My request is very simple and I am not asking the Government to complete all the projects. I only request that a public opinion framework be set up to prioritize these projects and to decide whether they should be carried out, instead of simply assigning these projects under the public works programmes for prioritization without first consulting the public and operating a "closed shop". I have mentioned that these 60 projects may become "lost" projects. If we are unable to launch these "lost" projects, would the Administration please tell me how could it foretell that it could maintain the present level of municipal services in the next three to five years? I think that it would be virtually impossible for the Government to do so. As such, how could the Government say that it

could take on all the responsibilities of the two Municipal Councils. The policies concerning these projects have already been endorsed in consultation with the district boards and members of the public and the Government has already made a promise to electors and members of the public in this respect. This should also be the responsibility of the Government. The provisions of this Bill have only covered legal liabilities, and the undertakings which the Urban Council has made in respect of certain policies are not included. So, the undertakings made in respect of such policies will be "lost" and it would be up to our non-directly elected government to decide whether these projects would go ahead. If ever they are given the green light, then how would priorities be set? This would have a great impact on the provision of municipal services under the new structure.

I have also requested the Finance Committee to follow up this matter, and hope that the Government will make a basic undertaking to the people of Hong Kong of submitting the funding applications in respect of these projects to the Legislative Council for final approval as scheduled. However, to date, the Government has neither made any undertaking nor promised us that it would do so. I hope that the Secretary could elaborate on these project undertakings in his response later on. Madam Chairman, the Government has repeatedly pointed out that there may be confusions or a vacuum in the provision of municipal services if this Bill is not passed. It could not be farther from the truth. If this Bill is not passed, and the two Municipal Councils are not abolished by virtue of clause 3, then the two existing Municipal Councils will continue to operate and continue to provide municipal services. There is no question of confusions arising. The question is, how much longer could the existing framework be maintained? In fact, we could continue to discuss this issue with the Government through the Legislative Council. The government proposal is only one of the options, not the only or the best option.

I believe that in the course of today's debate, we will gradually learn that there are still a lot of outstanding problems with the new structure proposed by the Government. Moreover, the new structure may not be better than the existing one.

Therefore, under such circumstances, there would not be a vacuum in the provision of municipal services. Municipal services could still be delivered to the public through the municipal services departments until such time when someone come up with a better proposal, and the proposal will be implemented only after it is endorsed by the Legislative Council. There would unlikely be any problems. Therefore, even though we do not support the stance of the Government or the Government's Bill, it does not mean that we are being irresponsible. On the contrary, it only shows that we are being responsible. If we move towards streamlining the structure, or even accept a two-tier representative system, I do not think that there is anything wrong with such a structure. The Government has claimed that it would enhance the power of the District Council, but from the response of the Government, we could see that only the allowances of District Council members and funding of the District Councils will be increased, and District Council members still do not have any final say on most district affairs.

Madam Chairman, next I would like to talk about why I think the new structure replacing the two Municipal Councils to be abolished under these several amendments will not be a good structure at all. It is because the Government is not elected by the public. I believe the Government would have learned from the press reports of the past two days that Prof Yesh GUARD of the University of Hong Kong has pointed out clearly that the dissolution of the two Municipal Councils is in contravention to the spirit of the Basic Law and the International Covenant on Human Rights. It is stipulated in the Basic Law that our Government should develop towards democratization, and this of course refers to the way by which the Chief Executive is elected and the whole political framework. However, I think that the dissolution of the two Municipal Councils not only hinders the democratization process through which our Government will become more accountable to the public, but will also be a major setback to the whole process.

As regards our political system, members of the public rarely have the opportunity to participate in deciding, making and enforcing policies. They have such rights only in respect of municipal policies. In addition to direct participation, the public can be involved in the formulation of municipal policies through the Municipal Council Members elected by them. However, the Government is now trying to seal this channel by turning down our proposal on "one Municipal Council, one department", for public participation could still be retained under this proposal. Through the various clauses, the Government

will centralize all the powers of the Municipal Councils, and thus reduce its accountability to the public and slow down the process of returning the administrative powers to the people. If our Government has been democratically elected, then I believe that members of the public will not always find it necessary to reflect their views to the Government, but since we do not have a democratic government, the degree of accountability will indeed be reduced as a result of these clauses. Since the Members of the two Municipal Councils are directly elected, they are accountable to the public. In addition to the power to make policies, Municipal Council Members are also duty-bound to monitor the implementation of municipal policies. There are views that the performance of the two Municipal Councils has not been satisfactory in supervising the two municipal services departments. Though, we agree that we should be held responsible, on the other hand, we could also see that the present structure designed by the Government is such that the two Municipal Councils cannot bring into full play its capabilities of supervising the two departments. Though structurally speaking, the two Municipal Councils do have the power to decide and make policies, they are not empowered to monitor the establishment, staff deployment, transfer, appointment and reward and punishment system of the two municipal services departments. Therefore, it could be said that the Municipal Councils are basically a "lame" structure, and this "lame" structure should first be improved before the municipal services could be improved. We are of the view that the municipal services must be improved, and there are deficiencies in the existing structure which have inhibited the Municipal Councils from discharging their monitoring functions effectively. Under such circumstances, if we apply the new proposals of the Government on the new bureau or the new department model that will be set up or a democratically elected municipal council model, then we will find that the proposal of the Government is, a *de facto* "one Municipal Council, one department" package, though the Government's proposal consists of a policy bureau and a new department, while our proposal consists of a democratically elected municipal council and a merged municipal services department. I am not sure whether the Government has stolen our idea or that it is the other way round, but the directions of the two proposals are in fact the same.

Madam Chairman, based on the above arguments, I oppose the Government's proposal. Thank you.

**MR GARY CHENG** (in Cantonese): Madam Chairman, at the Committee stage the Democratic Alliance for the Betterment of Hong Kong (DAB) will carefully vote on each amendment to the Bill, as much as we have carefully scrutinized the various clauses of the Bill in the Bills Committee. As the third part relating to the abolition of the two Municipal Councils contradicts the stance of the DAB, which advocates the "one Municipal Council, one department" proposal, we shall be voting against it. Thank you.

**MR MARTIN LEE** (in Cantonese): Madam Chairman, I would like to thank Mr Gary CHENG for clarifying on that. That was important because that proves how illogical it was for the DAB Chairman, Mr TSANG, to say yesterday they would be making a big U-turn on the issue. Their excuse for the change in position was that they did not want to waste the efforts of Mr LEE Wing-tat: they wanted to make sure Mr LEE's amendments could be shown to everyone. But before we discuss Mr LEE's amendments we need to go through this one, which is of utmost importance because if this one is not passed, especially clause 3 thereof, they will not become part of the Bill and the two Municipal Councils will not be "scrapped". However, we have not yet come to Mr LEE's amendments and this proves their logic in making the remarks yesterday is problematic. If they are against the principle they should oppose the Second Reading of the Bill. Now they have lost and they then want to oppose the amendment. They did not start with a vote for it and then changed to opposing it and then went on to opposing the Third Reading of the Bill. Madam Chairman, I found Mr SUEN's comments strange as in his eye public opinions mean "Silence is consent". When I studied law while I was young, I was told not to remain silent because the fact is silence does not mean consent. Now, the government officials are trying to use this against us and I think they have hijacked public opinion. It could not be farther from the truth. Sometimes, Hong Kong people do not think it is useful to say anything and so they keep their mouths shut.

Having heard Secretary Michael SUEN's remarks, I urge the people of Hong Kong to be careful with the Government. If they are not satisfied with what the Chief Executive does or what government officials say or do, they should protest at the doors of their residence next morning. Mr LEE Wing-tat was right. They must stand at the doors of Secretary SUEN's residence because he takes a car, not the Mass Transit Railway when he goes out. After saying what he said, Mr Michael SUEN must not blame people like the gentleman who wears long hair and who often protests at his residence because if they do not do so Secretary SUEN would take it that they agree. If on

reading the newspaper people find anything to their disagreement, they should pick the relevant Secretary for protesting outside his or her residence; otherwise they would take agreement for granted. What Secretary SUEN has said would cause a lot of trouble for many high-ranking officials but this has nothing to do with me. If that is not what the Secretary means he should discuss with other high-ranking officials or the Chief Executive so that he can then withdraw his remarks because it was very risky of him to have made all those remarks. My situation is different, because I often take the Mass Transit Railway and I often come across members of the public, whereas the Secretary and high-ranking officials do not. They sit at the back of cars driven by chauffeurs. If their chauffeurs do not complain to them they would say they do not hear anyone complaining. If that was the Government's position, I would be very disappointed indeed.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I would respond first to the two opinion polls cited by the Secretary in support of the Government's proposal to "scrap" the two Municipal Councils.

In fact, at the hearing of the Human Rights Committee of the United Nations (UNHRC), a deputy of Secretary SUEN also cited the two polls. At the time I was very angry. Why? As everyone knows, during the numerous debates of this Council, we cited a lot of data. Mr Ambrose CHEUNG has been extremely helpful in providing a series of survey results. Among them six or seven surveys showed that most people were in favour of the "one Municipal Council, one department" proposal. Therefore when I heard what the government representative said at the UNHRC I went to great lengths to reach someone in Hong Kong and requested them to send the data to Geneva. Early the next morning, I passed the data to members of the UNHRC, who then felt they had been misled by the government representative and were unhappy. Why did the government representative mention only two surveys when there were so many other data? I remember the vice-chairman of the UNHRC had asked on the spot whether there were only two surveys or there were more other data in support of a "one Municipal Council, one department" proposal, which reserved the right of the people to participate in municipal services. Another UNHRC member from the Middle East also queried whether there were only two opinion surveys. Madam Chairman, can you guess what answer the government representative gave? Madam Chairman, the government representative said they knew there were other opinion surveys and they knew about the relevant findings, but they would leave the analysis of the data to experts and statisticians.

I think that was a shameful answer. Indeed some UNHRC members shook their heads at the time and questioned why a representative of a dignified government could make such irresponsible remarks. Today I am very angry because the Secretary again cited the two opinion polls. In fact the Secretary could have omitted the details of the polls and simply say: The Government has the required number of votes, it thinks what it is doing is correct and it would go ahead with its own plans. I do not think it is acceptable to distort public opinion. This is the first point I would like to make.

My second point is about the legality of the "scrapping" of the two Municipal Councils. Yesterday I spoke on the binding effect of the International Covenant on Human Rights (ICHR). I also mentioned the UNHRC had once indicated that the Government's proposal is in violation of Article 25 of the ICHR. The spokesperson did not categorically use the word "violate" but the Secretary must not forget the spokesperson did point out that the method of formation of the Legislative Council did not comply with the provisions in the ICHR. Does the Secretary think that should not be a problem? Why does the Government not change the system of election of the Legislative Council? When the spokesperson mentioned the Municipal Councils he did not use the similar wording but he clearly pointed out that the "scrapping" of the two Municipal Councils would curtail the rights of the people to participate in public affairs.

Mr Secretary, you need not shake your head. You could repeat your speech to colleagues. Anyway, after that episode, the UNHRC requested the Government to reconsider its stance, but the Government refused. It was even unwilling to table the matter for discussion at the Executive Council. I think the Government has thus completely ignored the UNHRC, an international organization having the highest status in the interpretation of the ICHR.

Madam Chairman, on Article 97. I do not intend to raise numerous legal debates in this Council. Since the Secretary raised the issue of interpretation of Article 97 again, I want to expound two views. We can have two interpretations of Article 97. One of the interpretations enshrines the principle of legislative intent. On that principle, when one interprets the law one needs to read all information including information that emerged in the years subsequent to the enactment of the Basic Law. I think the Chair should recall when the Standing Committee of the National People's Congress (NPCSC) interpreted the law it quoted a decision of the Preparatory Committee of the Hong Kong Special Administrative Region (SAR) to explain how it came to understand the legislative intent. Certainly I do not agree with this view

because legislative intent is not interpreted this way. Any interpretation should look at the text of the law per se and interpret it under a set of principles. This is the way law is interpreted in common law. I will come back to this later. Did the Government use the same way to interpret the law this time around? I do not know. But I think the Secretary should know very clearly the decision of the Preparatory Committee in respect of district organizations (I may find the document later). I trust the Secretary must have read the document many times over and I have written about the issue in the press. The document clearly says district organizations should be set up in the SAR. The term of office of the provisional organizations should last till the first district organizations are established. In fact the decision of the Preparatory Committee assumes and expects the formation of the first district organizations. The definition of district organizations includes the two Municipal Councils and the district boards. Since the Preparatory Committee clearly pointed at the existence of the first district organizations and stipulated the term of office of the provisional organizations should last till the first district organizations are set up, how can there be no first district organizations?

I do not know how the Secretary interprets the legislative intent according to the decision of the Preparatory Committee. Does he treat the decision as a Bible when it is useful but a piece of junk when it is not? That way of interpretation I cannot agree with. However, I do not know the yardstick used by Government in interpreting the law. I hope the Secretary can enlighten us on the decision of the Preparatory Committee later, that is, the method of formation of the first district organizations and the term of office of the provisional district organizations, which should last till the establishment of the first district organizations. I really do not know how the Secretary interprets the law insofar as this issue is concerned.

Madam Chairman, for the sake of simplicity let me pose this question: Why do we think Article 97 has not authorized the Government to dissolve the two Municipal Councils? It is because the Article clearly says the Government is authorized to make laws and establish district organizations and consultative district organizations, which will provide services in such fields as culture, recreation and municipal services. Of course, everyone knows what Basic Law Drafting Committee members had in their mind then regarding district organizations. They included organizations which were consultative in nature and those organizations which had genuine powers to provide cultural, recreational, municipal and sanitation services.

However, to interpret the Basic Law, we must not take it out of context of the background to the Basic Law and the interpretation of some other provisions. In other words, if interpretation is made according to common law principles it must be consistent with the spirit and policy direction behind the Basic Law and other laws as far as possible. I hope the policies can be improved, but we cannot agree to an overly slow pace. We do not think it is acceptable to spend too long in policy improvement. The direction is surely one that progresses slowly until 2007, not one that would go backwards. This is the first point.

The second point. Article 39 makes an allusion to international covenants and conventions, and this allows us to see clearly we have an international obligation. In other words, when we interpret Article 97 we must make the Government assume the international responsibilities, open its political structure for public participation as much as possible and let people have the right to participate in district affairs. So, on this basis, Article 97 does not give the Government power to deprive the people of their right to take part in politics, or to abolish these district organizations which are channels of democratic participation. There can be reorganization or reform but not the power to deprive the people of their right to take part in politics. Furthermore, if restructuring is done in this way, would there be district organizations any more? Secretary SUEN, they would be statutory bodies, not district organizations any more. They would not be bound by Article 97. How can they be district organizations? They would not be providing municipal services on a district basis. Why do we think the two Municipal Councils are district organizations? It is because their members are returned from district elections, in which people are allowed to participate. Therefore when we look at Article 97 from this angle, we can see that it does not confer powers on the Government, nor can it be construed as having done so, to abolish the two Municipal Councils to brush aside Hong Kong's international responsibility under the covenants, and to deprive Hong Kong people of their right to participate in politics. This is my understanding of Article 97 of the Basic Law. If the Government should disagree with me, it may request more authoritative institutions to interpret again in future, with binding effect. But meanwhile, if the Government is to act in a responsible manner towards the public, it should explain its interpretation of the decision of the Preparatory Committee and its share of the international responsibility. It should explain its stance regarding the change of district organizations to non-district ones.

On the whole, when the Government pointed out the arrangement is consistent with the law, I think it was only a lame argument. I hope Honourable colleagues can vote against the motion.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, please speak in reply.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, just now some Honourable Members spoke about how we gauged public opinion, whether we do this ourselves or through other means. I may as well clarify this point to Members. We have many means to collect public opinion. For example, the reports in the newspapers we read every morning about the things that happened in this Chamber yesterday, the comments made by Honourable Members and those of the newspaper themselves. This morning I read about things which happened here last night and the press comments on us. This is one of the means through which we can gauge public opinion. I do not get to know this from my chauffeur talking to me, nor do I rely on the report from the radio to which I listen. Though I listen to the radio to every day, I cannot possibly listen to more than one programme at the same time. Every radio station has phone-in programmes for the public to air their views on matters which they think are unfair or those which the Government should pay attention to. We will get to know these views as soon as they are aired. It is of course true that I cannot possibly grasp all the information, but that does not mean that we do not have the channel for the collection of such information or that our colleagues are not working hard on this. We will sort out all the information we have got.

The point on opinion polls which I have mentioned earlier is mainly about the existence of many different kinds of opinion polls. Answers to questions found in opinion polls are mainly determined by the thrust of each of the questions asked. You throw out a question, then you get an answer. We may use a somewhat abstract analogy to explain this concept. For example, I tell you I have a stone. You may ask what is inside that stone and I may tell you that there is a head of a horse inside. Another person may tell you there is a ball inside. Find a sculptor, and he may use knives and chisels to carve a horse head out of that stone. If another person wants to carve a ball out of the stone, then the sculptor will make it for him. Whatever you want, you will get

it. Then what does this illustrate? How are the so-called deviations formed? I have just said, we will take the findings of opinion polls into reference. But we cannot say that since there are certain findings from an opinion poll, then the Government and the public will have to observe them like some golden rules. That is something we all know.

I am not saying that the opinion polls conducted by us are the most authoritative. I have based my arguments not on these. I was trying to say that all findings of opinion polls were to be taken as reference only. Notwithstanding this, it does not follow that the Government is being dangerously unscientific or that we do not bother to make an analysis of opinion polls. But more importantly, if we need to gauge public opinion, we cannot fool ourselves, nor can Honourable Members do the same. For more often than not, people like to see or hear about things selectively. They get flattered when people heap praises on them, and they get mad when they are criticized. The Government cannot view things selectively. Most of the time the Government is being criticized. We accept these views, for there must be some reason behind every comment made. We need to find out why these people are criticizing the Government and the reason behind it. We want to improve and this is the way we do things. It should not be seen as a disregard of public opinion or a failure to understand it.

Mr LEE wing-tat said that I do not have many opportunities of meeting the public. He may not know that I go to the market to buy foods. People may meet me by chance in some of the markets. Honourable Members may ask those who sell fish and vegetables in some of these markets and they will find out that I often talk with them. I think we all have this experience. People start a conversation with us before we do. They may talk about recent events, for example the dissolution of the Municipal Councils and so on. Some people, though Honourable Members may think that they are not representative enough, asked me why did the matter have to be dragged on for so long a time, and why did the "killing" not done swiftly. Of course, not every member of the public I met said this to me. I only heard one person say that remark, maybe that makes him not representative enough either. But I think in any case I should explain this to all Honourable Members.

It does not matter very much about what are the things which I hear and what I do not hear, for this is very limited. However, the most important thing is that we have this system. There is such a system within the

Government. The news summaries which we have for internal use are very clear and concise. If we need to know about a piece of news, no matter how it is reported and analysed, we will know it. We have this news service. I would not say that we know more about the views expressed than Honourable Members, but it would not be any less. Mr Ambrose CHEUNG expressed concern for the capital projects. He was worried that the Government would not undertake to submit these projects to the Legislative Council for deliberation. I can assure Honourable Members if there are projects on which contracts have been executed or are presently under way, we will certainly enforce such contracts executed by the two Provisional Municipal Councils and will not make any changes to them. Mr CHEUNG also said earlier that some of the projects had been considered by the Municipal Councils but had not been approved, and these projects were put into the public works programmes. We will consider these matters carefully. In the meeting of the Finance Committee tomorrow, we will brief Honourable Members on these some 60 items to which Mr CHEUNG has referred. We will exchange views with Honourable Members and they can rest assured that we will discuss the matter with them before we decide on how they should be handled.

Mr Albert HO mentioned the Human Rights Committee and made some comments about the opinion polls. Our colleagues might have not expressed themselves well enough in Geneva and so some misunderstandings might have arisen. However, as I have just said, there is also a diversity of opinions among Honourable Members on this issue. Had the public really opposed strongly to the reorganization proposal and did not agree to what we do at all, I can tell all Honourable Members that we would not be here today and say these to you. For we would not have gone this far. If we have not had the support as seen in the public opinion, we would have modified the proposal a long time ago. We certainly value public opinion. If we did not have the support of public opinion, we would not have reached this stage today. That is what I meant. Maybe we have not secured hundred percent support in public opinions. Unfortunately, Mr Martin LEE has distorted the meaning of my remarks, and made a new interpretation. He said that we did not respect public opinion. He called upon the public to make their views known promptly if they had a different opinion. Mr LEE is in fact not here now. Maybe he is watching or listening to what is going on here outside. I would like to tell Mr LEE that the public needs no reminding, they have been doing this. I said earlier that if the public had any problems, they would have voluntarily expressed what they had in their mind on the radio programmes.

Why do we pay so much attention to these programmes? It is because it offers us a good opportunity to know what the public thinks. This is a way we use to gauge public opinion. The public is free to criticize everything we do and we know it very clearly whether or not we have their support.

Members of the public are smarter than both Honourable Members and I in grasping the political situation and development of events. The people of Hong Kong will not express any strong views on any matters which do not concern them. There is a saying which goes like this: All roads lead to Rome. There are things which can be done no matter if you head straight in a certain direction or if you take a turn and get around it. It will not matter at all. But as for some major issues of right and wrong, as Honourable Members have said, the public has a lot of expectations on us. Basically, their position on this is very firm. If Honourable Members or the Government should deviate from their principle, the public will let us know in no time. I think we should make it a point to exhort each other that we should never take public opinion lightly. Our common mission is to serve the place we live and we need to know what the public thinks. The last thing we want to see is that both the Government and Honourable Members have different opinions as to what the public thinks. That will certainly be a deviation. Both the Government and Honourable Members should then join hands to find out where such a deviation exists. We should not accuse each other in this Chamber, shirking responsibilities. I do not think the public would like to see us doing that. They expect that we can have a clear understanding of everything. They want to see a close partnership between Honourable Members and the Government and that both parties can provide leadership to our community. They want to see a sense of direction in us. I believe Honourable Members are well aware of this.

As for the Human Rights Committee, Mr Albert HO has said just now that some members of the Committee have given us some advice for our consideration. And some members of the same Committee have some accusations against us. As a matter of fact, we raised this point in the question and answer session in the Legislative Council two weeks ago. We said that we had made some saving provisions. Before the reunification, when the British Government became a signatory to this covenant, certain saving provisions were made. They are still in force today. According to Article 39 of the Basic Law, the provisions of the two covenants shall remain in force and shall be implemented in Hong Kong. We all know that we have a Bill of Rights. What we have done is to incorporate the scope and the provisions of the human

rights covenant into our Bill of Rights almost unchanged. In the Bill of Rights, we have a clear record of the saving provisions. So it can be seen that we have reservations on the elections and formation of the Legislative Council. The fact that we do have reservations on some matters does not imply that we are not looking forward or making progress in the direction of democracy.

I have said many times here that the Basic Law has clearly specified the formation of the Legislative Council. We are heading towards progress. The number of seats returned by direct elections increases with every election. We need not worry that we are making no progress or going backwards. Come 2007, we have a mechanism by which we can set the pace of our future development. Article 68 of the Basic Law provides that the Legislative Council will ultimately be formed by universal suffrage in the end. There is no question about our progress of democratization. We will be making progress for sure. Our goals are very clear. I believe each and every one of the 60 Honourable Members in this Chamber all have some aspirations for democracy. We cannot say that certain Members from certain political parties aspire towards a greater degree of democracy while those from some other political parties will settle for a lesser degree of democracy. I think that it is unfair to say such a thing. We do have differences and we have different ways of looking at things. What is the major difference between us? We have different ideas as to the pace. Some Honourable Members aspire for a quicker pace and some others have reservations about it. We must find a way to make some compromise between these divergent views. I still have a lot of things to say and a lot of details to give. On this question of pace, we have to be very careful. We have a lot of time to discuss this in the Legislative Council. Each year we will have a similar motion debate like this and it has become some sort of a routine. I have explained clearly in the policy address this year our views on this and how we are preparing ourselves so that we can make a decision on this in 2007.

I think I have answered the questions raised by Honourable Members. Are there any more questions?

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Would the Secretary please sit down first. This is a special arrangement. However, I have granted a special leave for Mr HO to repeat his question so that each question from each Member can be answered.

**MR ALBERT HO** (in Cantonese): Madam Chairman, I wanted a quick voting originally. But I do not think this is now possible. Secretary Michael SUEN may go on talking for another hour. At any rate, I have just tabled some documents about a Decision of the Preparatory Committee for the Hong Kong Special Administrative Region (SAR) and district organizations. The Decision clearly specifies, and I have highlighted a paragraph thereof for the Secretary's reference, the method of formation of the district organizations. The term of office of provisional district organizations will not end until the formation of the first district organizations, the method of formation of which shall be decided by the SAR Government. So, the Preparatory Committee clearly states there shall be a first term of district organizations. According to the Decision, district organizations include district boards and the two Municipal Councils. I do not know how the Government interprets the legislative intent of the legislation, but I would like to know. Thank you.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I am grateful to Mr HO for giving me the original document for reference. But I am not prepared for the discussion of such a technical issue of law today. So I think it would be better for me not to give an explanation on this now, for if I do so, people would have the impression that I am making the explanation on behalf of the Government.

We all know that before we make any explanation, we need to grasp the picture of the issue first. I have come across some views on that but I do not think I have a good grasp of the issue. So I think I need the benefit of legal advice before I should comment on this. I do not think I can give my personal view on this casually. For when I give my views on this, Honourable Members may take this as an official view. Therefore, it would be unwise of me to do so.

Of course, that does not imply that I do not have any explanations on that issue. I am just saying that I may be unable to give a satisfactory explanation on this today. In any case, people have said that there are in fact two kinds of provisional district organizations, the Provisional District Boards and the Provisional Municipal Councils. Our views may be different in this regard. But nonetheless, we shall look into this issue carefully.

Although I cannot provide any legal arguments here, government lawyers have made some very detailed discussions on the various legal points and issues involved. That is why I said earlier that there is surely legal basis for the views held by the Government. However, I am not prepared for discussions of a legal nature today. I am sorry that I cannot elucidate the legal points to Honourable Members.

As for some questions which arise out of the issue, perhaps they merit our consideration.

*(Mr CHEUNG Man-kwong and Mr James TO made indications at the Secretary)*

**CHAIRMAN** (in Cantonese): Honourable Members in the meeting shall not interrupt any other Member or public officer who is speaking.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. I have said just now there is no denying that the Municipal Councils have made enormous contribution to Hong Kong for well over a century. We do not have any intention of "scrapping" the Municipal Councils because their efficiency is low. That is clear enough. The problems of an oversized organization and the lack of co-ordination are all referring to government departments. Honourable Members can therefore see that the new structure proposed by us is in fact mostly an internal reorganization in the Government. That is made because we wish to effect better co-ordination should any unforeseen incident arise.

For example, in the avian flu incident, many people think the Government could have handled the incident better. At that time, different Policy Bureaux were responsible for different policy areas and there was no single Policy Bureau to take overall charge of the work. So the decision-making process was rather a tortuous one. We had called the heads of various bureaux for some joint meetings, despite this we did not perform well enough on this incident because the organization structure that we had did not facilitate the implementation of our decisions.

Under the new structure, there will be a public officer to take charge of the whole incident when it occurs. This officer will make the decisions and co-ordinate the implementation of these decisions during the entire duration of the incident. We consider it a better way of doing things and so please do not worry that there will be any shortcomings in our new structure.

Honourable Members will certainly have some expectations for this new structure, that it should perform better. We certainly have this expectation too. But please do not forget that this is a brand-new organizational structure. During the initial stages of its operation, it is likely to continue using the existing practices. Even if changes are to be made, they will take some time. Later on during our further deliberations on the Bill, Honourable Members would see that a lot of amendments have been made on some of the existing bylaws.

In fact, in the course of scrutinizing the Bill, Honourable Members asked why improvement had not been made on some matters over the years. It is very difficult for me to give an answer to this. The reason is all these matters were handled by the Municipal Councils in the past and we will certainly make use of this opportunity to make improvements. However, I hope Honourable Members and the public will understand that this is a new set-up and in many areas we need to plan and study how to put things into practice.

Some people have asked how we can align the different policies of the two Municipal Councils and how to improve the licensing procedures of the food establishments and so on. All these are problems which have been around for a long time. Actually, the Members of the Municipal Councils have spent a lot of time trying to get around these problems. I am aware that many Honourable Members here are also very concerned about these problems and they have given a lot of valuable suggestions. For these long-standing problems, we hope to take as much time as possible and consult more people on these problems before making a final decision.

As for the allocation of resources, we will try to do so in accordance with existing practices and we will work hard on that.

As for the question of charges, I may as well mention in passing that we shall discuss such matters later on. We shall propose an amendment on the criteria to be adopted in setting the charges in our further deliberations on the Bill.

**CHAIRMAN** (in Cantonese): Secretary, you should speak on this part later. You should focus on clauses 1, 2, 3, 4, 6, 7, 12 and 13.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Sorry, my speech has gone beyond the scope permitted, I shall restrict my speech to a narrower scope.

Madam Chairman, in this regard I have tried my best to answer the questions raised by Honourable Members and I cannot go on talking about my opinions forever. Sorry for taking up so much of the time of Honourable Members. I think I shall have to stop here. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clauses 1 to 4, 6, 7, 12 and 13 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)

Mr Martin LEE rose to claim a division.

**MR GARY CHENG** (in Cantonese): Madam Chairman, a point of order.

**CHAIRMAN** (in Cantonese): Mr CHENG, is it a point of order?

**MR GARY CHENG** (in Cantonese): The Honourable WONG Yung-kan is out for some urgent business. He is hurrying back. Can I seek your leave to wait till he is back before voting?

**CHAIRMAN** (in Cantonese): I am sorry. The Rules of Procedure do not allow this.

**CHAIRMAN** (in Cantonese): Mr Martin LEE 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 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 MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

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, Miss Christine LOH, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr LAU Wong-fat, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong 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 57 Members present, 29 were in favour of the motion and 27 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**DR LEONG CHE-HUNG** (in Cantonese): Under Rule 49(4) of the Rules of Procedure, in the event of further divisions being claimed in respect of the remaining motions of the Provision of Municipal Services (Reorganization) Bill, the Committee of the whole Council do proceed to each of such divisions immediately after the division bell has rung for one minute.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That in the event of further divisions being claimed in respect of the remaining motions of the Provision of Municipal Services (Reorganization) Bill, the Committee of the whole Council do proceed to each of such divisions immediately after the division bell has rung for one minute. 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 respectively from each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**CHAIRMAN** (in Cantonese): In the event of any further divisions, the division bell will ring for one minute and the division shall be held forthwith immediately.

**CLERK** (in Cantonese): Clauses 5 and 8 to 11.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that clauses 5, 8, 9, 10 and 11 of the Bill be amended, as set out in the paper circularized to Members.

The proposed amendments to clauses 5 and 8 of the Bill seek to supplement the saving and transitional provisions of the Bill. These include the legal procedures not yet completed by the former authority, agreements, licences, departmental letters of appointment, authorized persons and current fees and charges which have been signed and issued. In addition, in accordance with the suggestions of the Bills Committee, we propose to amend subclause (1) of clause 10 to provide that offences committed before the Bill comes into force will be prosecuted according to the enactments which have been repealed rather than the corresponding new enactments. In addition,

subsequent to discussions with the Bills Committee, we propose to amend the wording of subclause (1) of clause 11 in the Bill to lay down clearly that the Chief Executive in Council may only make such consequential amendments to any enactment or provisions of a transitional or savings nature as are necessary for the better carrying out of the provisions of the Bill.

I implore Members to vote in support of this amendment.

*Proposed amendments*

**Clause 5 (see Annex VI)**

**Clause 8 (see Annex VI)**

**Clause 9 (see Annex VI)**

**Clause 10 (see Annex VI)**

**Clause 11 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I very much admire the Secretary for he could stand up and spoke for 45 minutes so that you knew he had gone beyond the scope of the question. Since the Chairman has shown indulgence to the Secretary, I hope I can be given the same indulgence too. I would give the DAB a full 10-odd minutes so that they can bring Mr WONG Yung-kan to this Chamber. Just now, the Government succeeded in pushing through the motion without Mr WONG's vote. If Mr WONG had come back to vote, it would be a 29 to 28 vote. Even if the Chairman's vote is counted, there would not be a majority. So, the Government would have failed by a minimal margin. Mr Jasper TSANG was good at mathematics, and the Government did a good job too in its calculation. It knew if the Secretary filibustered it would win if Mr WONG could not come back in time.

Regarding the five clauses, that is, clauses 5, 8, 9, 10 and 11, I am not in favour of any one of them and so the Democratic Party will be voting against them. First, the drafting of the five clauses is based on the presumed "scrapping" of the two Municipal Councils. After the abolition, transitional provisions, powers, contracts, offences and so on will be transferred to the new authority, that is, the Environment and Food Bureau and the Food and Environmental Hygiene Department. During our scrutiny of the Bill in the Bills Committee, many colleagues including several lawyers, I mean Mr Ambrose CHEUNG and Mr James TO, asked many questions. We asked whether the provisions had taken care of all problems relating to continuity or contractual relationships during the transition. Of course legal advisers from the Government were also present at the meetings of the Bills Committee. At first we debated on the verbosity of the provisions, which we regarded as unnecessary. Afterwards the Government indeed wanted to amend some of the provisions, but as it thought it had provided explanations it decided against it.

In fact I raised several questions at Bills Committee meetings. First, the penalty, provisions and fines extensively described in the old Public Health and Municipal Services Ordinance may not be the same with the transition to the new authority. Madam Chairman, let me cite an example. Discarding waste water at bathing beaches is a gazetted offence under the Public Health and Municipal Services Ordinance. But there may be a small difference as we change from the old law to the new. An offence may be committed on 15 or 16 October 1999 and the summons may be issued on 30 October 1999. The person summonsed may wait till 4 or 5 January 2000 after the holidays to appear before the court. Will the offence change due to the transition? This is one of our concerns.

Our concern is the issue of continuing offences. Some laws specify a certain penalty or fine for first convictions. Subsequent to that, further offences will constitute continuing offences, and other penalties, fines or even harsher penalties and fines may apply. We consulted the government counsels to ascertain if continuing offences would incur different penalties arising from a change in the provisions on transition. An obvious example is prosecution made when restaurants violate health regulations or licensing conditions. Under the existing Provisional Regional Council Ordinance and the Provisional Urban Council Ordinance, if a restaurant contravenes the Public Health and Municipal Services Ordinance or breaches the requirements of public health, a summons may be issued. Under certain conditions, the authority may even initiate prosecution. For serious cases, a closure order against the restaurant

may be obtained from the court. If the offence straddles the transition, that is, continues between December and January, it gives rise to the question of transition. We posed clear questions for the Government on whether continuing offences would give rise to the situation where fresh offenders would be treated differently as a result of the enactment of new laws. The Government guaranteed that this would not happen.

The third point is about the consequential, transitional and savings provisions to be made by Chief Executive in Council. We did not agree with the drafting of the relevant clauses. The present wording is of course most convenient for it is used to cover all possibilities so that clause 11 on "Chief Executive in Council to make consequential, transitional and savings provisions" is meant to provide against omissions in the drafting process. Thus whatever mistake is made can be remedied by way of provisions to be made by the Chief Executive in Council. But the Democratic Party does not think that is the best solution because excessive power will be conferred upon the Chief Executive and the Executive Council. If additional provisions are to be made to remedy any omissions will the power of the legislature be limited as it scrutinizes the draft provisions? Moreover, we are also worried that the Government may in future insert some new provisions or technical amendments which we may not accept on the pretext of taking remedial measures. Although clause 11(4) states "An order under this section is subject to the approval of the Legislative Council", we are worried that we may not have sufficient time in future for scrutiny as we do this time. How can we do our job properly then?

I urge colleagues to particularly note that of the five clauses clause 9 relates to saving of subsidiary legislation, fees, and so on. As everyone knows this is a provision like past ones to confer extensive powers on the authority to make subsidiary legislation and prescribe fees. Since the provision on fees prescription is not part of the present context of our discussion, I would put it off till later discussions. However, clause 9 provides more or less an excessive power to the Administration to make such laws. Hence we are worried. Madam Chairman, after some in-depth discussion within the Democratic Party, we have decided not to support clauses 5, 8, 9, 10 and 11. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Honourable Members, I wish to remind you there is no limit on the speaking time of public officers. But any Member or public officer should speak to the question. Therefore, when the Secretary for Constitutional Affairs spoke about fees earlier, I reminded him he was being irrelevant and he stopped talking about fees. This has nothing to do with indulgence. This is a matter of the Rules of Procedure. I hope Members can think carefully before speaking. I shall not tolerate irrelevant speeches by any Member or public officer. No one can have any privilege in this Chamber.

**MR MARTIN LEE** (in Cantonese): Madam Chairman, I very much appreciate your ruling just now. I do lend it my support, but since the Secretary is an experienced public officer I hope he could be more careful.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, I would like to speak on clause 5. In drafting the clause, the Government has taken the approach of taking over all contracts executed by the two Municipal Councils. When the new structure begins to operate, the party to the contract would become the Government, not the two Municipal Councils. From the legal point of view, it appears to be feasible. But where fairness is concerned gross injustice would be caused. This is because those who have signed the existing contracts with the two Municipal Councils could be the general public, or stall operators in the market or proprietors of small food stalls or restaurants in cultural and recreational facilities. Or they could be contractors providing security, cleansing or other services. Once the Bill is passed, they will lose their right to choose. They are not sure whether the contracts should continue. Hence unfairness will result.

The Bill provisions as they stand are mandatory. Then why will unfairness result? This is due to the fact that anyone had a choice when they signed the contracts. When they signed them they chose to deal with the two Provisional Municipal Councils, probably mainly because they thought the two Provisional Municipal Councils were representative assemblies and they had faith in them. Having considered various questions, they accepted the two Provisional Municipal Councils as their counterparts in the contracts. But if their counterparts changed to the Government, the situation would be different. Let me cite our markets as an example. There are over 10 000 stall operators in our markets. Due to the economic downturn in the past two to three years,

the Provisional Municipal Councils wanted to join hands with everyone to tide over the difficulty and were willing to freeze the stall rentals. Eventually they were even willing to reduce the rents by 30% per annum for a period of two years. The decision to do so reflected our sympathy for the plight of the people and our willingness to tide over the difficulty with them. But by June 2000, when the rent-reduction period ends, the Government will become the contractual party of the stall operators. Now the Government has clearly stated its concept of fiscal management: the user pays, cost-effectiveness, cost recovery and minimal subsidization. In the past two to three years, there have been many cases in which the Government has shown it adopts a different way from the two Municipal Councils in tiding over difficulties together with the public. It is for this reason that I suggested the Government should grant the contractual parties at least six months to decide whether to continue the contracts, when the new structure begins operation. On the other hand, according to general principles of law, if the two Provisional Municipal Councils are dissolved for certain reasons the contracts executed should cease to have effect. Of course both parties to the contracts may still make claims against each other but the contracts will end. Now the present arrangement is that the stall operators are compelled to deal with the Government as a party to the contracts after the two Provisional Municipal Councils are dissolved. Clause 5 proposed by the Government is mandatory on all those who have signed contracts with the two Provisional Municipal Councils to accept the fact that their contractual party will change to become the Government. They are forced to do so without any choice, or discussions or negotiations. Since the concepts of the Government are basically different from the Municipal Councils operation-wise, unfairness will result. For this reason, I oppose this clause. Thank you, Madam Chairman.

**MR CHAN KAM-LAM** (in Cantonese): Madam Chairman, I must take exception to Mr Ambrose CHEUNG's theory of unfairness caused by a change of contractual party. Whoever that party is, I think there should be no problems if the terms of the contract are fulfilled. Thus no unfairness is caused.

Just a short while ago, Mr LEE Wing-tat made some speculations about why Mr WONG Yung-kan was absent when the voting took place. I think this is unfair to Mr WONG, and more unfair to the DAB. Mr WONG made an appointment before this meeting to meet with people of his trade to discuss some issues of concern. As everyone knows, the Legislative Council is unlike other councils which can specify when Members' presence is required for the

vote. So, sometimes Members may leave the Chamber for a short while. As such, affixing the responsibility for the passing of the amendment on a certain Member or political party is obviously very unfair. No less often have we seen some Members of the Democratic Party, having said they supported or opposed a certain motion, disappear from the Chamber. Is there any explanation for that? There are some other Members who are also absent today. Are we going to affix the responsibility on them if a certain motion is passed or negated? I think the speculation of the Democratic Party is inappropriate to their status as Members. Thank you, Madam Chairman.

**MR GARY CHENG** (in Cantonese): Madam Chairman, the DAB wishes to seek approval to suspend the meeting because we have to discuss some important issues so that we can make decisions regarding the voting later.

As we want to convene an emergency meeting of the parliamentary group of the DAB, I hope you can grant an approval. We are expecting more votings as the meeting proceeds.

**CHAIRMAN** (in Cantonese): In the past, I suspended a meeting to let a political party to consider its voting decisions. Therefore I grant Mr CHENG my approval. I shall suspend the meeting for 10 minutes.

11.28 am

Meeting suspended.

11.40 am

Council then resumed.

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

(No Member responded)

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, let me make a brief response to the views expressed by Mr Ambrose CHEUNG just now on contract matters. We have not talked about the spirit of contracts here before. I think the focus of the question raised by Mr CHEUNG earlier is on how the Government can ensure existing contracts will remain in force after the functions and powers are taken back by the Government. In this regard, we have kept the contracts in force. When Mr CHEUNG talked about the rentals earlier, he was assuming that they would be adjusted in the following year and that there would be some move to be made on the part of the Government and so a situation not to people's satisfaction would arise. But these are all purely assumptions made by Mr CHEUNG. I am not sure whether these will happen at all. I believe we are only making some speculations when we talk about such matters here. The most important thing about the contractual spirit is that if there are some terms and conditions in it which allow a party to terminate the contract on certain grounds, we would preserve the relevant provisions. In other words, should there be any chance to terminate the contract, it can be done in accordance with the relevant provisions. However, what Mr CHEUNG was referring to was in case the contract in question did not carry such provisions, then the contract could not be terminated. I think that is a reasonable view, for when the contract in question was executed, there was no such anticipation at all. Given the change that we have, Mr CHEUNG was not aware of any problems when the contracts were executed. What he was referring to was the possibility of certain problems which would arise when contracts were due for renewal. I think that would be another issue. And in this present Bill, we have no intention to make any remedies in this respect, for we are simply not sure if this problem will arise. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Voting shall now begin. Would Members please take their time, for I shall check the number of Honourable Members present. There used to be three minutes for the division and since Honourable Members were already seated, that was easier to handle. Now please check your votes.

**CHAIRMAN** (in Cantonese): Are there any queries? If not, I declare that voting shall now stop.

**CHAIRMAN** (in Cantonese): The result will now 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, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kuong, Mr Ambrose CHEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kuong voted against the motion.

Dr TANG Siu-tong abstained.

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

THE CHAIRMAN announced that there were 55 Members present, 35 were in favour of the motion, 18 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Clauses 5 and 8 to 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.

(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): Schedules 1, 2 and 6.

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I have a point of order. Although there are no proposed amendments to Schedules 1, 2 and 6, can we speak on them?

**CHAIRMAN** (in Cantonese): You can speak on them. I thought there should not be any objections from Members, so I hoped to deal with the Schedules quickly. You have the right to speak. Mr LEE, please speak.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, because we will continue to oppose them so I want to speak on the reasons for our opposition.

Madam Chairman, Schedules 1, 2 and 6 were drafted by taking what the Government thinks is appropriate from the two Schedules in the subsidiary legislation in regard to the Urban Council and the Regional Council after their "scrapping". We cannot agree to this. The ground for our opposition is that this involves the "scrapping" of the two Municipal Councils.

Moreover, during the discussions, the Bills Committee found the selection had been random. By that I mean they were picked without any sound justification. Sometimes the Urban Council bylaw was picked and sometimes the Regional Council rendition. But all this may not matter now as the DAB has taken a U-turn again. They had six votes in favour of the Second Reading, and when the government motion needs one more vote to pass, Mr WONG Yung-kan was absent from the Chamber. Now the six votes would support any motion and so any motion may pass. Although the Government has a very accurate calculation about the votes, the Democratic Party will still insist on opposing the motion. This is because the clauses passed, that is clauses 5 and 8 to 11, and Schedules 1, 2 and 6 about which we are now discussing are premised on the "scrapping" of the two Municipal Councils. I do not know why the DAB voted for the previous clauses but the Democratic Party will continue to vote against Schedules 1, 2 and 6. Thank you, Madam Chairman.

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

(No Member responded)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Mr 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, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU

Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

Dr TANG Siu-tong abstained.

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

THE CHAIRMAN announced that there were 55 Members present, 35 were in favour of the motion, 18 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CLERK** (in Cantonese): Schedule 3.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to paragraph (c) of section 1 of Schedule 3 and to add paragraph (ca) to section 1 of Schedule 3, as set out in the paper circularized to Members.

I hope Members can support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, since the references to the Urban Council Area and Regional Council Area in some provisions of Schedule 3 will be deleted, we oppose the motion.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Mr 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, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Gary CHENG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kyong, Mr Ambrose CHEUNG, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kyong voted against the motion.

Dr TANG Siu-tong abstained.

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

THE CHAIRMAN announced that there were 55 Members present, 35 were in favour of the motion, 18 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CHAIRMAN** (in Cantonese): The Secretary for Constitutional Affairs has given notice that he will move an amendment to the proposed definition of "health officer" in paragraph (d) of section 1 to Schedule 3. Mr LEE Wing-tat has also given notice that he will move an amendment to the proposed definition

of "health officer" so that the official title of Director of Food and Environmental Hygiene in English will be changed to Director of Food and Environmental Health, and to make changes to the relevant official titles in English.

The Committee will now proceed to a joint debate. I would ask the Secretary for Constitutional Affairs to move his amendment first, for he is the public officer in charge of this Bill.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that the proposed definition of "health officer" in paragraph (d) of section 1 to Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**CHAIRMAN** (in Cantonese): I will ask Mr LEE Wing-tat to speak on the amendment moved by the Secretary for Constitutional Affairs and his own amendment. However, he may not move his amendment at this stage.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, thank you for your wise decision, so that I do not have to stand up a hundred times to move the relevant amendments. I can tackle the issue of choosing between "hygiene" and "health" once and for all. Although I can stand up time and again, to do so can be quite a strenuous job for me.

Madam Chairman, we had some detailed discussions in the Bills Committee and we received submissions from the Hong Kong Public Health Inspectors' Association (PHIA). The Bills Committee saw quite a number of disputes. Many colleagues supported the views of the PHIA at first, and so did I. Other Members, including Miss CHOY So-yuk and Mr Andrew WONG (if I remember it correctly) appeared to have been among the supporters. In the debates of the Committee, we had half of the members supporting to move an amendment to the Bill. Unfortunately, the Government

exerted some pressure, which I thought was unnecessary, on some Member. No one knew whether the pressure had come from the Secretary or higher levels, but I found it strange that the Government should be so nervous about the proposal to change the word "hygiene" to "health". This almost means if the Government wants a motion to pass, any amendments, rational though they are, will not be accepted. Under such pressure, the Bills Committee has withdrawn its earlier decision. Consequently I have to move amendments under my own name. I would like to thank the legal advisers of the Legislative Council for the enormous help given to me. Although laws nowadays have turned high-tech, and the word "hygiene" can be located with the help of the computer in the various provisions as they appear, it is much hard work to make hundreds of amendments. My secretary has been staying up for several nights to work on that. I must thank the legal advisers again for their help.

As I said, during the consultation stage of the Bill, we received a submission from the PHIA requesting that the English name of the Food and Environmental Hygiene Department be changed to Food and Environmental Health Department while the Chinese words "衛生" should remain unchanged. The Bills Committee held discussions about the submission and initially accepted the PHIA's view. Regrettably, the government representative issued a document which I think was misleading, so that the amendments cannot be moved under the auspices of the Bills Committee.

In its reply to the PHIA, the Government said changing the name from "Environmental Hygiene" to "Environmental Health" would confuse other countries, especially English-speaking countries. However, I think the argument of the PHIA was well-founded. The PHIA maintained that keeping the word "hygiene" would confuse these countries instead because no government in other countries use the words "Environmental Hygiene" in the name of a department. Let us look at the present division of the two Municipal Councils. In the Urban Council we have the Environmental Health Branch, while in the Regional Council we have the Environmental Health Division. In terms of staff ranks, inspectors in the two Municipal Councils are called Health Inspectors. We do not have Hygiene Inspector to designate a staff rank. The person in charge of all health inspectors is called District Health Environmental Superintendent, not District Environmental Hygiene Superintendent. I understand if a new department is to be established, the division, rank and post titles will retain their names in English.

In other words, a strange phenomenon will appear in future. If the government motion is passed today, there would be a Food and Environmental Hygiene Department. There will be ranks called Health Inspector and District Environmental Health Superintendent. So, the name of the department and the post titles will not match. I find this bizarre and ridiculous. I understand that the title of Food and Environmental Hygiene Department was first found in Mr Albert LAM's consultancy report entitled *The Consultant's Report on Food Safety and Environmental Hygiene Service in Hong Kong*. Mr LAM's major consideration then was that there should be no confusion with the English name of the current Health and Welfare Department. He overlooked the fact that the word "hygiene" had been discarded in other parts of the world. Unfortunately, when the mistake appeared in the Report, it was accepted by the Government and it perpetrates to the present moment. Today, the Blue Bill is peppered with "Environmental Hygiene". It is certainly difficult for the Government to admit that it has made a mistake. So, the Government maintained that there have not been any mistakes, despite the unanimous opposition from the staff side of the relevant rank against the proposed wording.

As regards the functions of the department, the Government explained by saying the term Food and Environmental Hygiene Department better reflects the work of the department. However, I understand that the word "hygiene" can only reflect one seventh to one eighth of the work of the division for environmental health due to the very narrow definition of the meaning of the term in English. The scope of the meaning of the word "health" is much wider. So, the health inspectors are saying they may do just one seventh of the work. Can they leave the outstanding six sevenths undone? Of course not. As the saying goes "If the name is not correct, the words will not ring true." If the Government limits the work of the new department to pest control, it may certainly call the department Environmental Hygiene Department. The name would be good enough if health inspectors need only carry out pest control but not work on environmental health and inspection of restaurants. But that is not true. What would they be doing in future? Health Inspectors and the relevant departments will still be managing cemeteries, crematoria, hawkers and public markets, and they will be carrying out inspection on imported and exported meat. Hence, as the title of a department, Food and Environmental Health reflects more precisely all aspects of the kind of work undertaken.

In the submission from the PHIA, I noted there was a letter from the International Federation of Environmental Health (IFEH), which was an authoritative organization. In the letter, it was pointed out that the use of the word "hygiene" for the name of a department would fail to reflect the job functions of either a Health Inspector or an Environmental Health Officer. So, not only does local staff but also an international organization thinks that it is not proper for the Government to use the term.

In its reply to the request of the PHIA to change the title, the Government said the PHIA has been making the request for the sake of raising the status of its members' rank. That I think is tantamount to defiling the PHIA. The Democratic Party and I have studied carefully the submission of the PHIA and found they were not looking for a raise in their status through the name change. I think the Government wanted to use the chance to tarnish the image of the PHIA by saying that on the pretext of defending their position it was trying to confuse and hype Members. The Association has been doing this not for its own interest. I think that was a very sinister step taken by the Government. I understand the PHIA has been contacting Members to relay their views on the change of name. They also rebuffed the Government's allegation in writing. I hope colleagues can understand the PHIA is representative of the health inspectors in Hong Kong. Its submission reflects the views of many staff of the Urban Services Department and the Regional Services Department who carry out health and inspection work. I hope Members can also read the conclusion of the IFEH which points out *inter alia* that the word "hygiene" could not reflect the job functions of the health inspectors and the department for environmental health. I also hope they can vote against the Government's proposal and amendment on the basis of these professional opinions. I hope colleagues can vote for my amendment which is actually the view of the PHIA. Thank you.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by the Secretary for Constitutional Affairs as well as the amendment by Mr LEE Wing-tat.

Does any Member wish to speak?

**MR CHAN KWOK-KEUNG** (in Cantonese): Madam Chairman, if the name is not correct, the words will not ring true.

Government departments in the other parts of the world providing similar services are called "environmental health departments", but the proposed department contains the words "environmental hygiene". As pointed out by Mr LEE Wing-tat, the word "hygiene" has a rather narrow definition, whereas "health" has a wider meaning.

As a cosmopolitan city, Hong Kong has an international status. It should not reduce 70% of the "environmental health" responsibility to 10% as this will adversely affect the status of Hong Kong as a cosmopolitan city.

There are fundamental differences in meaning between "health" and "environmental health" despite a common word used, which makes them appear similar. In fact, they are very different.

If names are not regarded as important, can we change the name "university" to "specialist college"? Why the name "university"?

Although the Bill will unlikely pass, I hope the Government can consider the international status of Hong Kong and progress towards providing Hong Kong with an ideal environment. The Government must not take retrograde steps in this regard.

Thank you, Madam Chairman.

**DR LEONG CHE-HUNG**: Madam Chairman, I am not going to argue on the nomenclature that is proposed by Mr LEE Wing-tat, but I thought I would take this opportunity to express the feelings of myself and that of the medical profession on the new structure that is proposed by the Government. Having agreed with the establishment of a central body to deal with food and environmental hygiene, the medical profession has reservations on the direction proposed by the Government. Instead, we propose that a Health Bureau be set up by splitting the existing Health and Welfare Bureau. This Health Bureau will be responsible for the policy of all food and environmental hygiene and health, and the current Department of Health will be the executive body.

Now, the reason is obvious. It is much more tidy to put all aspects of health and hygiene under one roof for policy formulation and policy implementation. The proposed organization by the Government could actually end up again having more than one bureau and its subordinate department dealing with health and hygiene issues. Worse, even in dealing with infectious diseases alone, two departments will be involved. How ironic!

Let us take the avian flu as an example. Now we all know that avian flu actually arises from fowls, like birds and chickens. Therefore, it must be food-borne. Obviously, under the Government's proposal, it will be the prerogative of the new bureau and the new department to look after it. But at a later stage, through possible mutation, it could really be transmitted from human to human through droplets from the respiratory tract. In that case, would it then be switched over to the Department of Health? Ultimately, which bureau and which department should really be responsible?

Madam Chairman, there are other areas of shortcomings in the current organization and system that need to be beefed up, and we thought that by a new structure or new organization, we can bring all these in together, too. The increase of incidences of infectious diseases, many of them unfortunately are home-grown, and the delay in alerting the public to take precautionary measures on these infectious diseases call for a better infectious disease surveillance. The medical profession has been calling repeatedly for the setting up of a centre for disease control type of unit, which could well be within the ambit of a reformed Department of Health.

There is also more. The recent controversy of genetically-modified food and the many kind of food supplements, many of them are actually drugs in disguise sold in the market with no control whatsoever, calls for the setting up of a controlling body to monitor not only food but also drugs in the same line .....

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, a point of order.

**CHAIRMAN** (in Cantonese): Dr LEONG, please sit down.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, the amendments that the Government and I propose appear to be about the words "hygiene" and "health", but Dr LEONG has spent three minutes talking about avian flu and who do what in the new structure. Of course we can debate on that. However, that appears to be irrelevant to the amendments in question. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Dr LEONG, I think Mr LEE is right. Please focus your speech on the issue of nomenclature.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, well then I will wait until the chance arises again. When I spoke I said clearly I was not speaking on Mr LEE's amendment but on the main principles regarding Schedule 3.

**CHAIRMAN** (in Cantonese): Honourable Members, I am sorry. For fairness' sake, I will suspend the meeting for five minutes to review the video-tape to decide whether Dr LEONG's speech was related to Schedule 3.

12.10 pm

Meeting suspended.

12.16 pm

Council then resumed.

**CHAIRMAN** (in Cantonese): Honourable Members, I am sorry to have kept you waiting. I reviewed the video-tape for the sake of fairness. I would ask Dr LEONG to speak again when we discuss the Schedule 3 as amended or the original Schedule 3 after we have voted on this part of the amendments.

**DR LEONG CHE-HUNG** (in Cantonese): Yes, Madam Chairman.

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

**MR MICHAEL HO** (in Cantonese): Madam Chairman, I would have thought that in this debate some issues should have been argued properly. Just now, Dr LEONG said the medical profession which he represents have been hoping to split the current Health and Welfare Department into two: Health and Welfare, not the kind of reorganized structure under discussion. If that is the case, there is no justification to support the Second Reading of the Bill regarding the reorganization because Dr LEONG has been saying they .....

**CHARMAN** (in Cantonese): Sorry, Mr HO. Mr LEE Wing-tat has just correctly pointed out we are talking about a change of name. What you are discussing is irrelevant. Please put off your discussion till this Council considers the Schedule 3 or the amended Schedule 3.

**MR ANDREW WONG** (in Cantonese): Madam Chairman, as Chairman of the Bills Committee, I feel obliged to make an elucidation. At the Bills Committee stage, the PHIA suggested that "hygiene" be changed to "health". At that time, we had to decide whether to table the amendment in the name of the Bills Committee. Three members voted for the proposal while three members voted against it. I made the casting vote because I thought the name should be changed. Indeed, I do not think the Government should be that stubborn. I thought the name could be changed and requested the Government to consider that. After consideration, the Government said it would stick to its stance at a subsequent meeting. But at the next meeting, it said it would ask the Bills Committee to consider withdrawing its original decision. So, the Bills Committee had to vote again. Finally, the motion to withdraw was passed and it was decided that the amendment should not be proposed under the name of the Bills Committee. However, this cannot stop any Member from moving an amendment at the Committee of the whole Council. I think the Government has been too obstinate. If it is afraid that a change to "environmental health" may result in the new department taking up the work of the Environmental Protection Department, it is acting like the man of Qi who was haunted by the fear that the sky might collapse. I want to state clearly I will vote for the amendment. Thank you, Madam Chairman.

**MISS CYD HO** (in Cantonese): I find the Government has been very careful after 1997 with its choice of words. It strives to be politically correct. This time the choice is rather poor because of the poor translation. People have grown used to the words "環境衛生" but few would say "環境健康". Again very few would say "environmental hygiene", but most people would say "environmental health".

Very strangely, although my colleague Miss Emily LAU from the Frontier often accuses people of mix coding Chinese and English when they speak, we have to do this in today's debate. Nevertheless, I hope we can use words which fall in line with trends in modern English. "Hygiene" is archaic. I fetched a copy of the *Concise Oxford Dictionary* from outside this Chamber and I would like to read aloud a definition of "hygiene": "sanitary science". "Sanitary" refers to "conditions that affect health especially with regard to dirt and infection". That would mean it is related to garbage collection, cleansing or work related to infectious diseases. The meaning is rather narrow.

Just now, Mr LEE Wing-tat pointed out that the present job duties and functions of health inspectors are not limited to cleansing work or the prevention of infectious diseases. Today, their scope of work is much wider. Whereas in the fifties their main duties might be pest control or the spraying of insecticides, today they have a continually growing area of work to cover.

Why does the Government want to translate a popular Cantonese term "環境衛生" into "environmental hygiene" but refuse to change the term to "environmental health"? We may perhaps look at the case from the other way round. Can the Cantonese term be changed to "環境健康" rather than "環境衛生" just to catch up with the new requirements of their job?

I want to talk about the broad definition of the word "health" as given by the World Health Organization (WHO). It is about a balanced development, physical, psychological, spiritual and social. Of course, when we use the word "health" on Health Inspectors, we do not mean they are going to take care of our well-being, social and spiritual. Today, we should not be so restrictive as to limit their work to cleaning the environment or combating infections.

We have met representatives from the PHIA. They indicated they had had some embarrassing experience. When they attended meetings of international organizations abroad, they called themselves "environmental hygiene" personnel, when other participants called themselves "environmental health" personnel. We were worried at first about their being rejected, but fortunately that never happened.

I hope the Government can withdraw the amendment, on the premise that no political consequences will arise and the "scrapping" of the two Municipal Councils will not be affected. This may give our health inspectors a more appropriate title in attending WHO meetings.

Thank you, Madam Chairman.

**MR FRED LI** (in Cantonese): I have been taking part in the work of the Urban Council for eight years. The select committee responsible for environmental health is named with the words "Public Health" rather than "Public Hygiene" in it. The current department proposed by the Government is called Food and Environmental Hygiene Department, which will be responsible for all public health work. But the word "Hygiene" is used. I hope colleagues can see the scope of meaning covered by this word is rather narrow and that is why the two Municipal Councils do not adopt it and do not call the relevant department or division a hygiene department or division. As Mr LEE Wing-tat has pointed out and what I am saying serves to remind Members that the relevant committee under the two Municipal Councils are called "Public Health Committee" not "hygiene committee". So, we have no reason at all to narrow the scope of meaning, given that their work includes the original duties of the two Municipal Councils, namely, hawker control and work related to markets. On the whole, the work belongs to the broader area covered by the word "health" rather than "hygiene".

I hope the Government or colleagues can note this. We should first vote against the Government's amendment and then discuss Mr LEE Wing-tat's proposed amendment about the word "health". I hope colleagues can support the idea of voting against the Government's amendment first. Thank you.

**MRS SELINA CHOW:** Madam Chairman, I think that whenever we have in this Chamber a disagreement or a debate over a name, invariably, there is a controversy. In this instance, we are really talking about two different approaches to this name. As far as the Government is concerned, the use of the word "hygiene" is probably of a more technical and a more technocratic, you can say, approach, whereas the amendment tends to approach it from a more political perspective.

When you come to talk about a department taking in charge, you have got to observe how it is going to apply it. I accept the view that has been put forward by the Administration that it is very, very difficult to talk about "food health". I think "food hygiene" is what everybody understands very, very clearly from a technical point of view.

Of course, I do understand Mr LEE Wing-tat's thinking behind the whole concept of health. But as far as the Administration is concerned, as far as the department's carrying out of duties is concerned, I would rather that it be more technical and specific than more political.

Thank you.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, the PHIA has told me of its views. After listening to its views, I tend to share them. I have also noted carefully how the Government handled this. I have two points to make on this question: first, the Government is rigid and inflexible even about the choice of name. That is why we should not expect too much of the Government's pledge on other policies. Second, it is not just a question of whether the term is "technical" and "specific". The most important thing is that it must be accurate. The term "environmental health" is more comprehensive. Thus, the Government fears that it covers some of the tasks for which the department concerned is not responsible. However, the term "hygiene" lacks accuracy, since the functions of the relevant department are wider than those covered by the term "hygiene". In other words, the duties of Health Inspectors are wider than those covered by the term "hygiene" and narrower than those covered by the term "health". How should we choose? In my view, the government department must have an accurate name so that the general public and international health organizations would know that its work has to do with "health". The problem can be solved by defining the functions

covered by the term "health" more clearly. The Government should not use the term "environmental hygiene", since the functions covered by the term "hygiene" have been defined internationally. As a result, the Government would have to explain that the work of Health Inspectors is wider than that covered by the term "hygiene".

Let us consider the term "municipal services" used by the Urban Council or the Urban Services Department. The word "municipal" has a very wide meaning. But does it cover the wholesale and retail market? We are responsible for the markets, but are the wholesale markets for fish and meat covered? Actually, they are the ambit of the Agriculture and Fisheries Department, but they also come under municipal services. Thus, insofar as the functions of a government department are concerned, it should have a name with a wider meaning, while its main functions should be carefully defined separately, so that the public and similar overseas organizations could understand the work of these departments more easily. Thank you, Madam Chairman.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, with regard to this issue, I think we have no objection to the Chinese name of "食物環境衛生署" and there is no suggestion to change the name into "食物環境健康署". So I think the problem lies in our understanding of the English words "health" and "hygiene". We are of the view that problems will arise if we replace "hygiene" by "health". As some Honourable Members have said, the change will cause confusion with regard to the Department of Health and its policy bureau, that is, the Health and Welfare Bureau. Besides, those international organizations which have contacts with the health authorities in Hong Kong will feel puzzled and even become confused.

The term "environmental health" embraces a lot of fields, including environmental protection, waste disposal, sewage treatment, radioactivity safety, occupational safety and health and so on. All these actually go beyond the scope of responsibilities of the new department soon to be established and this may cause confusion. As for the suggestion of "food and environmental health" made by some Honourable Members, the term "food and environmental hygiene" actually embraces two fields, one is food hygiene and the other is environmental hygiene. I have already talked about the term "environmental hygiene" just now. As for the term "food hygiene", it is defined in the guidelines to the scheme to enhance food safety in member countries issued by

the World Health Organization. It is defined as all the conditions stipulated in and all the measures adopted in all stages of food production aimed at ensuring a safe and proper handling of food. Part of the work on food in the new department is precisely the fulfillment of such a requirement. Therefore, we think our proposal would be a more reasonable one. Some Members have pointed out that there is an Environmental Health Committee under the Provisional Urban Council. However, the Provisional Regional Council uses the name "Environmental Hygiene Committee". That does not mean that one is right and the other is wrong, that just shows that both terms are being used. The choice depends really on how one would place the emphasis. As for the grounds of our argument, we have already presented them earlier. I urge Honourable Members to support our original amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

**CHAIRMAN** (in Cantonese): Will Members please check their votes. Are there any queries? If not, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, 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, Mr Bernard 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, Mrs Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr LEE Cheuk-yan, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

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

THE CHAIRMAN announced that there were 54 Members present, 29 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): As the amendment moved by the Secretary for Constitutional Affairs has been passed, Mr LEE Wing-tat may not move his amendment, and his other related amendments to various sections of Schedules 3 and 7.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to section 360, para (g)(ii) of section 366, sections 546, 555, 558 and 638 of Schedule 3, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that section 366 of Schedule 3 be further amended, as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move the addition of paragraph (da) to section 1, new section 26AA and new section 94B to Schedule 3, as set out in the paper circularized to Members.

Madam Chairman, I hope that the various political parties and colleagues will take this issue seriously, especially those colleagues from the Liberal Party, the DAB and the Hong Kong Federation of Trade Unions (FTU) who have always been concerned about people's livelihood, since this is about the rent of market stalls. At present, under the Urban Council and the Municipal Council, there are approximately over 10 000 lessees of market stalls, selling pork, beef, fresh fish, vegetables and tofu. Many of these lessees run a small business and are not much different from the grass roots. After paying a rent of some \$4,000 to \$5,000, they might just earn their own monthly wages. As a result of the economic downturn, sometimes they cannot even earn their own wages. In the Bills Committee, we repeatedly asked the Government to undertake to transfer the power to decide the rental adjustment formula originally determined by the two elected Municipal Councils as well as the matters in respect of appeals to the Legislative Council. Unfortunately, the Government refused to make such an undertaking despite our repeated requests. That is why I have to propose this amendment on behalf of the over 10 000 commercial tenants and stall operators. We have consulted them and they support our move. At present, the relevant departments under the two Municipal Councils have a very complicated mechanism for rent determination. This mechanism is based on the full market value. The full market value is

assessed by the Rating and Valuation Department, and this assessment often gives rise to arguments.

I believe that many colleagues must have seen these stalls when they go to the markets. Some of Mrs CHOW's constituents may also be market stall lessees or stalls associations. They know that there are often arguments with the Government about how the full market value for stall rental is assessed, which is often controversial. The situation is somewhat better now, since neither the Urban Council nor the Regional Council calculates rentals entirely according to the full market value — I stress the word "entirely", except for tenants who submitted the first tenders. For instance, 10 stalls may be offered for public tender. The premium offered in tender may be the amount of rent, which may be higher or lower than the full market value. Usually, the tender premium is higher. My amendments do not cover these stall operators.

I wish to stress this point to show that I am not interfering with the process of tender. Let there be no misunderstanding about this. This means that if some stalls are offered for public tender and someone is willing to pay a rent of \$40,000 to bid for a meat stall, I will not interfere. Actually, this was what happened in the Tsing Yi Market. However, the stall has already closed. After winning the bid for the stall, the tenant knew he had made a mistake. He won the bid for a fresh meat stall in public tender by offering to pay a monthly rent of over \$30,000. However, the stall was closed after only two months. 30% of stall tenants at the Tsing Yi Market got their stalls through public tender. My amendments have nothing, I repeat, nothing to do with these tenants. Whether they got their stalls through public tender, or whether they are tenants who were originally licensed hawkers under the Urban Council and the Regional Council, and who were resettled into market buildings, it is a kind of "insider tender". My amendments do not interfere with the rent set in these cases. Since I stress that I am not interfering with these cases which involve tender, what is the object of my amendments? My amendments apply only to cases where the lease of a stall is renewed for the first time, usually after three years and sometimes after four years (leases under the Urban Council are renewed after three years and some leases under the Regional Council are renewed after four years), no matter whether it is a first renewal after the first tender, after a public tender or an insider tender.

Actually, I am sure the Government understands my amendments, since they are based on the proposal on the policy of market rent adjustment submitted in 1996 by the Urban Services Department (USD) to the Urban Council. This paper is an Urban Council paper. I thank the Government for not telling me that it does not understand the content of the amendments after receiving them. It has no reason not to understand them, since I did not make them up. I have copied them from the policy proposed by the USD to the Urban Council. What is this policy actually? As I said earlier, it does not apply to the tenants who made the first tenders. According to the USD's suggestion, when the tenants renew their lease after three or four years, if rental adjustment is to be made, the Urban Council should take into account two factors: first, the new full market value, or fair full market value; second, inflation. For instance, a tenant might be paying a rent of \$10,000 three years ago, in 1996. When calculating the new rent, the two factors should be considered. So if the new full market value or fair market rent is \$15,000, and if the rate of inflation during those three years was very low, such as 10%, then according to the policy proposed by the USD, the rent should be adjusted according to the lower rate, that is, the 10% inflation rate. Thus, the rent for the new lease would be \$11,000. Of course, no matter what the stalls sell, the new rent payable is less than the full market value, that is, less than \$15,000. In my view, this is a compassionate policy looking after the difficulties of the tenants.

In the Bills Committee, many members, including the Chairman of the Bills Committee, Mr Andrew WONG, said that tenants of the Sha Tin Market had found the rent a great burden, especially in times of recession. Although this policy may entail a certain adjustment, they could still afford it if the inflation rate is not too high, since there is a cap. Of course, colleagues would ask what the reduction of rent by 30% means. I will explain this in detail later. Taking into account the variable where the new full market value is much higher than the original rent, I have included the proposal made by the USD to the Urban Council in the Schedules, so that the rent must be further adjusted. For instance, in the example just now, the rent was \$10,000 three years ago. However, three years later, due to the flourishing economy, commercial rent or the rent of market stalls has risen considerably, so that the new full market value is \$20,000 or \$30,000 instead of \$15,000. The revision formula provides for rental adjustment by a certain percentage based on the percentage difference between the new full market value and the original rent, if the former is higher. I will not give all the details here. If the new full market value is 100% more, the rent may have to be further adjusted by 1% to

2%. If it is 200% more, it may have to be further adjusted by 2% to 3%. In general, we will at least have a range. According to my estimation after going through all the papers roughly, if the rent is calculated according to this range, the amount will generally be lower than the full market value, unless the full market value is lower than the original rent. In the latter case, if the rent was \$10,000 three years ago, the full market value might become \$8,000 three years later if the economy is very depressed, which I certainly do not wish to be the case, then the new rent would be \$8,000. It is as simple as that. If the new full market value is lower than the original rent, the lower amount will prevail. If it is much higher than the original rent, then the new rent will be calculated according to the inflation rate.

After the rent has been adjusted in accordance with Schedule 17, 18 or 19, that is, according to the percentage difference between the full market value and the original rent, it will be further reduced by 30%. This measure was adopted by the Urban Council and the Regional Council last year. Madam Chairman, when I prepared these amendments, I knew that they were rather complicated. However, this was not my doing because the rent proposal was not made by me, but by the USD. Actually, I had wanted to use a simpler method. However, if I did, I fear that the Government would say that my proposal is not workable, or whatever. If I copied the USD's proposal which was passed by the Urban Council, the Government would not say that it is not workable. That is why I have copied the more complicated, but not really that complicated method based on inflation. This policy was not proposed by the Democratic Party, but was discussed in the Urban Council. According to the records, when the Urban Council discussed this rental adjustment policy, members of the DAB and the FTU supported the proposal out of sympathy with the tenants. The proposal to reduce rent by 30% was made by Mr WONG Kwok-hing of the DAB and the FTU in the Urban Council last year. I have used this as the basis of this amendment.

I wonder how Mr SUEN will respond later on. But why did I propose to prescribe the method of rental adjustment by legislation? It is because I feel we have a responsibility to the over 10 000 commercial tenants. In the Bills Committee, I asked the Government repeatedly whether the old system would be retained without any changes. The Government just said that it would not be changed at the initial stage after the passage of the law. The Government merely guaranteed this for a very short period of time. But what would happen in the long term? No answer was given. Nor did the Government answer the question whether the Legislative Council will be empowered to pass

the formula for rent calculation (not the rent applicable to all stalls). In my view, the Government and the Financial Secretary can be likened to a cat that will certainly eat the fish that it sees. I have used this example in the Bills Committee. If they can think of a departure tax, they can think of many other methods. Yesterday, the Financial Secretary said again that our tax base is too narrow and has to be broadened. Of course, we are not going to debate this issue today. I just want to say that I am worried because the Government has repeatedly stressed to us that it is suffering losses with the present level of market rentals. That was why it could not give the Bills Committee the guarantee that rents would be maintained at a level lower than the full market value in the long term to protect these tenants.

I disagree with this view. In my view, unless the management of all markets is contracted out to the private sector, the markets under the Housing Department or the two Municipal Councils serve several functions other than economic. First, the provision of services. The reason why the Housing Department reduced rent last year by deviating from the full market value was that it could not allow stalls to close one after another during hard times, so that a housing estate would be devoid of a market. If so, the Housing Authority or the Housing Department would have failed in its duty to provide comprehensive services to residents in housing estates. The same applies to the Urban Council and the Regional Council. We must not consider the economic factor alone. A government department has to take into account the fact that it has a duty to look after the people's vital need to buy food, fresh meat, vegetables and fruits every day. Second, despite the Government's frequent claim that the economy has recovered, if you ask the stall operators in the markets, you will find that many are still in dire straits. That is why they still very much hope that the Government will freeze the rent at 70% of the adjusted rate. Of course, this can no longer be done by the two elected Municipal Councils. It is left to the Government. Will the Government abolish this measure next year? No answer is forthcoming. Will the Government change this formula and calculate rent according to the full market value in a few years? There is no legislation to govern this. It is purely up to the executive authorities. Therefore, Madam Chairman, I really hope that colleagues, including those from the Liberal Party, the DAB and the FTU, will support my amendment. First, it provides people with a safeguard. Second, it provides additional safeguards to those in the retail trade or small businesses or those selling bean sprouts and bean curd in the markets who have to pay a monthly rent of \$3,000 to \$4,000. These small businessmen and small stall operators might just be

earning their keep. Unless the Government offers us a better guarantee today, I urge the Liberal Party, the DAB and the FTU to support my amendment on behalf of these over 10 000 stall tenants — they are stall tenants, not operators of big businesses. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MRS SELINA CHOW** (in Cantonese): Madam Chairman, as the representative of the Wholesale and Retail Functional Constituency, I support Mr LEE Wing-tat's amendment. First of all, I must say that Mr LEE Wing-tat has explained it very clearly just now. Basically, we have frequently pointed out that stall tenants in public markets have a hard time keeping their business going. The recession has only increased their hardship. In my view, if rental adjustment is not prescribed by legislation, they have no protection at all. Unfortunately, I failed to convince my colleagues in the Liberal Party, who are of the view that the mechanism should not be included in the law. Therefore, I have asked for exemption to support Mr LEE Wing-tat's amendment.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, the rental policy to which Mr LEE Wing-tat has referred in his amendment is in fact current practice of the Provisional Urban Council. I wish to add one more point, and that is, the Government should be able to see that this compassionate policy was in fact initiated as early as in 1996. It has been in force ever since. At that time, the economy had yet to nosedive. The consideration we had was that in a robust economy, that was something we should do. When the economy made its nosedive, we made a supplementary measure in 1998 to provide against the situation of a deflation. Before that, we had never thought of the problem of deflation; all the discussions had been on rising rents.

Our basis is to charge rent at market value, but we also have a balance factor which Mr LEE Wing-tat has mentioned. That is, to add a balance factor into the rent at market value as assessed by the Rating and Valuation Department, so that the rate of increase will not be higher than the inflation rate. At the same time, there will be a three-year period to increase the rent up to the determined level. Now we have factored in a downward adjustment mechanism in case of deflation. This factor of equity is quite simple. When after the Government has taken over the markets later and become the owner, even if the highest rent is charged, it will be no more than rent at market value. If for some reasons such as deflation the results of the assessment indicate that the assessed market value rent is lower than the rent paid by the tenants of the market stalls, that is, the Government is charging a higher rent than the market rate, then the Government should adjust the rent downwards.

Madam Chairman, in addition to this point, I wish to talk about a very fundamental point. For any mechanism to operate effectively, it is imperative that the results of assessment must be accurate. The base figure with which we are working is the so-called Current Market Rent as assessed by the Rating and Valuation Department. If this assessment mechanism for this Current Market Rent is unsound, thus leading to inaccurate bases and figures for the calculation of rents, then with whatever formula we are only making calculations and discounts on an inaccurate base.

Why do I say that this Current Market Rent may be inaccurate? It is because under the existing arrangements, the Rating and Valuation Department is not assessing rents as a hired consultant. It is doing this simply because the Municipal Councils think that of all the government departments, it is most professionally competent for the job. Therefore, the Rating and Valuation Department is asked to offer assistance to the Urban Council and the Urban Services Department to make an assessment of rents. But that is not a job of the Department. Let me cite a simple example. The police are asked to help in arresting illegal hawkers, but that is not their priority task. Their first and foremost duty is to maintain law and order. They will help in arresting illegal hawkers if they find the time and means to do it. The reason is that sometimes arresting illegal hawkers will lead to clashes.

The request made to the Rating and Valuation Department to make an assessment of property value is made under an informal arrangement which does not resemble consultancy and is even done without any remuneration. No wonder the kind of assessment they make is not a professional one like that made in the commercial sector. Those made in the commercial sector will set out clearly the rental value at different positions of the market, with reference to rents in other markets and the size of the population which the market will serve. What we find in the assessment made by the government department are some very basic figures, and that is not a professional report *per se*. According to my 10 years' past experience, I have been invariably worried that this may often lead to disputes because many market stall operators will think that the assessed Current Market Rent is not accurate at all. And even if rents are increased according to inflation rate and the rate of increase capped at 10% or 5%, the figures so derived are still not accurate. They may still be higher than the Current Market Rent.

In these circumstances, we asked the Government during the meetings of the Bills Committee to make an undertaking. Apart from the very specific mechanism mentioned by Mr LEE Wing-tat earlier, the undertaking should include the imposition of a period of moratorium after the Government has taken over the new municipal services structure. This period can be one year or two years, depending on whether the Government thinks that it will have enough time and whether or not it is feasible from an administrative point of view, to make a review of the mechanism. During this period, the Government should undertake not to make any major changes to the rental policy. It should also undertake to discuss the matter with the Legislative Council when it intends to make a review of the rent mechanism. It must ensure that this mechanism is not only workable, fair and it must also take into account the polarizing conceptual differences between the Council and the Government with regard to rents. For the Government, its concepts are cost-recovery, user-pays and reduced rate of subsidization. I am not saying that there is anything wrong with these concepts. I am saying that the facilities in the markets are quite worn out after almost 20 years' of use. The design of these markets is very out-dated and management costs are high. There are many markets which are as old as castles. Those stalls which face the streets should be the most valuable ones, but they are all tightly encased within the walls. Many of the markets we have are very backward in design and other aspects. No wonder their management and operation costs are very high. If this level of costs is used as a standard to recover costs, and if the market value

is far from being accurate, the 10 000-plus stall operators will be faced with very great hardship which will certainly have an impact on the people. When stall operators cannot make their ends meet, they will surely revise the price of the goods they sell upwards with rising costs. That will have a direct impact on the price of the things people buy.

I therefore urge the Government to reconsider this issue. Since the discussions in the Bills Committee to date, the Government has refused to make this fundamental undertaking. It does not want to make any undertakings as regards time. It refuses to be committed to the imposition of a moratorium period. It only says that the matter will be submitted to the Legislative Council for discussion after the review has been made. Urging the Government to make an undertaking is my bottomline, but still I can get no support from the Government. Madam Chairman, if the Government refuses to make this fundamental undertaking, I will support the amendment proposed by Mr LEE Wing-tat.

**MR FRED LI** (in Cantonese): With regards to the rent for market stalls, I had the opportunity of taking part in its determination. The process is a very complicated one, for we have to look into many questions. However, the Government deals with the matter in a very simplified manner. I once saw a vivid example in the USD. The Government's rule was very simple, it would rather increase the rent than to reduce it. The Rating and Valuation Department set a reserve price for tenders after it had made a study of the rents of market stalls. For example, a meat stall of excellent location was successfully taken by someone who offered a high price of \$50,000 in an open tender. When the lease agreement was due for renewal three years later, the Rating and Valuation Department made another assessment and found that the stall then only worth \$30,000. But the officials of the USD told me that the rent for that stall would remain at \$50,000. From that example we can see the mentality of public officers, and that is something we came across when we were members of the Urban Council. Even if the Rating and Valuation Department wished to reduce the rent after it had made an assessment and because the old tender was made at too high a price and the stall was not worth its original price, the Government still asked us for our support. If the result of the assessment was that the rent should be increased, then the rent would be increased. If it is worth \$60,000, then the rent would be increased to \$60,000. But if the value of the stall falls to \$30,000, then the rent may not be reduced. The reason for this is that the rent paid by stall operators should be kept at its

prevalent level, and that means there is a rent freeze. What kind of reasoning is that? It was written in black and white in the paper submitted to the Urban Council at that time. Fortunately, there were some members of the Urban Council who were returned by popular elections and so we voted down their proposal. We did that because we thought that the proposal was unreasonable and the rent should be reduced to market value for fairness' sake. If recession is very serious and business is slack, we would reconsider the matter. In this way we can reduce the hardship of the tenants who are running a small business in the markets.

I think Urban Council Members made the right decision of improving the rental policy for the market stalls. I hope that all Members of this Council should take the interest of these tenants into consideration. Just now Mr LEE Wing-tat forgot to mention the Hong Kong Progressive Alliance (HKPA). The HKPA represents the interests of the middle class and the business sector, I think that would include those small businessmen as well. The HKPA should speak out for them. The DAB and the Hong Kong Federation of Trade Unions also represent those who run a small business. Those who pay a monthly rental of \$50,000 for their market stalls belong to the minority, while the majority are those who pay \$2,000 to \$3,000 a month. They are those who sell vegetables, fruits and groceries in the markets. After the Municipal Councils are "scrapped", there will be no channel for appeal against the determined rents. So later on I will propose to set up an appeals mechanism. However, the Government opposes the introduction of this mechanism, holding the view that the matter should be left to the department. But, the department's decision is to recover costs at market value. If that is the case, it will present a great problem to the tenants.

Now none of the Members of the Liberal Party is here. I hope those Liberal Party Members who are having their meal will hear what I say. I fail to see why only Mrs Selina CHOW is in support of this idea. Are other Members of the Liberal Party care for the interest of big businessmen only? Do they not care about the interest of those small businessmen or retail traders? Is it because of this that they are not supporting the amendment moved by Mr LEE Wing-tat? I just fail to see why. I really hope that Honourable colleagues from the Liberal Party will give the matter a second thought. I hope they will consider why we have to set up a mechanism like this after such a complicated, painstaking and difficult process. It is because we want to provide some kind of protection for the tenants of market stalls. They will have to face this problem very soon because they may have to sign a new lease

agreement in March or April next year. Then what are we going to do about it? They can no longer lodge their complaint with members of the Municipal Councils. Can the Members of the Legislative Council help them? Sorry, we cannot be of any help because the whole thing is to be decided by the Government. What we can do is to make their views known to the Government. Things would be very different if the matter is decided by the Municipal Councils. Let me quote the example cited by me earlier again. The USD suggested that the rent should remain at \$50,000. We did not give it our approval. In the end the rent was revised to \$30,000. The USD must accept the final decisions made by the members of the Urban Council. But Members of the Legislative Council cannot do that. In this case, if we want to reduce the rent from the original \$50,000 to \$30,000, can we really make the Government reduce it to \$30,000? We do not have this power. We can express our regret to what the Government has done, we may condemn it, express our disappointment, our dismay, but the decision made by the Government remains a decision made by the Government and the Legislative Council cannot interfere with this decision. The kind of influence played by this Council is different from that played by Members of the Municipal Councils.

Suppose the Municipal Councils will no longer exist, it is my wish that that mechanism would not be handed over to the Government in its entirety. For the Government will be facing too great a temptation to recover costs and to impose rent at market value. That is indeed too great a temptation. It will make the tenants run into great difficulties with their operation. Therefore, I implore all other Honourable Members, including those of the "Breakfast Group" and the non-affiliated Members, to consider the difficulties faced by these tenants of market stalls who run a small business and support Mr LEE Wing-tat's amendment. Madam Chairman, I so submit.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. I would think that is a very complicated formula indeed. Mr LEE Wing-tat has not given us enough time for this. I have also tried to work out how this formula should work. I think all Honourable Members should also try to find out how this formula works and whether it really works.

Besides, Mr LEE Wing-tat has pointed out that we used to adopt an administrative method and now he is trying to impose legal restrictions. But is the drafting of the relevant provisions clear in this respect? I have obtained the legal advice given by the Law Draftsman. He is of the view that though we may infer the intent of the provisions, there may be loopholes in the wording and there are places which may be incomprehensible to people. I am not trying to criticize the proposal here, but I wish to say that we may not have sufficient time for that.

**MR LEE WING-TAT** (in Cantonese): Secretary Michael SUEN said just now that these provisions are hard to understand. As far as I know, when the President was to make a ruling on whether the amendment could be tabled in the Council, one consideration was whether the provisions proposed by me could be comprehensible to our Legal Advisers (that is, the Legislative Council's Legal Advisers) and the President, and whether the provisions are enforceable. I have a point of order and that is, according to the President's ruling, are these provisions be comprehensible?

**CHAIRMAN** (in Cantonese): My ruling was: The relevant provisions are comprehensible. However, even if I can understand them, it does not necessarily mean that other people can. Will the Secretary for Constitutional Affairs please continue?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. Therefore, in this respect we have spent a lot of time trying to figure out the contents of the amendment. If later on my understanding is found to be wrong, I hope Mr LEE Wing-tat would correct me promptly. For my understanding of this is based on my personal understanding and that of my colleagues.

The basis for this is of course, as Mr LEE Wing-tat has said, the assessment made by the Director of the Rating and Valuation. There a number of mechanisms involved. Schedules 17, 18 and 19 provide for the application of different mechanisms under different conditions. I would not explain that here and Honourable Members can try to find out for themselves which mechanism should apply under which circumstances.

I wish to talk about what kinds of results will be caused when these mechanisms are applied.

The mechanism proposed in Schedule 17 is relatively simple. For example, if the Current Market Rent is \$100 and the rent assessed later is \$150, then the Fair Market Rent shall be achieved by equal annual increases spreading over a number of years during the lease period. If the increases are to be spread over five years, then the rent payable during the first year will be \$110. It will be adjusted upwards to \$120 in the second year and ultimately to \$150. The purpose of this scheme is to alleviate the financial burden of the stall operators so that they will not have to pay the assessed market rent over the first few years of the lease. The assessed market rent will be achieved only at the fifth year or in the last year of the lease period. In this respect Schedule 17 is clear enough and I do not think there are any problems with it since its contents are easily comprehensible to everyone.

However, I think the problems with Schedule 18 are rather serious. I do not know if I have understood the Schedule correctly. The paper points out that the basis for calculation in this case is where the difference between Fair Market Rent and Current Market Rent is "nil" or less than 50%, then there will be no upward rental adjustment. May I ask what is meant by "nil"? Does it mean that the percentage of upward rental adjustment is "nil"? I cannot find any explanation for it from the wording. Is this the meaning here? I think Mr LEE may need to explain it clearly.

In addition, we need to look at subsection (2) in the amendment. It provides that: "Notwithstanding subsection (1), the actual amount paid by a lessee in a public market shall be 30% less the amount adjusted under Schedule 17, 18 or 19 after the Provision of Municipal Services (Reorganization) Ordinance has come into operation." I do not know on what basis is this written into the legal provision. Under this mechanism, there is a downward adjustment of rent after an upward adjustment. Under this mechanism, it implies that any adjustment upward of, for example, less than 30%, will actually be a downward adjustment instead of the original upward adjustment agreed. But the result is that rent will be adjusted downwards and nothing in this provision explains the basis for this. It only states that there will be a downward adjustment of 30%. So in this case, a downward adjustment of rent takes place instead of an upward adjustment. A clear explanation is wanting. I hope Honourable Members can look into this carefully.

Mr LEE shook his head just now, I presume he does not agree with what I say and his provision is not intended to mean that. Madam Chairman, can Mr LEE be given a chance to explain again? It is because he proposed his amendment very late and there was just one or two days after we received his amendment to prepare for a response. We simply had no time to find out more from him. If the Chairman could permit Mr LEE to elucidate on this, that will be of great use, because other Honourable Members would also be interested in listening to Mr LEE talking about how this should actually operate. If we wish to pass the amendment and make it part of our laws, we should know how this provision is to be applied.

I will stop here for the time being.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, please sit down first. As I understand it, the Secretary for Constitutional Affairs would like Mr LEE Wing-tat to explain his proposed amendment in respect of section 26AA. I wonder if Mr LEE Wing-tat would like to explain.

**MR LEE WING-TAT** (in Cantonese): I would be more than happy to comply. Madam Chairman, first, I find that it is unfair for the Government to blame me for submitting the Committee stage amendments to the Government belatedly. Frankly, the Bills Committee worked for six whole months and held 40 meetings. Even when the Government requested additional meetings, I dared not complain lest it should accuse me of delaying the deliberations on the provisions. On the morning when a report had to be submitted to Dr LEONG Che-hung, Chairman of the House Committee, the Bills Committee was still having a meeting. The Bills Committee was having a meeting on the very day when it had to report to the House Committee. The Bills Committee Chairman, Mr Andrew WONG, can testify to this. I did not make this up. The reason was because the Government had set a deadline to "scrap" the Municipal Councils within this year. This was the Government's doing, not mine. Therefore, it should not pass the buck to me. I have tried my best to finish the deliberations without objecting to any additional meetings proposed by Secretary Michael SUEN or Honourable colleagues. That is why I think it was an unfair criticism against me. I have only one secretary and I have

proposed so many amendments. I had to study the provisions, raise questions, attend the meetings and draft the amendments. We were hoping that the Government would give us its opinion, whether for or against our proposals, as soon as possible. Unfortunately, with respect to many important provisions, the Government only notified us one or two weeks before the deadline, saying that, "Mr LEE Wing-tat, I am sorry that I do not agree with you. Hence, the Government will not move an amendment." As a result, I had to work by myself that week. I thought about these amendments about rent even before I went to bed or when I was taking a bath. They were so complicated that I could not figure them out. I had talked many times with the Legal Advisers. I am very grateful to the Mr LEE Yu-sung, who helped me a great deal. I came to this conclusion only after thinking about it for a long time. Therefore, it was not my fault that the amendments were submitted belatedly.

Second, the fact that the amendments are hard to understand should not constitute a reason to oppose them. First, as I said, I did not come up with the proposal myself. I repeat, it is a policy that is being enforced by the USD. What I did was just to incorporate it into the provisions.

As the President said, she could understand the amendments when she made the ruling. I wonder why Mr SUEN did not ask the Director of Urban Services and his colleagues in the Urban Services Department. I did ask them and I talked to them personally on the phone. I have read several papers many times, including the Urban Council's "Committee Paper/Fin (I think it means Finance) 12896". The Secretary should have these papers too. I had let him read these papers before I submitted the amendments. He should be able to understand them, since they were written by his colleagues. I do not understand why he could not understand them. Assuming that he could not understand it — although I do not think so, but assuming that he could not understand it, what is the relevant mechanism all about? It is very simple. His first question was how the new market rent should be determined before the renewal of lease? As Mr Ambrose CHEUNG said, the new market rent would be the rate assessed by the Rating and Valuation Department. The new market rent may differ from the rent that is adjusted according to inflation. In the example that I used, the current rent is \$10,000, while the new market rent is \$15,000. If the inflation rate during the preceding three years was 10%, the Urban Council would recommend that the rent be increased by 10%. I think

Mr SUEN should be able to understand this. What he does not understand is, why are there some cases where the new market rent is 0.1% to 50% higher than the old rent, and there is no rent increase? Mr SUEN has got it wrong. Actually, it means that there is no additional percentage of adjustment. This is the method currently used by the USD. If the difference is between \$10,000 and \$15,000, there will be no additional adjustment. If the new market rent is between \$15,000 and \$20,000, that is, if the new full market value after adjustment is 50% to 100% higher than the original rent, the rent will be adjusted by one to two additional percentage points. This was copied from the method used by the USD and proved workable in our internal discussions. Just now he asked whether it means that there will be no rent increase. The answer is no. "Nil" means that there is no additional percentage of upward adjustment beyond inflation.

The Secretary went on to ask what the 30% reduction means. I have explained the question of the 30% reduction just now. Rent will be reduced by 30% after an adjustment on the basis of the Urban Council's current rental adjustment method. This is based on its relevant resolution. Those are my answers to Mr SUEN on these two points.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. I have also said that I can guess the meaning of that provision, but I need to see how it is written. The provision does not have the word "additional". The provision adds in section 79B(1), then there is a long paragraph which states that the rent payable shall be the lesser amount between the amounts stipulated in paragraphs (a) and (b). If the amount stipulated in paragraph (a) is lower, the rent shall be further adjusted in accordance with Schedule 17. That sounds clear enough and that is why I said just now that it should be clear to everyone. The provision also sets out that if the amount in paragraph (b) is lower, the rent shall be adjusted upward or downward with reference to Schedule 18 or 19. There is no mention of the word "additional". The provision states that according to Schedule 18 or 19, as I have said, the percentage adjusted is "nil". I know that I can guess what it means, but I was saying that it was not stated in the provision itself. There is no such word as "additional" there. There are only references to how adjustments are to be based. That is why I said we should make this clear, for the provision is not written in this way. So I have based my understanding on the wording of this

provision and that is how I have arrived at an understanding of it. If this is not the original meaning intended, then there will be a deviation from his original meaning in his amendment.

Perhaps I would like to respond to the remarks made by Mr LEE Wing-tat at the beginning just now. I was not blaming him, I was saying that I did not have the time to talk with him beforehand and try to find out what the meaning of these provisions was. I have indeed tried to do so, but I have been very busy during the past few days. Mr LEE was very busy too. We did not have a chance to clarify this point which I think is very crucial. The word does not appear in the text. We cannot say that since there is no such word, the implied meaning is such and such. If this is so, that would give rise to a lot of legal disputes.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, you may now speak.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I disagree with Mr SUEN's analysis. After finishing drafting these amendments, I went through them with our own legal adviser, that is, the Democratic Party's legal adviser. He said they could achieve the desired effect. Of course, I do not blame the Secretary for not understanding their content when reading them. Even though he said he could not understand the drafting of my amendments, they could be submitted by virtue of the ruling.

I can only stress that after finishing drafting the amendments, we discussed them with the Democratic Party's legal adviser, who said they could achieve the desired effect. I am not a lawyer myself. I thought that they were clear enough and hoped that colleagues would act on this basis. If the Government really could not understand them — I really have no idea why they could not understand them, since the proposal was made by the USD, not me. I have stressed again and again that I did not make this up. It was proposed by the USD. It was submitted by the USD to the Urban Council and passed. I merely made them into legal provisions.

If the Secretary accepts my suggestion, he has not said it yet. Mr SUEN did not say whether he accepts my suggestion. He merely said he could not understand the provisions proposed by me from a technical point of view. I hope that if he supports my proposal, the Government will urge colleagues to support me. If he really could not understand the drafting and if he has a better legal adviser than the Democratic Party's legal adviser, he could amend it later by adding words like "additional". This is workable.

So, I hope that Mr SUEN will not conceal his stand. Madam Chairman, the Government must state its stand clearly to this Council, that is, whether it accepts the Urban Council's existing mechanism for determination of market stall rentals. If not, the Secretary will no doubt urge colleagues to oppose me. If he agrees with my amendments, I will not argue with him about whether the provisions are comprehensible. After the passage of the Bill, the Government has the right to give notice to the President announcing its intention to move minor amendments to my provisions at a certain stage. I know he will have enough time. As far as I know, the majority of the market stalls of the Urban Council and the Regional Council will not be due for rental adjustment until March or April 2000.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to respond to Mr LEE Wing-tat's argument?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Actually I have not quite finished my speech and what I have done just now is merely exchanging my views with Mr LEE Wing-tat on the specific provisions. Our position is that we consider the second point raised just now, that is, the 30% issue, totally unacceptable. For there are no rational grounds for it. We think that there are no more grounds to support prescribing in the legal provision a further reduction of 30% of the rent payable which is already on the low side, for that will entail a greater amount of subsidy to be made out by the Government to market stalls. That is in our opinion, not an effective way to use public money. So we are opposed to it. Our position is that operating a market stall is a commercial behaviour and when rent is to be adjusted, we

should follow as much as possible the market trend. If the method of rental adjustment is prescribed by law, the whole mechanism will lose its flexibility and the Director will be unable to exercise his discretion to adjust rents according to the special needs of the stall tenants. It is because of this reason that we are strongly opposed to this amendment. I urge all Honourable Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, please reply.

**MR LEE WING-TAT** (in Cantonese): Thank you for letting me speak again. I will be very brief. In my view, Mr SUEN is wrong in saying that there is no basis for reducing rent by 30%. Last year, all members of the Regional Council agreed to this and many colleagues in this Council have also made this demand. Why would I want to incorporate it into the law? It is also because of a fear on my part. According to Mr SUEN, the most important thing is the basis for the Government's calculation of rent. It will calculate rent on the basis of the full market value. I am not trying to threaten Members when I say that if they negative my proposal, the Government will have the right to increase the rent of stalls by 50% to 100% over the next three years. At present, to a certain extent, the Government is not collecting 100% rent from the great majority of market stall tenants of the Urban Council and Regional Council. I do not deny this. One might call it subsidy and what not. But the Government is not collecting 100% rent. Apart from tenants who won the first bids for stalls through public tender, most other tenants are not paying 100% rent. They have told the Legislative Council and the two Municipal Councils of their hardship. This is not only the case with markets under the Urban Council or Regional Council. It is also the case with markets under the Housing Department or private markets. Private markets also have no way out and are struggling hard. As far as I can see, the stall tenants in private markets are having a hard time because they have to compete with two to three big chains.

If rent is adjusted according to the full market value and the Director is allowed to flexibly adjust rent, and if there is no reduction by 30%, I am sure that the over 10 000 tenants will have to face a wave of rent increases next year. The rate of increase may be very scary. I hope that colleagues will put

their argument aside. I urge Members not to support the Government's decision. Instead, they should think of the over 10 000 tenants. At present, they might be paying a rent of \$10,000, while the full market value is \$20,000 or \$30,000. If we give the Government this power, I very much fear that there will be a wave of huge rent increases next year.

Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please check their votes.

**CHAIRMAN** (in Cantonese): Are there any queries? If not, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr Ronald ARCULLI, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mrs Miriam LAU, Mr Timothy FOK and Mr FUNG Chi-kin voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, 10 were in favour of the motion and 15 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 12 were in favour of the motion and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of sections 2A, 30A, 40A, 49A, 49B and 49C to Schedule 3, and the amendments to sections 5, 16, 28, 47, 50, 52 and 56, as set out in the paper circularized to Members. I urge Honourable Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**CHAIRMAN** (in Cantonese): The Secretary for Constitutional Affairs has given notice that he will move to add new section 26A and to amend section 615 to Schedule 3. Mr Fred LI has also given notice that he will move to add new sections 26A and 615A to Schedule 3.

The Committee will proceed to a joint debate. I will invite the Secretary for Constitutional Affairs to move his amendment first, for he is the public officer in charge of this Bill.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 26A and the amendment to section 615 to Schedule 3, as set out in the paper circularized to Members.

In the discussions made in the Bills Committee, some Honourable Members were concerned that the Bill did not provide for any channel for appeal to enable the lessees of stalls in public markets to lodge appeals in respect of leases. We now propose to add section 26A to Schedule 3 in order to amend section 80(1) of the Public Health and Municipal Services Ordinance, to specify that the lessees of stalls in public markets may appeal to the Municipal Services Appeals Board against any decision to terminate the lease, licence or permit.

We also propose an amendment to section 615 in Schedule 3 to stipulate this channel for appeals in Regulation 6(1) of the Public Market Regulations.

I urge Honourable Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**CHAIRMAN** (in Cantonese): I will call upon Mr Fred LI to speak on the amendment moved by the Secretary for Constitutional Affairs as well as his own amendment. However, no amendment may be moved by Mr Fred LI at this stage.

**MR FRED LI** (in Cantonese): Madam Chairman, when the Bills Committee deliberated on clause 26 of the Bill and section 615 of Schedule, the Government did not propose any amendment to the regulations in relation to markets. In the meetings, we asked why the Municipal Services Appeal Board could not deal with disputes in respect of the leases, licences and permits of public markets, and why it could not deal with appeals in respect of rent. After a series of discussions, as Secretary Michael SUEN said just now, the Government agreed to add provisions on appeals in respect of leases and so on. Members have seen the Government's amendment. However, the Government has all along refused to add in an appeal mechanism in respect of rent. That is why I have to propose this amendment.

In response to my amendment, the Government has said that rent is a charge on commercial activities and the principle of subsidy should not apply. The Government's comment implies that the rent of stalls in many public markets in the urban areas and the New Territories in Hong Kong might be greatly increased in future. Even if we put this aside, the Democratic Party and I are of the view that appeals can certainly be lodged against rental adjustment. At present, the Provisional Regional Council has a select committee to deal with appeals by individual tenants in respect of rent. In fact, over the years, not many tenants have appealed to the Provisional Regional Council. Therefore, even if my amendment is passed, the new Municipal Services Appeal Board will not necessarily face a wave of appeals by tenants, as the Government fears.

Madam Chairman, just now, Mr LEE Wing-tat's amendment to add in a rental adjustment mechanism was negatived. Our two amendments in fact provide a double safeguard. Unfortunately, Mr LEE Wing-tat's amendment in respect of a rental adjustment mechanism was negatived. In future, all rental adjustments will be decided by the bureaucrats. My amendment would give tenants a chance to appeal if they are dissatisfied with the rent level. However, the Government again opposes it. I urge Members to consider this. It does not matter if they have negatived Mr LEE Wing-tat's amendment. But they should support my amendment, since it would provide at least one safeguard. I hope they will consider it from this point of view.

Some think that as rent involves an assessment of the market value, it is a very complicated issue. Since it would be impossible for members of the Appeal Board to understand the matter and decide whether the rent is fair, they should not be made to handle such appeals. In my view, this argument is invalid and untenable. First, members of the Municipal Services Appeal Board are appointed by the Government. If it has to deal with appeals against rental adjustment, the Government could appoint surveyors or other persons to the Board. Members of the Provisional Urban Council have approved the proposal made by the USD which Secretary Michael SUEN considers to be very complicated. In fact, the rental adjustment mechanism proposed in the amendment by Mr LEE Wing-tat just now is the same as the one adopted by the Provisional Urban Council. It was proposed by government officials and approved by members of the Urban Council after consideration. What is so complicated about it? It is not complicated at all. Maybe they just had too little time to consider it. The mechanism already exists. I see no reason why we should worry that members of the Municipal Services Appeal Board would

be incapable or that the matter is so complicated that they are unable to handle appeals against rental adjustment.

Given that the Government has now full power to determine rent and Mr LEE Wing-tat's amendment has been negated, I hope there can be a mechanism for appeal. I recall that in the course of the deliberations of the Bills Committee, Mr Ronald ARCULLI mentioned that there should be a mechanism for airing views, instead of letting the Government decide everything after the Councils are "scrapped". The Government fails to indicate how rent will be assessed, except that it will be dealt with by the Rating and Valuation Department. I believe many Members have misgivings about how the rent is assessed by the Rating and Valuation Department. If the future Director of Food and Environmental Hygiene listens only to the Rating and Valuation Department's suggestion and calculates all rents on the basis of market value, the consequences will be unimaginable. If tenants find the rent unacceptable, the stalls will probably not be leased out. That has always been the Government's attitude. If tenants find the rent too high, they do not have to rent the stalls. The Government will not care even if the stalls remain vacant. Maybe it will worry a bit when the Audit Commission finds out. Otherwise, it will not care, since it is not its money. Let them remain vacant! Even if tenants use the stalls as warehouses or play mahjong there, the Government will not care as long as it can collect the rent. If no rent is paid, it will resume the stalls. It will not mind if they cannot be leased out. Do we wish to see such a state of affairs?

My amendment is quite simple and not as complicated as the one before. Since the Government has accepted our suggestion to allow appeals to be made in respect of leases, why can it not go one step further and set up a mechanism whereby tenants can lodge appeals? Tenants of the Urban Council markets are not big businessmen or big companies. They just run a small business and hope to have a channel for appeal. The appeals will be determined by the Municipal Services Appeal Board. Why should the Government suppress such an appeal mechanism?

I hope Honourable colleagues will take my amendment into serious consideration and support it, so that the functions of the Municipal Services Appeal Board will include dealing with appeals in respect of rent. The Appeal Board members to be appointed by the Government will of course include the chairmen and vice-chairmen of the 18 District Councils. The Government has given its word. Since I trust Secretary Michael SUEN, I will not be proposing

an amendment to this provision. These people and other professionals will determine the different appeal cases on behalf of the community. I hope that colleagues will support this amendment.

I so submit.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by the Secretary for Constitutional Affairs as well as the amendment by Mr Fred LI.

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

**MRS SELINA CHOW** (in Cantonese): Madam Chairman, over the years, I have dealt with many such cases and some tenants have come to me for help. Even before I became a representative of the Wholesale and Retail Functional Constituency, I had already helped to deal with many such cases. Undeniably, the determination of rent has to do almost with the life and death of small commercial tenants. From the many cases I have dealt with, I understand that government departments and commercial tenants have very different views over this question. They might even get some professionals to argue about it, but to no avail. That is why I very much agree that there should be an appeal mechanism in respect of the determination of rent, so that these commercial tenants can have a chance to appeal.

Just now, I failed to persuade fellow Members of the Liberal Party to support Mr LEE Wing-tat's amendment, since they were against having the mechanism written into law. However, this does not mean that they do not think the actual circumstances of tenants should be considered as far as possible when rent adjustment is made. They just do not agree to putting down the principle in legislation. I am very glad to tell Mr Fred LI that I succeeded in persuading the Liberal Party to support his amendment. In fact, the Liberal Party already expressed support for this in the course of the deliberations of the Bills Committee. We think there is a great need to set up this channel so that small businessmen will have a fair chance of appeal.

I am very glad to report that I and other Members of the Liberal Party will support Mr Fred LI's amendment.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, the Government has kept telling us that after the new framework has been established, everything will remain unchanged and services might even improve. But this example clearly shows that it is not true.

When the new framework is established, rent will be determined by a different authority. Today, Secretary Michael SUEN has indicated clearly that the existing rent policy would not be adopted. The existing policy might be continued for a short period. But he hinted that it would soon be reviewed and changed.

Another thing that worries me even more is that if the rent determined by the Government differs greatly from the rent under the existing policy, commercial tenants do not even have a chance to appeal, since the Government wants to abolish the existing appeal mechanism as well.

I would like Members to consider what the reality is. The small businessmen in markets are mostly elderly people who have to pay a rent of \$3,000 to \$4,000, while earning perhaps \$5,000 to \$6,000 per month in the whole process. This might not be enough for a living. A household might need \$10,000 for its upkeep. A tenant might earn \$5,000 to \$6,000 from the stall and make up for the shortfall with his savings, with about \$3,000 to \$4,000 each month. We can see why they suffer from such hardship.

Under the new policy proposed by the Government, the mechanism for rent determination will be transferred from a municipal council to the Government's bureaucratic structure. This is a significant change. We have expressed our concern that the Government has a philosophy of rent determination that is different from that of the Municipal Council. In addition, the Government not only opposes the existing rent policy, it does not allow people to have a different opinion and to make appeal.

In the course of the deliberations on the Bill, we made the suggestion that if the Government did not consider the Municipal Services Appeal Board to be a suitable channel to handle appeal matters, it could consider leaving such

matters to the public health advisory committee within the new government framework. The Government can set up an appeal group responsible for public health under the advisory committee. The Government's advisory committee will be composed of professionals and persons well versed in matters of environmental hygiene. It will have some professionals knowledgeable in environmental hygiene and other matters related to markets who can help the Government formulate its policy. But since the Government is unwilling to devolve its power to any independent committee, it refuses to accept this suggestion.

Actually, as we can see, the Government does see the significance of rent. The Government understands that rent is an important factor for any business, large or small. The Government certainly knows that even for a very large business, rent needs to be subsidized through a different mechanism. In the case of Disneyland, it is rationalized through a special shareholding arrangement which will postpone the payment of rent for 25 years. Why can the Government not understand the plight of small businessmen of market stalls? The new framework is like an impregnable bulwark, since the Government makes all the decisions about rent and allows no appeal to be made. I cannot agree that this is fair or better than the existing policy or framework.

Thank you, Madam Chairman.

**PROF NG CHING-FAI** (in Cantonese): Madam Chairman, from the point of view of public administration, it is appropriate and healthy to have an appeal mechanism. I am prepared to support Mr Fred LI's amendment.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, in the meetings of the Bills Committee, we have carefully considered the proposal made by the Bills Committee to enlarge the purview of the Municipal Services Appeals Board.

In accordance with the suggestion made by the Bills Committee, we agreed to include appeals made against any decisions to terminate the lease, licence or permit of market stalls into the purview of the Appeals Board. However, we find it hard to accept the proposed appeal mechanism for rent. The proposal is not a proper one because:

First, the relevant authority must in future refer to the Current Market Rent as assessed by the Rating and Valuation Department with regard to every attempt to adjust rent for market stalls. As the Rating and Valuation Department is in full grasp of information on Current Market Rent, so it is a fair and reasonable mechanism to use the Current Market Rent as assessed by that Department as a basis for determination.

Second, if in future for any reason an operator of a market stall objects to the Current Market Rent assessed by the Rating and Valuation Department, he may lodge an application for review. When the Rating and Valuation Department makes a reassessment of the Current Market Rent, the statement submitted by the stall operator shall be considered. As a matter of fact, this is precisely the vetting system used by the Provisional Urban Council, and it has been running smoothly.

Third, if disputes on rent adjustment are given to the Municipal Services Appeals Board, this may lead to a great increase in the number of cases handled by the Board and hence the handling of other appeals against municipal services may be delayed.

In view of the above reasons, we oppose this amendment. I call upon Honourable Members to support our amendment and to vote against the amendment proposed by Mr LEE.

**MR FRED LI** (in Cantonese): Madam Chairman, I just wish to make one more sentence for fear that colleagues may not understand. I wish to repeat that the Government's amendment has to be negated first before my amendment can be put to the vote. Therefore, I hope colleagues will negative the Government's amendment. Thank you.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, just now the Secretary said that the mechanism for rent determination under the Urban Council through the Rating and Valuation Department is working well. I wish to add that this is not true. Over the past two to three years, we have noted that it is not working well. That is why we have been conducting reviews and discussions. In fact, we are still reviewing it.

In my earlier speech, I also mentioned that the Rating and Valuation Department is not employed to make assessments on a remunerative basis. That is why its expert assessment reports cannot compare with the average expert report. The Secretary will understand if he reads the so-called data submitted by the Rating and Valuation Department carefully.

Thank you, Madam Chairman.

**MRS SELINA CHOW** (in Cantonese): Madam Chairman, I also wish to talk about the assessments made by the Rating and Valuation Department.

I wonder if the Secretary knows that they arouse a lot of questions. The Rating and Valuation Department very often takes no heed of experts employed by others. In the former Legislation Council or in respect of cases that I have dealt with, the Rating and Valuation Department was often required to answer questions. However, it could never provide satisfactory answers. Therefore, we cannot throw the ball to the Rating and Valuation Department's court, saying that it provides professional assessments and is trustworthy, and that it will make assessments that are fair and acceptable to the commercial tenants.

**CHAIRMAN** (in Cantonese): Just now I let Mr Ambrose CHEUNG and Mrs Selina CHOW speak, because I had allowed Mr Fred LI to speak. However, the remarks made by both Members should have been made during the debate. Will Members please try to say everything they wish to say during any such debates later on? Secretary for Constitutional Affairs, do you wish to reply?

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

**CHAIRMAN** (in Cantonese): Mr LEUNG Yiu-chung, do you wish to speak too?

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam Chairman, I beg your pardon, because I heard the Secretary say that the present mechanism for market rent determination is working well, and I disagree. According to my experience, every time the rent of the markets under the Regional Council is adjusted, nine out of 10 stall tenants oppose it, mainly because they find that the rent assessed by the staff of the Rating and Valuation Department is extremely unfair. Usually .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, your speech is very similar to the speeches of Mrs Selina CHOW and Mr Ambrose CHEUNG. It is our usual practice to end the debate and proceed to voting after the mover of the motion has replied. But if you have any new points to make, please state them briefly.

**MR LEUNG YIU-CHUNG** (in Cantonese): Actually, I do not know whether it is a new point. What I mainly wish to say is that I disagree with what the Secretary said. *(Laughter)*

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

(Members raised their hands)

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

(Members raised their hands)

**CHAIRMAN** (in Cantonese): I think the question is not agreed by a majority of the Members present. I declare the motion negatived.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Constitutional Affairs has been negated, I now call upon Mr Fred LI to move his amendment.

**MR FRED LI** (in Cantonese): Madam Chairman, I move the addition of new sections 26A and 615A to Schedule 3, as set out in the paper circularized to Members.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**CHAIRMAN** (in Cantonese): The Secretary for Constitutional Affairs and Mr Fred LI have separately given notice to move an amendment to section 61 of Schedule 3.

Committee will now proceed to a joint debate. I will first call upon the Secretary for Constitutional Affairs to move his amendment, as he is the public officer in charge of the Bill.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to clause 61 in Schedule 3 as set out in the paper circularized to Members.

At present, all kinds of appeals which can be lodged with the Municipal Services Appeals Board are subject to a specified time limit. However, there is no such time limit on appeals from the public concerning objections against the building of crematorium in certain locations. We therefore propose to amend subsection (4) in section 124D of the Public Health and Municipal Services Ordinance to specify the time limit to 30 days.

I urge Honourable Members to vote in support of this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**CHAIRMAN** (in Cantonese): I shall invite Mr Fred LI to speak on the amendment proposed by the Secretary for Constitutional Affairs and on his own amendment. However, Mr Fred LI may not move his amendment at this stage.

**MR FRED LI** (in Cantonese): Madam Chairman, I hope that Members will support my amendment.

When the Bills Committee deliberated on this provision, we found that the original provision was directed against crematoria run by the private sector or other organizations. If someone wants to build a crematorium near people's dwellings, he must obtain the approval of the Government and the residents living nearby. If someone raises objection, an appeal can be made. However, Madam Chairman, the problem is that the original provision does not regulate the addition of facilities which are directly related to the burning of human remains, that is, cremators (rather than the addition of toilets and

washing basins), in a government crematorium or a private crematorium or other premises, such as a temple. We think that it would be unfair if residents are not given a channel of appeals.

Let me quote a live example. The Diamond Hill Crematorium is a government crematorium. Six of its cremators have been used to burn human remains for many years. There have been many complaints from residents of the district against the crematorium, who say that they can smell the smell of the corpses and the smoke. The cremators are very old and not environmentally friendly. Since the Diamond Hill cremators were built a long time ago, the Government proposed to upgrade the six cremators and build six more, that is, double the original number. While the Wong Tai Sin District Board was totally against this plan, the Government ignored it. When the plan was submitted to the Urban Council, it was fortunately opposed by some Urban Council Members. As a result, the plan to add six cremators was rejected. If the Urban Council did not exist, I do not know what could have been done. The Government would have added the cremators. I cite this example to bring out one question, that is, if the Urban Council did not exist, the Government would have added the six cremators. Could the residents nearby say anything to that? They could. They could raise it again at the Wong Tai Sin District Board and object to it again and again, and then what? The Government would still carry out its plan, just like the time before. The Government knew that the Wong Tai Sin District Board had unanimously opposed it, whether members of the Democratic Alliance for the Betterment of Hong Kong (DAB), the Democratic Party or the Hong Kong Progressive Alliance. Still, the Government submitted the plan to the Urban Council. Fortunately, the Urban Council was there as a gatekeeper and it was vetoed. But what if the Urban Council did not exist? Even if the Wong Tai Sin District Board still opposed it, the additional cremators would have been built, since there was no longer any gatekeeper.

My request is quite simple. If something like this happens, there should be an appeals mechanism for the nearby residents. I am only talking about appeals. The appeals mechanism does not have a veto power. It just gives affected residents a chance to appeal. To whom can they appeal? They can appeal to the Municipal Services Appeal Board. This is what my very simple amendment is all about. The Government merely makes a slight amendment by laying down the deadline for appeal, while ignoring our repeated demand made in the Bills Committee for hearing of objections raised by nearby residents. I wish to stress again that one cannot object to existing facilities or

facilities under construction. But what if the Government suddenly wants to double or triple the number of cremators? In my view, the Government is being a bit misleading. In the papers that the Government submitted to Members, it asked what is to be done if the people object to small-scale improvement works. I am not talking about improvement works. I have made it clear that I am just targeting at the facilities for burning of human remains, since the residents nearby are most concerned about this and are most likely to complain about this. I have absolutely no intention of setting up a mechanism for people to appeal against and object to works of improving the neighbourhood environment, such as planting a few more trees or building an extra toilet. I am just talking about cremation facilities. My amendment is also very clear. I thank the Legal Advisers for sorting out the legal provisions and making them quite clear. If someone misconstrues my amendment, he is challenging the Legislative Council's Legal Advisers, who wrote and drafted the amendment for me. I hope that Honourable colleagues will support my amendment. Of course, just as in the earlier procedure, the Government's amendment must be negatived first before I can move my amendment. Its purpose is to enable residents nearby to appeal against the addition of facilities for burning of human remains by the Government. These are my remarks. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by the Secretary for Constitutional Affairs as well as the amendment by Mr Fred LI.

Does any Member wish to speak?

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, since I am not one of the Members deliberating on this Bill, I might be able to make a few fair comments. However, I am speaking from my own experience. In my own constituency, as Mr Fred LI said just now, when the Government made its proposal on the cremators of Diamond Hill, the whole Wong Tai Sin District Board was unanimously against it. However, the Government took no heed of it in the end.

Although the Government's proposals are very often passed by the district boards, what can the district boards do as consultative bodies under similar circumstances? I wish to say to the Secretary that the Hong Kong

Federation of Trade Unions (FTU) will support the "scrapping" of the Municipal Councils. As I said yesterday, we already thought the structure redundant and unnecessary in the '80s. However, the question is, where should these powers be vested? Frankly, I do not trust the Government. I have worked in the lowest tier of the representative system before, and I have often been incensed by the way the Government handles things. That is why I and the FTU will support Mr Fred LI's amendment. In my view, a complaints mechanism should be set up in the middle. With a complaints mechanism, I believe it will be fairer. Even if the councils are unanimously agreed, when we have no legislation to bind the Government to listen to our views, I have to put my trust in such an arbitration mechanism.

Madam Chairman, I support Mr Fred LI's amendment. Thank you.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak in reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I have listened to the views expressed by two Honourable Members, may I ask them to consider the reasons I am going to give.

The Government does not support this amendment. The reason is that all recently completed crematoria or incinerator facilities which have been added on a substantial scale to existing crematoria have to undergo environmental impact assessment under the Environmental Impact Assessment Ordinance. The relevant projects can commence only after an environment permit is issued. The relevant provisions have served to ensure that such kind of application shall comply with stringent procedures and that the public will have ample opportunities to make their views known. The Administration will consult the relevant organizations before a decision is made. Should the Government wish to add new facilities in crematoria, funding approval would be sought from the Finance Committee of the Legislative Council. Honourable Members will then have another opportunity to consider the views from the public before a decision is made.

To sum up, we think that there are already ample channels whereby public opinion can be considered, hence there is no need for an appeals channel as this will create an overlapping of the procedures. I therefore call upon Honourable Members to vote against the amendment proposed by Mr Fred LI.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Fred LI rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Fred LI has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): I wish to remind Members that voting is now being made on the amendment moved by the Secretary for Constitutional Affairs. Please check your votes.

**CHAIRMAN** (in Cantonese): Are there any queries? If not, 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, Dr LUI Ming-wah, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr MA Fung-kwok, Mr HUI Cheung-ching, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mrs Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr Martin LEE, Mr LEE Kai-ming, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Dr LEONG Che-hung, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr Andrew WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

Miss CHOY So-yuk and Dr TANG Siu-tong abstained.

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

THE CHAIRMAN announced that there were 50 Members present, 20 were in favour of the motion, 27 against it and two abstained. Since the question was not agreed by a majority of the Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Constitutional Affairs has been negatived, I now call upon Mr Fred LI to move his amendment.

**MR FRED LI** (in Cantonese): Madam Chairman, I move the amendment to section 61 of Schedule 3, as set out in the paper circularized to Members.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to the proposed definition for "prescribed fee" as set out in paragraph (d) of section 1 of Schedule 3, section 63 and the addition of new section 94A to Schedule 3, as set out in the paper circularized to Members. I urge Honourable Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, in the course of our deliberations on this Bill, we had discussed a particular subject for a long time, and it was about the prescription of fees and charges for recreational, sport and cultural services. We know that these fees and charges collected by the Municipal Councils, such as those for facilities like swimming pools, the hire of turfed football pitches and other sports facilities like tennis courts, basketball courts and so on, are all determined by the elected members of the Municipal Councils.

We also know that some of the cultural and recreational events are heavily subsidized by public money. The new theatre in the Kwai-Ching area recently opened under the Regional Council invited a famous theatre company from Britain to stage Shakespeare's play, *The Taming of the Shrewd*. The proceeds from the admission fees failed, I think, to pay for the expenses of inviting this company to Hong Kong. In the past, this policy, that is the amount of subsidization for cultural and recreational activities, was determined by the elected members of the Municipal Councils. During the Bills Committee stage, the Democratic Party felt that some of the cultural events might stand a chance of recovering the costs incurred, and such events include, for example, those large-scale international events seeing participation by famous performers. In fact, most of the recreational and cultural activities are patronized by the general public. For example, parents only need to pay \$15 to \$16 to bring their children to the swimming pools for a swim during summer. Some young people will hire one of the tennis courts for a game of tennis, or they may like to join some cultural and recreational activities organized by the municipal services departments. The Democratic Party therefore seeks to formulate a sound policy to ensure that the Government will not increase these fees and charges arbitrarily.

We are doing this in fact on the same grounds we hold on the question of rent for market stalls earlier in this deliberation. Our proposals in respect of this particular issue have been turned down by the Government. The situation is somewhat better on the question of fees and charges for cultural and recreational services. Some of our suggestions have been adopted by the Government. It can be said that the Democratic Party has successfully gained a say for the public in the prescription of fees and charges for cultural and recreational activities in which tens of millions of people take part every year. These activities are, for example, football, swimming, table tennis and some cultural and recreational activities held in the City Hall which are very popular among the public. In this connection, I wish to thank the Government for adopting my views. Today we may be supporting a government motion for the first time and we are doing this because the amendment will benefit those who take part in cultural and recreational activities. However, we shall also allow the newly established department to determine some of the "prescribed charges" in accordance with criteria close to the market situation, and we will not necessarily oppose this.

As we have just said, in the debate we will put forward some reasonable demands. We will not ask the Government to include the admission charges of some concerts featuring certain singers into the scope of regulation of those "prescribed charges". We will not put forward such a demand because the rate of those charges is entirely dependent on the popularity of those singers and whether their fans are willing to pay that rate. We do not plan to impose any regulation on the charges for some of those operas or concerts performed by internationally famous groups. However, there are two areas which we think lacking a clear definition. First, how to delineate those cultural and recreational activities which should not be subsidized. Different people may have different opinions on this. Certain activities are quite obvious. For example, fees for activities like swimming should be subsidized. Concerts by certain singers should not receive any subsidies because the fees will be determined by market demand. However, there may be cases falling in the middle of these two extremes and it is difficult to make a decision. Certain activities may not be that popular, but the Government wants to promote them. I hope the newly established department will deal with this in a practical way.

Second, I also agree to the view that some of our sports and recreational venues are not well-utilized. There are some sports complexes which do not have modern facilities and they fail to reflect the amount of investment made by the Government. I think we should give the Government greater flexibility in dealing with problems related to these venues for sport and cultural activities.

Although we may not like the appointment procedures for members of the Cultural Commission and some advisory bodies for some sports facilities, I hope that more consultation can be held in this regard. When it comes to prescribing fees and charges, the affordability of the public must not be overestimated. This is the first point I wish to make. The second point, we wish to express our worries for the lack of a sound system to regulate the fees and charges for activities organized by groups. There is no system by which the Government can allow us to vet the fees and charges of these activities. I am worrying about the activities organized by district organizations. Mr Andrew WONG, the Chairman of the Bills Committee often mentions some district drama groups or Cantonese opera groups. Currently, they may use the community halls free of charge. I hope this principle can be upheld. I can feel that there are many middle age people and young people who are very keen on taking part in community cultural activities. They will very much want to participate in such activities. They may not be interested only in performance.

They enjoy organizing activities for the public. One good example is that there are some Cantonese opera groups in some public housing estates. These people pay some musicians out of their own pockets and hold practice sessions once every one or two weeks. Then after six months or a year they will hold a Cantonese opera evening and invite the elderly people in the district to be the audience. These performers will gladly put on some beautiful and shining traditional costumes and sing. They sing really well. They also put up a curtain on the stage and everything is done very seriously. I have attended these performances as well. One good thing about these performances is that the people of a community may take part in certain healthy recreational and cultural activities. If these groups wish to apply to use some of the public cultural venues, whether these be community centres or other venues, I hope the Government will deal with their application in a considerate and compassionate manner and will not charge them rentals at full market value as Mr SUEN has said just now. He sounded very terrifying.

Another issue is about sports complexes. We know that the sports complexes operated by the Municipal Councils do not charge full market prices. A large portion of the expenses of sports complexes is used in maintenance work. Turfing, for example, is very expensive. Many district groups, like sports and youth groups, will organize some activities from time to time. Though this Bill is silent on the criteria for charging these kinds of groups, I hope the current criteria will be used. I hope the Government can be more considerate to groups which promote sports at a district level as well as those neighbourhood groups. They should not be charged full market prices. I hope the Government can continue to let them use these facilities and charge them a concessionary price so that the public can use the sport complexes, the swimming pools and such like venues. Thank you, Madam Chairman.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, on the question of charges for recreational, sport and cultural venues, I think that the fundamental issue at stake is most of the powers are now being transferred from a representative assembly to the Government. I understand that the aim of the Government in proposing the amendment is to submit the policy concerning the charging of fees which are directly related to the people's daily life to deliberation by the Legislative Council. As for the charges concerning performances of a cultural or artistic nature, the Government sticks to a flexible approach and let the authorities concerned to set their own charges.

I have risen basically to express my worries. I hope that my worries will not realize in future and that these problems can be solved by the Government in due course. I think the Government should make an undertaking now because, in the consultant's report, it is clearly written and proposed that the Government should set up some advisory committees on the policies regarding management of these venues, their charges and subsidization. These committees are also charged with the task of monitoring these matters but the Government has not made any specific undertaking. In such circumstances, we do not know if these advisory committees will really be set up later. As far as I know, we have only two advisory committees now, that is, the Heritage and Culture Commission and an advisory committee on public hygiene. However, insofar as recreation is concerned, we cannot see any specific undertaking given by the Government and there will not be any committee on this to advise the Government on matters in relation to recreation, culture and sports and to monitor the Government's determination of charges. With such a committee, we can at least have an independent body to voice its opinions to the Government.

On the other hand, we are very concerned because the consultant's report also mentions many recreational and cultural activities organized at the district level. What the consultants have done is to make an assessment according to the principle of cost-effectiveness. Thinking that the attendance rates of certain cultural and recreational activities are not that high, they have questioned their cost-effectiveness. If this is the case, the consultants suggest that resources in these areas should be cut and some of these activities can be stopped. But in fact the main purpose of these activities is to provide some kind of service and cost-effectiveness is not the only criterion by which we assess each item of service. I think our Government will certainly look into the so-called effectiveness of these cultural and recreational activities as services. In the course of our discussions, the Government repeatedly mentioned that the purpose of setting up the new organizational structure is not to cut resources or to lower costs, but to enhance efficiency and streamline the existing structure. Resources and subsidization will not necessarily suffer any reduction. With regard to these subvention and subsidies, I hope concrete details on their amount can at least be set. It is because of this that we have had very lengthy discussions with the Government in the Bills Committee, hoping that some concrete undertaking could be made by the Government so that at least the current level of subsidization will not be reduced. In other

words, we hope that should the level of subsidization appear to have a direct impact on the charges to be collected from these activities, the Government will not reduce the level right away without consulting the Legislative Council. The amount of government subsidization will affect all the items of charges mentioned in Schedule 3 to which the Government has been referring, but there is no concrete undertaking given by the Government on the level of subsidization.

In such circumstances, even if the existing policy remains unchanged, there will be no undertaking from the Government in the near future. All we hear from the Government is that a review will be made, that the matter will be handled flexibly, that the public should have confidence in the Government, that the Government will take public opinion into consideration and that the charges will be set with regard to the affordability of the public and the matter will be submitted to the Legislative Council for discussion. All these remarks will be put on the record today. However, I am very much worried if these remarks will materialize. These will have to depend on how the matter is to be followed up and put into practice. After the power to set these charges is taken up by the Government, will a bureaucratic framework be charged with the responsibility to make decisions? Will some committees be set up to oversee the level of charges set by the Government? Last but not least, when these charges are to be determined, how can the Legislative Council be effectively consulted so that it can give some advice to oversee the operation of the Government? Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, you may now reply.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. I am very grateful for the valuable advice which Honourable Members gave us when they were deliberating on the Bill. We have drafted this amendment after taking the valuable advice into consideration. That shows that there is a basis for co-operation between the Government and the legislature. And very often we can work out something which is acceptable to both parties.

Mr Ambrose CHEUNG expressed the hope just now that his views can be put down on record. I can say that we will certainly consider his views carefully. Perhaps I can point out that the new department has a certain consultative structure in place. It will be responsible for work in relation to the use of the venues concerned and other related matters. We will hold extensive consultation in this respect. The members of that consultative structure include members of the public, professionals and service users.

As for the subvention policy, we will continue with the existing policy and we will not necessarily insist on a full recovery of the costs. Members can therefore rest assured. We will not prescribe the fees and charges by basing on the full recovery of costs alone.

We will consider all the details carefully and we will follow up with Honourable Members in due course or in the meetings of the relevant Panels.

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

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 64A and the amendment to section 66 in Schedule 3, as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment***Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to sections 75, 88 and 91 in Schedule 3 and the addition of new sections 83A and 89A in Schedule 3, as set out in the paper circularized to Members. I urge Members to support the amendments.

*Proposed amendment***Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to subsection 83B of the proposed Third Schedule in section 84 of Schedule 3, and the amendment to section 87 of Schedule 3, as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that section 84 in Schedule 3 be further amended, as set out in the paper circularized to Members. I urge Honourable Members to support the amendment.

*Proposed amendment***Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to sections 100, 146, 148, 149, 151, 157, 158, 165, 167, 174, 175, 219 and 224 in Schedule 3 and the addition of new section 149A in Schedule 3 as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment***Schedule 3 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I wish to ask a question. If I remember correctly, these amendments have to do with occulting signs. At the second last or third last meeting, Deputy Secretary Mrs CHAN proposed an amendment to allow business operators to display

occulting signs. I raised a question at once. Of course, there is strict legislation governing this. So far, occulting signs are not allowed to be erected in Hong Kong, since they may distract drivers' attention. We carried out a debate on this at that time and I urged the Government to consult the Transport Bureau, the Transport Department and the Legislative Council's Panel on Transport (that is, the Panel headed by Mrs Miriam LAU) whether they agreed with this change to be made by the Government. This change will affect business activities and turn Hong Kong gradually into Las Vegas where occulting signs are allowed. As far as I know, this has been strictly prohibited, which has given rise to various arguments. I have asked similar questions in the Transport Panel and the Government maintained a firm stand on this, pointing out that neither the Transport Bureau nor the Transport Department approved the erection or use of occulting signs for advertising purposes.

I am sorry that I really do not quite understand these amendments. Could the Secretary explain to us again whether his amendments would allow people to obtain the Government's permission for the erection of occulting signs and the hanging of occulting signs on walls? If this is to be allowed, why is it not considered a new policy? If it is a new policy, has it been discussed in the Legislative Council thoroughly? Has it been discussed with our colleagues in the Panel on Transport and the Panel on Planning, Lands and Works and has their approval been obtained?

Thank you, Madam Chairman.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, the information I have at hand shows that under section 5 of the current Advertisements By-laws, all occulting signs are prohibited. On 16 September a question on occulting signs was asked by an Honourable Member in a meeting in the Legislative Council. After a reply was given by the Administration, a review of this was made.

According to findings of the latest survey and review by the Transport Department, there is no connection between occulting signs and the number of traffic accidents. Road safety should not constitute a reason to prohibit the erection of occulting signs. In view of this, we have proposed an amendment to section 148 of Schedule 3 to delete this provision.

Consequential to the amendment to the Advertisements By-laws, we also propose that a consequential amendment be made to section 14 in the reference to the offence and the penalties by way of the amendment to section 151 of Schedule 3.

**CHAIRMAN** (in Cantonese): Excuse me, Secretary for Constitutional Affairs, I should have asked whether any other Member would like to speak before inviting you to give a reply. However, you have spoken before that.

Does any other Member wish to speak?

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I know that this is not a question and answer session. However, I made the point just now that it involves a major amendment of the law, which I consider to be of enormous import. The Legislative Council debated it many times before. I have also participated in the Panel on Transport and the Panel on Planning, Lands and Works. There was great controversy among Members about whether the erection of occulting signs should be allowed. While some Members thought that the restriction could be relaxed, others were of the view that their display should continue to be banned.

The Government has made a very quick decision this time around. As far as I know, the two Panels did not discuss this, unless I was absent. I do not know whether the public has been consulted. Although it appears there is little problem with the repeal of this regulation on the surface, it seems to be very hasty. I would like to ask why it is done in such a hasty way and whether the two Panels of the Legislative Council have been consulted. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak? If not, Secretary for Constitutional Affairs, do you wish to reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): I think I must explain this clearly. We do not seek to remove all restrictions on occulting signs, but only those provided for in the relevant section of the Ordinance mentioned by me just now. Yet, there are other legislative provisions in place which, for other purposes, restrict the exhibition of occulting signs. They include the Hong Kong Airport (Control of Obstructions) Ordinance which seeks to ensure the safety of air traffic. Moreover, there is the Shipping and Port Control Ordinance which seeks to ensure the safety of marine traffic, and there are also restrictions on the signs on expressways to ensure road safety. Therefore, safeguards are provided with regard to safety in other areas. Restrictions are nonetheless relaxed for areas which are outside the scope that I mentioned above and the purview of those provisions. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendment to subsection (a) of section 209 in Schedule 3 and subsections (a) and (c) of section 217 in Schedule 3, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, we oppose this amendment simply because it substitutes the "Director of Food and Environmental Hygiene" for the "Council" as the authority of enforcement. Thank you.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

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

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 209 and 217 of Schedule 3 be further amended, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of heading before new section 224A and new section 224A to Schedule 3, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR FRED LI** (in Cantonese): Madam Chairman, since this amendment repeals the reference to the Urban Council Area and the Regional Council Area in the Designation of Museums Order, we oppose it as a matter of principle.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

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

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 233, 248, 249, 250 and 255 of Schedule 3, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR FRED LI** (in Cantonese): Madam Chairman, I move the amendment to section 256 of Schedule 3, as set out in the paper circularized to Members. I believe the Government will also support this amendment, since it is rather simple and only involves the Food Business By-laws under the relevant Ordinance. At present, the Urban Council and the Regional Council each has its own Food Business By-laws. The Government has used the Regional Council's version as the blueprint for the proposed food business regulation.

When I looked up the relevant By-laws of the two Municipal Councils, I found that while the provisions are similar, there is one difference in the conditions for issue of licence. By-law 34(a) of the Regional Council's version stipulates that after the grant of licence, except with the written permission of the Council, no alteration or addition shall be made to the food business premises which would result in deviation from the plan approved under by-law 32.

The Urban Council's by-law is written better, since the word "material" is added before the word "deviation". The word "material" is important because, without it, a slight deviation will suffice for the food business owner to be prosecuted. I have an example at hand, called "The Story of the Boiler", which I will tell Members now.

As a Member of the Urban Council, I attended a hearing of the Urban Services Appeals Board on behalf of the Urban Council (the Urban Services Appeals Board will be replaced by the Municipal Services Appeals Board). The hearing was about the prosecution of a fast-food store owner by the Urban Services Department on the charge that the location of his boiler deviated from the location shown on the plan more than 10 years ago. He got five marks deducted and his licence was suspended for 14 days. Since he thought it was very unfair, he filed an appeal. It was a question of degree insofar as the deviation was concerned. I found it extremely unfair if he was prosecuted for

deviating from the plan simply because he had moved the boiler from the location shown on the plan 10 years ago to another location. He won the appeal and so did not have his licence suspended. Back at the Urban Council, I told them that the by-law should be reviewed. Since the Government has proposed amendments to this by-law, it seems to me that we should not give the food business owners too much trouble. If it is not a material deviation, we should not give them so much trouble.

Therefore, we have proposed to add "material" before "deviation" as in the Urban Council's by-laws. This amendment is not complicated, it is quite simple. I hope Members can support it.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR HOWARD YOUNG** (in Cantonese): Madam Chairman, many friends from the catering sector have said to me that if the regulations are overly strict, they would result in fault-finding. Many friends told us that they would create a difficult business environment.

The Liberal Party supports this amendment, since we think it would help to improve the business environment.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak in response?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Thank you, Madam Chairman. I just wish to say briefly that the Government supports this amendment.

**CHAIRMAN** (in Cantonese): Mr Fred LI, do you wish to reply?

(Mr Fred LI indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Fred LI 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 277, 280, 296, 297, 304, 316, 325, 329 and 350 of Schedule 3 and the addition of new section 367A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 379, 386, 388, 396, 401, 405, 409, 419 and 424 of Schedule 3 and the addition of new section 396A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR FRED LI** (in Cantonese): Madam Chairman, we support these amendments, since the provisions are rather outdated. According to one provision, for instance, students are not allowed to bring pen and paper into libraries. Since the Government's amendments seek to repeal these provisions, we support them.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

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

(Members raised their hands)

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

(Members raised their hands)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that section 446 of Schedule 3 be amended, as set out in the paper circularized to Members. This amendment is very simple. It deals with the opening hours of museums. My amendment seeks to amend mainly the opening hours of museums by way of subsidiary legislation. The amendment proposes that all museums shall be open every day of the year except Tuesdays and the Lunar New Year's day and the second day of the Lunar New Year, while the opening hours shall be determined by the Director. Why must it be prescribed by legislation? The reason is that in the long term, we hope that the museums in Hong Kong will be basically open all the time, like the museums in some countries or regions, such as the British Museum in Britain and the museums in Taiwan. Given that the building costs and other expenditure of museums are very high, I hope that more students and young people can make use of the facilities in museums to learn about history and other kinds of knowledge. Therefore, my demand is in fact quite reasonable.

Second, why did I propose the amendment? It was because of an absurd incident that happened some months or a year ago. Once, Mr TUNG Chee-hwa's sister went to a museum and found that it was closed. She was very upset about it. According to newspaper reports, she called the then Director of Urban Services, Ms Elaine CHUNG. Later, very strangely, the Director suddenly had the museum open on a very special day so that some VIPs could visit it. Hong Kong is a place that puts emphasis on the rule of law, fairness, going by the rules and a high degree of transparency. We cannot allow the Director to arbitrarily open the museums at certain times to let some VIPs visit them, just because Mr TUNG Chee-hwa's sister found a museum closed at one time. This is entirely at odds with Hong Kong's culture. While it might not be unusual in the Mainland, I believe it is unacceptable to Hong Kong people.

I am proposing this regulation so that the public will know that the museums are open every day of the year except Tuesdays and the Lunar New Year's day and the second day of the Lunar New Year. I will certainly not disagree if the Government should find the opening hours suggested by LEE Wing-tat too short. If the Government wishes the museums to open all the year round like the British Museum, I will certainly support it, since museums are very costly and often making losses, as the admission fees are not very high. In any case, I can at least plug the loophole whereby a person can decide the opening hours because of his rank. I hope colleagues will support me and I hope the Government will go one step further. At present, the museums in Hong Kong are not very well-known since they do not have many exhibits. There are only a few exhibitions each year like the one on masterpieces of several famous French painters last summer, the exhibition of Chinese treasures from the Mainland last year and the exhibition of Egyptian artifacts. I certainly hope there will be more exhibitions of this kind. If we keep improving, we might go one step further and have the museums open daily like the museums in other countries. We can provide a simple list of the opening hours in the brochures for tourists (every tourist visiting Hong Kong can get a brochure from the Hong Kong Tourist Association) so that they will know that they can visit the museums at any time except on a certain day or a certain half-day. This will be most convenient to tourists, to students and to Hong Kong people. Therefore, I hope that the Government and colleagues will endorse my proposal. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, the Government does not support Mr LEE's amendment mainly because we consider this proposal inflexible. For example, if it is stipulated that all museums are closed on Tuesdays, it will be relatively rigid for the management authority. We take the view that the days and time during which museums are open should be determined by the scale, location and characteristics of each museum. We must allow the authority to make appropriate arrangements flexibly. Under Mr LEE's amendment, if some people of Hong Kong happen to have their day off only on Tuesdays and must work on Saturdays and Sundays, they will never have a chance to visit a museum if all museums are closed on Tuesdays. Therefore, while we basically have no objection to the spirit of the amendment, we oppose an arrangement which is relatively rigid and lacks flexibility. For this reason, we urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, do you wish to reply?

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I just want to give a simple reply. Secretary Michael SUEN has actually not answered this question. Although there is no subsidiary legislation providing for the opening hours of museums, every museum is closed for one day every week. The merit of the subsidiary legislation proposed by me is that people may know that they will not be admitted by museums on Tuesdays. However, the Secretary is now saying that museums should choose on their own the day of the week on which they will be closed. If a person wants to visit a museum on a certain day, he has to call up the museum in advance to find out if it will be opened.

Isn't that very inconvenient? The so-called flexibility will only leave the public at a loss. If museums are opened seven days a week in future, I will certainly support it but the Government will not agree to do so. I have made this suggestion in the Bills Committee, prescribing that museums should be opened seven days a week like the British Museum or the museums in Taiwan. I will certainly support this, but the Government will not. Therefore, for the convenience of tourists and Hong Kong people, and to avoid opening museums in a discriminatory manner, I have made this suggestion. This suggestion is no different from closing museums for one day a week. I have only fixed the date for closure so that all Hong Kong people will be aware of this and this is good for students and the public. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That Mr LEE Wing-tat's amendment be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Will Members please check their votes.

**CHAIRMAN** (in Cantonese): Are there any queries? If not, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU and Mr FUNG Chi-kin voted against the motion.

Mr LEE Kai-ming and Dr TANG Siu-tong abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, five were in favour of the motion, 17 against it and two abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 26 were present, 11 were in favour of the motion and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 448 and 465 of Schedule 3 and the addition of new section 466A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR FRED LI** (in Cantonese): Madam Chairman, I move the addition of new section 468A to Schedule 3, as set out in the paper circularized to Members.

I have proposed this amendment because I discovered some omissions on the part of the Government in respect of the by-laws of the two Municipal Councils. At present, offensive trades are regulated by two sets of by-laws, that is, the by-laws of the Urban Council and the Regional Council. The Government has chosen the Regional Council's version out of these two sets of

by-laws. By-law 10 of the Regional Council's by-laws is about conditions for the issue of licence. Its provisions are almost identical to the Urban Council's version, except for paragraph (1)(m) which is not included in the Urban Council's by-law. Paragraph (1)(m) of by-law 10 stipulates that persons engaging in offensive trades must ensure that any heating equipment provided is properly installed and not likely to be dangerous. This is in fact quite an ordinary provision. However, on 1 January when the Urban Council no longer exists, a regulation based on the Regional Council's by-laws will extend to the urban areas, that is, the Urban Council area. Since the provisions of by-law 10(1)(m) are not included in the Urban Council's by-laws, all persons engaging in offensive trades in the urban areas, that is, the Urban Council area, will immediately contravene the regulation. This is where the problem lies. Thus, I propose to add a transitional provision, so that for a period of 12 months beginning on the commencement of the new law, section 10(1)(m) does not apply to a person who holds a licence in respect of an offensive trade carried on in premises in the Urban Council area. The 12-month period allows the relevant persons to comply with the new requirement so that they will not be prosecuted for breaking the law.

I proposed this amendment in the Bills Committee and the Government also agreed to it. I urge colleagues to support this amendment. Thank you.

*Proposed amendment*

### **Schedule 3 (see Annex VI)**

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

**MR HO SAI-CHU** (in Cantonese): Madam Chairman, we in the Liberal Party support this amendment. We also think that if people carrying on offensive trades are punished as a result of the new legislation, it will be unfair to them. We should give them some time to adjust to the new circumstances and make improvements. Therefore, we support this amendment providing for a 12-month transitional period.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

**CHAIRMAN** (in Cantonese): Mr Fred LI, do you wish to reply?

(Mr Fred LI indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Fred LI 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 475, 481, 487, 488, 489, 495, 497 and 498 of Schedule 3, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that section 500 of Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that section 500 of Schedule 3 be further amended, as set out in the paper circularized to Members.

In fact, the amendment seeks to amend mainly an outdated law concerning parks and playgrounds. According to the existing legislation, if a person enters a playground pushing a stroller or a shopping cart — some people will buy many things at the market and they sometimes carry the things with shopping carts — or a young or old person enters a playground pushing a bicycle, he has violated the law. This is certainly extremely outdated. I wonder why the Urban Council made this interesting legislation before to bar the entry of four-wheel carts. Perhaps it was because of the hawker problems. If a hawker pushes a cart into a park or playground for trading, a caretaker is empowered to hand him over to the police for action. Yet, I find this provision inappropriate now, therefore, I have moved an amendment to delete this provision. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR KENNETH TING** (in Cantonese): Madam Chairman, I support the amendment because I think it is fair and reasonable.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

(The Secretary for Constitutional Affairs indicated that he did not wish to speak)

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, do you wish to reply?

(Mr LEE Wing-tat indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Wing-tat 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 505, 510, 511 and 534 of Schedule 3 and the addition of new section 502A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I have risen to speak in support of the Government on the one hand, and to criticize it on the other. Section 555 of Schedule 3 of the amendment involves the erection of sculptures in playgrounds. This is actually a very sensitive issue because the Hong Kong Alliance in Support of Patriotic Democratic Movements of China will rent venues in the Victoria Park for "4 June" commemorative activities every year and it will erect such sculptures as the Pillar of Shame. At a meeting of the Bills Committee, the Government was asked why amendments should be made but the Government said that it had done so unintentionally. Yet, some Secretaries and officials have told me that some staff of certain departments had put contraband goods in such venues but it was not known who did so.

I find it strange why the supplementary provision prohibiting the erection of sculptures is restricted only to playgrounds but not beaches or other places. Evidently, the Government would like to restrict the erection of the Pillar of Shame or other sculptures by the Hong Kong Alliance in Support of Patriotic Democratic Movements of China in the Victoria Park in future. Fine, I support the Government's proposal to delete this amendment. Yet, the Government should not think that Honourable Members have failed to understand it or think that we are "fools". The media and some Members know this only too well.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

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

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Constitutional Affairs 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 present. I declare the motion passed.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that section 559 of Schedule 3 be amended, as set out in the paper circularized to Members.

Madam Chairman, this amendment deals with an exemption of liability clause. I believe Members are aware that the Consumer Council used to permit laundries to specify on the invoices that the laundries would not be held responsible for damages to the laundry. When we send our cars to small companies or repairers for maintenance, it would also be specified on the invoices that the companies would not be held responsible for damages to the vehicles during the time they are under repair.

In fact, we all know that this is very unfair to consumers. Therefore, many businessmen or organizations providing services have deleted this provision. Besides, the Consumer Council has indicated that this provision cannot restrict consumers or service users from claiming for compensation with the courts when there is sufficient proof of the liability or malpractice of the companies providing the services.

It came to me somewhat as a shock that, if I have not made a mistake in checking up information, almost most or all legal clauses relating to municipal services have deleted the exemption of liability clauses except for this clause in respect of the liability for the loss of articles at public cemeteries.

This is certainly a sensitive issue. We have discussed among ourselves the recent cases of thefts from graves or before cremation. In my view, if articles cremated together with the bodies are stolen, and the descendants of the deceased think that the Administration as the administrative authority or the management company under its hire has failed in its management, they should

claim for compensation. Despite this, the Government should not be held totally responsible. As far as I understand it, if this exemption clause is deleted and fair arrangements are made for legal rights, descendants can initiate proceedings if they have proof that the Department or the management or security company under its hire is negligent. This is fair. However, if the management or security company hired by the Department proves that it has tried its best to protect the articles at public cemeteries, I do not think the judge will penalize the Department or the management company. Therefore, we should not exempt the Government from all liabilities on this issue. However, with an exemption clause, even though we can prove that the Government has not sent staff to guard the graveyard, and has totally overlooked places under its management, and failed to step up security measures even after thefts have happened for more than three times, or after the fifth incident of grave excavation and theft of articles, the descendants can still not prosecute the Government according to the law because the Government has been exempted of liabilities. Is that fair? I do not think so.

If we think that the court or magistracy can strike a balance after listening to the views of victims or affected descendents and those of the Government, I think we should not exempt the Government from liabilities. Instead, just like other legislation, we should delete this clause that exempts all liabilities, and we should determine the party that should be held responsible according to the circumstances in future. We should not retain this clause that exempts all liabilities to protect the Government against some mistakes. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, Mr LEE has explained clearly the main reason for this amendment. It is currently provided in law that the Government or the Director is not liable for loss of or damage to articles placed above, inside, near or in the vicinity of any grave in a public cemetery. This is to protect the Government so that the Government does not have to make compensation for the loss of such articles arising from natural disasters. It is necessary to retain this exemption provision because its deletion may subject the Government to unreasonable or unfounded claims for compensation. In fact, the two Municipal Councils completed the amendment of this legislation only recently, extending the exemption provision to cover this area only in 1995 and 1996. Their intention was simple and that is, to effectively protect the interests of the Government and the two Municipal Councils. They saw this need only in recent years and the scope of the exemption provision was thus extended. At present, the Government does not see sufficient justification for the removal of this arrangement. For this reason, I urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, do you wish to reply?

(Mr LEE Wing-tat indicated that he did not wish to reply)

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

**CHAIRMAN** (in Cantonese): Are there any queries? If not, I declare that voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr Michael HO, Dr Raymond HO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Dr LEONG Che-hung, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mrs Miriam LAU and Mr FUNG Chi-kin voted against the motion.

Dr TANG Siu-tong abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, seven were in favour of the motion, 14 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, nine were in favour of the motion and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 561 and 590 of Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that sections 591 and 597 of Schedule 3 be amended, as set out in the paper circularized to Members.

This is a very simple amendment. I find it outdated to have a rule governing loitering in public conveniences. As there is legislation governing loitering offence, it is not necessary to have this provision.

I am worried about one thing. Some drunken people will vomit in public conveniences, they may pace to and fro in public conveniences and enter public conveniences again after vomiting. They may also be regarded as loitering. These cases may happen and we may see these people in Wan Chai or other places especially on Saturdays or Sundays. According to the law, the police can arrest them, but I do not think it is fair. Now that there are laws governing loitering offence, this provision can be deleted.

I hope that Honourable colleagues will support my amendment.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

(The Secretary for Constitutional Affairs indicated that he did not wish to speak)

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, you need not reply.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr LEE Wing-tat 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 593, 595, 601 and 608 of Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 620 and 621 of Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 626, 631, 632, 633 and 651 of Schedule 3 be amended, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 705, 721, 722 and 731 of Schedule 3 and the addition of new section 706A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support these amendments.

*Proposed amendment*

**Schedule 3 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule 3 as amended.

**DR LEONG CHE-HUNG** (in Cantonese): Madam Chairman, first of all, I would like to thank you for giving me a chance to speak. In fact, I almost finished speaking when I spoke on Mr LEE Wing-tat's amendment on changes in titles. Had Mr LEE been more patient, I would not have to take up a few more minutes. Yet, this gives me a chance to go through the main points again, but I would not waste Honourable colleagues' time repeating all the points already made.

The medical sector and I have reservations about the new structure to be established in the wake of the "scrapping" of the Municipal Councils. We do not oppose it but we have reservations. The reasons are very simple. Firstly, we think that the new structure may not really centralize all health and hygiene affairs, and there may still be some overlappings in the end. We suggest splitting the existing Health and Welfare Bureau into two. While the health bureau will be responsible for all health affairs, the Department of Health under it will become an executive body. Certainly, the welfare affairs should be handled by another policy bureaux.

We also think that this may give us an opportunity to do better many issues in connection with health and hygiene. For example, Hong Kong has not done enough in controlling and collecting data on many epidemic diseases, and we hope that the Government will make improvements at this stage. If the Department of Health takes charge of these affairs, we can set up a body similar to a disease control centre within the Department to exercise control.

Similarly, there are problems with a lot of food and drugs now. For example, we find a lot of genetically modified foods in supermarkets, and a lot of so-called food supplements, many of which are actually drugs. As they are categorized as food, they are not subject to control at all. Therefore, we suggest setting up under the Department of Health a body tasked with the control on food and drugs in order that public health will really be better protected ultimately.

Speaking after me earlier, Mr Michael HO said that if I oppose this new proposal of the Government, I should oppose the Second Reading of the Bill. Perhaps, I have to reiterate a few points here. Firstly, as I have said, we only have reservations about this new structure, but we do not absolutely oppose it. This Bill includes a few guiding principles. The first principle is that many departments take charge of food and environmental hygiene affairs at present but there is no formal co-ordinating body. If this Bill is passed, a central co-ordinating body will co-ordinate all affairs, and we find this principle acceptable.

After the "scrapping" of the Municipal Councils and the establishment of the new structure, we hope that the Government will examine if the new policy bureau can really reach a consensus with the existing health control structure, whether they will co-operate with each other and their work will not be overlapping. We also hope that the Government will incorporate the views

expressed by me just now into the purview of the new policy bureau or the old body to improve the situation.

Lastly, I would restate that I do not oppose the establishment of a new policy bureau but I hope that the Government will carefully consider that its work should not be overlapping and there will ultimately be a responsible body. I hope that we will know who will really be responsible when problems emerge.

Thank you, Madam Chairman.

**MR MICHAEL HO** (in Cantonese): Madam Chairman, I will not repeat views already expressed. However, I find it necessary to debate over the points made by Dr LEONG Che-hung.

Firstly, as Dr LEONG Che-hung has said, he reckons that after the passage of the Bill and the establishment of a new bureau and department, some tasks he expected to be completed or confused tasks that the Urban Services Department, the Regional Services Department and the Health Department failed to complete as well as overlapping or muddled up tasks may not necessarily be done well. Now that they may not be completed, why is he so confident in supporting this Provision of Municipal Services (Reorganization) Bill? Will everything be straightened out after the passage of the Bill? Will everything be sorted out naturally after the establishment of the new authority?

Dr LEONG Che-hung has suggested splitting the Health and Welfare Bureau into two, namely a health bureau and a welfare bureau. Madam Chairman, I consider it a better arrangement for the Secretary for Health to take charge of health, food and related matters. But before detailed studies have been made, it is just an "empty talk" that the Government's proposal is better. He supports the Bill even though he has reservations about it, what is the political reality? The political reality is that once the Bill is passed, a new bureau and department will replace the two Councils and departments at present. The new bureau will take charge of food and health as well as many problematic tasks such as food contamination and safety. These tasks will come under the purview of the new bureau and department.

If we pass the Bill today so that the new bureau and department will come into existence come 2000, the political reality is that in the next 10 years or

more, we should not expect the new bureau and department to reconsider the proposal made by Dr LEONG Che-hung concerning splitting the Health and Welfare Bureau into two to form a health bureau and a welfare bureau. This is the reality.

If Dr LEONG really hopes that a health bureau and a welfare bureau will come into being, then he must consider that this opportunity must not be missed. While such a large-scale review and reform are made, he must grasp the opportunity to conduct a comprehensive review. Let us think about this: How often will such a large-scale reform be made? After we have passed such a long Bill after lengthy debates, frankly speaking, there will not be a second opportunity for such a large-scale reform to be made in the next term or so of this Council.

Madam Chairman, when we discussed the new bureau and department arrangement, the Panel on Health Services held a few meetings and a joint meeting with other Panels. During those meetings, we raised queries and Dr LEONG asked many questions on such areas as the division of work between the new department and the Department of Health.

Madam Chairman, I can recall that we held at least three to four meetings in which many questions were asked. For example, who will be responsible for food contamination? Who will be responsible for those who are poisoned and those who are not in food contamination incidents? At that time, we got the answer that the new bureau would be responsible for locating the sources of food contamination while the Department of Health would be responsible for people who are poisoned and suffering from cholera. However, the Government has not yet briefed us on the division of work between the Department of Health and the new department.

Does Dr LEONG believe that the new department to be established will be able to solve the dozens of problems mentioned by him? If not, I do not see why he has decided to support this Bill to let the new bureau and department come into being to replace the old Municipal Councils and departments. He has let slip the opportunity for a comprehensive review and carelessly accepted the new bureau and department proposal of the Government.

Thank you, Madam Chairman.

**MR ERIC LI** (in Cantonese): Madam Chairman, Mr Michael HO just now questioned Dr LEONG Che-hung's logic in supporting the new proposal albeit holding reservations about it. I would like to discuss this with Mr Michael HO because I held a similar stance during the resumed Second Reading debate of the Bill.

By logic, my interpretation of this is actually very simple. If we think that the existing structure is not satisfactory, it is most important for us to consider whether the reorganized structure is more satisfactory than the existing structure. Even though the reorganized structure is not the most satisfactory, I think we have adequate reasons to support the reorganization so long as the new structure will be more satisfactory.

It is not unusual at all for us to have reservations about a certain matter. I believe many political parties or other Members have had reservations about a certain matter but they still supported it after all. I think this is very common in a parliamentary assembly. We may be somewhat disappointed with the Government, but we are not desperate. We still believe that the legislature should co-operate and negotiate with the Government over a long period of time, especially in respect of new matters or new reorganization with the ultimate hope of getting results acceptable and satisfactory to everybody.

I believe Secretary Michael SUEN and Mrs Lily YAM, who is responsible for the reorganization, have never said that the reorganized structure will surely be the best. I believe we have to work together to find out more in future. If we think that we are making a step forward today, I think we definitely have reasons to support the Bill.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Mr Michael HO, is there a misunderstanding of your remarks?

**MR MICHAEL HO** (in Cantonese): No, Madam Chairman, I wish to speak again.

**CHAIRMAN** (in Cantonese): It is the Committee stage, so you can speak again.

**MR MICHAEL HO** (in Cantonese): Madam Chairman, as no one is concerned about Mr LEE Wing-tat today, I would like to show him my concern. He is fighting hard, perhaps we should let him take a rest somewhere for a few minutes.

I would also like to discuss with Mr Eric LI about logic. His logic is: Should we choose a better thing before us? Under certain circumstances, we surely have to make such a choice. When we have two imperfect things, we should choose the better one. However, this will only be the case if there is no other choice, in other words, if one can only choose between these two things, he must choose a better one or the one that is not so bad.

What is the case today? An earthshaking reform — the scrapping of the Municipal Councils, the two departments and reorganization. Frankly speaking, it is a golden opportunity that will not reappear 10 years later in our estimation.

In that case, if we say that we should first accept this proposal, as Mr Eric LI has said, and we can continue fighting over a long time in future, are we not deceiving ourselves as well as others? So long as the Bill is passed and the new bureau and department are in place, will there be such a strong political force to push for such a material political reform? Will there be another opportunity? It will not come at least in the next 10 years.

If the Bill is not passed today, there will be another opportunity because the Government still have to handle problems such as food and environmental hygiene, therefore, they must introduce another bill or make amendments to this Bill. Even though the structure is not the most satisfactory, we can make a further step at this stage and move forward further in a better direction. Should we grasp this opportunity?

If we support the Bill now and give birth to the new bureau, I think the saying that "we should let it pass first and then continue fighting over a long period of time" will become empty talk. We all know that after the passage of the Bill, there will be substantially narrower space, at least narrower than without the Bill, for us to promote other reforms in this Council. There is no reason why we should not grasp the opportunity to fight for more space and make full use of this opportunity to fight for greater reform.

Therefore, Madam Chairman, by the above logic, I can forecast that it is impractical for us to pass the Bill and let the new bureau come into being while bragging to continue fighting for a long time.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Dr LEONG Che-hung, please be brief.

**DR LEONG CHE-HUNG** (in Cantonese): I would like to thank the Chairman for letting me speak again, but I am definitely not trying to filibuster. I have to clarify a few principles. First of all, I would like to thank Mr Eric LI for his help and for saying a few words for me.

Back to the question of principles, simply speaking, Mr Michael HO has just said that if we pass this Bill today, there will not be an opportunity for further changes. If the Bill is not passed and the Municipal Councils continue to exist, the Government may introduce another bill to provide better food and environmental hygiene services, according to him. My logic is that if the Bill is not passed today and the Municipal Councils continue to exist and be responsible for the management of food and environmental hygiene, what reasons do we have to strip the Municipal Councils of their responsibilities in respect of environmental hygiene and hand them over to the new body? This is my first point.

Madam Chairman, this Bill actually includes three points: firstly, "scrapping" of the Municipal Councils; secondly, the centralization of environmental and hygiene affairs in an organization; and thirdly, providing for a responsible organization. The passage of the first point leads to the second, and the second to the third. If the "scrapping" of the Municipal Councils is not passed, and the centralization of environmental and hygiene affairs in a responsible organization which follows is not passed, the issue regarding the organization that would be responsible would not arise.

By the same analogy, if we want to have a new organization to take charge of environmental hygiene, we have to "scrap" the Municipal Councils first and then consider whether the new policy bureau is best. I am not saying that is the best method but I also hope that the Government would consider my

suggestion in future. Even if a complete change will not be made, if the Government adopts the proposal made by me and follow up the matter, I hope that it would help make the job done better.

Thirdly, do we have no choice? Madam Chairman, under certain circumstances, we really have no choice. I have thought of proposing an amendment to divide the new structure into two, just like the division of the Health and Welfare Bureau into a health bureau and a welfare bureau as I have just mentioned. Yet, we can see that the Government strongly opposed the "one Municipal Council, one department" principle proposed by Mr Ambrose CHEUNG and Mr LEE Wing-tat. If I propose such an earth-shaking policy to completely change the original proposal, I believe it is barely possible or even impossible for us to discuss the matter. Therefore, I still think that this is a feasible method.

Thank you, Madam Chairman.

**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 Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 4.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 3(b), 7(a), 8, 10 and 11 of Schedule 4 be amended, as set out in the paper circularized to Members.

Madam Chairman, with regard to the composition of the Municipal Services Appeals Board, Mr Fred LI originally planned to move an amendment to include the Chairmen and Vice-Chairmen of District Councils as *ex officio* members of the Municipal Services Appeals Board. After discussions with Mr LI, the Government agreed to appoint the Chairmen and Vice-Chairmen of District Councils to sit on the Municipal Services Appeals Board in their personal capacity. This will facilitate the participation of District Councils in the new framework of municipal services.

On the functions of District Councils, I already explained the views of the Government this morning. Perhaps I should take this opportunity to further elucidate what I said this morning. Many Members have indicated their support for the abolition of the two Municipal Councils as well as the policy to enhance the representativeness and role of District Councils. The Government will proceed with its work in this general direction.

After the commencement of the new District Councils, the Administration will consider how to strengthen the role of District Councils, as well as their functions and duties in the community so that community life and participation will be more meaningful.

I urge Members to support these amendments.

*Proposed amendment*

**Schedule 4 (see Annex VI)**

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

**MR FRED LI** (in Cantonese): Madam Chairman, I am very glad that the Government has taken onboard my view, so I do not have to propose an amendment. I support the Government's amendment.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, you need not reply.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Constitutional Affairs 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 present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 4 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 present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 5.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 2, 3 and 4 of Schedule 5 and the addition of new section 12A to the same Schedule, as set out in the paper circularized to Members.

This amendment deals with amendments to the Dutiable Commodities Ordinance. They mainly seek to, firstly, stipulate in the Ordinance in express terms that the Liquor Licensing Board may determine the procedure for meetings and forms for the purposes of the relevant regulations, and secondly, provide under section 6A of the Ordinance and Regulation 24 of the Dutiable Commodities (Liquor) Regulations that the Secretary for the Environment and Food may determine not only the fees payable for the issuance, renewal, transfer and amendment of a liquor licence, but also fees for authorizing the appointment of a deputy licensee. Other amendments are technical ones.

I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, we cannot support this amendment because I would propose another amendment relating to the composition and operation of the Liquor Licensing Board.

If I have not made a mistake, I have to oppose this amendment before I can propose my amendment. Therefore, I would propose our amendment later.

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, you need not reply.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

**CHAIRMAN** (in Cantonese): Do Members want to know what is put to the vote? The question put is on the amendment moved by the Secretary for Constitutional Affairs to Schedule 5 relating to technical amendments and to provide for the Secretary for the Environment and Food may determine the fees of licences. Do Members understand? Please proceed to vote now.

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

Mr Kenneth TING, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Mr NG Leung-sing, Prof NG Ching-fai, Mrs Selina CHOW, Mr MA Fung-kuok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, 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, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai, Dr YEUNG Sum, Mr Andrew CHENG and Mr LAW Chi-kwong voted against the motion.

Dr TANG Siu-tong abstained.

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

THE CHAIRMAN announced that there were 46 Members present, 32 were in favour of the motion, 12 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that section 4 of Schedule 5 be further amended. The purpose of this amendment is to add to the definition section the definition of owners corporations because I will later on propose a further amendment concerning whether the views of owners corporations should be consulted in the consideration of applications for liquor licences. Therefore, this is a technical amendment to add the relevant definition.

Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, as Mr LEE said earlier, this amendment hinges on whether we accept another amendment to be proposed by Mr LEE later, that is, to add a new section in Schedule 5 to require the Director of Home Affairs to give notice in writing in respect of an application for a liquor licence to owners corporations in the vicinity of the premises to which the application relates. We oppose this amendment because as a general practice, the Liquor Licensing Board is required to post a notice at a conspicuous place near the premises for which the liquor licence is applied before it considers the application. Moreover, the applicant will be asked to place an advertisement on both Chinese and English newspapers to notify those residents who may be affected.

Secondly, the Home Affairs Department will also consult the affected parties in the vicinity, including the owners corporations, on the application for a liquor licence through various channels, and report the views collected to the Liquor Licensing Board.

Thirdly, with regard to the application for other licences, say, licences for food establishments, it is not provided in the existing laws that the owners corporations concerned must be notified of the application. Given that there are now channels for the affected parties to learn of the application for a liquor licence, we consider it unnecessary to include an additional provision requiring that owners corporations must be notified. It is all the more unnecessary to provide for the definition of owners corporation under the existing Dutiable Commodities (Liquor) Regulations. For these reasons, we urge Members to vote against this amendment.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, do you wish to reply?

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I shall be brief. The Government actually has such an administrative provision now. During our scrutiny of the Bill, the Government indicated that the Home Affairs Department would notify mutual aid committees and owners corporations

within a radius of 400 m from the premise to which a liquor licensing application relates. However, many owners corporations and mutual aid committees have expressed to us that the Government's work in this respect is not very good sometimes. The provision concerning a radius of 400 m from the premise has clearly defined the scope, and the Home Affairs Department has information on owners corporations within the scope. Therefore, if the Government thinks that it has been doing this part of the work well, it should support my proposal for I am only turning an administrative practice into a legal provision. I hope Honourable colleagues will support my proposal. The purpose of my amendment is to incorporate the definition of owners corporation into the legislation. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr Timothy FOK and Mr FUNG Chi-kin voted against the motion.

Dr TANG Siu-tong abstained.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion, 19 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, nine were in favour of the motion and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**CHAIRMAN** (in Cantonese): The Secretary for Constitutional Affairs has given notice to move an amendment to section 6 of Schedule 5, Mr LEE Wing-tat has given notice to move an amendment to section 6 of Schedule 5 and the addition of new section 16A to the same Schedule, and Mr Ambrose CHEUNG has given notice to move an amendment to section 6 of Schedule 5.

Committee now proceeds to a joint debate. I will first call upon the Secretary for Constitutional Affairs to move his amendment.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that section 6 of Schedule 5 be amended, as set out in the paper circularized to Members. This amendment seeks to amend Regulation 2A of the Dutiable Commodities (Liquor) Regulations to include a Vice Chairman in the composition of the Liquor Licensing Board, and reduce the number of other members from 10 to nine accordingly.

Given the heavy workload of the Liquor Licensing Board, it is necessary to include a Vice Chairman in its composition so that the Vice Chairman can take over the relevant duties in the absence of the Chairman. Moreover, we propose to provide in the Regulations that the Liquor Licensing Board must be made up of non-official members, and that a legal adviser shall be appointed by the Secretary for the Environment and Food. I urge Members to vote for this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

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

**DEPUTY CHAIRMAN** (in Cantonese): I would ask Mr LEE Wing-tat to speak on the amendment moved by the Secretary for Constitutional Affairs and his own amendment and that of Mr Ambrose CHEUNG. After Mr LEE Wing-tat has spoken, I would ask Mr Ambrose CHEUNG to speak. However, Mr LEE Wing-tat and Mr Ambrose CHEUNG cannot move their respective amendments at this stage.

**MR LEE WING-TAT** (in Cantonese): Mr Deputy, one of my major amendments is related to the Liquor Licensing Board. In the entire legislation for the "scrapping" of the Municipal Councils, although the Government has said from 9 am till now that it would enhance the powers of the District Councils, I have said time and again that the powers of the District Councils have not been enhanced and they are still advisory bodies. Therefore, my amendment is putting things right for the Government so to say.

My amendment proposes that each of the 18 District Councils should select a person as a member of the Liquor Licensing Board which comprises a total of 18 members. The Chairman and Vice Chairman of the Board shall be elected from among members. The merit is that, firstly, the representatives of District Councils will have real power in line with the Government's statement that it would give District Councils real powers to handle district matters. I do not think the Government has reasons to oppose this. Secondly, in the past, the Liquor Licensing Board of the Urban Council and that of the Regional Council were actually made up of elected Members. When the Bills Committee discussed the Government's amendment, the Government only said that it would agree that some Board members should be District Council members, but I think that this is not enough. While Members of the Municipal Councils used to elect representatives to the Liquor Licensing Boards, I wonder why the Government cannot continue to trust District Council members and allow each District Council to select a person to be a member of the Liquor Licensing Board to handle licensing matters. I know that the Government is worried that District Council members may have interests in districts on the basis of which they may oppose applications for liquor licences, or they may not remain neutral. In fact, the Government needs not worry because another item in the amendment to be proposed by me is that some panels may be formed and the membership of such panels may be changed after a certain period of time. Therefore, the District Council member of a certain district will normally not scrutinize applications for liquor licences filed in his district. Should such a case really arise, the Liquor Licensing Board can formulate certain rules to avoid such problems. I think that my amendment is better than the Government's, as the powers of District Councils can be suitably enhanced and the operation of the Liquor Licensing Board made sounder. Thank you, Mr Deputy.

**MR AMBROSE CHEUNG** (in Cantonese): Mr Deputy, I have proposed the amendment in the hope that the operation of the existing Liquor Licensing Board will be more efficient and smoother. Mr LEE Wing-tat has just said that the Liquor Licensing Board should become more representative with the addition of representatives from District Councils. I basically support this. At the Bills Committee, we saw that the existing Liquor Licensing Boards of the Municipal Councils were flooded with heavy workload and spent plenty of their time on applications. In the Provisional Urban Council, a meeting will at least be held almost every month and two meetings will sometimes be held in a month to handle dozens of cases. In addition to the cases handled by the Provisional Regional Council, dozens of cases may be handled in a month. Basically, the Liquor Licensing Boards operate in the form of hearings and cases are handled over a very long period of time. Precisely because they operate in the form of hearings, members will only vote on the cases after having listened to all the facts of the cases. Unlike ordinary meetings that begin at 9 am in which members can arrive at 9 am but leave for official business at twelve o'clock and then return at 5 pm to vote, members of the Liquor Licensing Boards cannot do so if they have not attended hearings or heard the cases before voting. This is a most unsatisfactory situation. The Government proposed that the Liquor Licensing Board should at first be made up of a Chairman and 10 members. The Secretary has now amended it to a composition of one Chairman and nine members, that is, a total of 10 members. I remember that the Secretary will propose an amendment to add section 8A later, setting the quorum of meetings to half of the number of members. In other words, there are only 10 persons in the Liquor Licensing Board while the quorum of meetings is half of the number of members. In the light of workload and nature of work, some people may have to spare two, three or even four days every month to take part in the relevant work. In view of the operation of the Municipal Councils now, there may be certain difficulties. Therefore, Mr Deputy, I actually proposed that the Government should increase the number of members of the Liquor Licensing Board while the quorum of meetings should be reduced from half of the members to one third. This way, the operation of the Board will be more satisfactory and it will not encounter difficulties in future. Thank you, Mr Deputy.

**DEPUTY CHAIRMAN** (in Cantonese): Members may now debate over the amendment moved by the Secretary for Constitutional Affairs as well as the amendments of Mr LEE Wing-tat and Mr Ambrose CHEUNG.

Does any Member wish to speak?

(No Member indicated a wish to speak)

**DEPUTY CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Mr Deputy, in response to Mr LEE Wing-tat's proposed amendment to section 6 of Schedule 5 in relation to the establishment and composition of the Liquor Licensing Board, I wish to make the following points.

Regarding the proposals of Mr LEE Wing-tat, our views are as follows. Firstly, on his proposal that the Liquor Licensing Board be made up of members of District Councils, we think it is very likely that the Board will lay undue emphasis on the views of constituents in the district concerned. We note that in some cases of application for a liquor licence, members of district boards have from time to time come to the Liquor Licensing Board in person to raise objection to the issuance of liquor licences on behalf of the residents. Therefore, under his proposal, we think it is very likely that a conflict of role will arise, so we have strong reservations about it.

Moreover, we believe that the Liquor Licensing Board should not comprise members of District Councils only. It should also include persons from other sectors, for instance, representatives from the legal profession, the architectural profession or other industries, so that the Board can consider the views of members from a diversity of background and make fair and impartial decisions on applications for liquor licence.

We also oppose the proposal that applications for liquor licence be considered by panels conducting hearings on them because such applications may be rather controversial in some cases. The community will naturally expect the Liquor Licensing Board to consider all applications based on the

same set of criteria. It is better for these applications to be considered by the full Board because this can ensure consistency in the criteria employed by the Board in making decisions as well as the acceptability of its decisions.

As for Mr LEE's proposed addition of new section 16A to Schedule 5, it seeks mainly to provide the rules and procedures governing the election of representatives of District Councils to sit on the Liquor Licensing Board, and also the election of the Chairman or Vice Chairman of the Board. As we do not agree with Mr LEE's proposal on the composition of the Liquor Licensing Board, we will oppose his proposed addition of new section 16A.

We have reservations about Mr Ambrose CHEUNG's amendment under which the membership of the Liquor Licensing Board will be increased by two members. The size of the Board's membership was not our prime concern in our consideration of the composition of the Board. Instead, we are most concerned about the representativeness of the members. In fact, we have considered the views from various sectors before we came to the decision that the Liquor Licensing Board be made up of 11 members.

Given that a decision on controversial applications must be made in the meeting of the full Board, I think it is appropriate to keep the number of members of the Liquor Licensing Board at 11.

I urge Members to vote against the amendments of Mr LEE Wing-tat and Mr Ambrose CHEUNG.

THE CHAIRMAN resumed the Chair.

**CHAIRMAN** (in Cantonese): Before I put the question on the amendment moved by the Secretary for Constitutional Affairs, I would advise Members that if the Secretary for Constitutional Affairs' amendment is passed, that will by implication mean that the respective amendments by Mr LEE Wing-tat and Mr Ambrose CHEUNG are negated. If the Secretary for Constitutional Affairs' amendment is negated, I will call upon Mr LEE Wing-tat to move his amendment and put them to vote. If Mr LEE Wing-tat's amendment is negated, I will call upon Mr Ambrose CHEUNG to move his amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

**CHAIRMAN** (in Cantonese): Is there any Member who is not sure about what is being put to vote now? Is everyone clear about it? Let me repeat it just in case. The vote is now on the Secretary for Constitutional Affairs' amendment concerning the establishment and composition of the Liquor Licensing Board.

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

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

Mr Kenneth TING, 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 MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, 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, Mrs Miriam LAU, Mr Ambrose LAU, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

Miss CHOY So-yuk abstained.

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

THE CHAIRMAN announced that there were 48 Members present, 32 were in favour of the motion, 14 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Constitutional Affairs has been passed, Mr LEE Wing-tat and Mr Ambrose CHEUNG may not move their amendments which are inconsistent with the decision already taken.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 8A to Schedule 5, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): The Secretary for Constitutional Affairs and Mr LEE Wing-tat have separately given notice to move the addition of new section 8B to Schedule 5.

Committee now proceeds to a joint debate. I will first call upon the Secretary for Constitutional Affairs to move his amendment.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 8B to Schedule 5, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**CHAIRMAN** (in Cantonese): I will call upon Mr LEE Wing-tat to speak on the amendment moved by the Secretary for Constitutional Affairs as well as his own amendment.

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, my amendment will add section 8B so that the Liquor Licensing Board will operate in the form of panels in future. I believe Members know that the Board handles hundreds of applications every year. If the 11 members of the Board have to hold meetings together, I am afraid their workload will be excessively heavy. If they can operate in the form of panels in future, the overall efficiency can at least be enhanced. My amendment also states that the quorum of meetings of the Board can be specified according to the standing orders of the Board, and the Chairman and Vice Chairman must chair meetings. I believe we need not worry that this amendment will affect the existing operation. On the contrary, my amendment will only enhance efficiency. I hope Honourable colleagues will support my amendment.

**CHAIRMAN** (in Cantonese): Members can now debate the amendment moved by the Secretary for Constitutional Affairs and Mr LEE Wing-tat.

Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to reply?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): In response to Mr LEE Wing-tat's proposed addition of new section 8B to Schedule 5, I wish to make the following points.

Firstly, we have no objection to the proposal requiring the Chairman or Vice Chairman to preside at meetings of the Liquor Licensing Board, and this proposal is already incorporated in my earlier amendment which has been supported and passed by Members.

Secondly, on the proposal that panels be appointed by the Liquor Licensing Board to hear applications for liquor licences, as I explained just now, we think it is more appropriate for the applications to be considered by the full Board because such applications are rather controversial in some cases. This can ensure consistency in the criteria employed by the Board and enhance the acceptability of its decisions.

Thirdly, regarding the quorum for meetings of the Liquor Licensing Board, it is necessary to expressly stipulate the quorum for its meetings in the Dutiable Commodities (Liquor) Regulations given that the Board is a statutory body. Therefore, it is inappropriate to provide for the quorum in the standing orders of the Board. For these reasons, I urge Members to vote against Mr LEE's amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Mr Kenneth TING, 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 MA Fung-kwok, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, 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, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the motion.

Mr Albert HO, Mr Michael HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah and Mr LAW Chi-kwong voted against the motion.

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

THE CHAIRMAN announced that there were 48 Members present, 34 were in favour of the motion and 13 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): As the amendment moved by the Secretary for Constitutional Affairs has been passed, Mr LEE Wing-tat may not move his amendment which is inconsistent with the decision already taken.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 8C to Schedule 5, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that new section 8CA be added to Schedule 5, as set out in the paper circularized to Members.

I have moved this amendment because an application for liquor licence has to go through a hearing process. As far as I understand it, many semi-judicial organizations will listen to the pros and cons. This is as important as trials by judges. However, I often receive complaints concerning the Liquor Licensing Board or the Appeals Committee of the Town Planning Board. I think some Honourable colleagues have also received such complaints on other occasions. Those hearings, including the hearings of the Liquor Licensing Board, very often take a long time. The hearing of a case may begin at 10 am, with a lunch break at 12.30 pm and resume at 2 pm while voting will take place at 4 pm. However, very often, seven people, A, B, C, D, E, F, G, of the Liquor Licensing Board or Town Planning Board will be responsible for the hearing. However, when voting takes place at 4 pm, A, B, C will not be there and only D, E, F, G are there, yet, H, I, J will join them in the afternoon or after 4 pm. Madam Chairman, this practice is allowed even

though there have been complaints against the Town Planning Board for years. I did witness one such occasion before, and not being mindful of my manners, I asked them not to leave half-way through the hearing. I also asked them not to miss the beginning of the hearing and join other people only half an hour before the vote.

What does my amendment seek to do? I ask that the same group of people should be responsible for the hearing and make a decision. The merit of this is that they can scrutinize an application with a greater degree of impartiality and an applicant will feel that his views are heard by the same group of people continuously regardless of whether or not he is satisfied with the decision of the Liquor Licensing Board.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, this amendment moved by Mr LEE Wing-tat applies only to a situation where panels are appointed for hearing applications for liquor licences. As the Government does not agree with the appointment of panels for hearing such applications, we are, therefore, opposed to this amendment. I urge Members to vote against this amendment.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, nine were in favour of the motion and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 8D to Schedule 5, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of new section 9A to Schedule 5, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**MR LEE WING-TAT** (in Cantonese): Madam Chairman, I move that new section 9B be added to Schedule 5, as set out in the paper circularized to Members. This amendment is actually identical to my amendment asking

Members to agree the definition of owners corporations. I ask that after the Liquor Licensing Board has issued a notice in future, the Director of Home Affairs shall give notice in writing, 10 days before the Board meets to consider an application, to all owners corporations within a radius of 400 m from the premises to which the application relates. Members will surely ask why the radius of 400 m be notified? I did not invent this, this is made by the Home Affairs Department and I am only borrowing a page from its book. Why are mutual aid committees not notified? As the definitions in the existing legislation do not include mutual aid committees, we could only require that owners corporations be notified. But I believe that the Home Affairs Department would continue to notify mutual aid committees. At present, section 16 of the Dutiable Commodities (Liquor) Regulations only states that the Liquor Licensing Board should issue notices but not notify the relevant organizations. I have only added a condition that owners corporations should be notified. As the Home Affairs Department has information on and knows the addresses of all owners corporations, I think the enforcement of this amendment will be pretty easy. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

**CHAIRMAN** (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, we already discussed this point earlier on. I wish to reiterate here that the Government opposes the enactment of legislation to require the Home Affairs Department to give notice in writing within a prescribed period of time in respect of an application for a liquor licence to owners corporations in the vicinity of the premises for which the liquor licence is applied. I urge Members to vote against this proposal.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat, you need not reply.

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEE Wing-tat rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEE Wing-tat has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Michael HO, Mr LEE Kai-ming, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr Timothy FOK, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr Andrew WONG, Dr YEUNG Sum, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, six were in favour of the motion and 19 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 23 were present, nine were in favour of the motion and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 10 to 16 of Schedule 5 and the addition of new sections 11A, 14A and 14B to the same Schedule, as set out in the paper circularized to Members.

I urge Members to support these amendments.

*Proposed amendment*

**Schedule 5 (see Annex VI)**

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule 5 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 the Members present. I declare the motion passed.

**CLERK** (in Cantonese): Schedule 7.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of heading before new section 1A and new section 1A to Schedule 7, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the amendments to sections 6, 36 and 47 of Schedule 7 and the addition of headings before new sections 44A, 65A, 83A, 89A, 93A, 93C, 105A, 105B and new sections 36A, 36B, 44A, 44B, 65A, 65B, 65C, 82A, 83A, 89A, 93A, 93B, 93C, 105A, 105B and 127A to the same Schedule, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 53, 93 and 113 of Schedule 7 be amended, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

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

(Members raised their hands)

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

(Members raised their hands)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that sections 10, 26, 30, 37, 43 and 83 of Schedule 7 be amended, as set out in the paper circularized to Members. I urge Members to support the amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move that section 42 of Schedule 7 be amended, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, I move that sections 60, 104 and 128 of Schedule 7 be amended, as set out in the paper circularized to Members.

Madam Chairman, these amendments are focused mainly on enhancing the representativeness of some existing bodies. With the existing structure, a representative of each of the Municipal Councils attends the meetings of the Hong Kong Academy for Performing Arts, the Hong Kong Arts Development Council and the Hong Kong Sports Development Board. If the Municipal

Councils are dissolved, the seats of these two representatives will be vacant. The Government's proposal will enable it to make appointments to fill these vacancies. However, the Government has expressed in its consultancy report and response that different advisory structures will be formed after the dissolution of the Municipal Councils. One advisory structure is the cultural committee, a non-statutory body, and various advisory committees will be formed on the basis of the consultancy report, including advisory committees in respect of sports and recreation. I hope that the Government can accept that representatives be selected from these newly formed advisory committees to fill the vacancies in the Hong Kong Academy for Performing Arts, the Hong Kong Arts Development Council and the Hong Kong Sports Development Board. I hope the Government will not turn down this proposal on the strength of some so-called technical provisions because the Government may say that these newly formed advisory committees are not statutory bodies. As these advisory committees have not been formed at this stage, we can hardly know what kind of organizations they are. As I have pointed out, a provision in section 11 in part I of this legislation has clearly stated that the Chief Executive in Council has the right to make adaptation provisions which basically proved that there are many complicated provisions in this Bill. The consequential transitional savings are actually standard provisions. If deemed necessary in future, we can define certain provisions more explicitly.

I suggest that after the Government has successfully "scrapped" the Municipal Councils and formed these advisory committees, it should introduce consequential adaptations to include these advisory committees so that they can select two representatives to the three bodies mentioned by me just now. Madam Chairman, as for the major principle, I hope that the Government will honour the pledges it made in the consultancy report and its response. I hope that some arrangements can be made to entrench the pledges in law. Thank you, Madam Chairman.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

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

**MR MA FUNG-KWOK** (in Cantonese): Madam Chairman, I fully support the spirit of the amendment proposed by Mr Ambrose CHEUNG. In fact, after the abolition of the Municipal Councils, the representatives of some other organizations such as the cultural committee or the sports advisory committee that may be established in future should be made in a position to keep tap on the operation of the relevant statutory bodies and reflect their views to the advisory committees. This is a very important function which should not be abolished together with the "scrapping" of the Municipal Councils.

The amendment proposed by Mr Ambrose CHEUNG has touched upon some technical problems. First, some technical problems may arise in respect of the cultural committee and the Cultural and Heritage Commission to be established by the Government. The sports advisory committee may not be established now. From the technical point of view, I may oppose it but I hope that the Government will accept this view or consider it after the relevant organizations have been established in future or when considering the two ordinances being amended now, namely the Hong Kong Arts Development Council Ordinance and the Hong Kong Sports Development Board Ordinance. Thank you, Madam Chairman.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, the amendments moved by Mr Ambrose CHEUNG to sections 60, 104 and 128 of Schedule 7 concern the ordinances in respect of the Hong Kong Arts Centre, Hong Kong Arts Development Council (ADC) and Hong Kong Sports Development Board (SDB).

Mr CHEUNG has proposed the inclusion of two members representing the Heritage and Culture Commission in the Board of Governors of the Hong Kong Arts Centre and in the ADC, and the inclusion of two members representing the Recreation and Sports Consultation Committee in the SDB. Yet, these two committees do not exist in reality, or legally speaking.

Moreover, the Government has tabled amendment bills at the Legislative Council on the reorganization of the membership of the ADC and SDB. The changes in their membership proposed by the Member just now should be followed up and examined by the two Bills Committees.

Insofar as the procedure is concerned, those bodies which will be directly affected are not consulted on Mr CHEUNG's proposals. Besides, his proposals have not taken into full consideration the composition of those bodies and representativeness of their members. Giving effect to these proposals hastily will cause great difficulties in the operation of those bodies. Therefore, the Government does not agree with these amendments.

I urge Members to vote against these amendments.

**MR AMBROSE CHEUNG** (in Cantonese): Madam Chairman, after I have heard the Secretary's response, I am certainly very disappointed because this is a very simple proposal in principle and it is consistent with the pledges made by the Government. It has pledged that it would strengthen the advisory bodies. Take the cultural committee as an example. Why did I propose that representatives of the cultural committee should attend meetings of the Arts Centre and Arts Development Council? It is mainly because I believe that there are different functions within the structure proposed by the Government, one example being the allocation of funds. If the representatives of the cultural committee can attend meetings of the Arts Development Council and Arts Centre, it will basically operate in a similar manner. While the Municipal Councils allocate funds to these two organizations in the existing practice, they can monitor their overall operation. They can work in concert with one another when allocation of funds is considered in future.

The Government has declined doing so on technical grounds and it has given two reasons. Firstly, the two organizations have not been formed. Madam Chairman, I have just suggested a solution, that is, stating in a provision in section 11 in part I that consequential adaptations can be made after the formation of these two organizations. Secondly, in respect of principles, the Secretary has said that the relevant bodies have not been consulted. In fact, consulting the relevant bodies may only be an excuse. Under the existing system, the Municipal Councils have two representatives. The Government has introduced an amendment bill to this Council in respect of the Sports Development Board and Arts Development Council. The Government has proposed other amendments in these two bills including changes in membership. There will be an additional representative of the Sports Federation and Olympic Committee of Hong Kong in the Sports Development Board. Actually, unless the Government thinks that the proposal will deprive

the existing organizations of their representativeness, or replace their existing representation, I would then agree with the Government that we should carefully and prudently consult the relevant organizations to see if they accept this practice. Yet, my proposal will make them more representative. Even if the Municipal Councils are replaced, the existing representatives have definitely not been deprived of their rights. Moreover, it is also in line with the Government's proposed increase in the number of representatives in this organization to make it more representative, I do not know why the Government oppose this under the pretext that the relevant bodies have not been consulted. If so, will the Government not oppose it if the two organizations have been consulted and given consent? Madam Chairman, I sincerely hope that the Secretary will consider this. I might as well call upon Members to support my amendment and oppose his proposal. Thank you, Madam Chairman.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Ambrose CHEUNG rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Ambrose CHEUNG has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Mr Michael HO, Mr CHEUNG Man-kwong, Mr Ambrose CHEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted for the motion.

Mr Kenneth TING, Mr James TIEN, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr LEE Kai-ming, Dr LUI Ming-wah, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mrs Miriam LAU, Mr FUNG Chi-kin and Dr TANG Siu-tong voted against the motion.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew WONG, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG and Mr SZETO Wah voted for the motion.

Miss CHAN Yuen-han, Mr Jasper TSANG, Mr TAM Yiu-chung, Mr David CHU, Mr HO Sai-chu, Mr NG Leung-sing, Prof NG Ching-fai, Mr MA Fung-kwok, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Miss CHOY So-yuk voted against the motion.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 24 were present, 11 were in favour of the motion and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the deletion of the heading before section 130, sections 130, 131 and 132 from Schedule 7, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

**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 Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): As the amendment to delete the heading before section 130, sections 130, 131 and 132 of Schedule 7 have been passed, the heading before section 130, sections 130, 131 and 132 of Schedule 7 are therefore deleted from the Bill.

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam Chairman, I move the addition of heading before new section 133 and new section 133 to Schedule 7, as set out in the paper circularized to Members. I urge Members to support this amendment.

*Proposed amendment*

**Schedule 7 (see Annex VI)**

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

(Members raised their hands)

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

(No hands raised)

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

**CLERK** (in Cantonese): Schedule 7 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.

(Members raised their hands)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bill**

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

## **PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL**

**SECRETARY FOR CONSTITUTIONAL AFFAIRS** (in Cantonese): Madam President, during the Second Reading debate, some Members expressed support for the streamlining of the three-tier system of representative government into a two-tier structure. At the same time, they hope that the Government can strengthen the functions and representativeness of District Councils. After the commencement of the first term of District Councils of the Hong Kong Special Administrative Region next year, we will work in this direction to promote the development of district organizations, and consider ways to enhance the role of District Councils in district affairs and to strengthen their functions.

Madam President, the

Provision of Municipal Services (Reorganization) Bill

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

**MR LEE WING-TAT** (in Cantonese): Madam President, I hope that I could speak during the Third Reading.

**PRESIDENT** (in Cantonese): Mr LEE, please sit down first. I now propose the question to you and that is: That the Provision of Municipal Services (Reorganization) Bill be read the Third time and do pass.

**MR LEE WING-TAT** (in Cantonese): Madam President, can Members speak during the Third Reading?

**PRESIDENT** (in Cantonese): Yes.

**MR LEE WING-TAT** (in Cantonese): Thank you, Madam President. I would only like to express my views on the Third Reading.

Firstly, I am sad that the Bill is read the Third time today. If the Democratic Alliance for the Betterment of Hong Kong (DAB) did not make an about turn yesterday evening, the whole scrutiny process would have already terminated. We have to pass the Bill and reject the elected Municipal Councils today. It is a big step backward in our democratic progress and I am sorry about this.

When we dealt with another amendment relating to clause 3 on the abolition of the Municipal Councils this morning, Mr WONG Yung-kan of the DAB was absent by coincidence. If he was present and voted against the amendment along with other DAB Members, the amendment would not have passed. If clause 3 is not repealed, the whole Ordinance will become meaningless. I believe that the Government cannot implement the new Provision of Municipal Services (Reorganization) Ordinance while implementing the Urban Council Ordinance and the Regional Council Ordinance concurrently. This may be a coincidence. However, the Second Reading was passed yesterday after the DAB had made an about turn. Today, we were going to pass a material amendment when one Member was absent by chance. If it is not a coincidence, I only think that this is a sorrowful thing for the Legislative Council.

If we are in favour of or against a question, we can actually debate over the question openly here, and we need not whisper to one another while a large team of "paparazzi" of the Government are gazing at us. We actually do not need to count the votes before deciding if some Members should be present.

I am also displeased with the motion on rents that does not involve any political considerations. I have urged many political parties to set a rental ceiling for the 10 000 stalls under the Urban Council or Regional Council as well as reduce the rents by 30%. It is a pity that this motion was not passed. I believe that the increases in rents in the years to come will affect those people greatly. I hope Members will ponder over the effects their decision will have on the livelihood of the operators of the 10 000 stalls and the old men or ladies selling bean sprouts and bean curd.

Madam President, from the time I started scrutinizing this Bill till now, I have worked on this for a few months and I have deep feelings. Firstly, I think that the Government still exercises enormous control. Sometimes, the Chief Executive or other high-ranking Secretaries will "canvass votes" and many Secretaries and Deputy Secretaries were "canvassing votes" in the Ante-Chamber just now. Any way, if political lobbying is warranted whenever we scrutinize a bill, I wonder if I may call this a "political deal". The Government will gain certain votes but how long can it "endure" this? There have been three such cases this year when we discussed the District Councils Ordinance, the Legislative Council Ordinance, and this Bill today. When new directly-elected Members join the Council next year, I believe it will be more difficult for the Government to carry out lobbying. I hope that the Government will fail one day and conduct a self-examination. If what they do does not tally with public opinion, even though they carry out political lobbying or clinch "back-room deals", they cannot turn around the overall situation.

With these remarks, Madam President, I oppose the Third Reading.

**DR YEUNG SUM** (in Cantonese): Madam President, I said that Mr Jasper TSANG's remarks were rubbish yesterday, but I want to emphasize again that it was not directed against any person.

I know that many Honourable colleagues support a two-tier structure because they think that three tiers are not needed in Hong Kong. However, I hope that Honourable colleagues who support a two-tier structure will listen carefully to what I am going to say.

The two-tier structure proposed by the Government will centralize the powers and runs counter to the expectations of Honourable Members, that is, to simplify the constitutional system and decentralize powers.

I hope that Honourable colleagues who keep saying that they support a two-tier structure will support it not in name, but in reality. When power is centralized, if they still support it, the so-called simplification of the constitutional system is virtually a pretext for supporting the centralization of power. I think that this is a very important point.

I feel very sorry today. If the DAB could oppose the Second Reading, I believe there would be enough votes to stop the scrutiny of the Bill and it would not be necessary for us to debate over its Third Reading. While the DAB wants to be a royalist party, it should be accountable to its constituents. I wonder how long they can play this role.

If this Bill is passed, there will be a material retrogression in democracy and it will seriously deprive people of the opportunity to take part in district affairs. At this historical moment, I am really sorry that the Municipal Councils may be brought to an end.

Thank you, Madam President.

**MR MARTIN LEE** (in Cantonese): Madam President, we have to vote soon but we will surely claim a division so that there will be a clear historical record of the Members that caused the "scrapping" of the Municipal Councils at the push of a button. However, the murderers may include not only those who press the button to support the Government for some who press the button to oppose the motion have actually supported the Government long ago. It is just a matter of time.

As two Honourable colleagues have said, when the golden opportunity arrived yesterday evening, had the six Members of the DAB observed their principles and opposed "scrapping" the Municipal Councils, refused to support the Government and disapproved of the passage of the motion on Second Reading, the "scrapping" of the Municipal Councils would have failed. However, they had chosen to make a "U-turn". When I read the newspapers today, I know that Chairman TSANG refused to admit that he had made a "U-turn". If it was not a "U-turn", what else was it? I might as well call it a "flip-flop". Why? If their principle was that they opposed "scrapping" the Municipal Councils, let us see how they performed. When we entered the Committee stage, they stated very explicitly that they would vote against the Government's amendment to make clause 3 part of the Bill because they opposed "scrapping" the Municipal Councils. By the same logic, why did they not oppose it during the Second Reading of the Bill?

The reason was simple, it was a matter of time. The Government asked them to let the Government go. Putting this in everyday language, if I use a snooker jargon, the Government wanted them to "yield cues", and if I use a football jargon, it wanted them to "balk". Otherwise, the "scrapping" must have failed.

Even if the DAB presses the button to vote against it now, it is too late. Yet, they could try their best to influence its affiliates, that is, the four Members of the Hong Kong Federation of Trade Unions (FTU). We cannot say that Members of the FTU are not DAB members for they are absolutely members of the DAB. Even if they oppose "scrapping" the Municipal Councils, I fail to see why it would be disadvantageous to FTU members and workers? In fact, if they oppose "scrapping" the Municipal Councils, it may be advantageous to municipal services workers for they would not be dismissed.

If the FTU discusses this with the DAB again and then votes according to the intents of the DAB, they can still turn around the situation. But if the FTU is not willing to do so, I cannot refrain from mentioning some uncertain votes in the past. Before the reunification, I can recall that there were four uncertain votes that drifted here and there in the Legislative Council. They were the four votes of the Hong Kong Association for Democracy and People's Livelihood. Yet, the four votes finally disappeared. Before the reunification, there was a Member by the name of CHIM Pui-chung in the Legislative

Council. On one occasion, he said to me outside the Chamber, "Hey, Martin, I would vote in support of the Democratic Party later". I said, "Why do you do something so nice? You are supporting me"? He said, "I figured that even though I support you, you will surely lose, therefore, I will support you. If I figure that you will be successful with my support, I will not do so, and I will support the Government then".

I know that the Government has made great efforts in lobbying Members. Officials at different levels, from D6 to D8 and so on, as well as the Chief Executive have been lobbying us. However, if I am a target of the Government's lobbying, I will not compromise so easily if I am lobbied in future. I will say, "Hey, the Chief Executive lobbied me in person last time, why does he not talk to me this time? If he talks to me in person, even though I will lose, it will not be so embarrassing. Why are only D8 officials talking to me? I am certainly unwilling to compromise so easily." I believe if Members follow what I said, the Chief Executive may have to lobby us in person every time.

At the Committee stage, I remember Mr Gary CHENG said this very clearly to the effect that "we in the DAB attach great importance to every item we have to vote on at this stage, handle them and propose amendments very prudently, and we will decide how we will vote after very careful examination." In that case, why had Mr WONG Yung-kan disappeared? He should have been here, but why had he disappeared? Mr Gary CHENG was certainly very tensed for he asked the Chairman to postpone voting so that Mr WONG Yung-kan could rush back to vote. This was an unprecedented incident. I do not believe Mr Gary CHENG did not know that he could not do so. He might have asked the Chairman to do so because he was really anxious. Why did they not look for Mr WONG Yung-kan earlier? Members had not pressed the buttons then and he might surface suddenly somewhere. Why was the matter muddled up? I believe they should account to the public for this.

I would like to talk about Mr Andrew WONG now. Actually, he and I are old men in the Legislative Council as we are among the first group that opposed the three-tier structure. We were indirectly elected Members at that time. From 1985 to 1986, we asked government officials why we needed three tiers? Why not two tiers? Subsequently, we kept asking the

Government what would happen if there were only two tiers. We certainly thought that the Legislative Council should be retained while the other two tiers could be merged to pool their powers together, and a three-tier structure was not necessary. In our view, under a three-tier structure, as government officials had to attend meetings here and there, they would be busy running about and it would be very toilsome and it was not necessary. Why were the two tiers not merged? We often discussed this point with the Government, but I would like to remind Mr WONG that the Government has not yet made a specific proposal. It only wanted to "scrap" the Municipal Councils first, and it will then rely more on the District Councils and "consider" devolving powers to a lower level.

Mr WONG, I would like to ask you a question: Do you think the Government will really devolve powers to a lower level? If Mr WONG believes so, he will be two and a half years old. It is now time for Mr WONG to speak. He has a chance now, he still has a chance. Perhaps Members of the DAB will miss the opportunity. They will miss the opportunity if they do not lobby Members of the FTU. But Mr WONG still has a chance. Now that we want the Government to merge the two tiers into one and devolve powers to a lower level, the only thing Mr WONG can do is to vote against the motion. I can say for sure that if he votes against the motion, the Bill will not pass Third Reading. At that time, the Government will discuss with Members of the Council at the first instance about what should be done. We may then discuss with the Government and tell them our demands and how we ask it to devolve powers to a lower level. We may then hold practical negotiations and conduct the first practical negotiation with the Government in dozens of years. Otherwise, the Municipal Councils will be scrapped and the second tier will be finished. Yet, the third tier does not have any power. I believe Mr Andrew WONG will also become one of the accomplices in aiding the "scrapping" of the Municipal Councils.

Therefore, I hope that Members would not let the Government go so easily and allow it to make a counter-offer after beating the tiger to death. Frankly speaking, it would not bother to raise an eyebrow to this at all. I hope that the four Honourable colleagues of the FTU who have the opportunities in hand and Mr Andrew WONG will understand this. Certainly, Members of the Liberal Party and other Members also have such opportunities, but I have mentioned Mr Andrew WONG in particular because I understand that

Mr Andrew WONG shares my views. Therefore, I hope that Mr WONG will rein in his horse at the hour of danger. Thank you, Madam President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Madam President, I saw an extraordinary "U-turn" yesterday. I was very upset about it. So I would speak on the "U-turn" specifically. In fact, the "U-turn" yesterday was a shameful act. It has betrayed the vote cast by the people of Hong Kong. It is an insult for elected Members to act this way because they have joined this Council as representatives of public opinion, but they have made a "U-turn". Although some people are willing to act in such a shameless way, what should they do now that the Bill will be read the Third time today? I hope that those Members will make yet another "U-turn" and support that the Municipal Councils should not be "scrapped".

As other Honourable colleagues have said, the Bill is a means by which the Government regains power. We can see that in the past year or two, if there were not elected members on the Urban Council and Regional Council, there would be big impacts on people's livelihood. To put it simply, without the help of these Members, the rents of market stalls under the Municipal Councils would have kept increasing and people would be even more badly off. Moreover, a lot of charges and scope of work are closely related to people's daily life. Members of the Municipal Councils indeed act as gatekeepers and express views on these problems. More importantly, they can monitor government policies. Without these representatives of public opinion, all these cannot be done and many people will have no redress for their grievances.

Many Honourable colleagues have said that they accept a two-tier structure, so do I. But it is a pity that the so-called two-tier structure at present is not a two-tier structure in essence. Although the district boards are "assemblies", what organizations are they? I have been thinking that the district boards should be renamed. To match their names to the reality, they should be renamed as "district advisory committees" and rather than district boards. Despite the terms of reference of the district boards, they only play advisory roles. Others can listen to what they like and turn a deaf ear to what they dislike. Is that meaningful? At present, the Municipal Councils hold policy-making powers and they can formulate policies, entirely different from these district advisory committees.

When Members say that they support a two-tier representative system, I hope they will be clear about one point. The district boards were actually means by which the British Administration in Hong Kong pulled wool over the eyes of Hong Kong people, making them think that they could elect representatives to take part in community and district affairs. There was a historical meaning behind this but we should examine ourselves today and stop subscribing to this.

What is the difference between district boards and ordinary advisory committees? Except for the fact that district board members were elected by the people, district boards do not have any power. As some Honourable colleagues have said, the Wong Tai Sin District Board opposed the construction of an incinerator in Diamond Hill, so what? The Government carried out the project as scheduled. But the Municipal Councils can really do something. If Members say that they support the so-called two-tier structure proposed, they are indeed deceiving themselves and others, and handing their power over to the Government. This is a material retrogression for a democratic and open society.

Yesterday, a Member said that "scrapping" the Municipal Councils would affect the livelihood of some people. This is true. In the past two weeks, some municipal services workers lodged complaints with the Complaints Division. They hoped that Members would not support the "scrapping" of the Municipal Councils because they would lose their jobs if the Municipal Councils were "scrapped". However, it is a pity that some Members said that they would lose their jobs not because of the "scrapping" of the Municipal Councils but the fact that the Government contracted out certain work. They are diverting the problem. I agree that contracting out services is a problem, but we cannot deny the fact that "scrapping" the Municipal Councils would affect the jobs of some staff. In fact, the staff with whom I have contacted will meet the fate of dismissal and severance, and their rice bowls will really be broken. Therefore, I hope that Members will not say that there will be no impact for there really is impact.

Therefore, I hope that these Honourable colleagues will examine themselves again. From the point of view of democracy and people's livelihood, "scrapping" the Municipal Councils is a retrogression. I hope that these Members will examine themselves and oppose the proposal to "scrap" the Municipal Councils.

Thank you, Madam President.

**MR AMBROSE CHEUNG** (in Cantonese): Madam President, if a historical moment is to arrive, it will certainly arrive. I am a newcomer to this Council, yet I may most probably be a newcomer retiring prematurely. I have seen many things since I joined this Council, and there are some examples from which I will learn, but there are also others from which I definitely will not learn.

Over the past 18 months since I became a Member of this Council, I have all along held fast to one principle, one ideal, which is to say only the things that I believe. So, I have asked for a vindication of the June 4 incident. I have also expressed my hope that the Government would seek to amend the Basic Law, since I consider it inappropriate of the Government to request the National People's Congress to interpret the Basic Law. As regards the Government's proposal to dissolve the two Municipal Councils, my stance is different from that of the Government's.

An Honourable colleague once told me that he would mistake me for a democrat if he should hear I speak out of this Chamber. It does not matter to me. I do not care how people label me. The most important principle I adhere to is: Holding fast to my stance and expressing the views that I believe. I do listen to the views raised by the Government, albeit my stance afterwards remains different from that of the Government in most cases. The only exception is the Disney theme park project — I am in support of the Government in this regard.

Madam President, the question of the dissolution of the two Municipal Councils will come to a final decision upon conclusion of the debate today. During this debate, I have seen different political bodies making known their positions on the issue. At different times and stages, some of the positions declared were true but some were not. Of the different manifestations of their position, some did not necessarily reflect their real attitudes. Nevertheless, that does not matter to me either, for our performance will eventually be appraised. After all, history will give us an appraisal.

The question is not anymore the preservation or otherwise of the two Municipal Councils, but the dignity of the Legislative Council, to which I have referred in my first speech. How well has each one of us discharged our duties as Members of this Council in the eyes of the public? I am not in a position to make such an appraisal, nor is this Council. We should leave that to the public.

Madam President, I should like to make two supplementary points. The first one is related to people's attitudes towards the lower two tiers of the representative system. Actually, I contacted some Members several months ago to solicit their opinions as to whether these two tiers could be strengthened at this stage if both the dissolution of the two Municipal Councils and the "one Municipal Council, one department" proposal would eventually lead to a two-tier structure. I have also pointed out that if the two tiers were to be strengthened, the various District Councils must be vested with solid powers. Regrettably, however, the majority of Honourable colleagues did not support my view.

If a two-tier structure vested with solid powers should remain our goal today, this Council would have a constitutional role to play and a responsibility to strive for it, albeit the power of veto is the only constitutional power that this Council could exercise. Looking back, although reviews have been promised in the white papers published during 1982-85 and the Government has also undertaken to enhance the roles of the various district boards for more than a dozen years since then, tangible results have yet to be seen. Not that we do not trust the Government, but waiting for too long a time would serve to shake our confidence.

As I have referred to in my first speech, we could exercise the power of veto to reject the Second or Third Reading of the Bill. That way, we could really hold further discussions with the Government to find out the direction in which the two-tier structure should develop. This is a positive and constructive suggestion aiming at giving play to the constitutional function of this Council. All along, there have been voices from among us complaining or criticizing the Basic Law for making use of various kinds of constraints to limit our constitutional role. Nevertheless, the Government should not be the only one to blame, for I believe this Council should also be held responsible. When the opportunity arises, have we ever played our appropriate role to discharge our constitutional function?

Madam President, if we do not exercise our power of veto, we will still be a long way from a two-tier structure with solid powers. Today, as we listened to the Secretary's Third Reading speech, I still could not find any specific promises made by the Government. Could we still trust the sincerity of the Government? Personally, I will cast a vote of no confidence.

Last but not least, I should like to speak a few words on public opinion. Madam President, at the beginning of the debate, the Secretary selectively disclosed some opinion poll results. In order that a comprehensive account of people's opinions (including at least those collected in the eyes of the public) could be put on the Official Record of Proceedings of this Council, I wish to use about two minutes to speak on some public opinion polls.

The following data were collected between June 1998 and March 1999. In an opinion poll conducted by the Democratic Alliance for the Betterment of Hong Kong in June 1998, 32.5% of the people surveyed supported dissolving the two Municipal Councils and 68% were in favour of a merger. As to the telephone opinion poll conducted by *Apple Daily*, 30% of the interviewees supported a dissolution and 44.6% supported a merger. With regard to the telephone opinion poll conducted by the Democratic Party, while 17.1% of the people interviewed were in favour of a dissolution, 33% were for merging and another 11.2% were for retaining the Municipal Councils. In other words, a total of 44.2% of the people interviewed in this telephone survey supported the Municipal Councils. According to the research conducted by the Hong Kong Institute of Asia-Pacific Studies, Chinese University of Hong Kong, 9.5% of the people were for dissolution and 57% were in favour of a municipal council. As reflected in the findings of an opinion poll conducted by the Social Science Research Centre of the University Hong Kong, 16.2% were for dissolution and 60.7% were for retaining the Municipal Councils. The corresponding findings of the Asia-Pacific Institute of Business were 15% and 64% respectively. The principal researcher responsible for the study of "Hong Kong in Transition", conducted by the Department of Politics and International Relations of the Baptist University, conducted three separate surveys respectively in January, July and October 1998. With regard to the findings of the three surveys, 9% of the people surveyed in January were for dissolution and 61% were for the Municipal Councils. The corresponding figures of the findings in July were 13% and 54% respectively; and in October, 14% and 60%. As regards the survey conducted in March 1999 by the two Municipal Councils, while 11% of the interviewees were in favour of a dissolution, 74% were for a merger, and those who were in favour of retaining the municipal council system together with those who were for merging totalled at 85%.

On the other hand, the Government has also conducted a public consultation exercise. Instead of conducting any opinion poll, the Government prepared only some questionnaires to collect the people's opinion in June and July 1998. With respect to the various district boards and their respective area committees, while 12.8% of their members supported a dissolution, 72.1% were in favour of the Municipal Councils. Regarding the different submissions received by the Constitutional Affairs Bureau in June and July 1998, 32.7% of the 710 representations submitted by individuals were for dissolution and 48% were in support of the Municipal Councils. The Government has also received 2 565 representations the contents of which were identical. Of these submissions, 2% were in favour of dissolution while 97% were for keeping a municipal council. As to the 1 663 government-prepared questionnaires, 17% of the completed questionnaires were for dissolution, 44% were for merging, while 18% were for retaining the structure. In other words, 62% were in favour of having a municipal council. So, these are the results of the Government's questionnaire survey.

Madam President, I believe the findings of these 12 surveys are clear enough. At last, there were surveys the findings of which were in favour of "scrapping" the two Municipal Councils. The first one was the telephone opinion poll conducted by the television programme "Hong Kong Affairs" on 28 July 1998. In this connection, 50.3% of the responses received were for dissolution, while 36.3% were for merging and 13.4% were for retaining the two Municipal Councils. In other words, a total of 49.7% were in favour of a municipal council, which is almost a draw compared to the 50.3% for dissolution. The only survey the findings of which were in support of "scrapping" the two Municipal Councils should be the one conducted by Hong Kong Institute of Asia-Pacific Studies of the Chinese University of Hong Kong in October 1998. According the results of this survey, 56.7% of those surveyed were for dissolving the two Municipal Councils while 29.6% were in favour of keeping them. This is the only record in support of "scrapping the two Municipal Councils" that I have in hand.

The findings to which I referred were collected through a variety of means and channels. The opinion polls concerned were conducted by different institutions using different methods, some were very scientific surveys while some others were opinion collection exercises conducted in a comparatively unscientific manner. Nevertheless, the findings presented were a comprehensive record of the people's opinions, at least more comprehensive than the opinion polls mentioned by the Government during this debate.

Madam President, in presenting these figures to the Council, I hope that the people's opinions I have in hand will be put on record and go down in history. Regardless of whether the voting result is in favour of dissolving the two Municipal Councils or retaining them, the views of the public have been clearly reflected.

Thank you, Madam President.

**MR CHEUNG MAN-KWONG** (in Cantonese): Madam President, as the question of the Third Reading of the Bill currently under discussion will soon be decided, I should like to speak a few words and put them on record as witness to the development of the two Municipal Councils.

I have been rather disheartened in this two-day debate, for I have seen the degradation of a parliamentary assembly. The Democratic Alliance for the Betterment of Hong Kong (DAB) has disappointed me very much in these two days. I do not intend to raise any factional disputes over this issue, but I really want to express my heartfelt feelings.

In these two days, since there were not enough votes to support the Government's proposal, the DAB first resorted to "filibustering" before making an about-turn for the Government. This was what happened yesterday. Today, to ensure that the voting result would be in line with the Government's wishes, the DAB has even adopted the "playing truant" strategy. Of course, they are returning to this Chamber to vote against the "scrapping" of the Municipal Councils. That way, they will be able to hang up signboards to sing their own praises. So, "filibustering", "making an about-turn", "playing truant" and "singing their own praises" are the four steps used by the DAB to support the Government. As for the ultimate aim, it is of course to "scrap" the two Municipal Councils.

Throughout the entire process, the absurdity of the arguments advanced by them are really amazing; besides, the political strategies they have employed are very impressive as well. Nevertheless, what they have done have only served to make people feel that this Council has indeed degraded itself. I was once moved by a banner slogan displayed by the DAB. That was a really good

slogan, which said: The people's wish is my wish. This is a very good slogan. I always thought to myself that although this was a slogan of the DAB's, the Democratic Party should also make it one of our targets. For this reason, I have also adopted it as my personal encouragement. However, what they have done today is a different story. Their performance today tells us that "the Government's wish is their wish", "the Government's wish rules their votes". By voting in favour of the Government's wishes, the DAB has breached the promises made in their slogan. Two lines from the novel "A Dream of Red Mansions" can best describe the things happened today. They are: "When false is taken for true, true becomes false" and "Too much cunning in plotting and scheming". Which part of the attitudes they reflected in this Chamber is true and which part is false? I am afraid all is but "too much cunning in plotting and scheming". However, immediately following the line "too much cunning in plotting and scheming" is "the cause of her own undoing". Would that be the fate of this Council as well?

When talking about the performance of the Municipal Councils, many a time we were quite unhappy. This is true, for what certain individual Members of the two Municipal Councils have said and done indeed serve to invite public criticisms against the two Municipal Councils. Moreover, the meetings of the Municipal Councils were very often rather chaotic or even frustrating. To some members of the public, all these are signs that the two Municipal Councils have fallen into a degradation. As a result, the public is losing confidence in them. Today, despite the well-written and respectable Rules of Procedure of this Council, the tricks employed by certain Members have served to reduce the Council to an emulation of the Municipal Councils. If we should go on employing such tricks, if we should let this situation to develop, sooner or later the people will lose confidence in us as well. As the saying goes: "As my body turns to dust today, so will yours in the future". We should not allow this Council to go on like this. Otherwise, even though we may succeed in "scrapping" the Municipal Councils by using tricks, this Council may very likely be met with the same fate in the future. This is because the tricks we employ would cause the people to lose confidence in this Council.

This issue has brought to my mind yet another issue, which is the "integrity" of a political party and the "integrity" of a person. Whether it is the integrity of a political party or that of a person, creditability is the most important factor. This is what the morality of a political party or a person is

about. Today, however, why must one do something to undermine the integrity of a party? Even though many of us in this Chamber did not say it out loud, deep down in their hearts they do feel that certain people have indeed ruined the integrity of their party, and that the trustworthiness and creditability of these people's party have all been destroyed. What a pity! What a shame! For many of those affiliated to that party are well-educated people who know what is right and what is wrong. In the circumstances, Madam President and Honourable colleagues, I must admit that my heart really sinks.

When I first joined the Council in 1991, I hoped that this Council is a council which upholds fairness and reasons. However, many a time that was not the case. Open-hearted debates and sincere voting decisions are my expectation. But how can I find sincerity in tricks like "about-turn", "playing truant" and "singing one's own praises"? I am so disappointed, but there is nothing I could do. So, this is the Council that we have. Is there any way we could improve the situation? I think our only hope lies in a democratic political system. That way, the undesirable factors will be eliminated gradually and the remaining factors, which are the good ones, could interact to urge political parties to improve and progress. As political parties continue to improve themselves, the public would be benefited eventually. I really hope things would develop this way. I do not wish to criticize any Members or parties, but I really need to pour my heart out. Certainly .....

**PRESIDENT** (in Cantonese): Excuse me, Mr CHEUNG, you have been speaking for seven minutes already. However, I should like to draw your attention to Rule 63 of the Rules of Procedure, which says: Debate on that motion shall be confined to the contents of the Bill. You may now continue.

**MR CHEUNG MAN-KWONG** (in Cantonese): Thank you, Madam President. Actually, just when you were about to remind me of the Rule, I was preparing to thank you for your patience with me. So, these are my remarks. Madam President, please accept my apology.

**MR JAMES TO** (in Cantonese): Madam President, sometimes history does repeat itself. Just now Mr SIN Chung-kai happened to show me a number of British public order bills relating to "DNA profiling". Let me quote a remark

made by Prime Minister John MAJORS in 1997 against the Labour Party — the present ruling party — which was then a party not in office. He said, "They always said what the public wants to hear, but ensure enough votes to be against what the public want done." I am really surprised to see how quickly history has repeated itself, for some of our Honourable colleagues in this Chamber have in effect put this remark into practice. So, such kind of political party exists in not only the United Kingdom but also Hong Kong.

I have read in the newspaper some reports on this Bill, in particular the things happened yesterday. In this connection, Mr Jasper TSANG has reportedly warned the media, "These are my reasons for supporting the Second Reading of the Bill. Don't put words into my mouth but report only the things I have said." I believe we are all aware of that, but still I should like to point out to Honourable Members, especially Mr Jasper TSANG, that Mr LAU Kong-wah, a fellow party member of Mr TSANG, has made it clear yesterday that the reporters had not put words into their mouths. Why? This was because Mr LAU Kong-wah .....

**PRESIDENT** (in Cantonese): Excuse me, Mr James TO, you have been speaking for one minute and 36 seconds but so far you are still talking about the voting episode. Just now I have already reminded Mr CHEUNG Man-kwong of the provisions under Rule 63 of the Rules of Procedure, which says: "Debate on that motion shall be confined to the contents of the Bill." So, please do not dwell on the voting matters any longer but speak on the Bill instead.

**MR JAMES TO** (in Cantonese): Yes, Madam President, but what I said just now was related to the stance that a party has adopted in relation to the Bill.

**PRESIDENT** (in Cantonese): You may continue with your speech, but please bear my words in mind.

**MR JAMES TO** (in Cantonese): My speech will be very brief, lasting slightly more than a minute. In explaining why his party supported the Second Reading of the Bill, Mr LAU Kong-wah pointed out yesterday that it was in fact their strategy. Mr LAU has also compared their strategy with the

"filibustering" tactics used by the Democratic Party in the past. Hence, I should like to point out that the Democratic Party employed the "filibustering" tactics just because we wanted to win; however, if a party "filibusters" or changes its voting decision in order to lose, then the party concerned is indeed putting into practice the remarks made by John MAJORS in 1997: "They always say what the public wants to hear, but ensure enough votes to be against what the public want done." How coincidentally has history repeated itself in such a manner!

**MR FRED LI** (in Cantonese): Madam President, because of your repeated reminders, I must be very careful when making my speech.

Madam President, the text of the Bill is lengthy like a very thick book. To scrutinize it, we have altogether held 40 meetings, some of which were "double" sessions. For my part, I have attended most of the meetings and made my best effort to scrutinize the Bill. I believe that not many Honourable Members in this Chamber really understand very much the content of the Bill. Just now we have voted on many of the clauses set out in the Bill, as well as a number of amendments moved by the Secretary on behalf of the Government. However, I do not know how many Honourable colleagues have really studied the clauses and amendments. Every time the Secretary moves an amendment, he will rise and say, "I move that clauses so-and-so be amended, as set out in the paper circularized to Members." It is not necessary for him to read out the content of the relevant amendments. But what on earth are all those amendments about? Have Honourable colleagues read them beforehand? Do Honourable colleagues understand them and know where the problems lie? Actually, the considerable time spent on scrutinizing the Bill, which is equivalent to almost 40 meeting sessions, should be proof positive that the ordinances relating to the two Municipal Councils as well as the Public Health and Municipal Services Ordinance (Cap. 132) are indeed problematic.

In fact, the present review offers a very good opportunity for us to re-examine the provisions set out in the relevant ordinances and to remove from them the obsolete ones. One example is the prohibition of insufficient clothing in public swimming pools; indeed, I was surprised to learn that we should not wear fewer clothes in swimming pools. In scrutinizing the Bill, we have identified many obsolete requirements and suggested the Government making amendments to the relevant provisions. The Government agreed to some of the amendments but held that time was too limited for it to consider the rest of

the proposed amendments because the Bill must be passed before December. On the other hand, there were some Members who, upon taking their seats, had urged us to pass the Bill expeditiously without regard to many of the provisions contained therein. Such kind of attitude really annoyed me. What if we have passed the Bill with our eyes closed, and found that the Bill was fraught with many problems? Should we tolerate that? Should we shut our eyes to all those obsolete requirements? In the end, when the Government called for meetings, or even suggested holding additional meetings and working overtime, none of us raised any objection. To cope with the Government's timetable, we made our best efforts to attend all the meetings, which were held twice or even thrice a week. One thing I must point out is that while the content of the Bill left a lot to be desired, the Government eventually agreed to many of our suggestions and made amendments accordingly. But how many of the Members in this Chamber really understand this Bill? Actually, many other amendments should have been made, only that the Government has intended to "scrap" the two Municipal Councils first and leave the implementation of the amendments concerned to the Director of Food and Environmental Hygiene upon establishing the Department of Food and Environmental Hygiene. As regards matters relating to leisure and cultural activities, the Government has intended to leave them to the future Director of Leisure and Cultural Services. On the cultural front, however, nothing has been suggested so far. We have concentrated our discussions on many hygiene-related issues, as well as on matters relating to food safety, crematorium and so on. Actually, there is still much room for development on the cultural front. But the question remains that we have no idea as to in what direction will the policies on culture develop. Things in the leisure field are just the same. Despite the ample room for development, the Government has deferred all actions in this respect until the two Municipal Councils are "scrapped". From this, we can see that the abolition of the two Municipal Councils is in fact an important political decision, any other matters should give way and wait to be handled at later dates.

This time we have spent 40 meeting sessions to deal with a part of the issue, but we do not know how much time do we still have. Upon passage of the Bill, the two Municipal Councils will cease to exist and the Government will be applying for funds to set up the relevant new Policy Bureaux and government departments. By then, it would be very difficult for this Council to participate in reviewing the relevant laws and regulations. With regard to the actions to be taken by the Government, whether it will take action gradually, very slowly, or simply take no action at all, we just cannot have a

say anymore. What about submitting a private bill? Given the many constraints, there are bound to be obstacles. After the question on the Third Reading of the Bill has been put, we will need to cast our votes. However, I have found the political parties represented in this Chamber rather schizoid. Whilst their representatives in the two Municipal Councils are striving hard to safeguard the two Councils and putting forward a "one Municipal Council, one department" proposal in protest against the "scrapping" proposal, their representatives in this Chamber support the "scrapping" of the two Councils. Why is there a lack of co-ordination between the first and second echelons of these political parties? Why are they so divided? The Hong Kong Federation of Trade Unions (FTU) is particularly the case. Notwithstanding the strongest protest staged by their fellow member WONG Kwok-hing in the Provisional Urban Council, the FTU Members in this Council have all along been in support of the "scrapping" of the two Municipal Councils. Why is that so? I am a witness to the case. In attending meetings of this Council and that of the Provisional Urban Council, I have witnessed everything. I have witnessed the actions taken by the Provisional Urban Council throughout the entire period when this Bill was under scrutiny. Have such actions achieved any effect? Have any Members been affected as a result? No, not really. Members have already made up their mind; as such, the result of the forthcoming vote will certainly be in favour of the passage of the Bill to "scrap" the two Municipal Councils. I remember Mr Michael SUEN having made this remark which impresses on my mind: "The point of no return". Now that the Bill is put on the table, we have no doubt reached the point of no return. Hence, the opinion polls mentioned by Mr Ambrose CHEUNG just now could all be cast aside. Given that we have reached the point of no return, all those figures will not be taken into account and dwelling on any of them would just be a waste of time. The Government cannot afford to lose this time, it has to win, and it has to win regardless. Its machinery must therefore be fully mobilized. Otherwise, how could the new bureau and the new government departments be established? Where would Mrs Lily YAM go if the position she is prepared to take could not be created? The protest we stage is but a beautiful mistake, for the Government will always find its mouthpiece and supporters. What is more, it can even find its supporting party in this Council.

For these reasons, in the end I could only say that Mr LEE Wing-tat and I have made our best effort to scrutinize the Bill on behalf of the Democratic Party, albeit we are opposed to the "scrapping" of the two Municipal Councils all along. I think the Government is also aware of that. Despite the protest we made against the "scrapping" of the two Municipal Councils, we have done

our best to help the Government to improve the Bill. We have looked into the unsatisfactory parts of the Bill as far as practicable and pressed the Government to make many improvements. The fees and charges for leisure venues are one good example in this connection. I believe we have given a good account of ourselves here, I just want to put that on record. Madam President, I so submit.

**MISS CHRISTINE LOH:** Madam President, I am responding directly to the Secretary's opening remarks for Third Reading, since they were partially directed at me. So, I ask for your patience, but I promise you that I will be very brief.

The Honourable Andrew WONG and I have been trying separately to ask the Administration to give an explicit undertaking about the evolution of District Councils. Mr Andrew WONG even dug out an amendment in my name which we worked on together and which we failed to win sufficient support during the passage of the District Council Bill calling for greater powers to be given to the District Councils at a time deemed to be appropriate by the Chief Executive. Mr Andrew WONG used that to try to lobby the Administration, I believe, throughout today.

At Second Reading, the Secretary gave some very vague comments which were totally inadequate to me. At the resumption of Third Reading, he made another attempt. Let me say that I appreciate all his efforts to meet the concerns of the Citizens Party. Allow me to repeat them, however. Indeed, we want an undertaking of further devolution of power to the District Councils. Furthermore, we want to know when appointments will be abolished. I know how hard the Secretary and his team have tried to meet our concerns. I can just about accept the latest statement on the direction towards devolution of power. It is not perfect, but I believe it is the best that the Administration can do today. However, our concern for District Council appointment remains.

I have made a number of very quick, urgent calls to members of my Party to seek their views. The Party still instructed me to vote against the Bill.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Provision of Municipal Services (Reorganization) Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

**PRESIDENT** (in Cantonese): Pursuant to the Rules of Procedure, a division is to be ordered after the question concerned has been decided by a show of hands. However, I understand that Members are already very tired, so the division bell will now start ringing for three minutes.

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

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

Mr 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 David LI, 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, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Wing-chan, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Howard YOUNG, Mrs Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung and Mr FUNG Chi-kin voted for the motion.

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, Miss Christine LOH, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr Gary CHENG, Mr SIN Chung-kai, Mr WONG Yung-kan, Mr Jasper TSANG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Chin-shek, Mr LAU Kong-wah, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong 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 59 Members present, 31 were in favour of the motion and 27 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): Provision of Municipal Services (Reorganization) Bill.

### **MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. The movers of the motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on the amendment. The mover of an amendment will have up to 10 minutes to speak. Other Members will each have up to seven minutes for their speeches.

First motion: Small and medium enterprises.

### **SMALL AND MEDIUM ENTERPRISES**

**MRS SELINA CHOW** (in Cantonese): Madam President, 98% of the enterprises in Hong Kong are "small and medium enterprises" (SMEs). According to the Government's definition, SMEs in the manufacturing industry and service industry refer to companies with less than 100 employees and less than 50 employees respectively. There are a total of more than 280 000 such companies in Hong Kong, with nearly 250 000 of them (that is 88%) being "tiny" companies employing less than 10 people. These SMEs are the mainstay of Hong Kong economy, providing 1.33 million job opportunities (that is, 40% of our workforce).

Nowadays, everyone says SMEs need help. A Small and Medium Enterprises Committee has been set up by the Government and a number of non-governmental SMEs organizations have also been established. Even trade associations set up their own SMEs committees. However, can these organizations really offer effective help to resolve the most fatal problem currently faced by SMEs in various trades and industries?

As a representative of the wholesale and retail sector, I have the opportunity of coming into contact with SMEs on a daily basis. In addition to the sector represented by me, a number of other trades, including sectors related to estate agency, tourism, transport and so on, have all given me the same message and that is, the most fatal problem currently faced by SMEs is cash flow and financing.

A strong opinion holds that the Government's recent scheme of boosting the amount of guarantee for loans for SMEs is not running successfully. Of course, the Government will use various data to try to convince the public that the scheme is going to work. However, if Members should listen to the voices of the SMEs carefully, they will find that the scheme is basically unable to help most small businesses which are badly in need of help. As Members are aware, the "bricks and mortar" policy adopted by banks in Hong Kong has dealt a deadly blow to the financing of SMEs. Even the Chief Executive specifically mentioned this in his policy address. But in spite of this, will the banks alter this policy just because the Chief Executive has mentioned this point? The answer is definitely in the negative.

The Liberal Party firmly believes that it is necessary to conduct a radical and in-depth search for a solution which can really help SMEs to resolve their cash flow difficulties. In the debate on the policy address, I asked the Government to study the need to set up development banks in response to and acknowledgement of the fact general commercial banks act in accordance with commercial principles without regard to their social liabilities. When we look at other places, we can easily find such examples as the Pudong Development Bank, which was specially set up in the Mainland for the Pudong development project, and the Singapore Development Bank, which is set up in Singapore for providing loans to SMEs. In other words, these banks are established for the purpose of implementing certain government policies.

The Hong Kong Government can indeed consider something different. For instance, Hong Kong consortia can raise funds to establish a Venture Capital. The Government can then provide professional support in the legal and accounting areas. Such a plan can be worked out very quickly. As another feasible solution, the Government can buy out an existing bank and retain all its professional management staff and use the Government's policy of assisting SMEs as its business portfolio. In doing so, it can ensure that loans are not always determined by property prices. Instead, they will be determined on the basis of whether a business is healthy and viable. It would then obviate the risks of financing. The recent establishment of the Second Board has undeniably benefited some medium sized companies. However, we should understand that, even by the most conservative estimate, the cost for listing a company is at least \$5 million. As far as I understand it, several companies which went listing recently through this channel have, as a general rule, each spent more than \$10 million. How can "tiny" companies meet the requirements to raise funds by this means? They have to rely on the banks eventually.

Even if their capital problems can be resolved, it does not mean that these businesses will definitely succeed. Like a head-on blow, the financial turmoil has awakened the business sector, particularly trades and industries which were worry-free in the past. For instance, the retail industry which I represent and tourism, which has long had an outstanding performance, were forced to improvise countermeasures within a short period of time. Furthermore, the World Trade Organization agreement reached between China and the United States has brought new challenges to Hong Kong. As it is imperative for Hong Kong to re-position itself, it needs to cope with the market demands in terms of information and technology. Moreover, Hong Kong is now subject to ever-increasing competition, particularly those from places in the Asian-Pacific Region like Singapore, Taiwan, Thailand and mainland cities such as Shanghai. SMEs really find these hard to cope with. The Government therefore plays a very important role. It needs to provide investment opportunities in hardware to ensure that we have world-class equipment and networks and, more importantly, cultivate manpower resources.

Labour shortage has all along been a problem for SMEs. Generally speaking, the labour sector will give priority consideration to posts offered by big organizations where better benefits and welfare, more training

opportunities, more optimistic prospects and better-defined work are offered. Relatively speaking, small enterprises have a heavy workload or even combine a number of work types together. The working hours are longer too. Local workers usually refuse to work for industries which have a special requirement. For instance, employees working in the fishing industry will need to work at two or three o'clock early in the morning and finish work at six or seven o'clock in the morning. Moreover, the work is somewhat obnoxious in nature. The Government has not only failed to solve problems for employers in such industries, but also, in cases of labour disputes, frequently demanded them to pay more compensation than what have been provided for in agreements. As a result, a number of employers have expressed great discontent. Some small employers have even aired their grievances to me. They are of the view that it is difficult to do business, and this is perfectly true. However, it is equally difficult to wind up their business for compensation and severance payment alone will probably cost them more than \$1 million. In times of extreme difficulties, where can they find money to wind up their business? This is a question that the authorities concerned must address and improve. We need to give SMEs, particularly "tiny" enterprises, a helping hand.

At the same time, the Government also needs to take the initiative to offer SMEs other help over a wide range of areas and provide training at different levels, targeting at employers, managers, supervisors and workers alike, who should be given ample opportunities to acquire the latest knowledge in terms of concept, technology and methodology. To encourage SMEs to accept new technology and concepts, the Government should make investment in the relevant promotion. It should not strictly adhere to its "user pays" and "self-financing" policies in order to enable Hong Kong's products and services to move in the direction of high-added value.

On the other hand, for the purpose of assisting SMEs, a serious reform is indispensable for resolving problems resulted from the Government's bureaucratic system and the charging of government fees.

Members of the public are terribly afraid of the licensing system. Although the Administration has now finally invented a temporary licensing system, it still takes 188 days counting from the application date before a food establishment can obtain a licence. Moreover, it will take 315 days for a formal licence to be issued. Can a small restaurant operating on a small sum

of capital manage to pay rents just for waiting for the licence? Can it wait until a licence is issued? With no alternative, the operator can only take the risk of being punished for not applying for a licence. He can operate the restaurant for a year or so and then wind it up. Will such an unstable operating manner help upgrade the professionalism of the whole industry and the quality of service? Why is it necessary for the issuance of licences to subject to such a prolonged delay which is absolutely unacceptable? In this respect, the Buildings Department (BD) has made no performance pledges. An applicant must obtain an approved plan from it before he can ascertain whether his selected site can be operated as a food establishment. This procedure alone will take 28 days. It will then take half a month for certified true copies to be confirmed. It is really inconceivable that such a backward procedure still exists in this era of technology. Apparently, the Financial Secretary needs to ask the officer in charge of the Business and Services Promotion Unit to facilitate some changes. But regrettably, he is nowhere to be found. Actually, he is not being lazy. He is only dealing with the Disney issue. This is not the first time I raise this point. I must appeal to the Government once again to make speedy remedy by finding someone to deal with this important matter.

Incidentally, the sewage charges scandal has been lingering on for four years. What efficiency is it for the appeal procedure remains unimproved and the unfair charging of fees still exists, although the head of the bureau has changed two times already?

Madam President, SMEs are facing innumerable problems. Let us wait and see how far the valuable opinions put forward by Honourable colleagues today will be respected or adopted by the Government.

**Mrs Selina CHOW moved the following motion: (Translation)**

"That, as small and medium enterprises (SMEs) are the mainstay of Hong Kong economy, this Council urges the Government to provide a positive steer in areas such as financing, information provision, technical support, market development, quality support, infrastructure, environmental support and human resources development, and homogenize the strengths of the Government, the public and private organizations in order to promote the development of SMEs."

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW, as set out on the Agenda, be passed.

**MR SIN CHUNG-KAI** (in Cantonese): Mr Deputy, the Democratic Party will support the motion moved by Mrs Selina CHOW today. The motion discusses mainly problems faced by SMEs. There are more than 280 000 SMEs in Hong Kong, accounting for 98% of the total number of enterprises throughout the territory, and the number of people working in SMEs accounts for 60% of the total working population. The relationship between SMEs and Hong Kong resembles a big company, which requires both big clients and a great number of small and medium clients to share its market risks. Therefore, the existence of SMEs serves a very important function. I want to emphasize that the first and foremost objective of assisting the SMEs is to boost the competitive edge all rather than viewing production as the sole target of large and medium enterprises. I also want to emphasize that the biggest difficulty currently faced by SMEs is, as clearly stated by Mrs Selina CHOW earlier, the financing problem. Apart from this, there are also problems related to market development, information and availability of technology and so on. After the financial turmoil, the Government put forward the so-called "nine initiatives", one of which is to set up a Special Finance Scheme for SMEs. I cannot say this Scheme has failed completely, but I think Members will agree that there are weaknesses with the Scheme. Of course it is useful in a certain sense, but there is naturally still room for improvement.

As regards the proposal put forward by Mrs Selina CHOW earlier concerning the setting up of development banks for SMEs, the Democratic Party thinks this merits consideration if the banks can be operated purely in accordance with commercial principles, without the need for considerable subsidy by the Government. I would like to suggest the Liberal Party to examine this issue in detail in the first place. At this stage, we do not want to indicate whether or not we will support the idea. However, we can consider the matter in this direction.

Nevertheless, the Democratic Party wishes to offer another solution for the Government's consideration. We all know that most banks in Hong Kong are now adhering to the "bricks and mortar" policy, without bothering to set up a credit rating system. In fact, the Government can consider setting up some credit rating companies. These companies can levy charges for assisting in rating SMEs, just like accrediting three As to major international organizations. But we will give ratings mainly in the light of Hong Kong's environment. These rating companies must be more professional in the sense that they can assess the management of each company. The relevant organizations can then apply to banks for loans by virtue of the ratings they are given. In fact, the banks should set up their own rating regimes to comment on the credit ratings acquired by the organizations before deciding on the amount of loans to be offered. Nevertheless, our local banks have got used to the "bricks and mortar" policy. No loans will be offered without the collateral of "bricks and mortar". Some banks do have their own rating systems and employ professional staff for rating loans. But the number of such banks is small.

Perhaps the Government can consider setting up its own development bank, just like what Mrs Selina CHOW suggested. However, risks will arise if the bank is to be run by the Government, like the case in South Korea or Malaysia several years ago. At that time, numerous governmental organizations offered a huge number of loans in vigorous support of other companies. Consequently, their governments were thrown into predicaments once problems arose. We must learn from these historical lessons.

If the proposed development bank can be operated purely in accordance with commercial principles rather than "bricks and mortar" as its credit policy, we should consider this proposal once we find that there is a commercial incentive or a basis for making profits.

The second point I want to raise is purely related to financing. In fact, I think it is not absolutely true that the market is lack of flowing capitals for whether or not capitals are sufficient shall depend entirely on the types of trades and industries. What happens to the IT industry in Hong Kong is just the opposite. Many risk funds can simply not find a sufficient number of quality companies for investment. In other words, the market is unable to offer adequate quality companies for investment. Capitals are indeed available but the problem is there is no quality investment target.

There are few people in Hong Kong who are well versed in technology or the market trends. The Government should consider how to make up for this deficiency. Now I would like to talk about the concept of family business in brief. I dare not say that this concept should be abolished. But at least, changes are warranted. For instance, we need to understand that the stake of a family's share in the family business will be thinned by the introduction of a new organization into the business, but at same time it will inject new blood into the management.

There is one more point I want to say but there is not much time left now. A saying has become popular over the past couple of years: "E-business or out-of-business". This means that enterprises will wind up or extinguish unless they switch to e-trading.

In the United States, 90% of the companies have made use of the Internet, and benefited as a result. In the United States, 60% to 70% of big companies and 30% of small companies have their own websites. Many companies in the United States maintain close communication with their clients through the Internet and integrate some of their business with "back office". In doing so, their operating costs have greatly lowered.

What happens in Hong Kong is just the opposite. According to the findings of a study conducted by the Hong Kong Productivity Council and IBM in this area, SMEs in Hong Kong are extremely backward in the application of e-trading. This is indeed a practical issue. Therefore, the Government should consider how to encourage 280 000 SMEs to move in the direction of "e-trading" world in the coming few years. Given the fact that China will soon be admitted to the World Trade Organization, there is a greater need for the Government to ensure that SMEs in Hong Kong are able to grasp the first mover advantage. Otherwise, we will lose a lot of opportunities.

In our opinion, the Government has made a lot of efforts in giving IT development the impetus. However, there is much it needs to do in educating SMEs. I hope the Government can make more efforts in this area.

Mr Deputy, I so submit.

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, SMEs indeed need to face a lot of difficulties in the current competitive environment.

The Democratic Alliance for the Betterment of Hong Kong (DAB) considers it necessary for SMEs to rely on the Government for the provision of supportive measures in order to strive for improvement. At present, local SMEs are still at the recovery stage after being hit by the financial turmoil. The Government should strengthen its support for SMEs in such areas as financing, human resources training, management strategies, application of IT and product development.

Operating in a small scale, SMEs are not strong enough to cope with an economic downturn. They are in desperate need of a stable, business-friendly environment in order to survive fierce competition in the market. Unfortunately, the Government raised the proposal of increasing charges again recently. A lot of these charges, such as water charges, sewage charges, licence fees, patent registration fees and chemicals storage licence fees, will affect the operation of SMEs. Government charges have already imposed a heavy burden on SMEs at the moment. If the Government really raises various charges next year, I am afraid this will deal a blow to hundreds of thousands of SMEs all over the territory, in detriment to a full recovery of the economy.

The DAB sees that Hong Kong is still at a preliminary stage of economic recovery and there will still be some fluctuation. Although we can see that sectors like commerce, finance and tourism have slightly picked up, there is no obvious sign of recovery insofar as the retail and other industries are concerned while personal spending is still weak. The Government should not conclude that the worst times are over. What is more, it must not "wield the axe" at SMEs and members of the public.

The Government should indeed bear in mind the lessons learned from other countries which "rubbed salt into injuries" in the course of economic recovery. We can recall that Japan once had a short-lived economic recovery a few years ago. However, because of the mistakes made by the helmsman in office, the chance leading to an economic recovery was strangled. In 1997, the former Japanese Prime Minister Hashimoto decided to raise consumption tax before Japan's economic recovery had stabilized, and that led to an economic recession once again. It was only until the second half of this year that the Japanese economy showed signs of slight improvement. Is it not more

or less the same as what Hashimoto did a few years ago if the Government of the Hong Kong Special Administrative Region (SAR) chooses to raise charges at this time when our economy has only slightly improved?

The difficulty faced by SMEs mainly lies in financing. The intention of the Special Finance Scheme for SMEs launched by the Government was originally good. But on the question of how to set up a "simple, convenient and comprehensive" supportive finance mechanism for SMEs on a long-term basis, the Government only knows to ask the banks to relax lending, while failing to create a better supportive financing mechanism. In October this year, the Government suggested to double the amount of guarantee for loans provided under the Scheme. However, it indicated that it would stop injecting more funds and that the Scheme would not be operating on a long-term basis. As far as we understand it, many SMEs have expressed great disappointment at the Government's short-sightedness.

In fact, such organizations as SME institutions and trade associations have put forward a lot of suggestions on the Special Finance Scheme for SMEs. Examples include to strengthen publicity on the vetting criteria for the Scheme, to set up long-term loan schemes, to meet the needs of SMEs in terms of interest per annum and repayment periods and to establish quasi-government lending institutions such as "Development Banks for SMEs" with a view to creating a fair finance environment for large, medium and small enterprises. Unfortunately, the Government has not considered the views of the relevant trades carefully.

Apart from considering the "Special Finance Scheme for SMEs" operated by the Industry Department, SMEs can also apply for finance from local venture capital funds. SMEs must, however, first formulate a detailed and feasible development plan, explore items with market potentials and equip themselves with a healthy management framework, composition and so on. This is indeed beyond the ability of ordinary SMEs. In fact, do we need to explore different financing channels for SMEs, apart from encouraging banks and lending institutions to approve loans? The Government should give more consideration in this area.

Local SMEs undeniably lack financing assistance. Given their low standard of IT application (for instance, the Hong Kong Productivity Council pointed out that 60% of SMEs have not yet made use of more advanced communications and trading tools such as e-commerce and e-mail) and a lack of

research and development, management personnel for SMEs and support for developing overseas markets and so on, SMEs find it really hard to move towards a more advanced mode of development.

As we move into the next century, the DAB hopes that all sectors can work in concert to enhance the competitive edge of local SMEs, develop financing channels that can meet the needs of SMEs in setting up, maintaining and developing their businesses so as to enable SMEs to formulate development strategies to tie in with development objectives in the short, medium and long terms, explore innovative products, and strive to become the most competitive SMEs in the Region.

With these remarks, Mr Deputy, I support the motion.

**MR BERNARD CHAN:** Mr Deputy, small and medium sized enterprises (SMEs) have long been the mainstay of Hong Kong's economic success. In building Hong Kong's fame as a world-class financial hub, their contribution is immense. However, the Asian financial turmoil starting in July 1997 has put many SMEs in a quandary, and many cash-strapped enterprises have been left to face prolonging difficulties, so widespread and deep that many need the financial aid to tide themselves over the hardship.

At present, Hong Kong is still looking for a new formula for economic revival. It is prepared to take time and effort to invest heavily in new technologies and value-added industries. The plight in front of us is that the local SMEs are losing competitiveness in the face of a shrinking market as well as various forms of on-going economic restructuring. Hong Kong's business environment for SMEs today is indeed very different from that of 10 years or 20 years ago. Once we are slow in responding to these rapid changes and challenges, it is very likely that we will lose out.

Government policies always play the most crucial part in determining the path and form its economy is to take. It is the duty of all governments in well-developed countries to provide long-term policies for the development of their own SMEs. But as things stand, our Government seems to have lagged behind in responding to the challenges, and its policy is publicly seen as being shortsighted.

I have not forgotten the doubling of loan guarantee offered by our Chief Executive, Mr TUNG, in this year's policy address to assist SMEs, which are suffering from severe cash flow problems.

Yet, Mr Deputy, we all must come to face the harsh reality that temporary loans will indeed provide a timely revival, but will not solve the problem in the longer term. What we need in the immediate future is a favourable investment climate and environment, as well as clearly-defined policies for the restructuring of our economy.

I wish to refer in particular to the hardship of the small and medium sized financial service intermediaries in the field of insurance, which is being hard hit by the economic downturn. Ferocious competitions and cut-throat price wars are choking these businesses to death. The situation may not likely improve following China's entry into the World Trade Organization. Unlike those multi-national conglomerates, which are well positioned with almost unlimited reserves of capital to invest in the mainland market, our local light and medium-weight intermediaries will have to stay and struggle to live on.

I would like to make a few comments on the suggestions put forward by my Honourable colleague, Mrs Selina CHOW. A national development bank is mainly for infrastructural projects, or other mega-sized projects, and not for SMEs. Her other idea is for the Government to buy into a local bank. I doubt very much if Dr the Honourable David LI will agree with the Government stepping into his business.

Mr Deputy, what we need today is a policy that should both ensure the continued growth of SMEs as well as other sectors of local business.

Mr Deputy, I support the motion. Thank you.

**MISS CHOY SO-YUK** (in Cantonese): Mr Deputy, information shows that 400 bankruptcy cases and 1 100 closures were recorded for SMEs in the first half of this year. In July 1997, there were 290 000 SMEs employing less than 100 people each, accounting for some 1.6 million people in total. Up to June this year, the number reduced to 280 000 only. Compared to the time before the outbreak of the financial turmoil, there were 79 000 SMEs and 74 500 employees fewer than before. If the Government continues to ignore the

operational difficulties faced by SMEs, particularly capital shortage, the overall situation of SMEs will keep on deteriorating. I reckon it would be difficult to look for a further drop in the unemployment rate.

A long time ago, Mr Deputy, the Hong Kong Progressive Alliance (HKPA) has already suggested the Government to set up a long-term finance fund for SMEs. It was only until last year that the Government decided to launch a \$2.5 billion Special Finance Scheme for SMEs. However, we can find plenty of deficiencies with this Scheme and they include too little injection, unduly complicated vetting procedures and the obviously transitional nature of the Scheme itself. Though unintentionally, the Government seems to have given people an impression that SMEs applying for special finance are similar to applying for Comprehensive Social Security Assistance (CSSA). This is even more ridiculous for SMEs have made enormous contribution to the Hong Kong economy. Accounting for 98% of the total number of enterprises in Hong Kong and employing more than 50% of the workforce, the annual output of SMEs accounts for 48% of the Gross Domestic Product (GDP) calculated in terms of production. The Government is indeed obliged to give SMEs support, which should definitely not be taken as welfare handouts like CSSA. In addition, SMEs must repay the special finance. It is extremely ridiculous for someone to liken the loans to CSSA.

The HKPA has pointed out time and again that compared to the Government's generous support for real estate, the \$2.5 billion Special Finance Scheme for SMEs is indeed negligible. Let us compare the home purchase concessionary schemes launched by the Government under various names. The amount of loans provided under the Home Starter Loan Scheme alone has reached \$18 billion. This year's policy address has announced yet a further housing loan scheme for singletons. What the Government has done will easily mislead the community into thinking that it will give huge support to real estate at the neglect of SMEs. For these reasons, the HKPA recommends that the Government should at least devote one tenth of its strength for supporting real estate to setting up a long-term development fund of a considerable size for SMEs. It can consider merging several funds in support of SMEs and boosting the capital injection afterwards with a view to setting up a loan fund for SMEs of a considerable scale and effectiveness, streamlining application and vetting procedures, and changing the transitional and expedient nature of the Scheme once and for all.

Mr Deputy, the Government should draw lessons from overseas countries in strengthening its financing support for SMEs. Regrettably, the Government has only decided to double the amount of guarantee for loans provided under the Special Finance Scheme after reviewing the findings of the Scheme. It has not boosted its injection and taken up a greater share of risks. It is not the least helpful to SMEs in solving their financing problems.

Compared to the case in overseas countries, we can see that the support given by our Government for SMEs is far from adequate. For instance, the Canadian Government takes a greater share of risks by way of legislation. According to a "Small Enterprise Loan Act", if a bank suffers losses in connection with loans executed strictly by virtue of the Act, the federal government will give partial compensation and a levy of only 2% will be charged on the amount of loans as registration fee. In Israel, a "national guarantee fund for small enterprises" was set up in 1994. Its maximum repayment period is five years and its vetting procedures are not as complicated as those adopted by banks in Hong Kong. Another example is Singapore, which is similar to Hong Kong in terms of lending mechanism, that is, financial institutions will act as lending agents. However, the Singaporean Government offers a uniform, concessionary interest rate for a "local enterprise financial scheme" to avoid interest fluctuation from imposing a burden on SMEs. For the purpose of encouraging export-oriented foreign exchange earning, the Irish Government offers low-interest loans of up to 66% under a five-year market scheme for SMEs. Under this scheme, SMEs are only required to repay loans in phases in proportion to their turnover from the third year onwards.

Borrowing what the governments of the abovesaid countries have done, the HKPA considers it imperative for the Government to strengthen its support for SMEs in alleviating their financing difficulties, and improvement can be made in the following areas:

First, to merge several existing support funds for SMEs and boost the government injection afterwards with a view to setting up a long-term development fund for SMEs of a considerable size and effectiveness;

Second, the existing loan term under the Special Finance Scheme for SMEs is only one year, which is too short to give effective help to SMEs in solving their cash flow problems. The Government should consider lengthening the loan period to three or five years to enable the SMEs to recycle their credit line to really alleviate their capital shortage;

Third, after lengthening the loan period, the Government should consider setting a uniform interest rate for the relevant loans or offering a combination of floating and fixed rates and capping the floating rate to prevent the loans from imposing a burden on SMEs as a result of interest rate fluctuation;

Fourth, to effectively change the "bricks and mortar culture" of local banks in offering loans. It is not enough to rely solely on the Chief Executive's appeal. The financial industry should give impetus to banks in taking speedy action to set up a credit rating information system so as to encourage them to assess the risks of financing SMEs on a comprehensive basis; and

Fifth, the Government should model on Canada in shouldering the risks of financing SMEs. Furthermore, it can also learn lessons from Israel in requiring borrowers to make a matching injection of not less than 25% of the loan amount to enhance their commitment to enterprises.

Of the five areas mentioned above, the "bricks and mortar culture" adopted by local banks in providing loans should indeed change. The shortcoming of this culture means more than the inability of SMEs to raise loans from banks without property as collateral.

With these remarks, Mr Deputy, I support the motion.

**DEPUTY PRESIDENT** (in Cantonese): Miss CHOY, your time is up.

**MR KENNETH TING** (in Cantonese): Mr Deputy, I will speak mainly on the difficulties faced by SMEs in financing.

As pointed out by other colleagues, SMEs are the mainstay of Hong Kong's economic development. In order to speed up our economic recovery, the Government must try every means possible to promote the development of SMEs.

The biggest difficulty faced by SMEs in Hong Kong at the moment is a serious shortage of working capital. Under the current "flooding" situation (where banks have more funds available than the number of quality borrowers), banks in Hong Kong have struggled fiercely to offer a wide range of

concessions for property mortgages together with cash rebates. However, they have adopted an opposite attitude in their offer of business loans for SMEs. Even if SMEs are willing to pay higher interest rates, banks are still reluctant to lend them working capital. Therefore, the Government must address this issue by providing SMEs with adequate financing channels.

Mr Deputy, I have once suggested in this Council that the Government should set up a committee comprising members from the banking sector, SMEs, the accountancy sector and representatives from the Hong Kong Monetary Authority (HKMA) to enable representatives from various sides to formulate a set of objective and fair lending criteria for SMEs. There will then be rules to be followed when SMEs apply to the banks for loans and when the banks deal with such applications. Nevertheless, the Government has only told us that it is now trying to improve the existing mechanism in this direction. Moreover, it has failed to adopt my recommendations in concrete terms. In this respect, I am a bit disappointed.

Faced with the fact that SMEs in Hong Kong are unable to borrow working capital from the banks, the Federation of Hong Kong Industries hopes that the Government can reconsider my proposal of setting up a committee as early as possible to enable SMEs and the banking sector to formulate a set of lending criteria acceptable to both parties in order to solve the financing problem faced by SMEs.

Furthermore, we would like to urge the Government to draw lessons from the successful experiences of other countries and seriously examine the feasibility of establishing "development banks" with a view to providing sufficient working capital for SMEs with good management and potentials for development.

Mr Deputy, although we have put in place a \$2.5 billion Special Finance Scheme for SMEs, it can only benefit the banks and their long-term clients. It has failed to provide financing assistance for hundreds of thousands of other SMEs. The Liberal Party would like to urge the Government to provide SMEs with more financing channels expeditiously to facilitate the continuous development of SMEs in the territory.

With these remarks, Mr Deputy, I support Mrs Selina CHOW's motion.

**MR CHEUNG MAN-KWONG** (in Cantonese): Mr Deputy, the amount of subsidy given by the Government to the business sector at present has added up to \$10 billion. Each year, the Government will also give a financial subsidy of more than \$3 billion to various statutory bodies. If we browse through the on-line information service centre set up by the Industry Department, we will find that at least six or seven activities or seminars are organized by different government departments or support bodies every day.

I said this because I want to illustrate that the Government has already set up a number of support bodies to serve SMEs and has set aside considerable funds for launching various loan schemes. Of course, there are still some areas which need to be improved and strengthened. But I consider that what warrants further review is not questions like how many support bodies we should continue to set up, how many loans we should offer and how many tax and land concessions we should give. Instead, it should include: first, upgrading the position of SMEs in the Government's decision-making process, strengthening co-operation and co-ordination of various government departments to enable them to give more consideration to and better cope with the development of SMEs in the course of formulating economic policies; and second, strengthening the communication between government departments and SMEs to enable the services provided by the Government and various support bodies to better meet the needs of SMEs.

Let me start off by discussing the first point. Although the Government has emphasized time and again that it attaches great importance to SMEs, the government framework and support organizations have failed so far to set up an independent department or body specifically for SMEs. In April this year, the Financial Secretary finally announced the setting up of a Small and Medium Enterprises Office with special responsibility for promoting and assisting in co-ordinating the support work carried out by other government departments and business organizations. However, the Office is not a high-level organ though it can undoubtedly perform its role of co-ordinating government departments and providing services and information satisfactorily. It is obvious that the Office is unable to, by virtue of its functions, take up the full responsibility of inter-departmental policy co-ordination and demanding various government departments to assess the impact on SMEs in the course of formulating policies. Of course, I do not mean that the Government must appoint a commissioner to take charge of the work related to SMEs. But at least, the Trade and Industry Bureau should more proactively give play to its

intermediary role by assisting the Office to perform such work. I would try to elaborate the importance to SMEs of an effective co-ordination of policies of different departments from two aspects.

First, many Honourable colleagues have mentioned the point that SMEs have all along been faced with financing difficulties. As the financing problem involves the lending policies of the banking industry, it is difficult to work out an effective solution by solely relying on the efforts of the Industry Department. The Trade and Industry Bureau or the Industry Department should take the initiative to liaise with the Hong Kong Monetary Authority and representatives from banks, SMEs and so on with a view to setting up a study group to discuss ways to solve problems relating to the financing difficulties faced by SMEs and relax regulatory measures through streamlining government procedures. At the moment, work related to reducing operating costs of SMEs is mainly taken up by the Business and Services Promotion Unit. Nevertheless, the Unit is not specially set up for SMEs. Neither is it specially responsible for examining the possible impacts that various departments may exert on SMEs in implementing their new policies. If the Trade and Industry Bureau can arrange the Small and Medium Enterprises Office to conduct standing meetings with the Business and Services Promotion Unit to boost mutual co-operation, the voices of SMEs can at least be better heard in the Government internally.

Lastly, I want to discuss the operation of the Small and Medium Enterprises Committee. Being an advisory body comprising people from relevant trades, the Committee mainly aims at advising the Government, examining and reviewing the support currently given to SMEs. In addition to acting as a bridge between relevant trades and the Government so as to give the latter a better understanding of the difficulties faced by SMEs and their views, it should also provide a channel through which SMEs can find out the support provided by the Government. However, the Committee is currently operating in a disappointing manner.

According to the information available, it has already been three years and four months since the Committee was set up in July 1996. However, only 15 meetings have been held so far. In other words, less than five meetings were held each year. When the Committee was first established, a work plan was formulated in the hope that the Committee could take the initiative to study eight areas with a view to conducting a full review of and improving the support given to SMEs. However, the Committee has so far been led by the

Government. Its effectiveness is restricted to only giving passive advice on policies proposed by the Government. For instance, the Government did consult the Committee on the implementation of its plan to reduce wastes and its consultation on the blueprint of sustainable development into the 21st century. Consultation is certainly very important and the work in this area should be recognized too. However, the Committee should play a more active role in examining Hong Kong's investment environment offered to SMEs from a holistic approach as well as taking the initiative to give advice. It is indeed necessary for the Government to review the operation of the Committee expeditiously, upgrade its responsibilities, strengthen its communication with relevant trades and enhance its transparency so as to give full play to its bridging role.

I so submit. Thank you, Mr Deputy.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, SMEs have been playing an important role in Hong Kong's economic development. According to the latest survey conducted by the Government in March this year, there are more than 280 000 SMEs in Hong Kong, accounting for over 98% of local registered firms. They employ a total of some 1.3 million people, representing 60% of Hong Kong's working population. Apart from providing enormous job opportunities for the local labour force, SMEs act as a major driving force for our economic development too. Eight Hong Kong companies were even selected by the *Forbes* magazine recently as among the best 300 SMEs in the world. This fully illustrates the fact that local companies have a high level of development and great potentials.

Nevertheless, the development of SMEs, because of their comparatively small scale and limited resources, is always subject to restraints. To alter this objective fact, we must give support and take matching measures in various aspects. To this end, the Government can indeed play a more active role. It is undeniable that the SAR Government has, over the past two years, performed in a more active manner in this area.

To start with, the Government launched a Special Finance Scheme for SMEs in 1998. Under the Scheme, the Government acts as a guarantor to help relevant enterprises to raise loans from Scheme financial institutions. Recently, the Government even decided to raise the amount of guarantee for loans provided under the Scheme from \$2.5 billion to \$5 billion so as to help

more SMEs to obtain credit from banks. However, the Scheme is meant to be a short-term measure only. To help resolve the financing difficulties faced by SMEs in the long run, we must understand that the crux of the problem actually lies in the fact that local banks lack professional knowledge needed for assessing unsecured loans. At the same time, SMEs have insufficient knowledge about modern financial management. Therefore, the Government should launch some corresponding measures to boost the ability of the banks in the management and assessment of risks. Furthermore, it should endeavour to give impetus to facilitate a greater degree of professionalism in the management of local SMEs.

A very important means of boosting Hong Kong's competitive edge is to encourage local enterprises to innovate and upgrade technology. This is particularly applicable to SMEs of a comparatively small scale. In fact, the Hong Kong Government has, on past occasions, launched several popular schemes, including the Hong Kong Industrial Technology Centre, which aims at helping smaller and newly-established companies. Under this scheme, rental concessions are offered to newly-established technological companies. To help the growth of these new companies, assistance is also given in such areas as management, marketing, finance and technology. Earlier on, the Government set aside \$5 billion for the purpose of setting up an Innovation and Technology Fund to subsidize individual programmes which can bring innovation or technological upgrading to the manufacturing and service industries. This is an active approach indeed.

Regrettably, the Government still needs to further strengthen support in this area. Compared to other neighbouring countries and regions, the amount of subsidy Hong Kong injected into technological development and other developments is still small. In Japan, spending in this area accounts approximately for 3% of its Gross National Product. As for Taiwan and Singapore, the percentages are approximately 1.8% and 1.2% respectively. But for Hong Kong, it can hardly reach 1%. If such a gap is allowed to maintain, I fear that Hong Kong can hardly catch up with other countries in the development of high technology. It is indeed necessary for the Government to boost subsidy in this area in concrete terms.

Human capital is of paramount importance to the development of high technology and high value-added enterprises. In the long run, we must nurture local human resources. At the same time, we can boost our strength in manpower resources through accommodating talented people from outside

Hong Kong. I am in great support of the Government's proposed scheme to import talented people. However, external talents should not be restricted to those from the Mainland only. Those who come from other regions and countries and who can make contribution to Hong Kong's development of innovation and technology should be considered as well.

Insofar as market development is concerned, SMEs are also subject to resource restraints. They actually need government assistance badly. Apart from allocating additional resources, the Government can also actively promote Hong Kong's products to places all over the world, particularly the Mainland, through relevant organizations such as the Hong Kong Trade Development Council. Of course, it is also imperative for the Government to promote on-line trading expeditiously and formulate effective regulatory legislation to enable on-line trading to develop in a secure and reliable environment for this trading mode has become increasingly popular. According to relevant estimates, transactions made through the Internet will reach US\$220 billion in 2001. This is going to be an enormous market.

With the growing globalization of world economy, we must upgrade the quality of various trades and industries in Hong Kong to consolidate the position of local products and services in the international market. SMEs need to establish an effective quality management system on the one hand and reach an accredited standard of quality which is recognized internationally on the other. In this respect, the Government should be able to play a bigger role in publicity and co-ordination.

With these remarks, Mr Deputy, I support Mrs Selina CHOW's motion. Thank you.

**MR CHAN KWOK-KEUNG** (in Cantonese): Mr Deputy, according to the information provided by the Industry Department, 98% of enterprises in Hong Kong, that is, 280 000, fall into the category of SMEs. At the same time, more than 1.33 million people, that is two thirds of the working population, are employed by SMEs. From this, we can see that SMEs have a higher labour content, as has been pointed out in a research report compiled by the Hong Kong Federation of Trade Unions. The fact that SMEs form an important backbone of the Hong Kong economy has also been precisely reflected in these two aspects.

SMEs have so far been a miracle for the Hong Kong economy. However, a number of SMEs have wound up as a result of the 1997 financial turmoil. Even for those which are lucky enough to survive, they have to face operational difficulties brought about by the economic recession, or struggling on the verge of bankruptcy.

Meanwhile, with the rocketing global development of information and technology, those SMEs which have long remained at a low production skill level obviously lag behind others when faced with competitors from other regions in the global market. The admission of China to the World Trade Organization (WTO) also implies that local SMEs will have to face an even greater challenge in future.

Although the Government realizes the difficulties faced by SMEs and has started giving them support in nine major areas including starting business, finance, information provision, human resources, technology, environmental management, market development and infrastructure, the problem remains that support alone is not enough. Let me cite the Special Finance Scheme for SMEs as an example. As the Government has offered a \$5 billion loan guarantee and overly relied on banks to make their own judgment, a lot of problems have arisen. As a result, enterprises which are in genuine need of help have not been benefited. At the same time, the Government's indication that no more funding will be injected into the Scheme together with the Secretary for Trade and Industry's clear statement that the relevant measure is only temporary by nature has made people question the sincerity of the Government in assisting SMEs.

Insofar as overall policies are concerned, support given to SMEs in Hong Kong, compared to other countries and regions, is obviously inadequate. For instance, even though both Japan and Taiwan have been caught by the same economic recession, their governments have performed in a far more active manner than Hong Kong in rendering assistance to SMEs. Whereas both these governments have set up government departments specially tasked to help SMEs and passed relevant laws for the purpose, in Hong Kong, only limited support is given to relevant enterprises by the Small and Medium Enterprises Office under the Industry Department and the Small and Medium Enterprises Centre. In terms of scale and functions, these two bodies are lagging far behind their counterparts in Japan and Taiwan. There is also a lack of relevant legislation.

In Taiwan, a committee for examining policies on SMEs is responsible for the formulation of relevant policies. In Japan, the relevant work is taken up by the Industrial Policy Bureau on a yearly basis. These show how seriously the governments of the two countries have taken SMEs. But looking back at the Hong Kong Government, it still lacks comprehensive and long-term policies for the development of SMEs. The fact that most existing policies are just temporary and transitional by nature has greatly undermined the effectiveness and continuity of the support measures.

Although the performance of the Hong Kong economy in the third quarter of this year registered a 4.5% real growth over last year, this does not mean that SMEs have completely turned the corner in the wake of the financial turmoil. The challenge brought about by the admission of China into the WTO is still an uncertainty. It is indeed essential for the Government to give enormous support to the relevant enterprises.

In fact, the Government has taken a correct direction and notion in formulating its policies of assisting SMEs. But at the same time, it should intensify and strengthen co-ordination of the existing matching policies and give additional assistance to individual SMEs with high labour content such as the recovery and recycling industries, so as to enable SMEs to survive and find room for development. In so doing, 1.6 million low-skilled workers with a low literacy level and academic standard can also be benefited.

Mr Deputy, I so submit.

**DR PHILIP WONG** (in Cantonese): Mr Deputy, I find today's motion meaningful in the sense that it is different from some of the previous debates moved purely for the purpose of soliciting votes. Like Honourable Members, I am gravely concerned with the prospects of SMEs in Hong Kong. Apart from speaking on this issue in a debate on the policy address and in the regular meetings held by two community groups, the Lions Clubs and the Rotary Club, I have also discussed it with the relevant people in the business sector and professional fields. On the whole, I think SMEs, being the backbone and driving force of the Hong Kong economy, has made tremendous contribution to the prosperity and progress of our society and economy throughout the years. We cannot make light of their achievements. In order to solve the current problems faced by SMEs owing to their relatively small scale and limited

resources, we should rely on co-ordination of all parties, particularly the Government and the banking sector, to take corresponding measures and try every possible solution, apart from encouraging SMEs to cope with changes flexibly and strive to improve themselves.

Today, I want to put forward two proposals. First, I urge the Government to consider issuing guidelines to ask the banking sector to set aside a certain ratio of their total loans for SMEs. As far as I know, this ratio may even reach 30% or higher in similar guidelines issued by certain countries and regional governments. It is evident that this will help create a better business environment where SMEs can survive and develop more easily.

I do understand that, from the standpoint of a bank, it will definitely "take the easier option". This is because the amount of time and energy spent on serving a big enterprise is probably more or less the same as that for serving a small one. It is definitely conducive to the bank in terms of cost-effectiveness if it can do more business with big enterprises. However, I am of the view that the banking sector should not ignore SMEs while fighting for doing business with big enterprises. Many big enterprises with brilliant performance, including private and listed companies, have actually developed and expanded from some undistinguished SMEs. In the banking sector, people with vision will definitely be able to see that the whole society and the banking sector will be benefited if we can explore the potential of SMEs and help them grow. As Hong Kong is still at the preliminary stage of economic recovery in the wake of the Asian financial turmoil, and adding to this the factor of globalization as well as the challenge presented by the information revolution to the business environment, we should examine how best we can provide SMEs with the most effective assistance by targeting at the problems worst haunting them. I hope that the Government and the banking sector can seriously consider the above proposal, render timely support to SMEs and help them resolve their financing problem, a problem which needs to be resolved most urgently.

For my second proposal, I urge the Government to help SMEs operating in the Mainland. As important investors in the Mainland, these SMEs play an active role in the economic reforms and construction of the Mainland. They are also willing to observe the state laws and rules. For these SMEs, the admission of China to the World Trade Organization (WTO) will bring not only new opportunities, but also new challenges. I support the setting up of a trade liaison committee between the Government and the relevant departments in the

Mainland so that we can reflect issues of general industry concern to the Mainland. In a nutshell, we have at present five issues of major concern:

First, if the departments concerned in the Mainland can widely consult relevant enterprises through the liaison committee or other effective channels before formulating economic policies involving the operation of businesses run by Hong Kong businessmen in the Mainland, it can enable the policies to reach the established target of the state on the one hand, and reduce the impact on the daily operation of enterprises on the other.

Second, in promulgating various economic policies, if the mainland authorities can explain clearly, through the liaison committee or other channels, to the relevant enterprises the objectives, contents, implementation schedule, channels and means of the policies to enhance transparency, enterprises can be given a better understanding of the policies, thus preventing the occurrence of mistakes and confusion at the time of concrete implementation due to misunderstanding. Since some mainland regulations took effect in October this year, a lot of Hong Kong businessmen operating factories in the Mainland have been complaining of suffering from inconveniences and disturbances. They hope that the liaison committee can reflect to the relevant departments in the Mainland the views of the industry so that the matter can be properly resolved as soon as possible. Furthermore, if the adaptation period can be suitably extended, it can help the policies to be implemented smoothly.

Third, we can expect a series of changes to take place in the future in such areas as economic and trade policies, tax regime, market liberalization and competition in the wake of the admission of China to the WTO. It is earnestly hoped that relevant departments in the Mainland can continue to consider offering Hong Kong businessmen certain concessions in their formulation of preferential policies on investment, in order to boost their competitiveness so that they can play its intermediary role better in the attraction of foreign investment.

Fourth, there are bright prospects for the Mainland and Hong Kong in co-operation in such areas as high technology and environmental protection. It is hoped that the liaison committee can provide more information on the relevant development for reference.

Fifth, apart from setting up an office in Beijing, the Government should also consider setting up corresponding organizations in such regions as the Pearl River Delta, where there is the largest number of Hong Kong businessmen, to help them resolve problems encountered by them from time to time.

Thank you, Mr Deputy.

**MR HUI CHEUNG-CHING** (in Cantonese): Mr Deputy, I believe we all remember that in mid-July this year, I moved a motion on "Assisting the Development of Small and Medium Enterprises" in this Council in a bid to urge the Government to give full support to SMEs. The motion was supported and passed by Members unanimously. I am very pleased today that this Council can discuss again in an in-depth manner policies and strategies needed to be taken by the Government to support SMEs.

Mr Deputy, for the purpose of supporting SMEs, it is of paramount importance for the Government to maintain a business environment where "small enterprises can do business alongside big ones". Only in doing so can SMEs find room for survival and development. However, it is not easy to create such a business environment. Under the current economic depression, big enterprises can influence government policies for they have more money and human resources. Moreover, it is easier for them to benefit from the measures taken by the Government to stimulate the economy. But who can help SMEs, which can do nothing but to work very hard, tide over their difficulties?

For these reasons, I have all along supported the Special Finance Scheme for Small and Medium Enterprises launched by the Government. The fact that the Government has recently doubled the amount of guarantee for loans under the Scheme to \$5 billion has, to a certain extent, illustrated that SMEs benefited under the Scheme have maintained a good repayment record and the problem of bad debts is not serious. The Government should indeed draw lessons from the experiences of our neighbouring rivals and Western countries for the purpose of setting up a long-term finance scheme to provide SMEs with additional financing channels.

Furthermore, the Government should actively examine how to make use of the market force to help SMEs cope with their financing needs. I am glad to see that the Hong Kong Monetary Authority and the Financial Services Bureau are examining the feasibility of setting up a credit data bank for SMEs. The Industry Department has also planned to help SMEs improve their accounting systems. In the long run, all this work should be able to give impetus to the banking industry to develop a credit rating information system, thus enabling the banks to make a full assessment of the credit risks of SMEs, apart from relying on property as collateral. SMEs will also find it easier to secure finance from the banks by virtue of their own conditions, performance and prospects.

Of course, what matter most to SMEs are business opportunities. Without business opportunities, it will be useless even if SMEs are able to secure huge loans. For SMEs in Hong Kong, particularly those in the import and export trade, the imminent admission of China to the World Trade Organization is going to bring both opportunities and challenges. It is most important for us to be able to make use of this opportunity to strengthen Hong Kong's role in re-export, transportation and so on. So the first and foremost task for the Government is to improve the transport infrastructure facilities between Hong Kong and the Mainland, including simplifying procedures for cross-boundary freight. The SAR Government should make good use of its liaison with mainland officials by setting up offices in key cities in various provinces in the Mainland so as to help Hong Kong businessmen to explore business opportunities and to provide them with updated information.

Mr Deputy, it is of vital importance for Hong Kong to be able to highlight its position as the most ideal big trading port for China to conduct global trading and to put in place a system for certifying the quality of products and services provided by Hong Kong businessmen. It is definitely easier for Hong Kong, owing to its small size and its rule of law tradition, to exercise regulation and promote the concept of quality certification. As it is impossible for Hong Kong to lower its business cost substantially, the Government naturally needs to take a more proactive approach to give impetus to SMEs to apply for ISO certification with a view to upgrading the quality of our products and services as well as our competitiveness. In particular, if SMEs want to enter the electronic trading market, quality certification will become an important index for overseas customers to their selection of trading partners. It will surely help raise the reputation of the whole trade if more and more SMEs are awarded quality certification.

In addition to promoting quality certification, it has become a major trend for local SMEs to shift to IT application and electronic trading. This is going to be particularly beneficial to SMEs for the manpower, administrative costs and the size of shops required by the relevant technology are small and yet it can enable big business to be operated very effectively. Up till now, many SMEs are still resistant to computers. The Government should take active action to ameliorate this problem. The Hong Kong Chinese Importers' and Exporters' Association, to which I belong, is now working with the Hong Kong Productivity Council (HKPC) to design a low-cost and highly effective software named "Trade @ Anywhere" to help our toy and grocery industries handle their daily business with respect to quotation, procurement, transportation, inventory control and so on through on-line linkage. I believe the relevant IT can meet the needs of the relevant industries.

Lastly, I hope the Government can pay attention to the fact that support for SMEs is now provided by numerous organizations, including the Trade and Industry Bureau, Hong Kong Development Council, HKPC, Vocational Training Council, Small and Medium Enterprises Committee and so on. The Government should examine whether the division of work among various organizations is in harmony with a view to raising the effectiveness of support given to SMEs.

With these remarks, Mr Deputy, I support the motion.

**MRS SOPHIE LEUNG** (in Cantonese): Mr Deputy, it seems that most of the time when I rose to speak, it was you, Mr Deputy, who chaired the meeting. It is probably because both you and I bear the same surname, isn't it?

What I am going to speak today can be viewed from three levels. A number of Honourable colleagues have spoken on SMEs, a matter apparently of great concern to all of us. The first topic I want to speak on concerns development banks and the credit rating mechanism closely related to development banks, which have been mentioned by many colleagues earlier. The development banks are in fact a long-standing discussion topic with the Liberal Party down the years. We do understand that a rating mechanism must be put in place. Indeed, many colleagues share the same views as ours. Today, I want to recommend to the Government certain mechanisms which are more concrete and feasible. At the moment, various trades and industries,

particularly SMEs, have their own ways of management commensurate with their scale. As they are not yet able to upgrade themselves, it will be inadvisable to set up a rating mechanism hastily. For many people, this is indeed a thorny issue. I want to make a suggestion to the Government here. Perhaps we can first set up a mechanism to allow SMEs to take part voluntarily. The mechanism will then help participating SMEs to upgrade their quality of management. This is step number one, which will of course include an upgrade in the quality of management in such areas as accounting and capital management. I believe only in so doing can we really set up a mechanism to help SMEs upgrade their own quality. Of course, I do not want to make it too rigid. Neither do I hope to see that when some SMEs fail to reach their target, someone will report them to the Inland Revenue Department for having furnished incorrect information in completing tax returns as with the case in the past. We should give them a chance to upgrade themselves. This is our first concrete proposal.

As for my second suggestion, Mr Deputy, with your permission, I would like to quote a report in the latest issue of the *Fortune Magazine* — in fact the magazine should not be published until 6 December. According to the magazine, the current economy of Japan seems to remain in an extremely depressed situation, with many economic sectors performing very badly. However, its SMEs are having an outstanding development in terms of technology. It is also mentioned in the magazine that the Patent Office in the United States has received a total of 320 000 applications from Japanese SMEs for patents at a level of world-class high technology last year. Representing a jump of 32% over the previous year, this figure is three times the overall figure for Germany. Even the United States, which can be said to be the number one country in terms of high technology, has lodged 90 000 applications only. How can Japan, with such a stunning figure, fare so well? Mr Deputy, I want to tell you that, in the past few days, I had that "little dog" for company every evening after returning home. It is so clever that it can do everything. With a voice recognition function, it can even recognize my voice. When my son talks to it, it will respond differently for my son's voice is different from mine. It does really have such functions. This invention is actually attributed to Japan for having set up a forecasting institute 28 years ago though it still has only 50 employees even up to the present moment. Does it work under the Japanese Government? Named "Institute for Future Technology", it is definitely subsidized by the Japanese Government. What does it do mainly? First, it is responsible for collecting information on the most advanced and

latest technological development in the world and making predictions on aspirations or possibilities with respect to the upgrading of living standards by mankind in future. At this level, the Institute will explain the report to 4 000 companies in Japan in detail and make predictions, which can enlighten SMEs to think.

Coming back to my old trade in Hong Kong — the textile and clothing industries, every three years, the Government will carry out work in this area but each time it will rely on a so-called consultancy which has virtually no idea of our trade, and that consultancy work requires a lot of money. Moreover, a new consultancy might be commissioned every time. I am not trying to say that the Government is insincere. I just want to say that its approach is awfully wrong. Let us look back at Japan. That Institute has existed for 28 years. It will be so much better if our textile and clothing industries can have such an institute to predict the future trends, customer requirements and so on for us.

Lastly, Mr SIN Chung-kai has, as a representative of the technology sector, pointed out earlier that technology is very important. According to the him, there are a lot of places for training human resources in Hong Kong, but he has only indulged in empty talk for he has not specified by what means people can be selected for training. He kept on mentioning technology and going on-line, but failed to target at the needs of individual trades. We in the Liberal Party will not indulge in empty talk only. We have done some practical work. Over the past three years, my office has gained great success in training staff and doing similar work. I have even trained employees of other companies to go on-line without charging any fees. However, the training provided must be related to the trades in which they engage for the training to be successful.

With these remarks, Mr Deputy, I support the motion.

**MR NG LEUNG-SING** (in Cantonese): Mr Deputy, although the atmosphere is not heated, I still want to join in because all of us care about the SMEs.

In times of an economic depression, SMEs really need our attention. In the past, SMEs did make a lot of contribution to Hong Kong, a free market-oriented society. I believe it is not the first time we debate this question in this Council.

I have not made any special preparations in detail but I have, over a period of time, heard some aspirations put forward by SMEs in various areas. SMEs do indeed play an important role in diversifying the economy. Just now, some Members mentioned the point that we can find many employees working in various SMEs. I believe the continuous operation of SMEs can definitely make a positive impact on the whole community.

This Members' motion has put forward a comparatively desirable point that the Government should steer our way. I think this is essential. We used to say that the Government would not lend a helping hand. But over the past couple of years, we could see that some measures had been taken by the Government. For instance, the Government has set up a Special Finance Scheme for SMEs, formulated suitable schemes for relevant computer facilities and so on and helped relevant trade associations and enterprises. SMEs will naturally be benefited as a result of the work done by the Government in publicizing and promoting various types of Hong Kong enterprises to overseas countries. However, we still need to see whether these SMEs can really compete in the market freely. We have to be careful if the Government's intervention is too specific. In particular, competition from the mainland market will become increasingly rife as a result of the admission of China to the World Trade Organization. We may then need to put in place a mechanism enabling free competition. For these reasons, the Government is able to help steer our way. However, we must pay attention to how far it should help.

Just now, some Members mentioned the banking industry in Hong Kong. I did raise the point that the Government had never mentioned the need to change the business culture of any trades in its past policy addresses. Incidentally, I must say that the SAR Government cares for various trades and industries instead of a certain trade only. Of course, the Government should give support to various trades and industries, instead of criticizing a specific trade. The fact that the financial and banking sectors have been able to operate steadily in the financial turmoil has definitely played a positive role in reinforcing Hong Kong's position as a financial centre. By the same token, the banking sector needs a stable and concrete business environment too. I believe members of the public are fully confident that the banks can make their own judgment in providing loans. And in order to do so, the banks will strike a balance between profits and risks. However, if a certain party asks the banks to alter their prudent way of providing loans and subsequently leads to risks, it will be extremely difficult to ask a certain party to bear the consequences. We must consider this point very seriously.

One of the objectives of conducting this motion debate is to urge the Government to steer the way for SMEs to enable them to continue their development and maintain their stability. I have this point to make and I believe some Members have mentioned it earlier. Actually, the Government has been making constant efforts in perfecting a credit databank relevant to SMEs. I firmly believe SMEs will not find it difficult to secure financing from banks if they are able to gain a good rating. On the contrary, if the banks provide loans to companies without a good rating, how can we help the banks recover debts should any problems arise? Moreover, the Government can continue to perfect the existing Special Finance Scheme for SMEs. Some Members mentioned earlier on that the Government should treat different trades and enterprises in a reasonable manner. Once indexes of credit risks are set, I believe repayment periods can be adjusted accordingly and flexibly so as to give SMEs a reasonable chance to catch their breath. They will be able to survive so long as the repayment periods are reasonable.

Lastly, regarding electronization, it is true that many companies are not necessarily willing to inject huge capitals into this area. In that case, it is imperative for the Government to make incessant efforts to give appropriate impetus in manpower training and provision of facilities. I believe these are conducive to helping enterprises to continue moving forward. Thank you, Mr Deputy.

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

(No Member responded)

**SECRETARY FOR TRADE AND INDUSTRY** (in Cantonese): Mr Deputy, I am grateful to Mrs Selina CHOW for moving this motion today and those Members who have spoken earlier. I wish to take this opportunity to respond to the valuable views expressed by Members and explain the principles adopted by the Government in providing support for SMEs.

Undoubtedly, SMEs are the backbone of Hong Kong economy. There are more than 280 000 SMEs in Hong Kong. They constitute over 90% of the local business establishments and employ some 60% of our workforce, so their influence on Hong Kong's economic development is evident. Generally speaking, SMEs' advantage in terms of competitive edge is attributed to their sensitiveness to market changes as well as their flexibility. But still, SMEs are faced with many challenges for they are subject to constraints in respect of resources and the scale of business. In providing support for SMEs, the Government's policy objective is to strive to create a business-friendly environment and provide SMEs with tailored support services in the context of the free market economic framework, so as to facilitate the effective operation of SMEs and enhance their competitiveness.

There is a large number of SMEs in Hong Kong, involving various trades and industries. Therefore, government support for SMEs actually covers a very wide range of areas. To co-ordinate the support services for SMEs more effectively, the Small and Medium Enterprises Office under the Industry Department compiled and published the Small and Medium Enterprises Development Support Plan last month. The Plan systematically sets out the Government's strategies in providing support for SMEs and the specific support services to SMEs in a number of major areas. These major areas include finance, information, human resources, quality, environmental management, market access and infrastructural facilities, and they are precisely the many areas on which Members raised concern in their speeches today. I wish to take this opportunity to brief Members about the support services provided by the Government in these major areas.

First of all, I would like to begin with the financing of SMEs. Just now many Members expressed a lot of views on this issue and we will certainly take them into detailed consideration. However, we hold that the financing needs of SMEs must be met through the monetary market ultimately. As regards the establishment of government-funded bodies, such as a development bank, as Members proposed just now, our view is that this may not be the most cost-effective way for the purpose. In respect of financing, we all know that the Special Finance Scheme for SMEs was introduced by the Government in August 1998 in an effort to provide relief for SMEs faced with credit squeeze. Approval was sought from the Finance Committee of the Legislative Council in November this year to increase the approved commitment for the Scheme from \$2.5 billion to \$5 billion so that more SMEs will benefit from it. As at

25 November this year, the Scheme has provided loan guarantees of close to \$2.8 billion for more than 7 200 SMEs. Indeed, the number of SMEs benefited under the Scheme is somewhat limited compared to the many SMEs in Hong Kong, as a number of Members have rightly pointed out. This is the reason why we have constantly emphasized that the Scheme is just a short-term measure. The financing of SMEs in the long term should be improved through the fundamental channels. I will explain this in greater detail later on.

Although the Special Finance Scheme for SMEs is a short-term measure, it does not mean that the Government attaches little importance to SMEs. Quite on the contrary, the Government is very concerned about them. A host of specific measures or capital-raising channels are in place for the benefit of SMEs in respect of capital raising or financing. For instance, the Growth Enterprise Market launched in November this year can help technology-based SMEs to obtain financing more easily for the development and expansion of their business. Moreover, the Hong Kong Export Credit Insurance Corporation provides a wide range of insurance facilities and credit management services to Hong Kong exporters of goods and services trading on credit terms with overseas buyers.

Furthermore, as one of the Government's initiatives to support innovation and technology, a \$5 billion Innovation and Technology Fund was set up to support projects that contribute to industrial innovation or facilitate the process of technological upgrading. Earlier on Members mentioned the lack of venture capital among SMEs. In fact, the Small Entrepreneur Research Assistance Programme has been introduced under the Innovation and Technology Fund. Under the programme, financial support is provided in the form of matching grants for those SMEs with good research ideas to help them conduct commercial research in areas where venture capital is lacking. Also, a \$750 million Applied Research Fund has been established to provide technology-based ventures with share capital directly. These measures can provide valuable financial support for many SMEs.

With regard to information access, we appreciate that it may be rather difficult for SMEs to gain access to information due to limitations in human resources. In view of this, the Small and Medium Enterprises Office of the Industry Department has set up a Small and Medium Enterprises Information Centre and a Virtual Small and Medium Enterprises Information Centre on the Internet, providing one-stop information services on a wide range of support services, activities and facilities offered by government departments, industry

support organizations and industrial and commercial associations, as well as application procedures for licences and permits required for business operation in the various trades and industries in Hong Kong.

Other than the services provided by government departments, the SME Service Centre of the Hong Kong Trade Development Council (TDC) also provides professional trade consultancy and advisory services, and runs a Virtual SME Centre on the TDC's website to provide up-to-date business information to SMEs. The Expert Hotline run by the SME Centre of the Hong Kong Productivity Council (HKPC) provides SMEs with advice from professionals such as lawyers, tax and accounting consultants, in order to help them solve business problems.

With regard to technical support, it is rather difficult for small enterprises to obtain suitable technical or professional support from the market due to a lack of funds. In this connection, Members specifically made suggestions to the Government as to what it should do to improve the operation of electronic commerce in SMEs. In this regard, the HKPC has endeavoured to assist business enterprises to enhance their productivity. It offers technical support in areas ranging from the conventional industries such as electronics, clocks and watches, toys, to the up-to-date digital technology. We are particularly aware of the need to assist business enterprises to resolve problems associated with new technology. For example, advisory services are provided by the Hong Kong Productivity Council in respect of the Year 2000 compliance of computers. Besides, the Government has worked with a number of relevant organizations to compile a guide to electronic commerce for distribution among SMEs. As Members pointed out earlier, electronic commerce will be a new trend in the 21st century and its application will become increasingly popular. We will continue to find ways to enhance SMEs' know-how in the application of electronic commerce.

As for market access, the development support strategies of the Government are to promote the products and services of SMEs and in particular, facilitate SMEs' access to overseas markets, and also foster business partnership. In this connection, apart from over 300 well-known trade promotions organized by the TDC worldwide each year, the TDC has also provided a trade-matching service known as the "TDC Link" through its website on the Internet in response to the needs of the present-day information era. This service, which assists enterprises to explore business opportunities,

is particularly important in light of the general trend towards the globalization of the world economy. The HKPC has introduced the "Hong Kong Industry On-Line", offering assistance to local industrialists, especially SMEs, to locate potential customers and business partners, and explore business opportunities.

In respect of quality support, we understand that the competitiveness of SMEs often hinges on excellent quality management. To enhance the awareness of quality assurance, and to improve and promote product testing and accreditation services, the Government has set up the Hong Kong Accreditation Service to improve the standard of laboratories and facilitate acceptance by local and overseas agencies of the results of tests conducted by recognized laboratories, thereby removing trade barriers technically and thus enabling local manufacturers to broaden their access to overseas markets. Moreover, the Government has all along endeavoured to promote full-range quality management, sparing no effort in promoting certification services in respect of the ISO 9000 series and environmental management systems. Through our hard work over the years, the local industrial and commercial sector has generally acknowledged the importance of ISO 9000 certification. In the meantime, we saw the setting up of quality accreditation agencies as well as consultancy services for such purpose. We will continue to ensure the professional standard of these agencies through our accreditation services.

On infrastructural construction, the SAR Government attaches great importance to making preparations for future development. For this reason, massive resources are channelled into long-term investments. The port facilities, airport and road networks have provided great conveniences for the various trades in the industrial and commercial sector, with SMEs being the main beneficiaries. Furthermore, to cater for the needs of the industrial and commercial sector for land, the Hong Kong Industrial Estates Corporation has been providing land at cost to enterprises which cannot otherwise operate in multi-storey factory buildings. The incubation programme of the Hong Kong Industrial Technology Centre Corporation has provided operating facilities for technology-based companies of a small scale or assisted them in renting these facilities. The Hong Kong Science Park, to be commissioned in 2001, will provide comprehensive support services of a high standard for those high technology and high value-added enterprises (including SMEs) so that business enterprises operating in the Park can be provided with ideal development opportunities and environment.

With regard to environmental management support, our strategy is to assist SMEs to adopt latest environmental technologies and meet local and international standards through the information and support services of the Environmental Protection Department and the HKPC. Their services include providing information about waste reduction and recycling methods, environmental analysis services, and assisting enterprises in their compliance with the laws of Hong Kong and international standards such as enhancing their environmental management systems to meet the requirements of ISO 14000.

As regards human resources development, the Government is committed to providing business enterprises with suitably-trained manpower and at the same time helping them tap, nurture and develop manpower resources. The Government has constantly ploughed substantial resources into basic education and a series of education reforms are underway with a view to further improving the quality of local talents. With the development of Hong Kong into a knowledge-based economy, the Government will ensure that tertiary institutions and training institutes will take steps accordingly in order to train local talents needed by us. Certainly, the existing immigration policy will be reviewed and improved so that Hong Kong can import from places all over the world (including the Mainland) talented people whose expertise is lacking in the territory in order to enhance our competitive edge. Moreover, the Clothing Industry Training Authority, Construction Industry Training Authority, Employees Retraining Board and Vocational Training Council have organized training courses or seminars for SMEs to enrich their knowledge of business management and professional skills in various aspects. Just now Mrs Selina CHOW mentioned the problems encountered by SMEs, such as those in the catering sector, in the application for business licences. As far as I understand it, the Business and Services Promotion Unit is actively following this up with the relevant departments. They are now working on it in the hope that the processing time for licences can be reduced. We will reflect the concerns raised by Mrs Selina CHOW to the Business and Services Promotion Unit.

Just now I have briefly explained the strategies and measures adopted by the Government in a number of major areas to support the development of SMEs. Members or the public may refer to the newly-published Small and Medium Enterprises Development Support Plan that I mentioned above for the full details of the relevant measures. The Industry Department has distributed some 2 500 copies of the Plan to over 330 industrial and commercial organizations as well as other parties concerned, including Members of this

Council. The full contents of the Plan have been uploaded onto the website of the Virtual Small and Medium Enterprises Information Centre for public information.

The examples cited above clearly show that the Government has offered support services not only through the relevant government departments (such as the Industry Department) directly. It has also provided a wide range of support services through various industry support organizations as well as industrial and commercial organizations. This happens to coincide with the spirit of homogenizing the strengths of the Government, the public and private organizations to promote the development of SMEs, as many Members have advocated today.

As a matter of fact, the Small and Medium Enterprises Committee was established in 1996 to draw on collective wisdom for more optimal results and pool the strengths of all sectors. The Committee, which comprises SME operators, representatives of industrial and trade associations, industry support organizations and relevant government departments, is set up to study issues affecting the development of SMEs in Hong Kong, identify areas in which SMEs require support and assistance, and make suggestions on the necessary support measures. The Committee has provided lots of useful ideas on important matters such as the credit guarantee trial scheme and the Special Finance Scheme for SMEs. The Government has also consulted the Committee on a myriad of issues such as training of human resources, the establishment of the Small and Medium Enterprises Office under the Industry Department, sustainable development and so on. Earlier on Mr CHEUNG Man-kwong highlighted the importance of better co-ordination. In this connection, the newly formed Small and Medium Enterprises Office of the Industry Department will also play the role of a co-ordinator to enhance co-ordination among various government departments and public bodies, thereby facilitating SMEs' access to more effective support services.

However, I wish to emphasize that in the process of homogenizing the strengths of all sectors, the role of the Government is to provide support and assistance, and it has no intention at all to stifle the normal development of the market or even to take over the role of the market. We must understand that commercial decisions should rest on the businessmen themselves and not to be guided by the Government. For this reason, the support services that I mentioned above are provided on the overriding market-driven principle, striving to create an overall business-friendly environment with maximized

liberty and scope for private enterprises to develop their potentials to the full. Indeed, SMEs' advantage lies in their flexibility. Excessive government intervention will only ruin their entrepreneurial spirit, which is in turn counter-productive to their development.

Take the Special Finance Scheme for Small and Medium Enterprises as an example. The Scheme, which was introduced in June 1998, is one of the relief measures adopted by the Government in light of the credit squeeze faced by SMEs at the time. The purpose is to cushion the effect of short-term drastic economic adjustments. However, we have reiterated time and again that the Scheme is meant to be a short-term measure. The long-term financing needs of SMEs cannot and should not be met by government subvention. Instead, we must resort to other channels, such as strengthening the management of SMEs, implementing measures to reform and liberalize the market, and enhancing the assessment capabilities of banks in respect of loan applications from SMEs. We believe that the problems of the market should be resolved through the market ultimately. Obviously, the Government will continue to play the role of a supporter. For instance, the Hong Kong Monetary Authority has proposed that in-depth studies be conducted in early 2000 to ascertain the propriety of setting up a databank on credit reference. We believe that this should be conducive to improving the transparency of SMEs' finances and useful to banks in considering loan applications from SMEs. Mr CHAN Kam-lam spoke of government fees and charges just now. In this connection, the Secretary for the Treasury already explained in detail the position of the Government to the Legislative Council last week. We hope that Members can allow the Government a chance to consult the Legislative Council on proposed fee adjustments when our economy shows clear indication of positive growth. We call on Members not to subjectively take the view that government fees and charges must be frozen or even reduced in 2000 as Hong Kong economy has remained uncertain or has yet regained its vitality.

Meanwhile, many Members also mentioned the problems to be faced by SMEs following China's accession to the World Trade Organization (WTO). In this connection, aside from the support services that I explained just now, we will reflect the problems and views of SMEs to the relevant authorities and agencies on the Mainland through different channels, including the new Mainland-Hong Kong Special Administrative Region Joint Commission on Commerce and Trade. It is true that SMEs will be facing new challenges from the competition brought by China's admission to the WTO, but we firmly

believe that SMEs in Hong Kong will remain sensitive and flexible to market changes and that they can maintain a key position in the enormous mainland market.

Mr Deputy, I believe that the Government and Members share a common goal of providing the best possible milieu and opportunities for SMEs in Hong Kong. In fact, many of today's highly successful private or publicly listed corporations have grown and developed from small and medium sized enterprises. Examples of these cases abound in Hong Kong. If we can draw on the experience and spirit of these successful enterprises, coupled with the provision of suitable support services by the Government (and in this regard, we undertake that the Government will consistently endeavour to identify ways to intensify the existing support services), we believe that SMEs in Hong Kong will certainly remain a strong driving force of our economy in the next century.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, you may now reply and you still have three minutes 26 seconds.

**MRS SELINA CHOW** (in Cantonese): To start with, Madam President, I would like to thank the Secretary for providing each of us an annual report. Nevertheless, the report has completely failed to look after the problems currently faced by SMEs, which are crying out for help, for the Government to lend a helping hand. Has the Government heard their cries and pleas? The Government should not assume that it can muddle through just by saying that it will set up resource centres or table eight or 10 support measures to this Council. The problem is SMEs do hope the Government to help. Failing to help, the Government only knows to figure out something and says that is what SMEs want. Despite the pleas for help from SMEs, the Government stated that it would not intervene. I have heard this government line many times before. Whenever we ask it to find ways and means to meet the demands, it will invariably make excuses by saying that it will adhere to its principle of non-intervention or active non-intervention. This attitude is absolutely incompatible with what SMEs really want. After the financial turmoil, SMEs

have already awakened. The Government has, however, not yet awakened for it is still repeating the same old stuff to us. If we have one more chance to debate this question, I hope the Government will not repeat the same old time because we have heard that too many times already.

My questions for the Government are as follows: Insofar as those 280 000 SMEs are concerned, how many of them can be benefited with the setting up of so many resource centres? How many needy SMEs have received actual help from the Government? Has the Government considered what assistance SMEs really need? They want the Government to "save their lives" because they have difficulties in raising funds. Is the Government aware that the \$2.5 billion Special Finance Scheme together with the guarantee could not help much? As for the Hong Kong Trade Development Council, we appreciate its efforts. But as a self-financing body, it has raised its charges dramatically and subsequently aggravated the burden on SMEs. What happens to another self-financing body, the HKPC, is almost the same. SMEs will need to pay the HKPC before it tries to find clients for them. It seems that the Government is completely ignorant of what has happened.

The Trade and Industry Bureau has focused its attention on the manufacturing industry. However, Hong Kong is now dominated by the service industry. Has the Government helped the service industry resolve the numerous problems confronting it? Just now, the Secretary said that the Government would set up a centre for handling licensing matters. Has the Government ever considered simplifying licensing procedures to help SMEs solve their problems radically? Regrettably, the Government only knows to set up a centre and instruct SMEs how to apply for licences. It is most disappointing that the Government has coldly rejected our request to examine the feasibility of setting up development banks. How could the Government behave like that? The biggest difficulty faced by SMEs at the moment is the lack of financing. This is why I hope the Government can really change its attitude.

I am afraid I have no time to thank each of the Honourable colleagues who have spoken on this motion. They have indeed made a lot of suggestions. I hope the Government can seriously consider the issue to find out how SMEs can really be benefited instead of "playing" with us again.

**PRESIDENT** (in Cantonese): Your time is up.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Selina CHOW, 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 respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

Second motion: Quality of public housing.

## **QUALITY OF PUBLIC HOUSING**

**MR GARY CHENG** (in Cantonese): Madam President, I move the motion which has been printed on the Agenda.

The Democratic Alliance for the Betterment of Hong Kong (DAB) has recently conducted an opinion poll in October. As indicated in the results, as many as 80% of the interviewees began to lose confidence in the quality of public housing. I believe the Government dreads to hear such figures, or some government officials may perhaps feel wronged because the Government did not construct those buildings. Yet what the Government dreads most should be that the news might impact on the property market or ruin the image of Hong Kong. In any case, we should never adopt an ostrich policy to handle this confidence issue. We must face the issue squarely. If the Government and the Housing Authority (HA) are responsible, they should all address the

issue squarely. After all, nobody would wish to see the public living in, waiting to be allocated, or buying flats that cannot inspire confidence in us. Nevertheless, recently there have been a series of incidents involving substandard piling works, shoddy work, cases under investigation by the Independent Commission Against Corruption and so on. Sometimes life is like that, and people just cannot help but believe that calamities come in succession. Indeed, many problems have emerged one after another since we started discussing the quality of public housing. I have put forward a number of points and a major premise in this motion, which focuses on resolving the confidence problem in the first place. To restore public confidence, we hold that the mechanism for supervising construction works must be reviewed and improved. While the responsibilities of the various parties involving in constructing the buildings or supervising the construction works must be defined clearly, care should also be taken to enhance the co-operation of the Housing Department (HD) with the HA and the relevant professional institutes. Apart from that, we should also review and raise the construction, repair and maintenance standards of public housing, improve the existing subcontracting practice, as well as review the contents of the existing training programmes for construction workers with a view to enabling the trainees to better meet the industry's needs.

Now I should like to speak on a few questions to which I may not have any answers. But still I think it should be time to make clear certain things. Yet first of all, let me declare an interest; I am a member of the HA. I forgot to do so just now. The first question is the status of the HA and the HD as landlords, an issue which we have been talking about all along. At the outbreak of the substandard piling works incidents, the Government has been responding with great anger. In particular, Director of Housing, Mr J A MILLER, has anger written on his face and reflected in his words. According to Mr MILLER, the HD is also a victim. However, the fact remains that the people are losing confidence. It would not help to resolve the confidence problem if the Government should do nothing more than feeling very angry, that it is also one of the victims. For this reason, the Government must not forget that it is also a developer, and that it has a role to play in developing and supervising the projects concerned. In this connection, when the Government blames the consultancy firms for their substandard performance in supervising the quality of public housing blocks, they in return blame the Government for imposing too many constraints on them and accusing them of knowing nothing about their work. Who should we listen to then?

Director MILLER has mentioned for many times the need for the construction industry to change its culture. But in what way could we have in place a good environment or mechanism whereby all parties concerned can sit down and discuss the matter formally? As far as the quality of public housing is concerned, I believe the Government must first figure out that it is both a landlord and a developer at the same time, and should therefore be held responsible as well.

Secondly, is it true that problems are only found with public housing blocks, but not private residential buildings? There has been a view that private buildings do not have so many problems, but I do not think so. Basically, the construction process of private buildings and that of public housing blocks are very much different. Some people even consider that it should be easier to control the quality of public building blocks as they are made of prefabricated components, but there are others who hold that because the housing units are assembled one by one, some blocks may become tilted while others are problem-free. Many people say that private developers are good at doing finishing work, since they would remedy the problems, if any, in a case-by-case manner. As such, it is not easy for the problems to surface. On the other hand, the mass production process has made it inevitable for public housing blocks to have problems. According to the Government, the problems exposed are but some errors in construction. Yet how can we help the public to understand the situation? I think there is a problem here. How are we going to define errors in construction? Take the titled blocks in Tin Shui Wai as an example, should the problems concerned be regarded as construction errors or should they be considered errors made after the buildings are completed? It really beats me.

Thirdly, why are there things that other places can do but not in Hong Kong? I have heard many people criticize the subcontracting practice adopted in Hong Kong. However, I know that Japan also uses the subcontracting practice. What is more, there are as many as seven to eight levels of subcontracting in Japan! As regards wages, are wages in Hong Kong too low? But wages in the Mainland are much lower. Some developers have confided to me that the quality of buildings in the Mainland is comparable to that of ours. Why is that we cannot make the same achievements as others? The HD has all along been telling me how dissatisfied it is with the local

construction industry; besides, it has also informed me of some quality and admirable job accountability systems that other countries have. Once I visited an overseas fruit company which uses a frame to select its apples. In this connection, the apples that drop through the frame will be disqualified. Some people say construction workers in Australia have to sign papers to bear responsibility for the walls they have painted. That way, the workers concerned would be held responsible should there be any problems. I have discussed many similar cases before. Nevertheless, are those arrangements workable in Hong Kong? When and how are they going to be applied in Hong Kong? So far I cannot see any specific procedure or measure which could enable us to do the same.

Further still, I should like to speak on the question regarding supervision. With regard to the public housing blocks in Tin Shui Wai, some people ask why does the Kingswood Villas situated right across the street not have any substandard piling problems. Are there any problems with the design of our buildings? Would it be possible that the developer of Kingswood Villas have use the right piles at the right places, or would it be possible that there are some problems which we are not aware of? Is it true that such problems do exist? Has the Government tried to hide something from us? Have members of the industry tried to shift the responsibility to others?

I believe we must face up to all these problems, in particular when the volume of public housing construction would reach its peak in the coming year. If I remember it correctly, the public housing units to be completed next year would reach some 80 000 to 90 000. There has been an argument that problems would be inevitable for such a peak period, and that other countries have also experienced similar situations when a large amount of housing units were being constructed. I am afraid I could not accept this argument. So long as we anticipate that a peak period is approaching, we should have in place measures to ensure quality of the flats produced during that period, for all parties involved do have their own roles to play. This is especially true when public housing projects always involve the largest, in terms of their scales, number of workers involved and proportion of the population affected. The public housing projects are so large in scale that other developments just cannot compare. Indeed, to the construction industry, public housing projects are their biggest business.

Now, I will switch back to the confidence issue. Perhaps it is the last thing that the Government wants to talk about, but to me, it is the first and foremost problem we should address. As regards the amendment proposed by Dr Raymond HO in relation to this issue, I will discuss that later. What I should like to point out here is that, from the very beginning, I have emphasized that the first and foremost issue we need to tackle is the confidence. Perhaps the measures introduced by the Government could resolve the long-term problems, the confidence issue facing us now is also a problem waiting to be resolved. For this reason, I urge Honourable Members to support the four proposals that I have put forward in my motion. I hope Members will give consideration to these four proposals, since they have been made in consultation with the various sectors of the construction industry as well as the academia concerned. I also hope that these proposals, when implemented, could help to resolve the confidence problem in the first place and then resolve in the long run the issue as to how the construction industry of Hong Kong as a whole could ensure the quality of our housing units.

With these remarks, Madam President, I urge Honourable Members to lend their support to my motion.

**Mr Gary CHENG moved the following motion: (Translation)**

"That, as the public are losing confidence in public housing after the successive surfacing of problems of poor quality construction and substandard piling works, this Council urges the authorities to face up to the issue and adopt the following measures:

- (1) review and improve the existing mechanism for supervising construction works, including defining clearly the responsibilities of the parties concerned, penalizing substandard project consultancy firms and defaulting officials and enhancing co-operation with the relevant professional institutes, so as to ensure the effectiveness of the supervisory mechanism;
- (2) review and raise the construction, repair and maintenance standards of public housing;
- (3) improve the existing subcontracting practice; and

- (4) revise and improve the contents and arrangements of the existing training programmes for construction workers in order that the trainees can meet the industry's needs,

so as to ensure the quality of public housing and restore public confidence."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Gary CHENG, as set out on the Agenda, be passed.

**PRESIDENT** (in Cantonese): Dr Raymond HO 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 Dr Raymond HO to speak and to move his amendment.

**DR RAYMOND HO** (in Cantonese): Madam President, I move that Mr Gary CHENG's motion be amended, as set out on the Agenda.

I believe every government official sitting in this Chamber, in particular those responsible for housing policies and matters, would feel very uneasy about the successive surfacing of problems of the poor quality of public housing and substandard piling works. Regrettably, however, since the surfacing of the various problems, the Government has been trying to duck out and shift the responsibility onto the construction industry and the construction workers. Judging from their replies to questions regarding the quality of public housing blocks, it seems that government officials simply do not consider the Government should bear any responsibility for the problems. What is more, they even insisted that they had done nothing wrong. So far the Government has kept putting the blame on several professional sectors of the construction industry, including my constituency — the engineering sector. Worse still, the most senior government officials have never tried to differentiate semi-professionals from professionals before criticizing them for allowing their professional standard and professional conduct to decline. Such indiscriminate criticisms are not only inappropriate but also very unfair to the industry. As a result, the professional sectors have risen in protest against the Government.

In view of the poor quality of public housing units and home ownership scheme flats, many members of the public as well as the media are asking this question: Is it a rule that the higher the price, the better will be the quality? While the rents or prices for public housing are comparatively lower, does it follow that the quality of such units and flats will necessarily be poorer? Perhaps the honourable government officials could never imagine that their homes would have such problems as cracked walls and exposure of reinforcing bars, since they are all living in luxurious flats that worth some \$10 million. So, we can see why the general public will immediately express their dissatisfaction upon learning that problems of substandard piling works and foundation works or problems of poor quality of superstructure have surfaced in certain construction sites of the HD.

Actually, I agree largely with the motion moved by the Honourable Gary CHENG in that the Government should face up to the problems relating to the poor quality of public housing as well as the substandard piling and foundation works. Nevertheless, I think the original motion have missed certain crucial points.

First, even though problems have been found with the HD construction sites, we should not jump to any conclusion, in the absence of sufficient evidence, that the people are losing confidence in public housing. This is because so doing would be very unfair to not only HD staff at various levels but also the reputable consultancy firms and building contractors participating in the projects concerned. I believe those Honourable colleagues who are also members of the HA certainly do not wish to see the public losing confidence in public housing.

Second, with regard to responsibilities, it would be obviously unfair if only the project consultancy firms and government officials but not the building contractors concerned are held responsible.

Third, we have no objection to contracting out construction projects. Given that the targeted number of public housing units to be constructed is rising every year, and that the HD is unable to increase its manpower, the most economic and cost-effective alternative would be to contract out the design and construction work to some consultancy firms. However, that does not mean the HD should leave them unsupervised. Even if the contracted out projects concerned were subject to examination by the Buildings Department (BD) under

the Buildings Ordinance, the HD should have in place an effective reporting system. In this connection, the HD should learn from the good example set by the Works Bureau over the past decades.

Fourth, the production volume of the HD will soar from some 30 000 or 40 000 public housing units a year to this year's 60 000 and further to more than 90 000 next year when the peak period arrives. However, the HD has never adjusted its administrative strategy in relation to project management and construction work supervision, nor has it arranged its administrative structure and manpower resources beforehand to cope with the change. All in all, the HD has failed to take into consideration the principle of change management. As a result, problems have surfaced in some of the construction projects and caused people to question the quality of the housing blocks constructed by the HD.

Fifth, given that the existing tendering principle is to award the contracts to the lowest bids, some irresponsible contractors will offer an unreasonably low premium to win the tender. Once they are awarded the contracts, they will provide very poor services that are commensurate with the low tender offers. The Government should really review the situation and the practice concerned.

Sixth, from a technical point of view the foundation problems surfaced in some HD construction sites are very inspiring and call for grave concern. The HD should conduct a thorough technical review of the designs of public housing blocks under construction and those to be built using similar types of piles, as well as amend the design of the superstructure including the building height. This is of great urgency because some of the projects concerned have been approved of already. We do not wish to see any recurrence of the Tin Shui Wai incidents.

Seventh, the HD is playing the role as a developer and also that of a safety police. In order to discharge its duties effectively, it must face up to all the key problems concerned. For example, the depth and specification requirements adopted by the HD in relation to prefabricated concrete piles are far less stringent than that adopted by the Architectural Services Department (ASD) or the BD. Anyone who is experienced in construction works knows that piles of such kind must be subject to the limitation of many factors, including soil conditions, building height, piling specifications and depths, supervision requirements and so on. In addition, the soil investigation

procedures should also be improved, since the existing borehole method is not good enough. So, supervision over piling work and the borehole soil investigation method are two areas that warrant improvement by the HD. With regard to the measures to enhance supervision, I have suggested the HD setting up an independent building safety inspection division to be accountable directly to either the HD or the HA. This arrangement should be able to considerably reduce the role conflicts that project managers have to face when seeking to balance important factors like costs, pace of progress and safety. If there should be any shortage in manpower resources, the HD could also consider contracting out more design projects to free more staff members to take up safety inspection duties.

Eighth, for any projects are to complete successfully, it is necessary for the engineers, architects, clerks of works and building contractors concerned to strike up a good co-operation partnership right from the launch of the projects, with a view to avoiding any conflicts when the projects are underway.

Ninth, we all agree that the skills level of construction workers varies dramatically and that training should be provided for them expeditiously. With regard to the proposals to set up a registration system and to upgrade the skills of construction workers, the Building Contractors' Association has expressed agreement and offered a lot of suggestions. As to the proposal to enhance the training programmes provided for construction workers, I believe it is necessary for the HD to consult the relevant trade associations and trade unions.

All these points warrant our particular attention in the light of the public outcry as a result of the various problems arisen recently in relation to the HD. Regrettably, they have not been included in the original motion. As such, I hope that my amendment could help to make the motion complete. I hope Honourable Members will lend their support to my amendment, which is in fact a good-intentioned amendment, thereby giving the Government a comprehensive and precise proposal regarding the way to promptly resolve the various public housing construction problems.

Madam President, I so submit.

**Dr Raymond HO moved the following amendment: (Translation)**

" To delete ", as the public are losing confidence in public housing after the successive surfacing of problems of poor quality construction and substandard piling works,"; to delete "issue and" and substitute with "problems of the poor quality of public housing and substandard piling works etc. and to expeditiously"; to add "improvement" after "adopt the following"; to add "in particular the means of supervising contracting-out projects," after "supervising construction works,"; to delete "including defining" and substitute with "and define"; to delete "," after "of the parties concerned" and substitute with "; the Housing Department should also commit to fulfilling its duty to police housing safety,"; to delete "penalizing" and substitute with "punishing"; to add "contractors and" after "substandard"; to delete "and" after "project consultancy firms" and substitute with "as well as"; to add "," after "defaulting officials"; to add "and partnership" after "and enhancing co-operation"; to add "and trade associations" after "with the relevant professional institutes"; to add "quality of construction and" after "so as to ensure the"; to add "review and" before "improve the existing subcontracting practice"; to add "and the policy of awarding contracts to the lowest bidders; (4) examine immediately the causes of the incidents of substandard piling works; conduct a thorough technical review of the designs of public housing blocks under construction and those to be built using similar types of piles, and amend the design of the superstructure including the building height, so as to ensure safety" after "improve the existing subcontracting practice"; to delete "(4)" after "; and" and substitute with "(5)"; to delete "improve" from "revise and improve" and substitute with "enhance"; to add "in consultation with the relevant trade associations and trade unions" after "existing training programmes for construction workers"; to add "the skills acquired by" after "in order that"; to add "actual" after "the trainees can meet the industry's"; and to delete ", so as to ensure the quality of public housing and restore public confidence". "

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Raymond HO to Mr Gary CHENG's motion, be passed.

**MR TAM YIU-CHUNG** (in Cantonese): Madam President, recently, there have been successive surfacing of problems of poor quality construction of public housing blocks. On the one hand, this should be a sign that the problems have been brewing for some time; and on the other hand, it may also be a good opportunity for a comprehensive reform to be introduced. Indeed, a comprehensive review of the situation brooks no delay. I believe this review should involve all parties concerned, including building contractors, subcontractors, construction workers, training centres, the HD, and the relevant professionals, with a view to winning their support for reforming and improving the situation in a comprehensive manner. In addition to safeguarding against any problems relating to the quality of construction, the reform should also aim at enhancing the quality of public housing as a whole.

As a matter of fact, the construction industry of Hong Kong is internationally reputed for both the outstanding designs of buildings and the remarkably short construction time needed. However, problems like poor quality construction, shoddy work and substandard piling works incidents have served to continuously undermine people's confidence in public housing. Are all these problems attributable to the system itself, or should they be attributed to the people concerned?

The HD has referred to the present stage as the peak period of public housing construction and hinted that some error and mistakes would be unavoidable. I just cannot accept such an argument, since the quality of public housing is closely related to the safety of people's lives and their properties. In this connection, in Ping Tin Estate Shopping Arcade, Kwun Tong, a glass panel fell off and caused a young child to fall down from heights; in Tin Shui Wai, certain blocks of Ting Chung Court became tilted because the piles were shortened. Such accidents did not happen by chance. If we should ignore the problems behind these accidents, one day Hong Kong would be filled with defective buildings. By then, how could the people of Hong Kong live in peace or work happily?

One of the long-term causes behind the deteriorating quality of public housing is the HD's practice of awarding contracts to the lowest bids. In order to win the tender and to safeguard the profit margin at the same time, contractors would very often resort to using substandard building materials,

hastening the construction time, or employing illegal workers. Apart from that, the loopholes in the supervisory mechanism of the HD have also provided some good opportunities for the unscrupulous contractors. In the Tin Chung Court substandard piling incident, for example, because the HD has failed to follow the procedures to require the supervising consultancy firm to conduct settlement tests of the piles within the prescribed period, as a result, the problems were identified one year later than would have been the case. The supervision of the HD is always conducted in paper only, since the supervisory level never conduct any site visits but relies on the report of front-line officers. Moreover, the HD staff have always been very careless in supervising and examining the construction, it is naturally very difficult for the problems to be identified promptly. One typical example is the HD completed an investigation report only two months before the Tin Chung Court incident, but it failed to discover any clues of the subsequent incident.

There is a lot to be done if the Government is to plug the loopholes. I believe one most important direction is to enhance both the professionalism and the enterprise spirit of the construction industry. Recently, a construction worker reflected to me that although he had several certificates issued by the Construction Industry Training Authority, he had been unable to find any job after the new airport projects were completed. Why? He told me since he did not know many people, in particular subcontractors, it was therefore impossible for him to find any jobs. The existing subcontracting practice is a kind of brotherhood-like or friendship-based employment system. That means workers have to befriend the subcontractors if they want to find any jobs. Under the circumstances, how could they have the initiative to continuously improve on their skills? On the other hand, with the subcontracting practice, the workers do not have any job security; as such, they have to submit to the subcontractors in order to secure their employment rather than holding fast to their professionalism. Naturally, the quality of construction would be sacrificed as a result. In this connection, to enhance supervision alone may be able to cure the symptoms but not the disease. Even though the work not satisfactorily done at the early stages could be identified later, the rectification of the problems would require extra costs and time. Who would be the one to bear such additional costs? In the end, the public would still be those who suffer most.

I believe we should brook no delay in pushing the construction industry to develop its professionalism and enterprise spirit. Apart from playing a

more active role in co-operating with the Building Contractors' Association and in enhancing the development in this connection, the Government should also consider whether it could introduce some other practical measures as well. At present, there are around 71 000 workers working in the construction sites territory-wide. Of these construction workers, more than 37 000 are engaged in the government sites. As the government department that has a long-term construction need, the HD should be in the best position to motivate the construction industry to develop its professionalism and enterprise spirit.

The desirable culture of an industry cannot be established over-night. The support of a mechanism for employment, good mode of operation and supervisory system would be indispensable. We hope that the Government would introduce improvement in a comprehensive manner, with a view to ensuring the quality of public housing, thereby enabling the people to live in peace and work happily. With these remarks, I support the original motion and the amendment proposed to it.

**MR EDWARD HO** (in Cantonese): Madam President, the motion moved by Mr Gary CHENG is targeted at the poor quality of public housing. However, as Mr CHENG has pointed out, the problem of poor quality affects not only public housing blocks but also the construction industry as a whole. As professionals practising in the private sector, we do attach great importance to the problem. For this reason, I consider it a necessary step to conduct a fundamental review of the construction industry, with a view to finding out ways to rectify the situation. Yet, Madam President, this is not what I am going to talk about today as I have spoken on that for many times already. Today, I will focus my discussion on the relationship between project consultancy firms and the HA as well as the HD, since I have some personal experience to tell.

Many project consultancy firms are very unhappy with the tendering system currently used by the HA and the HD. Perhaps I should give Honourable Members some brief explanation of this system. Under the present tendering system, there are two selection criteria according to which project consultancy firms will be appointed. The first one is the technical capacities of the consultancy firms concerned, and the second one is the consultancy fee they charge. Given that the technical capacities of the consultancy firms are more or less the same, in the end, the firm which charges the lowest fee would be awarded the contract. Perhaps Members would ask:

What is the problem with awarding contracts to the lowest bids? The problem remains that because of the existing poor business environment, certain consultancy firms would offer extremely low bidding prices in order to win the tender. With a works project which lasts some four to five years, for example, some of the tender offers are so low that the hourly cost for professionals would just equal to that for technicians. If such a situation should continue to exist, would the HA and the HD be taking risks? Actually, we could tell the difference by examining carefully the tendering system for construction projects. Speaking of tender offers, if any building contractor should calculate the premium for a square metre of concrete at only one tenth of the typical cost, I do not think the HD would award such building contractors any contracts. Otherwise, the HD would have to face many potential problems such as shoddy work or even compensation claims. As such, I believe there is indeed a need for the HD to further deliberate over the reasonable criteria for selecting consultancy firms. Furthermore, Mr Gary CHENG and Dr Raymond HO have also suggested the Government enhancing co-operation and partnership with the relevant professional institutes and trade associations. I fully agree with their suggestion in this respect. At present, because of the heavy workload, the HA and the HD have contracted out a considerable number of projects to be taken care of by the project manager grade staff of the HD. Since these project managers believe they are playing the role as supervisors of the contracted-out projects, any discrepancies between the work procedures of the consultancy firms and that of theirs, such as the documentation errors mentioned earlier, would be considered a blot on the track record of the relevant consultancy firms. Yet they do not seem to realize that they have a responsibility to work in co-operation and strike up a partnership with the consultancy firms to enable the projects to be completed successfully. I think this is a very crucial matter.

Madam President, the point I have just referred to is related to the suggestion made by Mr Gary CHENG and Dr Raymond HO to penalize or punish the parties responsible for the shoddy work. Two weeks ago in the debate on the motion moved by the Honourable NG Leung-sing, I said that since the responsibilities borne by professionals were actually very heavy, there should be no need for us to worry about any imprudent conduct on their part, nor should time be wasted in discussing the issue of fines and punishment. However, things have become very unfair lately. The HD is so afraid of being criticized by the public, Members of the Council or the media that whenever any problems are uncovered, it would always find someone to take the blame. To the HD, both the public and this Council would expect to see some parties

being taken to task whenever any problem surfaces. Actually, things do not necessarily develop that way. While problems may perhaps be inevitable for projects, the question remains whether the problems are all attributable to the professionals concerned. I think this is what Dr Raymond HO meant by the responsibilities of the parties concerned. Naturally, responsibilities should be clearly defined.

Madam President, my comments are indeed the heartfelt feelings of the practising professionals. On the other hand, I have also talked with the HD architects and learned that they were also dissatisfied with the bureaucratic structure of the Department. They also told me the joke "Time after time", the punchline of which is that time after time they have to submit so many forms and reports that their time and energy are all wasted in the paper work instead of being used in taking care of the construction projects. Actually, I agree very much with both the motion moved by Mr Gary CHENG and the amendment proposed to it by Dr Raymond HO. Regrettably, however, we in the Liberal Party will not lend support to either of them. Why? This is because we consider we should protest against the HD.

**PRESIDENT** (in Cantonese): Your speaking time is up.

**MISS CHOY SO-YUK** (in Cantonese): Madam President, in recent years, problems with the quality of public housing have become all too common, ranging from minor defects like spalling concrete, cracks on external walls, seeping ceilings and blocked pipes to very serious ones such as exposure of reinforcing bars, substandard piles and even the settlement of a whole housing estate and many many others. The spate of problems with the quality of public housing has not only aroused the strong discontent of the whole community and the affected residents, but also eroded public confidence in the our public housing. What is even more worrying is that in the coming two years, we will see the peak of public housing construction. Will even more problems with the quality of public housing surface then?

The reasons for the declining quality of public housing are many, and the following can be readily quoted: The practice of the HA to award contracts to bidders quoting the lowest prices, the vicious competition among consultancy firms, the subcontracting practice and the ineffective supervision of the HD. My colleagues in the Hong Kong Progressive Alliance (HKPA) and other

Members have already dwelt a lot on these points, and so, I am not going to repeat them here. Instead, I am going to say a few words about the quality of construction workers and the feasibility of implementing a system of permanent appointment in the construction industry.

Actually, when we look at the problems with the quality of public housing, there is one reason which is worth noting — the volume of public housing construction has soared in recent years, but the construction period has been cut instead of being lengthened. According to information available, the number of public rental units constructed by the HA in 1994-95 was just about 12 000, but in 1998-1999, the number shot up to some 50 000. And, in the next financial year, the number will go further up to 900 000. The HA also forecasts that in the next seven years, a total of 40 000 public rental or subsidized housing units will be completed. But then, as disclosed by the construction industry, the HA has shortened the construction period in an attempt to provide enough public housing to meet demands. Years back, the construction period was 32 months, which means a production of one housing block every eight days. The buildings now are much taller, but the construction period has been shortened to 24 months. If we also consider the environmental laws, which forbids anyone to carry out construction works at night, we will see that the time available for the construction of one housing block is just about four days only. Tight schedules will easily lead to errors and quality problems. This needs no further elaboration. But this has also led to an even more serious problem: The supply of experienced and high-quality construction workers has simply failed to catch up with the demands imposed by increased construction works. That being the case, how can we possibly ensure the quality of our buildings? And, if building contractors try to employ illegal workers or workers with inadequate skills because of meagre profits, what will be the consequences? I think Members all know the answer.

At present, the shortage of front-line workers is a common problem within the construction industry. There are some 98 000 construction workers in Hong Kong, and even under normal market conditions, these workers are often unable to meet the demand, and this is aggravated by the even greater shortage of skillful and experienced workers. Besides, the problems of an ageing workforce, low productivity and unstable performance are also common. The practice of awarding contracts to bidders quoting the lowest prices and the multiple subcontracting practice are no doubt causes of these problems, but we must not forget the reluctance of the young people in Hong Kong to join the

construction industry. In fact, the construction industry has become some sort of an obnoxious industry because of its high incidence of industrial accidents, unstable income, and the heavy physical demand it imposes on workers. More importantly, specialized as it is, this industry cannot offer any professional qualifications and stable income like other professions.

To address this problem, the Government must promptly put in place a mechanism to upgrade the overall professional standards of the construction industry. This can actually be done in two ways. First, a professional licensing system should be introduced to upgrade the professionalism of the industry. Recently, the construction industry has started to discuss the possibility of introducing a licensing system for construction workers and middle management personnel, and some tentative ideas have been worked out. The Government should have more exchanges with the industry and provide more assistance as soon as possible. Besides, the Government should also explore the feasibility of introducing a permanent appointment system as early as possible. Actually, as the construction industry becomes increasingly professional, there is really a need for each and every specialized works type to retain a stable workforce. This is the only way to maintain overall quality, and a system of permanent appointment is precisely the key factor which can make it possible to create and maintain a stable workforce for individual works types. The social costs of permanent employment are no doubt comparatively high, but from the perspective of the whole community, permanent appointment is certainly a way of saving resources, because it can ensure better housing quality.

In February this year, some Executive Council Members, officials from the Education and Manpower Bureau and the Works Bureau, some Legislative Council Members, employees' and employers' representatives from the construction industry and other community figures signed a charter which aims to improve work site safety and construction quality and to implement a system of permanent appointment in the construction industry. Unfortunately, the Government has so far failed to take any concrete actions. And I also hope that the Government can now start to take the lead. I hope that from now on, when it invites any tenders for public housing projects, it can prescribe a condition requiring the bidders to set down a certain proportion of permanent appointment on agreement terms. And, the bidders should also be required to draw up schedules on a gradual and appropriate increase in the proportion of permanent workers they employ. That way, the spirit of the charter can be realized.

In recent months, the HA has formally announced that it will join hands with all the relevant government departments to carry out a comprehensive review of public housing quality. It is expected that the review can be completed before the end of this year. I hope that the HA can complete this review as quickly as possible, and that in the course of the review, it will also take on board the opinions put forward in this Council today.

With these remarks, Madam President, I support the amendment and the original motion.

**MR LEE WING-TAT** (in Cantonese): Madam President, the recent spate of problems with the quality of public housing is an apt reflection that the system of housing construction adopted by the HA really leaves much to be desired. There was first the substandard piling works problem at the construction site in Tung Chung early this year. Then, there was the problem of uneven settlement at Tin Chung Court and the redevelopment site in Yau Tong. And, recently, cracks have been found on the external walls of Tin Yiu Estate in Tin Shui Wai. So, the HA really must review its management of housing construction works, its supervision of contracted-out works and the training of construction workers.

Since we will see the peak of public housing construction in the coming two years, the contracting out of construction works supervision is arguably an acceptable and reasonable approach. But the point is that the HD must at the same time put in place a satisfactory mechanism to monitor the work of its consultants and building contractors. In the case of the uneven settlement at the Tin Chung Court site, for example, has the consultant ever submitted any regular supervision report to the HD? Has there been any dereliction of duty? Why was the problem of uneven settlement not detected until all the housing blocks had been completed? Is all this a clear indication that the supervision mechanism as a whole is plagued with problems? Following all these incidents, Director of Housing Mr Miller remarked that as far as all these engineering defects were concerned, he himself was also one of those having been cheated. I think he was simply trying to shift the blame to others. In the very first place, the HD must improve its chain of supervision, its works procedures and its acceptance procedures. It must also step up its spot checks and impose meticulous and stringent monitoring on those consultants who are

responsible for works supervision. A number of works consultants have recently disclosed that some building contractors have simply failed to employ an enough number of monitoring staff, and this has led to a decline in works monitoring standards. This means to say that these building contractors have failed to discharge their works monitoring duties properly, and neither have the works consultants employed by the HD. And, all this also means that even the HD itself has failed to properly monitor the supervision standards of its works consultants. That being the case, I would certainly be puzzled if there were no problems.

Basically, the HD adopts a tendering system for the award of its piling and construction works contracts. And, since a principal contractor will usually further contract out his works to different levels of subcontractors, all the building contractors involved in a project often have to resort to jerry-building if they are to make any profits. This is one of the reasons why the quality of public housing construction is unable to meet the required standards. I once suggested to the HA that we should put in place a system which saw price and quality as equally important, or which even emphasized quality alone. The potential problems with the existing system are very obvious; do the HD and HA want to see more public housing construction scandals before they make any improvements? I am convinced that it is not a question of whether or not the HD has realized its error; rather it is just a question of determination. The HA naturally has to consider the issue of construction costs, but it must never sacrifice quality while doing so. The HA must promptly put in place the reforms required; this is the only way to restore people's confidence in the quality of public housing.

The quality of construction workers is also a significant problem affecting the quality of public housing. At present, the Government does not make it mandatory for building contractors to hire permanent workers. The only thing it has done is to offer a monthly allowance of \$2,000 starting from late 1998, so as to encourage building contractors to hire permanent workers on agreement terms. But the number of permanent workers employed by the building contractors working for the HD has nonetheless remained very small. Without any job security, construction workers sometimes have to work as decoration workers. This has led to a high mobility rate among them, thus directly affecting the quality of housing construction. In the absence of any permanent employment, it has been impossible to build up any long-term and stable

partnership between workers and building contractors, and employers are generally reluctant to allocate any resources to workers' training. In view of this, the Democratic Party has been advocating that the Government and the HD should lay down a condition requiring building contractors to employ a greater proportion of permanent workers. The Democratic Party is also of the view that the Government should introduce a test regime to ensure the quality of public housing. In addition, the Democratic Party also thinks that the training for construction workers should be enhanced. Following this, building contractors should be required to employ a fixed proportion of workers with skills certificates for each job type, and the proportion should be increased gradually.

The construction industry often argues that the multi-layer subcontracting practice simply cannot be changed overnight. But the fact is that this practice has seriously affected the quality of public housing, because under it, subcontractors cannot possibly make any profits unless they suppress workers' wages or resort to jerry-building. We propose that the HA should restrict the number of layers which a principal contractor can subcontract his works, and it should also require a principal contractor to contract out works only to those building contractors or subcontractors approved by the HD. Such a requirement will mean that the HD will have to compile a list of various types of contractors, so as to ensure the standards of subcontractors.

During our discussions about the quality of public housing, we have not talked too much about the responsibility of professionals. I know that professionals all hold professional qualifications, and they are monitored in their professional ethics by their respective professional institutes. But sometimes I really cannot understand one thing. If I am a very rich man with as much as \$1 billion, and if I have a piece of land and hire a building contractor to construct a building on it for me, and if I also hire a works consultant to supervise the building contractor, should I be criticized if a substandard piling problem subsequently emerges? I do not think that I should. But who should be held responsible then? Should the professionals involved be held responsible? Have our construction professionals ever requested their professional institutes to step up works monitoring? We are no doubt experiencing an economic downturn, and many professionals such as lawyers, engineers, architects and so on have complained that the prices offered by the HD and HA are indeed too low. But these professionals are all highly

educated, and they should understand that they should observe their professional ethics. They may well think that they are not adequately paid, that what they get cannot possibly enable them to make ends meet. But if they still want to bid for a works project even at the prospects of losses, they should remind themselves that they must always produce work of acceptable quality. They must not work half-heartedly or give reserved professional advice on the pretext of meagre fees. This is totally undesirable. I think professional institutes must give some thoughts to this problem.

Madam President, this issue really requires much more than simple and brief discussions. That is why I wish to call upon Members to attend the three special meetings to be held in the first two to three weeks of December. That way, we can make collective efforts to identify the root causes of the problem. Thank you, Madam President.

**DR TANG SIU-TONG** (in Cantonese): Madam President, recently, many quality defects have been found in the construction projects of the HD, and the community has thus started to look into the various possible reasons, such as the quality of construction workers, the practice of awarding contracts to bidders quoting the lowest prices, the proportion of permanent workers, the responsibility of professionals and so on. But I wish only to focus on the subcontracting practice and the quality control of public housing projects.

Many people blame the subcontracting practice for causing the many problems now plaguing the construction of public housing. To be exact, there are two types of subcontracting — one based on the types of works involved and the other on a commission system. The first type basically involves the contracting out of the different types of works in a project to different contractors, the aim being to increase efficiency and flexibility. This type of division of labour is commonly found in the production of other products and services and is not directly related to the problems with public housing construction. The problems are related rather to the second type of subcontracting, that is, the one based on a commission system.

Usually, under the commission type of subcontracting, the principal contractor who succeeds in bidding for a project will subcontract the whole project to another contractor for a certain amount of commission. Thereafter, the principal contractor, who has made a profit from the commission, will never again bother about the quality of the entire project. Such a

subcontracting practice has given rise to a whole lot of contractors who have no commitment whatsoever to works quality and who see only what profits they can make out of the price differences. This has led to a "vacuum" in terms of the internal quality control and accountability for housing construction projects. Besides, since sub-subcontractors or even any other further contractors are not employed by the principal contractor, there are always problems of supervision. Hence, the problem of "the principal contractor being unable to supervise construction workers" has become a common phenomenon. In the end, it has become even more difficult to control the quality of works. In view of all this, the HD should take corresponding remedial measures to tackle the problems resulting from the subcontracting practice.

At present, it is the practice of the HD to award block construction contracts. But then, once the principal contractor gets a contract, he will usually divide the whole thing into smaller items of works and contract them out to many small and medium contractors down subcontracting heirachy. To tackle this problem, the HD can consider the possibility of dividing up a block contract into smaller items before inviting tenders and awarding the contract to any principal contractor. In addition, the HD can also consider the possibility of forbidding a successful bidder to further contract out the works concerned.

The two possibilities mentioned above are different, but they can achieve more or less the same results. Both of them actually share the common objective of reducing the room of subcontracting. That way, the profiteering of middlemen can be reduced or even avoided; the HD will thus be able to maintain contact with the "genuine" contractor much more easily. Enhanced accountability and quality control will come as the results. Besides, having reduced the profits tapped by middlemen, we will be able to make sure that the genuine contractor can always get reasonable profits, and this will in turn reduce the desire of contractors to jerry-build housing blocks.

Furthermore, the HD must also review its existing grading system. Specifically, performance should be linked to eligibility for bidding, so that approved contractors can be given an added incentive to emphasize works quality. At present, the HD simply divides all approved contractors into two categories on the basis of works project prices — those who can bid for contracts each worth \$300 million or more and those who can only bid for contracts valued below \$300 million. The result of this is that even though the track records of a contractor are not so good, he can still get works contracts as

long as he goes for contracts with lower values. Singapore, however, is entirely different in its approach. There, the Government divides contractors into eight different categories on the basis of their works quality and track records, and the aim is to induce contractors to upgrade their works quality. So, even though Singapore is equally burdened by huge housing demands as Hong Kong, and even though it also has to rush along with housing construction, it seldom has any problems with its public housing. This is something we should learn from Singapore.

Having said all this, I must add that however hard we try to induce and encourage contractors to upgrade their works quality, we must not forget the importance of third-party monitoring. Basically, the BD should have the ultimate authority to ensure the quality and structural safety of all buildings in Hong Kong. However, in the public housing sector, such an ultimate authority is vested in the HD, because the Government wants to speed up the construction of public housing. So, the housing construction works under the HD are not subject to the regulation of the Buildings Ordinance. But having been given such an ultimate authority, the HD simply contracts out the job of works supervision to outside consultants, and while doing so, it also curtails the manpower deployed to supervise these consultants on the pretext of saving resources. This has led to the repeated occurrence of public housing scandals, showing that the HD is no longer qualified to have the ultimate authority to ensure the quality of public housing. Moreover, since the construction works under the HD are not subject to the regulation of the Buildings Ordinance, the Government is unable to invoke this Ordinance or any other relevant laws to prosecute any contractors or professionals involved in such construction works, even if they have allowed grievous deviations from approved plans or submitted false reports. This is an obvious loophole in the monitoring mechanism for public housing quality.

The Director of Housing is also clearly aware of all these problems, which is why he remarked, following the series of scandals, that he would explore the possibility of handing back the job of works supervision to the BD. But then, right afterwards, the Secretary for Housing made a most ridiculous remark in the Legislative Council that the existing arrangements under the Buildings Ordinance were "time-tested" and did not warrant any review. This is nothing but a gross deception. I am of the view that the Government should set up an ad hoc group as quickly as possible. This group should explore who should be given the ultimate authority to ensure the quality and structural safety of public housing blocks, and it should also review whether it is appropriate to

grant continued exemption to public housing construction works under the Buildings Ordinance. It is hoped that this can restore the credibility of the monitoring mechanism and people's confidence in the quality of public housing.

Madam President, I so submit.

**MR FRED LI** (in Cantonese): Madam President, I do not have a prepared script, and I will just talk about my own experiences and raise a few problems, in the hope that the Director and the Secretary can try to work out some ways of tackling them.

Harmony blocks represent the latest design in public housing. In Kwun Tong, for example, there are several public housing estates of such a design, and I know them very well because I often go there for work these days. After the recent typhoons, the problem of water seepage was reported in 500 units in three harmony public housing blocks in Kwun Tong. Five hundred households in these three housing blocks complained about the seeping of water into their units through the windows; they said that water kept pouring in like waterfalls, and they simply could not go to bed. It is only just two years into the occupation of these new housing blocks, so one really has to question what went wrong with the Clerks of Works or even the architects of the HD during the construction process. Why have such problems emerged? In nearby Ping Ting Estate, there are about 300 households; this is not a big number, and it is also a new housing estate which was completed as recently as one to two years ago. However, if Members take a walk there, they will easily notice the rusted reinforcing bars in the external walls of the housing blocks, and they will also see that there are as many as 100 spots of rust stains. Perhaps, we may really have to ask Dr Raymond HO why some new buildings with a vintage of around two years should have developed such problems. The reinforcing bars in the external walls have rusted, with stains here and there, ugly as ringworm. The conditions of Kai Tin Estate are not any better. These three housing estates are all newly completed ones. I am not going to name the building contractor here. But I think Members probably all know the name.

I see that following the recent spate of problems, staff of the HD has been holding many frequent meetings to work out ways of repairing the affected buildings. But the residents concerned and I are still very puzzled, because we

fail to understand why the HD should have accepted buildings of such poor quality, and why it should have paid the contractor at all. What went wrong with the architects? The Senior Architect who met with me was not involved in making acceptance of completed buildings from contractors, and he complained to me about his colleagues who were involved in such work. He grumbled that he now had to shoulder all the responsibility and work out remedial measures.

Members may have heard quite a lot about Ping Tin Shopping Arcade. Some time ago, in this shopping arcade, a boy fell down from heights as he tried to lean against the glass panel of an aluminum railing, because the glass panel had not be properly installed. There was obviously an improperly installed railing in the shopping arcade, but why did those in charge still effect acceptance of the shopping arcade and pay the building contractor? So far, all I have heard is that the building contractor will be penalized, but I have never heard anything about whether any HD staff will be penalized. Who in the HD were in charge of the supervision of this project? Who were responsible for acceptance of the shopping arcade? Who was the AP, the Authorized Person? Will they be penalized? No one knows. I know only that as a penalty, the building contractor will be forbidden to bid for any works project for a period of six months, and it is also said that the contractor will be blacklisted. But I do not know whether the HD has taken any action to penalize or discipline the architects and Clerks of Works involved.

The purpose of constructing sheltered pedestrian walkways, as Members also know, is to shelter pedestrians from rains and the sun. Those engaged in the construction industry of course know very well that the shelters of such pedestrian walkways should be slightly sloping in gradient, so that rainwater can travel down to some catchwater drains through the pipes installed. But surprisingly, in some places, we can find that while pipes are installed, there are not any catchwater drains. This is precisely the case in Tze Wan Shan. I once accompanied the Director in a site visit to Tze Wan Shan. We walked around the newly completed housing estates and shopping arcades in the area, and saw no catchwater drain near the sheltered pedestrian walkways there; rainwater simply ran down through the pipes installed and splashed all over when reaching the ground. Whenever it rains, the residents there will complain, saying that despite the shelters, the ground is all wet, and very slippery too. Why is there such a problem? Compared to the substandard piling problem in Tin Chung Court, this problem does seem to be a very minor one. But the residents still want to question why buildings such as theirs, which were completed just one or two years ago, should have developed all

these problems. Why have there been so many problems with new harmony blocks? Actually, I am very angry, and I have tried very hard to remain calm, so as to make my points clear.

In this motion debate today, I wish to mention all these problems, in the hope that the HD can make genuine efforts to review its procedures of supervising building contractors and effecting acceptance of completed buildings from them. I hope that the HD can try to find out which procedure has gone wrong, and whether any staff and building contractors have failed to discharge their duties properly. It should also find out why all these problems will emerge whenever there are typhoons or heavy rain. Besides, it should also find out why the quality of public housing is worse than that of all other types of buildings. Some building contractors are especially poor in performance. Well, the HD can always blacklist these contractors and even forbid them to bid for any works contracts forever. But what about the staff of the HD? Has the HD ever considered how to deal with them? It is imperative for the HD to question the relevant staff, so as to find out why they agreed to accept buildings of such poor quality. And, these staff must be told that following their acceptance of these buildings, their colleagues responsible for managing these buildings will be victimized. I really sympathize with all those Housing Managers. They did not effect acceptance of all these buildings themselves, but because of the poor quality, they are forced to face the complaints and criticisms of the residents every day. I can well appreciate their situation. I therefore want to ask what actually went wrong with all those people responsible for supervising the construction process.

When I was in my seat a moment ago, I managed to write down the names of several more problematic housing estates in a matter of just two to three minutes. But I do not want to write down any more names now, and I just want to say a few words more on the issue. I have been working for the people at the district level, and so, I frequently come into contact with them. That is why I wish to raise all these problems here. In terms of quality, many housing estates constructed a decade or so ago are much better than the new housing estates we now have. Ping Shek Estate and Choi Hung Estate are two examples. Why are new housing estates plagued with so many problems? I hope that the Secretary for Housing and the HD can heed the opinions I have reflected on behalf of the residents concerned. I also hope that they can take steps to address the housing quality problems faced by people living in newly completed housing estates. With these remarks, I support the original motion and oppose the amendment.

**MR HO SAI-CHU** (in Cantonese): Madam President, like Mr Fred LI, I am not going to read out a prepared script; I can speak impromptu, because I am engaged in the construction industry.

To begin with, let me declare my interests. First, I am a building contractor, but I have long since stopped bidding for any HD projects. Forty-five years ago, I constructed two public housing blocks, but thereafter, I never dared to do so anymore. Later on, I will tell Members why. *(Laughter)* Second, I am a member of the HA.

Having listened to Members' remarks about the construction industry, I cannot help wondering why they know so much. I must say that I really appreciate the research efforts they have made. Because of the time constraints, I am not going to repeat all their points, and I will focus on several relatively important points now.

First, Members seem to have attributed all the problems to a handful of reasons, the most notable one being the subcontracting practice. On this, I must clarify that such a practice has in fact existed in Hong Kong for decades. But were there so many problems in the past? No, many buildings constructed in the past were of very good quality. And, at one time, the quality of public housing was not too bad either, and this was particularly the case with the two blocks constructed by me. We have to note that even with the subcontracting practice, and regardless of how many layers of sub-contracting there are, the principal contractor will always have to remain ultimately liable. But for one reason or another, principal contractors all seem to have forgotten this point. Perhaps, this is because given the very keen competition, they can only make very meagre profits, and they cannot thus employ additional manpower to check whether their subcontractors have all done their work properly. If effective monitoring can be conducted down through all layers of sub-contracting, there will not be any problems, no matter how many layers there are. Mr Gary CHENG was right in pointing out that the construction industry of Japan also adopts such a system. But have the Japanese encountered any problems?

I think the most important problem is that over the past few decades, there has been a drastic degradation in professional ethics within the construction industry, and there has been a diminished sense of responsibility too. Members may still remember that we all used to respect the construction industry very highly in the past. At that time, we called construction workers

as "masters", and no one ever addressed them as "construction guys". But they are all called "construction guys" now. In the past, they used to be called "masters", which told of their high status in people's mind. In the past, whenever a rich man employed a carpenter to work for him, he would "worship" him almost like a god. This was based very much on the same mentality which induced us to worship LU Ban, the master craftsman. I think we should really cherish the long-standing tradition of the construction industry. That is to say, we should always have a high sense of responsibility, because the industry plays a very important role in society. All industry participants, be they ordinary workers or employers, must bear in mind that their work is highly significant, because the construction of a building is not only just about business and profits. Structural safety should be the prime concern of anyone taking part in the construction of a building, because any defects in this area may result in human casualties. And, they must also bear in mind that an ordinary man may well have to scrimp and save for his whole life before he can buy a flat. That is why all participants in the construction industry must adhere strictly to their professional ethics and discharge their duties properly.

Supervision is of course important. But we must not forget one thing. How can we possibly supervise each and every item of works, when there are so many job types, and when even a smallest-scale construction project will have to take dozens of months? So, ultimately, the success or otherwise of a project will have to depend on the sense of responsibility of all those involved. If everybody can work with a full sense of responsibility, only a very simple mechanism of supervision will be required. But why is it not the case now? I think the answer to this question is actually the crux of all the problems we now have. The point is that people nowadays simply do not attach any importance to responsibility and professional ethics. How are we going to improve the situation? I do not think that we can effect a complete change overnight. We must start by enhancing the professional ethics and standards within the construction industry.

Are the standards of construction workers just too low nowadays? I do not think so. We now run a far larger number of training programmes than ever before. We used to practise the apprenticeship system, but it is gradually phased out by now. But why is the situation still so bad, even with the many specialized training programmes we now provide? The main reason is that people are trained technically, but they are not trained in terms of professional ethics. They are not trained on professional standards and ethics. So, even

though they possess specialized skills, they do not actually attach too much importance to them, and they will always put their wages in prime consideration. When it comes to subcontracting, all the several subcontractors have in mind will be speed. If ever they are to emphasize quality, they will have to go slow, and what can otherwise be done in one day will probably have to take two days instead. But since they are going to be paid the same wages, they would of course try to finish it all in one day, so that they can earn double the amount. People now are all money-minded, and they have forgotten all about their responsibilities. Therefore, I think that when we provide any training in the future, we should not just concentrate on technical skills. Rather, and more importantly, all course participants must be made to realize what professional ethics are all about.

Moreover, why is the quality of private sector housing construction higher than that of HOS and public housing? Members must realize that to those in the construction industry, the requirements specified for the construction of a hotel, an HOS block or a public housing block are just all the same. It is all written down in black and white, and the contents are all the same. But those in construction industry also know that they should adopt different quality standards when it comes to different kinds of buildings. Very often, building contractors are all very clear about the quality requirements. If all can know what different quality standards are required, they will not have to worry about money. Can we possibly expect any building contractor to carry works even at a loss? This is simply not possible at all.

Second, in the case of private sector construction works, whenever problems emerge, all those involved can immediately come together for discussions, and following the discussions, the problems can be solved. But in the case of government works, the HA and the HD will invariably ask us to fill out many forms and comply with a lot of red-tape first. So, by the time when people can sit down for discussions, the project may well be near completion already. That being the case, how can problems be solved at all? When problems remain unresolved, quality will necessarily be low.

Because of the time constraints, I will stop here. I may not support this motion, because I think penalties are not the best solution. In my view, co-operation is the only best way to solve problems.

Thank you, Madam President.

**MR JASPER TSANG** (in Cantonese): Madam President, the only thing I want to say is how the Democratic Alliance for the Betterment of Hong Kong (DAB) looks at the amendment of Dr Raymond HO. There are several points in Dr HO's amendment which the DAB supports very much. One example is the need for a review on the supervision of contracted-out works. We very much agree that such a review should be conducted. At present, the system of domestic sub-contractors is generally adopted in the construction industry. As a property owner, the HD does not actually have to care about how a principal contractor splits up its works into different items and how and to whom he subcontracts the works. As a result, after many layers of subcontracting, the building contractors who actually carry the works may well be both inexperienced and substandard. This has made it difficult to ensure works quality.

We remember that the HA once admitted that under the existing system of domestic sub-contractors, it was extremely difficult to monitor the works quality of contractors. But such a system is already deeply embedded in the construction industry. So, although permanent employment has been suggested as a solution, such a suggestion cannot possibly change the situation in the near future, because it involves the industry culture. So, we think that the HD should first try to improve the existing practice of subcontracting by, for example, putting in place a system of nominated sub-contractors. With this system, the HD can at least decide which sub-contractors to select. This can at least ensure the works quality of sub-contractors, because they will have to work well enough to remain eligible for HD nomination. So, they will work more seriously, and this can in turn ensure works quality.

Dr Raymond HO's amendment contains a special point on urging the authorities concerned to build up a partnership with the relevant professional institutes and trade associations. We note that the Director of Housing, Mr Miller, has also said something to this effect. He said on one public occasion that he wanted to build up a partnership with various parties, and he also said that he wished to see a relationship of co-operation characterized by risks-sharing and mutual trust.

We agree that if the quality of housing construction is to be enhanced, all the parties involved must build up a relationship marked by co-ordination, mutual trust and mutual assistance. But we think that the HD has so far failed to stand by its own words. One example is the Tin Chung Court project

mentioned by other Members. In this case, after problems were revealed, but apparently before any thorough investigation was ever conducted, the HD hastened to issue a high-profile statement, shifting the blame onto the consultancy firm. We notice that this has aroused strong dissatisfaction among some professional institutes, and some have even issued statements of protest. We hope that the HD can learn a lesson from this incident and make appropriate improvements. Thereafter, whenever it tackles any problems, it must join hands with professionals and professional institutes with a positive attitude. It should never rush to shift the blame onto others. It is only in this way that a genuine partnership can be built up.

Dr Raymond HO's amendment also urges the HD to play a good "policing" role in connection with the structural safety of buildings. The DAB believes that this is already very much a consensus in the community. There is definitely a need for the HD to step up its construction site inspections, to station more Clerks of Works at construction sites and to increase the number of spot checks. The BD has already issued a statement, stating that the Department will tighten its control over the piling works in private housing construction sites. The measures to be taken include an increase in the proportion of bored piling tests. In addition, in the case of drop-hammer piling, the engineers employed by the building contractor must be present when the works with every pile are completed, and they are also required to sign the piling report on each and every pile, so as to certify that piling standards have been met. Will the HD follow suit?

However, Madam President, there is one point in Dr Raymond HO's amendment which the DAB cannot support. This relates to the fourth point in his amendment. In brief, he proposes to conduct a technical review of the design of public housing blocks under construction and those to be built using piles similar in type to those found in previous substandard piling incidents, and to amend the design of the superstructure including the building height. While it agrees that there is a need to review the design of piles, the DAB, however, also thinks that if we try to amend the design of superstructure and reduce building height, we will be putting the cart before the horse. It has been reported that the drop-hammer type piling now widely used by the HD are cheaper than other types, but they may not be very suitable for high-rise buildings. I do not know whether it is true. If it is, the HD should of course abandon this type of piles, so as to ensure structural safety. When it comes to the modification of superstructure design, as a professional in the field,

Dr Raymond HO may well have his own engineering and cost-efficiency considerations, and his judgment may be very sound. However, his proposal may not be very appropriate in the context of Hong Kong.

As we all know, huge numbers of families, as many as over 100 000, are still waiting for public housing, but land supply in Hong Kong is very scarce. That is why the HD must make full use of the lands available, and it must construct the greatest number of housing units by using the least amount of land. So, if the problems lie in the choice of piles or designs, the ultimate solution should be to make improvements to the choice of piles. If construction works have not started yet, other types of piles should be chosen at once. If, however, works have already started, then other engineering remedies should be explored. We naturally understand that costs will invariably go up if such remedial measures are to be implemented for works which are already underway. And, we also understand that the completion date may well be delayed too. But if we are to make the best use of our precious land supply, this is the price we must pay.

For this reason, we do not support the amendment moved by Dr Raymond HO.

Thank you, Madam President.

**MR NG LEUNG-SING** (in Cantonese): Madam President, the quality of public housing has recently become a focus of concern in the community. As a member of the HA, I am of the view that the continuous disclosure of problems relating to the quality of public housing will not only lead to grievances among the people, but also undermine their confidence in the public housing of Hong Kong. Worse still, this may even hinder the smooth implementation of the long-term public housing policy of the Government. Hence, this problem must be addressed properly, and it must be tackled by making positive improvements to the system of works supervision.

Following the financial turmoil, the supply of private-sector housing has gone down in response to market conditions. The construction output of private developers last year, for example, was just about 22 300 units. But in marked contrast, the output of public housing has maintained at quite a high level throughout. Under the public housing development programme, the expected total output for the period from 1998-99 to 2001-02 will be about

220 000 units, which means an average of 55 000 units a year. As at the end of 1998, as many as 185 000 units under the HA were under construction, and these units were located at hundreds of construction sites. It is also expected that the annual output of the HA will reach a record high of 93 000 units in 2000-01. All this shows that the output of the HA as a public housing provider is far higher than that of any single private developer. That being the case, it is only natural that there are more problems with public housing quality than with the quality of private housing development projects. Therefore, given the existing system of practices in the construction industry, it is in fact no easy task for the HA, which is responsible for the development of public housing, and the relevant government departments to ensure both quality and quantity.

In order to enhance the control of the HA over the quality of public housing construction, and in order to restore public confidence, I wish to make a proposal here. When the peak of public housing construction arrives, I think we should really establish under the HA a credible housing quality assessment group. This group should be composed of representatives from the industry, relevant professionals and academics, and should be given clear responsibilities for monitoring public housing quality in terms of structural safety. Whenever the HD discovers that there may be structural problems with any housing units under construction, representatives from the assessment group should be assigned to take part in the relevant investigation and compile an independent report. The assessment group should follow the quality and safety standards adopted by the construction industry, and it should be a body with adequate professional expertise and authoritative standing, one which is capable of ascertaining the seriousness of public housing safety problems. For minor quality problems which may not affect public safety, they should be corrected internally in accordance with the relevant contract provisions, and the HD should maintain a complete and systematic internal record on all the improvements made. But for serious problems relating to building safety, in particular those involving structural safety, they should be disclosed, and those responsible must be made to shoulder the civil or criminal liabilities. With this approach adopted, the HD should adjust its practice of indiscriminate disclosure, that is, it simply should not think that it is always good to disclose each and every problem uncovered in the hundreds and thousands of housing units under construction. I believe that the approach recommended by me is much more positive from the pragmatic point of view, the reason being that what the people want to see is a strong commitment to sound supervision and quality housing on the part of the Government, rather than any attempt to disclose all problems.

As for the subcontracting practice, which has recently attracted quite some criticisms, I would think that the ultimate solution should be the setting down of clear contract provisions. The loose and vague wording used in the past must be abandoned. Instead, clear and specific contractual obligations must be laid down, so that the various parties responsible for works supervision each step along the way can discharge their respective obligations in strict accordance with the relevant contract provisions. In this way, each segment of works and its progress can be effectively monitored, and the HD will also be able to obtain clear and orderly records which can be used for investigation when the need arises. That way, once any problem occurs, it will be easier to ascertain who should be held legally liable. In this connection, a lot can be learnt from other public sector organizations such as the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation, which have very rich experience in drawing up provisions on supervision in their works contracts.

Madam President, I so submit.

**MISS CHAN YUEN-HAN** (in Cantonese): I think the poor quality of public housing has been a long-standing problem. Years back, there was a case in which defects were found in 26 public housing blocks. The shoddy work of developers and the corruption of HD staff at that time caused many defects in public housing blocks, and the Government thus suffered a loss of \$1 billion. But the quality of public housing has never shown any improvement since despite the case. Since my debut in direct elections in the 1990s, I have come across more similar cases. King Shan Court in my constituency is one example. Then, when I chaired the Housing Panel of the Provisional Legislative Council, there was the On Ning Garden incident. And, the year before last, a glass panel in the shopping arcade of Ping Tin Estate even fell off, causing a child to suffer injuries. Incidents of this kind frequently occur, and it seems that the poor quality of public housing has become very much a part of our daily life. This is really most annoying. Public housing is plagued with so many defects, so I really hope that the Government can make determined efforts to solve this problem.

The cases mentioned by me were of a more serious nature. The defects found in the 26 public housing blocks, King Shan Court, On Ning Garden and Tip Tsui Court, for example, were more serious. But we must not forget that there are also many other less serious incidents. Just visit any public housing estates, and we will notice that defects are found almost everywhere. Newly completed ones are plagued with defects, and so are those completed a long time ago. Feeling puzzled, I once asked the Honourable HO Sai-chu whether the buildings constructed by them were also like this. Mr HO, however, replied that the buildings constructed by them would not be like this. Sometimes, I really cannot understand what is going on. People living in public housing blocks may well think that they are poor, and the Government has thus tried to construct housing units for them in such a haphazard fashion. The beautiful exterior designs of public housing estates now seem to suggest the otherwise, for landscaped gardens, podiums and so on are found. But we must not forget that public housing estates are plagued with many internal defects. This is also the case with newly completed housing estates, where seeping windowsills and walls with spalling concrete are a rule rather than an exception.

I know nothing about building construction, so I have asked several friends of mine for their opinions. But none of them knows the reasons. My constituency is divided into the eastern and western parts, where both newly completed and old public housing estates are found. Lower Wong Tai Sin Estate is just a newly completed housing estate, but many complaints from residents have been received. I even notice that we cannot possibly identify any immediate solutions to the problems underlying all those appalling incidents. We notice that very often, no solution can be found. Since the issue has become a major concern in the community, Members have put forward many opinions too. We understand that public housing construction enjoys an exemption, and it is not subject to regulation by the existing Buildings Ordinance. I am sure the Government will later tell me that it has some other ways of supervising public housing construction. We sometimes criticize other countries for adopting "self-contained" systems, so to speak, with always the same group of people being responsible for policy formulation and supervision and for urging themselves on. Such systems are not desirable, and they remind me of how we have criticized our existing health care system and how the Harvard Team recommended the Government to set up an independent arbitration mechanism in its report. But if we look at the monitoring mechanism of our public housing construction, we will see that the whole mechanism is basically "self-contained", with the same authorities responsible

for drawing up rules, supervision and building design. If the Government still refuses to reform such a mechanism now, then, to be very honest, I must express my strong regrets. I also wish to ask the Secretary for Housing this question: Should we be so tolerant of the departments responsible for constructing public housing units? Hong Kong has always been noted for its mechanisms of checks and balances, one example being the checks and balances existing among its legislative, executive and judicial branches of government. But then, in the case of public housing, there is an entire absence of any monitoring mechanism from the stage of design to the stage of actual construction. I hope that the Bureau Secretaries responsible for these matters can really do some serious thinking.

I also wish to discuss the various opinions about the contracting out system. In this connection, I agree that many problems with the quality of public housing have emerged, but can we lay all the blame on the whole contracting-out system? I think if we can put in place a mechanism to monitor the system of out sourcing, the matter can in fact be resolved. The best solution is of course for the HD to employ some permanent construction workers and set up its own housing construction team. That way, it may be able to do away with any contracting out, and the permanent workers it employs will all be able to concentrate on doing their work well without any worries. Some private property developers are now already beginning to adopt this practice, so I think the Government should really make a decision concerning all these matters. If it is not prepared to set up any housing construction team, it should then put in place a monitoring mechanism to supervise the system of out sourcing. If it does not do this, very serious problems will emerge sooner or later. The HD, consultancy firms and building contractors are involved in this. They must try to build up a good working relationship among themselves. The Government simply should not lay all the blame on some particular building contractors and consultancy firms whenever problems are detected, as if it were not in any way responsible. Things simply cannot work out that way. And, I do not think that the Government can get away so easily either, because whenever any problems occur, our Housing Panel will most definitely hold it accountable. This morning, we were originally supposed to hold the third meeting in a series of three consecutive special meetings, but because we have to discuss the reorganization of district organizations today, the meeting was called off. But sooner or later, we will still go back to the Government again and press it for clarifications, and we will definitely voice our condemnation. So, I think the Government should really draw lessons from the bitter experience and think about these problems very seriously.

I will not rule out the merits of the early warning system recently put in place by the Government. But I do not think that this alone can be adequate. The Government needs to do the work of monitoring in conjunction with non-industry participants. Another important issue I wish to raise here concerns the eight problems with the construction industry mentioned by Mr Miller last week. He said that the quality of construction workers was a big problem. In response, I must say that the skills level of Hong Kong construction workers is already very high. So, please do not lay all the blame on workers. The trade unions of construction workers have in fact refuted Mr Miller's point. We cannot of course deny the existence of some black sheep in the industry, nor can we refuse to admit that some technical problems may have occurred due to the lack of supervision. But this is not the fault of workers; rather, it is the monitoring mechanism which has gone wrong. The Government simply should not shift the blame onto the workers. All in all, I think the Government must tackle this problem seriously, instead of trying to shift the blame onto others.

Madam President, these are my remarks. I hope the Government can heed our advice.

**PRESIDENT**(in Cantonese): Time is up. Please take your seat.

**MRS SOPHIE LEUNG** (in Cantonese): Madam President, I do not belong to the construction industry, but having listened to my colleagues' remarks, I feel compelled to say a few words. As pointed out by Mr Edward HO, right now, in our society, whenever a certain industry fails to do well, or whenever something is not done well enough, people will invariably try to hold someone responsible, thinking that penalties can always succeed in reforming a person. I have listened attentively to my colleagues' remarks, and I have come to the observation that the issues involved are not at all simple. So, if we simply go for the easiest way out, if we do nothing but impose penalties, then, at the end of the day, those who have well-behaved and been responsible will simply quit. Mr HO Sai-chu said that he also bid for public housing projects before, but that he no longer dares to do so now. There may be two reasons for this. First, he has already quit public housing construction. If penalties are to be imposed in the future, and if penalties are to be extended to private housing construction, he may decide to quit the industry for good. That makes me worry about his employees and the job opportunities of workers.

A Vice-President of the Harvard University visited Hong Kong earlier this year, and he asked me, "Why are the people of Hong Kong looking at things with such a lack of perspectives?" At that time, I asked him in return, "What do you mean?" Later, I came across the saying "a wise man changes his perspective thrice" in the Buddhist scriptures. Is it really true that we are looking at things with a lack of perspectives? I wish to make an appeal here; we must all look at things in their proper perspectives. Now, obviously, the problems before us have to do with the framework itself. But we have not tried to deal with all these problems. Instead, we go for the easiest way out by imposing penalties. This will probably drive the well-behaved from the industry, and those who are dishonest may do even more bad things in desperation. In the end, companies will close down and workers will become jobless. And, unemployed workers, in their desperation, may well join companies which are not so scrupulous. In the end, there may be no channels of redress for these workers. We should not be so irresponsible in our work, and I do not want to see the industry going in this direction anymore. Several other industries have already been forced into a dead end by our predecessors. I do not want to see the construction industry follow such a path again. This is the first point I wish to raise.

Second, what problems are there with this industry? Having listened to Members' remarks, I have the impression that the whole industry is plagued with structural problems, and we cannot possibly oversimplify the situation by laying all the blame on the subcontracting practice. As pointed out by Mr HO Sai-chu, this practice has been adopted for years, but why was there no problem in the past? Even in Japan, such a practice is adopted, but their buildings are equally pleasant in look. And, despite the earthquakes of Magnitude 7 and 8 there, their buildings can still stand intact. Why have there been so many problems in Hong Kong? We cannot of course forget the problems with our workers. There is indeed something wrong with the quality of the workers here, and we simply should not turn a blind eye to all these problems. I have recently heard a story about a five-star hotel, or a magnificent building. The construction of the building was already completed and it was all tidied up, ready for inauguration the following day. The man in charge inspected the whole building several times, and found that some individual spots still needed to be tidied up. Some workers agreed readily to stay behind to do the job. But then, the following day, in the lobby where the ribbon-cutting ceremony was due to take place, some faeces was found. What was the mentality underlying such kind of behaviour? Why should people ever do something like this? I thought at that time that the employer might have failed to pay

wages to the workers. So, I talked to the person in charge, asking him whether there was any case of short-payment of wages. I noticed that there was no negative news about the project during the construction period. But why then did all this happen? I think when we are looking into the structural problems with this industry, we must at the same time study the kind of problem I have mentioned, so as to find out the reasons. We are now providing more and more training programmes to ensure the employment of our workers. I think this has made them somewhat irresponsible in their conduct. Actually, there are many problems in this respect.

Besides, I also want to raise the point that even the developer should also share part of the responsibility. I am of the view that the HA and the HD should both share part of the responsibility. As pointed out by some colleagues, whenever the HA and HD award any works contracts, they will always ask for both low prices and high quality. But then they will never do any monitoring work to see if the requirements are met. The only thing they do is just to employ a Project Manager to oversee the whole thing. And, these people are expected to perform well despite their low salaries. Besides, the job requirements of these Project Managers are not clearly set down. So, in the end, it is certain that they will fail to achieve the desired objective.

Also, though many public housing blocks are very beautiful in exterior design, they are plagued with many internal problems due to the lack of any supervision from the developer. This is precisely where the problem lies. That is why I hope that when they look at the structural problems with the industry in the future, Members present here, the construction industry professionals gathered outside or even the HA can look into all these problems. I have also visited some housing estates, and though I do not visit these housing estates as often as Members working in those districts, I still have the impression that public housing blocks in the past were of a higher quality. They were stronger in structure and were not as poor in quality. I hope that we will not concentrate only on penalties, on trying to identify easy scapegoats. If we do this, we will be no different from those people whom I met as a small girl in my native village, people who labeled others as the "Five Vice Elements" and who ordered my parents to kneel down every night. If we do this, we will be no different from these people in mentality. Why must we resort to penalties?

I think we should identify some proper solutions to deal with the structural problems with the industry, instead of rushing to ask for penalties at a time when our own workers are still not so good in quality. I think this is a very irresponsible action. I hope Members can also adopt this attitude in the future, instead of always talking about penalties. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak? Dr Raymond HO, you are not permitted to speak again.

**DR RAYMOND HO** (in Cantonese): Madam President, may I ask whether I will still have ..... Yes, I want to raise this question because I think Mr Jasper TSANG has misinterpreted my amendment. I am not sure whether I will still have any opportunity to offer my explanation, but I think my remarks just now should not have used up my time limit.

**PRESIDENT** (in Cantonese): Dr Raymond HO, you may interrupt immediately after Mr Jasper TSANG has finished speaking, so as to ask for permission to clarify those parts of your remarks which you think have been misinterpreted. But if you think other Members have misinterpreted or distorted your amendment, I can do nothing to help you. Whether you have any time left is not the point here. It is the Rules of Procedure that forbids you to do so.

**DR RAYMOND HO** (in Cantonese): Since Mr TSANG misinterpreted only my amendment, not my remarks, I did not raise my hand right away to ask for permission to speak.

**PRESIDENT** (in Cantonese): In that case, I am afraid I can do nothing to help you.

Mr Gary CHENG, you may now speak on Dr Raymond HO's amendment. You have up to five minutes.

**MR GARY CHENG** (in Cantonese): Madam President, I should like to speak on the amendment moved by Dr Raymond HO from two perspectives. Firstly, with regard to the suggestions we all agree to, we have no objection to the ones seeking to supplement or further improve both the wording and the observations of the original motion. Examples of such suggestions include substituting "punishing" for "penalizing", substituting "co-operation and partnership" for "co-operation", substituting "actual needs" for "needs" and substituting "revise and enhance" for "revise and improve". We certainly agree to these proposed changes and are grateful to Dr HO for suggesting them.

In addition, the amendment is correct in suggesting reviewing also the policy of awarding contracts to bidders quoting the lowest prices and examining immediately the causes of the incidents of substandard piling works. Earlier, Dr Raymond HO said that he had yet a point to raise. As I have read the brief note he passed to Mr Jasper TSANG, I can now give him my response. Dr HO wrote that we must examine immediately all the piles, including those that are still under construction. I believe there should not be any problem with this. Besides, I also believe that the HD will definitely do so. Indeed, the HD has started examining the piles concerned upon learning the problem with Tin Chung Court. However, when Dr HO further suggested amending the design of the buildings concerned, including the building height, I could not help but liken his suggestion to the Procrustean bed. This has something to do with a point raised in my motion, the confidence issue to which I have referred from the outset. I do not know whether this is a very unprofessional or ridiculous way of thinking, but is he not telling others that the buildings concerned are defective in suggesting amending the building height and design of public housing blocks using similar types of piles? This is a question Dr HO needs to resolve if he is to restore public confidence. We agree that the Government should re-examine the piles concerned to look into, for example, the types of piles that are suitable for certain housing blocks. We do appreciate the need to conduct such examinations. As to the proposal to amend the design of the entire superstructure including the building height, I do wonder if that would affect the plot ratio. Although Dr HO has suggested lowering the building height by a storey or two, I am afraid we still cannot accept this idea.

More importantly, the crux of the amendment is the deletion of the point on "losing confidence", a point which I have mentioned from the outset. When I first learned of the amendment proposed by Dr HO, I thought the Government must have lobbied Dr HO to do so to prevent my motion from

being carried, seeing as it would be most unhappy to see me discussing the confidence issue. However, judging from the speech given by Dr HO earlier in the debate, that does not seem to be the case. As pointed out by the Honourable Miss CHAN Yuen-han, Dr HO has made very stern criticisms against the HD. Today, two Members by the surname of HO have made very stern criticisms against the Government. In this connection, Mr Edward HO has even talked about staging protests against the Government. But that appears not to be Dr HO's goal. Nevertheless, his amendment seeks to delete from my motion the confidence issue part, which I believe is of utmost importance. I just wish to say briefly that we should not adopt any short-sighted attitudes towards the confidence issue, and that neither the HD nor anyone of us should be afraid of suffering pains. When it comes to the issue of confidence, we may perhaps be concerned about our property market or even our image being affected, or that we would cause others to worry about the safety of the buildings concerned. In my opinion, while the HD may not necessarily be held responsible for the lack of confidence on the part of the public, it certainly has a responsibility to restore public confidence. For these reasons, I still hope that after careful consideration Members will vote in support of my motion but against the amendment.

Thank you, Madam President.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, I sincerely thank Members for the views they have expressed on the improvement of the quality of public housing. The Government, HA, the HD and Honourable Members share a common goal. Indeed, some cases of substandard construction works have been uncovered recently, but I wish to point out that a great majority of public housing projects are sound and proper. As a developer, the HA attaches great importance to the quality of housing blocks. In this connection, the HA will step up its monitoring efforts. Substandard housing blocks will definitely not be accepted. The HA and the HD will definitely not shirk their responsibilities in respect of the recent incidents. I believe that we have a consensus, that is, the safety of the public should be our top priority. The HA, the Government, the construction industry as well as friends from the relevant industries must address the existing problems in a serious manner.

As we all know, the HA is currently conducting a review in relation to the construction industry to identify ways to raise the quality of construction works. As the review is underway, we should not draw a conclusion at this stage. However, I am happy to briefly respond to the views expressed by Members. I hope that this motion debate and future discussions will continue to serve as a forum for us to draw on collective wisdom so that the quality of public housing can be further improved.

Now, I will respond to Members from a diversity of angles, namely, works supervision, construction and maintenance standards, the policy based on which contracts are awarded as well as the subcontracting practice, design of piles and training for workers, as pinpointed in the motion.

Regarding supervision on construction works, the HA's construction contracts have clearly provided for the responsibilities of the contractor. The contractor has the responsibilities to supervise his workers and carry out construction works to the required standard specified in the contract. On the other hand, the HD also has a set of procedures governing contractors and consultants at three different stages of the construction process, namely, the commencement stage, completion stage and handover stage. At each of these stages, the HD will send professionals and site staff to conduct inspection and tests, compile reports, carry out handover work and so on in accordance with the prescribed procedures.

As for those contractors and consultants whose performance are unsatisfactory, the HA will duly penalize them depending on the seriousness of the problems, including suspension from tendering, demotion or removal from the HA's lists of contractors. Similarly, disciplinary actions will be taken against defaulting HD staff members in accordance with the Civil Service Regulations.

The overall review being conducted now also covers the following areas. First, stepping up supervision on construction works, particularly the procedures for piling works. Second, improving the existing Performance Assessment Scoring System. Third, reviewing the disciplinary system. Fourth, enhancing exchanges between the HA and contractors/consultants to facilitate discussion on issues of mutual concern. The HA will also review the existing structure of and working procedures for project management to achieve a clear division of powers and responsibilities, streamlined structure and greater efficiency.

The second aspect discussed in the motion debate concerns the construction, repair and maintenance standards of public housing blocks. The required standards in these areas are under constant review of the HA in order to dovetail with the ever-changing demands and evolving technologies. As a matter of fact, all the standards required of construction, repair and maintenance works are laid down in the contract documents. These specifications for construction works are often adopted or used as references by the private sector in their construction projects, so these standards are in principle sound and proper.

We have also taken certain improvement measures which include firstly, introducing a new system for new construction projects under which building works are categorized to observe different sets of specifications, and setting up a building works specification library to clearly convey to contractors the HA's building requirements and standards; secondly, using standardized prefabricated building components (such as wall panels, metal gate, cooking bench, kitchen cabinet, windows and doors) to control quality, reduce reliance on skilled labour, cut the cost and shorten the time required for the building works; and thirdly, introducing a control list system for new projects so that the established practice of setting up demonstration flats can produce a more optimal result and in which case, the materials used by approved contractors can be controlled stringently.

Certainly, the HA will continue to make improvements by, *inter alia*, identifying ways to step up efforts in ensuring compliance with the existing standards and taking on board views from the industry, academic institutes as well as users.

The third aspect that Members discussed concerns the subcontracting practice and the policy based on which contracts are awarded. At present, the system whereby the HA invites tenders and awards contracts is broadly the same as that generally used by the Government in contracting out building works. If the past performance of the bidder and the contents of his tender comply with the requirements in respect of the design, technical know-how, finances and so on, the HA generally awards the contract to the bidder quoting the lowest price. Obviously, this practice has the merit of good quality control and it is also a fair and objective selection criterion. However, we appreciate Members' concern about quality. The HA will constantly make improvements to the Preferential Tender Award System, laying emphasis on the requirement of quality improvement.

Under the general provisions of the contract, the principal contractor is not permitted to sublet the whole of the project to which the contract relates. Yet, the HA allows the contractor to sublet part of the works to subcontractors. The subcontracting practice can provide flexibility in the utilization of resources and ensure cost effectiveness. It enables the principal contractor to cope with the workload which changes from time to time, reduce risks and make arrangements for the many procedures involved in the construction process. Yet, it is true that multi-layer subcontracting and confusion in powers and responsibilities may be resulted in the event of abuse, and poor workmanship will easily arise without proper supervision and control. Given that the principal contractor is made responsible for the works of its subcontractors, the existing system of the HA still aims at monitoring the operation of the principal contractor.

We understand the pros and cons of the subcontracting system. The HA is considering requiring the principal contractor to strengthen the management and control of its subcontractors.

On substandard piling and the design of piles, the HA has found cases of substandard piling works recently. These cases are now under investigation, so it is inappropriate for the HA to make conclusive comments. Nevertheless, the HA has adopted some improvement measures as follows.

Firstly, deploying more site staff to exclusively supervise foundation works and deploying more resident structural engineers to monitor building works on construction sites;

Secondly, setting up an independent working group for the purpose of vetting and audit checks at the tendering stage and after the placement of piles to ensure that the design of piles and the relevant construction works are up to standard; and

Thirdly, monitoring the settlement of piles in all housing blocks and compiling reports on a regular basis to examine if the piling works are completed properly. Preventive measures to strengthen the foundation will be taken at an early stage, if necessary.

The HA's review will target these areas to avoid the recurrence of similar incidents. The quality of works will be monitored throughout the construction process and once problems are detected, we will identify solutions immediately to ensure compliance with safety and quality requirements. In this connection, I wish to reiterate that despite recent incidents of substandard piling, it does not mean a general deterioration of the quality of public housing, or that the safety standard is going downhill. In fact, most of these incidents are actually uncovered by the HD itself. The HD will remain alert and impose stringent control on the structural quality of housing blocks.

Lastly, training for construction workers. Members rightly pointed out that the craftsmanship and working attitude of construction workers are directly related to the quality of housing. The HA will continue to work closely with the Hong Kong Construction Association and Construction Industry Training Authority (CITA) to require contractors to employ a certain number of trade tested workers in the construction of public housing. This requirement has been included in the contract and we hope to increase the number of trade tested workers gradually.

The CITA launched a co-operative training scheme jointly with employers 18 months ago. Its purpose is to organize, with the co-operation of contractors specialized in special trades (such as piling, grouting, and so on), on-site training courses in those kinds of works for which training must be carried out in practical working environment. Regrettably, these training courses received lacklustre response. The HA now plans to exchange views with the CITA, construction industry, relevant professional institutes and trade unions with reference to requirements for building works and also cases pertaining to construction quality and safety, thereby exploring ways to step up training so as to ensure that works prone to problems will be undertaken by well-trained workers in future.

Madam President, the public housing programme directly concerns the interest of all people of Hong Kong. Any housing block which involves jerry-building practices, poor workmanship or fails to comply with safety requirements are unacceptable to the Government and the HA. We very much hope that all parties concerned can work in concert to improve the quality of housing. To this end, the Government and the HA will actively strive to establish a partnership with contractors, the relevant professional bodies and members of the construction industry, sparing no effort to raise the overall

standard of the construction industry. Madam President, as the saying goes, "even a wise man who is moving for a third time takes into account many considerations". We will consider and make reference to the views expressed by Members irrespective of the outcome of this motion debate.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr Raymond HO to Mr Gary CHENG'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)

Dr Raymond HO rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Raymond HO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Mr Eric LI, Mr HUI Cheung-ching, Mr Bernard CHAN, Mr FUNG Chi-kin and Dr TANG Siu-tong voted for the amendment.

Mr Michael HO, Mr LEE Kai-ming, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Mr CHAN Wing-chan, Mrs Sophie LEUNG, Mr SIN Chung-kai and Mr LAW Chi-kwong voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Andrew WONG, Mr David CHU, Mr NG Leung-sing, Mr MA Fung-kwok and Miss CHOY So-yuk voted for the amendment.

Miss Cyd HO, Mr Albert HO, Mr LEE Wing-tat, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr Gary CHENG, Mr Jasper TSANG, Dr YEUNG Sum, Mr LAU Kong-wah, Miss Emily LAU, Mr SZETO Wah and Mr HO Sai-chu voted against the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present, six were in favour of the amendment and nine against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 20 were present, five were in favour of the amendment and 14 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

**PRESIDENT** (in Cantonese): Mr Gary CHENG, you may now give your reply. You still have three minutes and 55 seconds.

**MR GARY CHENG** (in Cantonese): Madam President, I shall try to be as brief as possible, because we have been sitting here for 12 hours already. And, I really have to thank Honourable Members for participating in this debate.

The Government has stopped short of giving any definite undertaking that it will support my motion. But at least, the Secretary has still told us a long list of measures, so I would simply take this to mean that he would support my motion with concrete actions rather than mere words. The Secretary has not said that our proposals are wrong in any way, and he simply says that positive actions will be taken. So, it is at least a very good thing if all the measures mentioned by him can really be put into practice.

Like some colleagues in this Council, I also think that the Government should take the lead, because the HA and the HD are now the biggest employer in the construction industry who can exert a dominating influence in the market. For this reason, the Government is obligated to take the lead in introducing new ideas, new ways and new procedures. And, even if all the measures mentioned by the Secretary are implemented, the construction industry will still be marked by very great problems, deep-rooted problems. It is always difficult to take the first step. So, I would suggest that the HD or the HA should begin by first dealing the easy rather than the difficult. They should begin by first dealing with those problems within their control. The problem of "time after time" can at least be dealt with first. Members who have come late may not know what this means. This means that complicated procedures are required and many forms must be filled out in the process. This expression was not invented by me, but a popular saying in the HD. At least, the problem of "time after time" can be solved first.

I am pleased to learn that the authorities are working positively with both the Hong Kong Construction Association and the CITA, but I also noticed the charge in Members' remarks during the debate just now. It seemed that the professional sector was not at all satisfied with many of the existing procedures. I do not wish to see any confrontation, and I hope that we can all join hands to build up a co-operative relationship instead. That way, it is hoped that we can gradually improve the established practices of the construction industry and bring about genuine improvements to the quality of housing construction in Hong Kong. Thank you.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion of Mr Gary CHENG, as set out in 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.

(Members raised their hands)

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

#### **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 2.30 pm on Wednesday, 8 December 1999.

*Adjourned accordingly at a quarter to Ten o'clock.*