

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 26 June 2008

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.M., G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

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

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

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

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

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

DR THE HONOURABLE YEUNG SUM, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

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

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE ALBERT JINGHAN CHENG, J.P.

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

THE HONOURABLE MRS ANSON CHAN, G.B.M., J.P.

MEMBERS ABSENT:

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE VINCENT FANG KANG, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE JOHN TSANG CHUN-WAH, J.P.
THE FINANCIAL SECRETARY

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

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR EDUCATION

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

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

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

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

THE HONOURABLE DENISE YUE CHUNG-YEE, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE TSANG TAK-SING, J.P.
SECRETARY FOR HOME AFFAIRS

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

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

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

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

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

PROF LAU SIU-KAI, J.P.
HEAD, CENTRAL POLICY UNIT

CLERKS IN ATTENDANCE:

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

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): A quorum is lacking as there are only 22 Members in the Chamber. Clerk, please ring the bell.

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

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

BILLS

Council went into Committee.

Committee Stage

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

REVENUE BILL 2008

CHAIRMAN (in Cantonese): As requested by Mr LEE Cheuk-yan, the Committee will deal with clauses 7 and 10 and other clauses separately.

I now propose the question to you and that is: That the following clauses stand part of the Revenue Bill 2008.

CLERK (in Cantonese): Clauses 1, 2, 4, 5, 6, 8, 9 and 11 to 19.

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 clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 7.

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

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, the reason I have applied to single out this clause so that Members could vote on it separately is that I wish to urge Members to object to the proposed clause 7. Well, what is clause 7 all about? It is very simple. Clause 7 proposes to lower the standard rate of salaries tax by 1%, from 16% to 15%. I urge Members to support my amendment.

Yesterday, we already put forward the relevant justifications. Actually, the reason is simply to manifest the "ability to pay" principle. The Secretary said yesterday that this is unfair — unfair to "the kings of employees" — including himself. I do not know whether he was airing his own grievances, but how will this be unfair? The reason he gave was that as the rate of salaries tax has been reverted to the 2002-2003 level for everyone, if this is not applied to them, it would be unfair to them.

I think this claim has disregarded a basic fact, and that is, there is already "extremely, extremely, extremely great inequity" in Hong Kong, meaning that the distribution of resources in Hong Kong as a whole is so unequal that most of Hong Kong's wealth is owned by a very small group of people, with the top 10% alone owning 40% of the wealth. This is the situation in Hong Kong and it is extremely, extremely, extremely unfair. What I am now doing is to make this "extremely, extremely, extremely great inequity" a little bit more equitable, only just a little bit more so, but the Secretary said that this is unfair to them. To say that this is unfair to them is only making this "extremely, extremely, extremely great inequity" (that is, the problem of disparity between the rich and the poor) even more serious. Thus, the Secretary's complaint about "unfairness" is actually indicative of his neglect of the "great inequity". I hope everyone could see that the Secretary's claim is unjustified.

On the other hand, I have listened to Mr Ronny TONG's explanation. He said his friends think that there is no reason to punish those who are financially successfully and there is no reason to exclude them from the tax reduction. Moreover, even though they are punished, it does not necessarily mean that it will benefit the poor. This is what they claimed. Mr Ronny TONG said that he did not have an answer for his friends, but I think the question is very easy to answer. Mr Ronny Tong himself has also mentioned that the position of the Civic Party is that those who have the ability should pay more, and the current proposal is only to give effect to the "ability to pay" principle. Under the existing tax system, the marginal tax rate is set at 17%. According to the current proposal of the Government, taxpayers are only required to pay taxes up to 15% of their salaries as opposed to the original 16%. If we have no objection to it, then the rate of salaries tax will be revised from 16% to 15%, but I think if the rate can continue to be pitched at 16%, the "ability to pay" principle could be better manifested. It is just as simple as that.

Moreover, it should not be considered as a "penalty", and I was really very angry when I heard that this is a "penalty". Frankly speaking, we are now only talking about paying tax, so how can we say that it is a penalty? If that were the case, then we might as well not observe the "ability to pay" principle and make everyone pay 10% of their salaries as tax. At present, some places in

the world have adopted a flat rate, so we might as well also introduce a flat rate. But, does it mean that it is the fairest way? As such, under the guiding principle of the "ability to pay", I think it is unjustified for Mr Ronny TONG's friends to call the relevant arrangement a penalty.

Yesterday, I also heard Mr Ronny TONG mention another point, and that is, once we have passed the legislation to allow the Government to reduce tax, it can no longer say that it has no money in the future. I dare say the Government will tell us right on the next day that it has no money for implementing the 10-odd measures which Dr Fernando CHEUNG or Mr SIN Chung-kai listed yesterday. I dare say that the Government will still tell us all the time that it does not have sufficient funds.

Some people said that there is no reason for the Government to say so, for it has a reserve of more than \$1,000 billion, so will it still have the nerve to say that it has not got sufficient funds? How can the Government not be embarrassed? I can answer this question on the Government's behalf. The Government will say that the \$100-odd billion of surplus has already been returned to the people by "giving out candies" on a one-off basis, whereas the \$1,000-odd billion in its reserve will be used as future reserves. Moreover, a large part of this \$1,000-odd billion is in the Exchange Fund, whereas the amount of fiscal reserves will be determined by future circumstances.

Some people may say that there is no reason for the Government to say so and there is no reason for it not to use the money when it obviously has so much money. However, the Government will tell us that there are things known as recurrent revenues and recurrent expenditures and these things should be taken into account in public finance, and the principle of balancing the two must also be upheld, otherwise, we will have a deficit budget. Of course, Members can say that we would still agree on a deficit budget, but the Government just will not do so.

As such, my conclusion is very simple, and that is, if it is said that tax reduction by the Government may not necessarily help the poor people, I would say that this will definitely — I repeat, definitely — make it more difficult to help the poor, for the Government can then say with strong justifications that the

decision to reduce tax has been passed by the Legislative Council, and without recurrent revenues, how can its recurrent expenditures be covered? The Government will definitely say so. Though we say that the Government has a lot of money, it may still argue that this is not true, for public finance is not about the amount of reserves but recurrent revenues and recurrent expenditures. The Government will certainly say something along those lines.

To a certain extent, this may not be wrong, for in the long-run, a balance should really be struck between our recurrent revenues and recurrent expenditures. Thus, when facing criticisms in the future, the Government will say that the tax reduction has our support today. Honestly, we are just being stupid, because when we want to fight for something in future, the Government will certainly say that it has no money. So, we must not be fooled by the Government.

I heard that one of the principles highlighted by the Civic Party in the upcoming election is justice. Since this Bill today is all about economic justice, if you support the Government and allow it to reduce tax payments for the "kings of employees" and consortiums, then you are actually against the principles of economic justice and "ability to pay", and it will be even more difficult for us to squeeze a little bit more resources out of the Government for the benefit of the low-income people in need.

That said, I should still commend Mr Ronny TONG for doing a good job in speaking up for the poor in the past and for his willingness to do so. However, he has not done a good job in speaking for the rich people yesterday but this is still a good thing, because it is still not too late to make amends and I hope the Civic Party can discuss this further.

Furthermore, there is a report today that you have come to the rescue of James TIEN for we heard that James TIEN will go on a cruise today and will not attend this meeting — this is what the press says. So, if you change your mind and vote against the Government on clause 7, then the Government may not have

enough votes. Very often, it is indeed easier for us to pressurize the Government into spending more money on the needy if there are more funds.

Chairman, I wish to make a final appeal here, in the hope that Members will see things differently after the debate.

Thank you, Chairman

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

MS MARGARET NG (in Cantonese): Madam Chairman, why do I have to join in? It is because I heard what Dr Fernando CHEUNG said about the problems now faced by the socially disadvantaged and the attitude taken by the Government in this Chamber yesterday. I think everyone present or even those outside this Chamber who have heard his speech could hardly remain untouched. This is another side of our society which definitely warrants a response from the Government. How can anyone remain unmoved after hearing such facts? However, Chairman, I am greatly shocked that the Secretary could still remain indifferent. He did not say a word in his response to Dr Fernando CHEUNG's sincere and heartfelt speech. Does it actually mean that this Government thinks it does not have any responsibility towards the people, or that the Secretary sees no need to respond to the advice of Members as he thinks that he will definitely get enough votes for passing the motion? Such an attitude will pose additional difficulties to any supporter of the Government.

I am very glad that Mr LEE Cheuk-yan has mentioned the relationship between tax reduction and public policies earlier. Chairman, I am a very conventional follower of free society and I think one of the most basic principles is that the Government cannot collect a cent more than necessary in tax revenues. It should collect tax when necessary and should refrain from collecting tax when there is no such need. This is the most basic principle.

Furthermore, there is another equally important principle, and that is, the Government has responsibilities towards both society and the people. When factors of inequity, especially when those factors may upset the balance of society, emerge in society, then correct public policies should be formulated, so that such problems can be resolved. This is an unshirkable duty of the Government. Under a free economy, it is very natural for everyone to work for their own benefits, but who is going to take care of the needy ones in society? No doubt, it will be the Government, but the Government cannot do anything without funds, so it has to rely on tax revenues. Under such circumstances, it is necessary for the Government to strike a balance between the two. However, it will not be enough to just strike a balance; the Government must also explain its actions.

We have undergone a very long internal discussion with Dr Fernando CHEUNG. Our main justification is that though the two issues are inter-related, they are also separate issues, for how much we have received from tax revenues and whether we can take care of the socially disadvantaged are actually two separate issues. Today, we can see that though the Treasury has an enormous surplus, it does not necessarily mean that the Government will take money out of its coffers and distribute it among the socially disadvantaged. But, have we got money for the extravagant Tamar construction project? LEE Cheuk-yan, the answer is yes. Why? Because this is actually a matter of priorities, and that is, how this Government sets its priorities, which means that the Government will take actions when people who have a say and who can put direct pressure on the Government, and challenge its authority have exerted their influence, but it will turn a deaf ear to the socially disadvantaged and ethnic minorities. It shows that the Government has totally disregarded the voices of the minorities in this Council. This can be seen so clearly. As such, Mr LEE Cheuk-yan, the problem which we must address is the Government's unfair priorities in its policy. If this problem remains unresolved, it does not really matter how much is generated from tax revenue.

The Government is now causing a split in society. Since many people in the community hope that the Government can reduce tax in light of the enormous surplus, the Government said that we must support tax reduction; otherwise it will be unfair to this group of people and so, we do not have to listen to Dr Fernando CHEUNG. I think that this is a very dangerous tendency, and I would also ask Mr LEE Cheuk-yan to think about it from this angle. What I do

not wish to see is the Government linking tax reduction or tax increases with improvements of services for the socially disadvantaged. In other words, if we fall into this trap, the Government will say that if we want to increase services for the socially disadvantaged and improve public policies, then it will have to increase tax. If we do not agree to increase tax, we should not ask for improvements. I think that this "link" is really an unconscionable link.

I do not know how to say this politely in Chinese. I would say that this is unconscionable, and an unconscionable government cannot gain a foothold in society. I was really angry when I heard what it said yesterday. If this Government can totally disregard such problems, I do not know where it will be leading Hong Kong. Therefore, I think we should tell the Government and explain to the public that tax reduction or tax increase is one thing, but the Government is duty-bound to solve the problem of social inequity by means of public policies. The Government must squarely face up to the problems raised by Dr Fernando CHEUNG. However, when can those problems be resolved?

Though Dr Fernando CHEUNG said that he is very angry at heart, he is more cultured than I am, and he is not asking the Government to solve all the problems in one go. He only wants to see the signs that the Government will solve these problems and which direction it is heading. So, the Government should at least acknowledge the existence of such problems and the need to solve them. However, it has not done so — Chairman, the Government has not done so. How can I sit here and listen to such cold and callous speeches? Chairman, the speeches are not only cold and callous but also the hollowest I have ever heard.

The Financial Secretary wrote us a letter, which we have all received. I think everyone who gets a letter from the Financial Secretary will, like me, read it carefully and those who have done so will try to find out what additional points the Secretary would make in his speech yesterday, and what changes and responses would be made after listening to so many of our speeches. However, he only read out what was written. Is this the standard of our politically accountable officials? Chairman, I do not wish to stray too far away from the topic. I only feel that we should face up to the issue of tax reduction and tax

increase squarely. Mr Ronny TONG has already explained the relevant principles, so there is no need for me to repeat them. As regards public policies, if the Government insists on linking public policies with the sufficiency of funds, then it has to explain why it can afford to reduce tax. Tax reduction can only be made on one basis and that is, the Government has sufficient money to spend and can share the money with the socially disadvantaged as well as improve public services. In that case, the Government can respond to the point raised by Dr Fernando CHEUNG and other Members.

Chairman, this is all I can say. Thank you.

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

MR ALBERT CHENG (in Cantonese): Madam Chairman, "unconscionable" can be translated as "無良" in Chinese. Since the Government has such a huge surplus but it has provided inadequate support for the socially disadvantaged, I do not think that this is a well-balanced Budget.

I certainly agree to the "ability to pay" principle and the progressive tax regime mentioned by Mr LEE Cheuk-yan and these have always been my beliefs. However, I must make one point because I have to give Mr LEE Cheuk-yan an explanation on why I support the tax reduction proposal of the Government.

In fact, as Ms Margaret NG has also mentioned, Chairman, supporting the socially disadvantaged is not directly related to whether or not the Government has a surplus. Our society does have a responsibility to look after the socially disadvantaged, and even if the Treasury is not "flooded" with cash and the Government has a deficit budget, we still have to support the socially disadvantaged. Thus, these two issues cannot be lumped together, especially when inflation is so serious.

The Government has allocated \$100 million for returning wealth to the people in light of its surplus but the problem is that the middle-class, taxpayers

and the socially disadvantaged alike are all affected by inflation. For many years, I have been saying that the so-called simple tax regime of Hong Kong is actually a fake, because the tax regime which we have adopted is never simple as a result of various indirect taxes and the high land price policy. I have also pointed out a hundred times why we have to pay \$2 or \$3 for a pineapple bun. It is because \$1 out of the \$2 or \$3 is used to cover the rent. Since we have to shoulder the rental cost every time we buy something and pay a price for the high land price policy, we have actually paid a lot of indirect taxes.

Moreover, there is a point which Mr LEE Cheuk-yan may not understand for he thinks that the plutocrats in the context of disparity between the rich and the poor have to pay tax, but this is actually not the case. As compared to the majority of the top ten plutocrats in Hong Kong, LEE Cheuk-yan and I may have to pay more tax than they do, for they do not earn a salary but only collect dividends and the profits tax is already paid upon receipt of dividends. Thus, instead of salaries tax, you can play up the issue of profits tax.

However, as regards this amendment, since I think that the middle-class is now facing the pressure of inflation and the majority of these people have already paid a price for the current surplus, I am not too happy about the proposal of not lowering the tax rate by 1%. Unless LEE Cheuk-yan can assure me of one thing and that is, apart from asking the Government not to lower the tax rate, he should also ask that the tax revenue in question should be used for the benefit of the socially disadvantaged. If he can do that, then he will certainly have my support. However, this is not the case and the problem is that this is basically impossible. Therefore, this amendment will only give people an impression of "being jealous" — if you do not have something, then I should not have it; if I do not have something, then you should not have it, — this can also be called a no-win situation.

The interest of the middle-class is one thing, and that of the socially disadvantaged is another. I agree with Ms Margaret NG that we should view the two as separate issues. Here, I maintain that even if the Government does not have a surplus today, it still has to take care of the socially disadvantaged. Who said that the Government should take care of the socially disadvantaged only when it has made money? This concept is wrong. The guiding principle

should be that even if the Government does not have a fiscal surplus or has recorded a deficit, we should still ask the Government to support the socially disadvantaged.

As such, we must never say that the tax rate should not be lowered because the socially disadvantaged has not been taken care of. Fernando CHEUNG said that we should not allow certain people to enjoy a tax reduction because we have to fight for transport fare subsidy for the disabled, Comprehensive Social Security Assistance (CSSA) payments, and so on. However, the point is that we should not stop the Government from lowering the tax rate for certain people because there are no such measures. That is a mistake. That is wrong. Unless the Professor can convince the authorities that if the tax rate is not lowered by 1%, then this amount of money will be used as subsidies for the disabled and for increasing the Old Age Allowance. If that is the case, then I would certainly indicate my support by putting up both feet and I might even play foul by pressing the "yes" button at Dr David LI's seat. However, I think we should separate the issues and cannot confuse them.

Moreover, as regards the so-called simple tax regime of Hong Kong, I really want to tell everyone, and I think everyone is aware that LI Ka-shing has openly indicated that he does not have to pay tax. You and I have to pay tax but he does not have to, for he does not have to pay salaries tax. Therefore, this has absolutely nothing to do with the so-called problem of skewed wealth distribution.

Here, I must explain that over the years, like you, I have always supported the abolition of the simple tax regime and establishment of a progressive regime. However, the thing is that we should first deal with the indirect taxes and high land price policy properly. Moreover, we have not only paid indirect taxes as a result of the high land price policy, and we have also done so in respect of transport. For example, when drivers refill their vehicles or when members of the public ride on buses, use the roads and tunnels, everything is subject to the "user pays" principle. From this, we can see that we have actually paid a lot of indirect taxes.

Regarding the "take home pay" of the middle-class, I did some calculations when I first came back from Canada and found that I had to pay

more tax in Hong Kong, though Canada is known as "a country of ten thousand taxes" where middle-class people have to pay 40% of their income as tax while the standard rate of Hong Kong tax was 15% back then. In terms of housing, I only had to spend 25% of my income on paying mortgages or rent when I was in Canada, but when I returned to Hong Kong, I had to spend 30% to 40% of my income on this area back then. Furthermore, the price of petrol is very high and everything is very expensive. I have found out only recently that I have to pay tax even when I buy a bun. My "take home pay" in Hong Kong is even less than that when I had to pay 40% of my income as tax back in Canada and worse still, I do not enjoy any benefit here.

So, as regards today's issue — Chairman, as Ms Margaret NG has said, I do not wish to stray away from the topic — I think we must support the proposed tax reduction. But at the same time, it does not mean that we have given up our fight for the benefits of the disadvantaged. We can still talk to the Financial Secretary and Prof KC CHAN and ask them, "My buddy, who will take care of the socially disadvantaged?" Prof CHAN certainly has to respond to Dr Fernando CHEUNG after listening to what Ms Margaret NG said earlier so furiously, otherwise he is unconscionable; he simply is unconscionable. So, I support the tax reduction and I have given my reasons for it.

Thank you, Chairman. I so submit.

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

MR RONNY TONG (in Cantonese): Chairman, I absolutely agree that "unconscionable" should be translated as "無良" in Chinese, though the standard of my Chinese may not be as good as Ms Margaret NG, but I believe that this word should be translated as "無良" in Chinese.

I do not wish to repeat what Ms Margaret NG has said earlier, but I would like to clearly tell Mr LEE Cheuk-yan that with regard to the problem of poverty in Hong Kong, our position is exactly the same — I repeat, exactly the same — and what we are now facing is a question of logic. From my experience of

working in the Legislative Council over the past four years, I discovered that the objective of the Government has always been to split up our society, and driving a wedge between "the haves" and the "have-nots" by pleasing one group and suppressing the other. Why is it that you do not have something? Because he has it. Why is it that you have got something? Because he does not have it. I think that this is a very dangerous approach. We definitely do not approve of the Government's policy in dealing with the disadvantaged and we find such policies very distressing. However, at the same time, our society has more than one stratum, and since there are many strata, we do have to take into account the feelings of other strata.

Chairman, the so-called "ability to pay" position is not in conflict at all with our existing position, for the most fundamental principle is that those who have the means should pay more when need arises. What we are now facing is not a need or a lack of resources, but the distribution of resources. I hope Mr LEE Cheuk-yan can understand our position in this regard.

MRS SELINA CHOW (in Cantonese): Chairman, yesterday, I heard the speeches made by colleagues on the Bill in this Chamber, and they made me feel as if we were having the Budget debate. It seemed that we were once again debating on the Budget, for the content of their speeches was so extensive that they actually covered a wide range of topics. Chairman, you were certainly very tolerant in giving them an opportunity to speak. In fact, this Bill is related to taxation and since it is tax-related, anything which incurs an expenditure can be covered. Chairman, you were certainly very accommodating in your decision, and though it is not a bad thing, I find the contents of many speeches very familiar and we have already heard them before.

Since Mr LEE Cheuk-yan has talked about fairness earlier, I would also like to talk about fairness. He said our existing so-called simple tax regime is unfair and only what he proposes is fair, for he has drawn the line at "\$10 million", which does not mean that the more you work, the more you get; instead, it means the more you work, the less you get. It would be best if you do not earn too much money, otherwise, you would have to pay more tax. I think that my opinion is very similar to that expressed by Ms Margaret NG

earlier and that is, a government should not take what is more than necessary from its people. If it has taken what is more than necessary, or once it discovers that the economic environment has improved, then it should return what it has taken in excess to the people. This is the basic responsibility of a government. Therefore, over the past several years, we in the Liberal Party have always hoped that the Government could return tax payments to people who "rode out the storm" together in the past. In 2003, the Government said that the situation was difficult and it did not have sufficient money, so it had to take more from the people, but now the Government has sufficient money, and not only does it have sufficient money but a huge amount of money, so we ask the Government to return the money to the people, or to "return wealth to the people". We think that the basic belief and the basic principle are very important, and the Government cannot say that once it has decided collect tax in a certain way, then it must always stick to it. This is the first point.

Secondly, the merit of our tax regime is that it is very simple and fair, but he said that it is not fair. The existing tax rate is set at a certain percentage, which means I have to pay more tax when I earn more and less when I earn less and this is very fair and simple. I believe that Members may have friends living in the United States and they will know that filing a tax return is a very taxing and complicated task. Fortunately, I do not live in the United States, otherwise this would kill me for I would not know what to do when I look at the tax return form, and I have to think of ways to save a bit here and there, and how money should be spent on this area an ordinary resident living there has to fill in the form in this way but in Hong Kong, we do not have this problem.

We do not have to spend time and energy on doing such things and why is that so? It is very simple, for no matter how much money we earn and how much surplus we have got, businessmen and wage earners only need to multiply their income by a certain percentage, and it is just as simple as that. The work of the Government is also very simple for it does not check everything or bargain with the people each and every step of the way. We actually fail to appreciate how lucky we are. Though Mr LEE Cheuk-yan will certainly deny it, he has now actually gone on what we call a slippery slope. He asks for a progressive tax system. This time, it is 16.5% or 17.5%, and what is he going to say next time? He wants to have more tax brackets and thinks that the Government should charge 1% more. This is what he thinks, but the question is: Has this

been thoroughly discussed by Members? He certainly will not admit that this is a change to our tax system but that is a fact, and this will change the nature of our whole tax regime.

Let me return to the subject of fairness. Though the Professor has not requested me to speak up for him, I think some colleagues were a bit unfair when they spoke earlier. In fact, what we are discussing here today is this Bill, but colleagues have a lot to say on how the Government should spend money, instead of how the Government should collect revenue. This is not at all surprising, because when the Budget is delivered every year, different Members would have different expectations and this reflects that different people and different social strata would have different needs and expectations. We certainly understand that Dr Fernando CHEUNG often speaks up for the disadvantaged and the disabled, and I totally agree that as a compassionate and caring society, we must definitely take care of the disadvantaged. And, we have brought these problems to the attention of and exerted pressure on government officials at the meetings of various subcommittees and panels. However, now that we are debating on the Bill, is the Professor really in a position to respond to the very strong demands of our Members?

I believe that this will be rather difficult. Our Government is a very big, complex organization and we should identify our targets a bit more clearly. As regards the problems listed by Dr CHEUNG yesterday, I believe that the Professor is not in a position to solve those problems. Insofar as the Government is concerned, we all know that the system requires that relevant problems should be handled by relevant departments. If the responsible Secretary is convinced by Members, then he would fight on their behalf; and if the Secretary is not convinced, then he would not do so. The rule of the game is how Members who face different Bureau Directors and who represent different interests, social strata and people, can continuously exert pressure on the Bureau Directors.

We heard a colleague say earlier that if you have got something, then he would have to go without, but I have rarely heard the Government say so. Instead, it says "none is going to have it". When a Member asks the Government for something, the Government will not grant the request if it does

not like it, but it will do so if it likes it, why is that so? It is because the Government has its own set of policies, so if the Member's request is in line with its policy, then the request will be granted, otherwise, it will not. I think each and every one of our Members will feel very disgruntled because we fight for different things in different areas, but the Government will only deal with our requests in this manner.

Generally speaking, we Members do care about society. I very much agree to what Ms Margaret NG and Mr Albert CHENG said earlier. We are a progressive society and we must help the socially disadvantaged and those who genuinely lack the ability to solve problems on their own, and the Government must help them solve their problems. Is the Government not helping them at all? No, but the pace is really slow and it is often not sensitive enough. Sometimes, the government officials may not really understand public sentiments and they may not really reach out to the people to feel their pulse. However, what is undeniable is that I believe Members have told government officials on different occasions that they could do better, but I do not think that the Government is upholding the philosophy of "If you have something, then he would have to go without". The Government's philosophy is "none is going to have it", that is, every request which is not in line with its policy will not be granted.

Chairman, let me turn back to the amendment. I do hope that Members can really listen to the voices of the middle-class. Why do you have to draw a line for our middle-class, even if they are wage earners who have the ability to earn a bit more, and say that we have to collect more tax from them because they have the ability to run some small business and earn a certain sum of money? Is this an attitude that a free economy should adopt? Is it that the more you work, the more you earn? No. What you are saying is that if you have the ability to earn more, than you should not only pay a bit more but a lot more taxes, and you should pay a higher percentage of tax than other people. Basically, you already have to pay more tax than other people even if the same percentage is applied.

Currently, the voice of our middle-class is very weak because neither do they have any sense of crisis nor serious requests; they have not asked the

Government for anything; they only hope that the Government will take less out of their pockets. However, you are now telling them that "No, you have to pay more tax because you have earned more! Pay more! Pay more!". Under such circumstances, I feel that to Hong Kong as a whole we are actually operating our economy under the basic concept of the more we work, the more we earn, so this is actually dealing a blow to us. I believe that to the middle-class, encouragement and enhancing their abilities as far as possible why did many people consider Hong Kong dynamic in the past and that Hong Kong people were working very, very hard to earn money? Take a look at foreign countries which adopt a progressive tax regime and we will see that more and more people think that it is unnecessary to earn too much money for it means that they can only keep less when they earn more, and as things go on like this they will ask the Government for wealth redistribution. If we go on this path, then I would think that we are acting against the foundation of the strongest motivating force of Hong Kong.

I really hope that everyone will focus on the amendment under our discussion. The most fundamental issue, I believe, is not as simple as about 1% — on paper it seems that we are only talking about 1% and it is not a big amount, but this is not the case. In fact, this has far-reaching implications on all the people and in particular, this will deal a very heavy blow to our middle-class, which has the greatest ability in mobilizing our economic force. Thank you, Chairman.

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

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, Ms Margaret NG was already very angry after the end of yesterday's meeting. She was uttering criticisms while she walked away. She asked why the Secretary had failed to respond to Dr Fernando CHEUNG's questions who had said so much and even explained the problems item by item. I told Ms Margaret NG that this was a normal attitude of the Government. Why is it normal? It is because the Government is selective in listening to opinions. For a Government which is

selective in listening to opinions, giving no response is its guiding principle, so it is only normal for it not to make any response. On the contrary, I will find it abnormal if the Government has made any response.

In fact, how could it be possible that the Government is unaware of such problems? Mrs Selina CHOW said that this Government may not be sensitive enough. On this point, how possibly would Fernando CHEUNG, LEE Cheuk-yan, Frederick FUNG and people like us who are concerned about the grassroots, have failed to talk about it? How could it be possible that the Government is unaware of these problems at the Panel on Welfare Services or other occasions, as we have even set up several special Subcommittees, including the Subcommittee on Elderly Services and the Subcommittee to Study the Transport Needs and Provision of Concessionary Public Transport Fares for People with Disabilities, in this term of the Legislative Council? If we say that the Government is unaware of the problems, then we have really underestimated this Government and its abilities. Therefore, I do not agree that this is the result of the Government's lack of sensitivity.

Secondly, some people may say that this outcome may be a result of the differences between government policies and our expectations. I just want to ask why we just attribute the outcome to differences in respect of policies. The question is why are the policies different? Will Members answer this question? If Members do not answer this question and just say that this outcome is a result of differences in respect of policies, then I think that Members' way of reasoning is really too simple. If we have to ask why, we will find that there are several reasons. The first reason is that of course, when we ask the Government why it has not allocated additional resources in this or that area, it will reply, "The pie is only this big and we only have this amount of money, so where else can we find money? It is not that we do not wish to do something or do not know where the problem lies." This is particularly the case for the Social Welfare Department. They will say that they certainly know where the problem lies, but what can they do about it? The pie is only this big, so what can they do? The first problem is that the pie is just this big and there is only this amount of money, so what else can it do? This is something which the Government often

says, not only in respect of social welfare issues but also education issues. This is the first problem. Regardless of whether Members accept it or not, this is the fact which the Government has told us.

As regards the second problem, I do agree that it has to do with the policy. The Government has its own perspective and position in deciding which issues will be given more weight and which will be given less, but the question is why the Government focuses more on some issues than the others? Well, as I have mentioned earlier, this is because this Government is selective in listening to opinions, thus its policies must also be biased. Therefore, I do not think that this Government can become accountable; it is neither a government monitored by the people nor one with a mechanism allowing criticisms from the people. I agree that to resolve the problem by way of the taxation regime alone is inadequate, and that is precisely the reason why we have continued to fight for democracy, and it is only by doing so can the Government be monitored by the people and accountable to the people.

However, a more crucial point is that I think such outcome is the result of the Government's preferential treatment for certain groups. The biggest problem is that it turns a blind eye to the hardships of the grassroots and attaches importance to the benefits of the upper class. This is best reflected in our tax regime. We must point out that the "ability to pay" principle has been upheld by all societies in the world. This is a fact and something that must be done. Should we ask someone with no money to pay tax instead? There is no doubt that only people who have money can afford to pay tax and this is an obvious fact. As regards how much tax should be paid, then the situation varies with different societies. In fact, as compared to many other places, we can see that Hong Kong adopts a low tax regime. The Government now claims that Hong Kong people cannot share the fruits of society only because it wants to lower the tax rate by 1% but we object to that. However, the problem is when the grassroots of our society have such great demands, why can we not respond to their requests?

Moreover, this amendment of Mr LEE Cheuk-yan only targets those who pay more than \$10 million of profits tax. As regards salaries tax, we have only targeted at the standard rate. According to the figures of the Government,

144 000 taxpayers will be benefited if the standard tax rate is lowered, and among these people, 24 600 are unincorporated profits taxpayers, not people who earn more by working more as some Members mentioned earlier. Furthermore, 19 000 salaries taxpayers and taxpayers under personal assessment will be benefited, while other beneficiaries are all property taxpayers. Chairman, is this just a case of "the more you work, the more you earn"? From these figures alone, we can see that this is not the case, and this is the outcome of business operations, because property tax is generated from business operations. So, the argument which puts emphasis on the more you work, the more you earn is hardly acceptable.

Lastly, Chairman, I certainly agree that offering assistance to or solving the problems of certain social groups may not necessarily be related to the tax regime. If we think that this policy is important, we will continue to pursue it, but the problem is that if our resources are limited, then this will often be used as a pretext for policy-makers to make such decisions. This is precisely why we must have resources.

Chairman, as long as there is a tax regime, there will be injustice and unfairness. Chairman, why am I saying this? As some people have to pay tax and some do not, it will result in inequities, so how can it be fair? However, I think that if we still accept and approve of it and consider it to be fair, it is only because we feel that those who have the ability should accept these social responsibilities. Thus, I think the question of whether or not this is fair is not relevant in this case. The whole point is only whether we can put into practice the principle of those who have the means will pay in order to help those who do not have the means, and that is what we mean.

Chairman, I so submit.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, speaking for the second time.

MR LEE CHEUK-YAN (in Cantonese): When the Liberal Party said that it supports Margaret NG and Albert CHENG, I think they both should reflect on themselves. I think they are in great trouble this time. I very much disagree to a point made by Selina CHOW. She said that the Government often wants to collect more. To quote the former I still remember clearly that the former Secretary for Health, Welfare and Food, E K YEOH once asked: where did the money come from? Has the money fallen from the trees? After all, this machinery of the Government does have the responsibility to redistribute wealth.

Redistributing wealth is the responsibility of the Government. What we are saying now is that discontent can be heard everywhere and people are always complaining about the disparity between the rich and the poor. Actually, in order to allow the poor to earn a living and survive, the rich should give a bit more under all circumstances and a tax regime is precisely to perform this function. As regards the tax regime, what we are talking about is actually not much, only 16% or 15%. Our greatest hope is that the richest "kings of employees" can give we do not mean to impose a cut of 1% on them.

We all want to turn ourselves into spokesmen for the middle-class, as if we are very capable of defending their interests. In fact, my amendment today — perhaps this should not be regarded as my amendment but rather the proposal which I have singled out for objection — is not targeted at the middle-class. What do people in overseas countries call the people whom I target at? They are known as the "fat cat", and that is, the "fattest" CEOs. You can certainly say that how can we blame these people for being successful? Why do we have to collect more taxes from them? But, to a certain extent, what is the basis of the success of these CEOs? It is based on an unfair economic system. To put it simply, for example, I have recently received a lot of complaints. Everyone says that wage earners have asked for a pay rise, but how about those in the retail industry? As soon as the retail business slightly turns better, their thresholds for earning commissions will be instantly raised, and the staff have to work like crazy to catch up but they still fail to meet the quota. So, who is benefited in the end? It is the CEOs who earn huge bonuses by pushing their staff to do more business. This is how the entire system works and how the CEOs come to earn their bonuses.

Let us consider the situation of the "kings of employees" who earn an annual salary of \$100 million. They have to pay \$16 million for tax with respect to their \$100 million salary, and they are now allowed to pay only \$15 million and \$1 million is to be returned to them. We are not talking about the middle-class but the super "kings of employees" in Hong Kong. Therefore, I have to stress this point in particular, and that is, please do not always say that what I have done in singling out this issue will make the middle-class pay more. In fact, I already made it very clear yesterday that we supported the widening of the tax bands for it will help the middle-class, but we now are talking about the richest "kings of employees". Should they continue to shoulder more responsibilities?

Secondly, Chairman, I hope Members can have a little bit more imagination in a political sense, especially since Margaret NG reminded us earlier not to fall into the trap of the Government. On the contrary, I hope the Civic Party will not fall into the Government's trap. If you agree to lower the tax rate, then you are letting this unconscionable Government off the hook, so don't let this unconscionable Government off the hook. You have let it off the hook. So, please apply your imagination politically. Please think about this: if we can stop the Government from lowering the tax rate today, then the Treasury will collect \$4.4 billion more from profits tax, and \$1 billion more from salaries tax, and the fiscal position of the Treasury next year you have often asked me to separate the two issues, but please use your imagination: With an additional revenue of \$5.4 billion while expenditure remains the same, the surplus for next year will increase a lot. More surpluses will certainly make it easier for us to force the Government to do more. If you do not apply your imagination politically and just insist that the two issues should be separated while continuously exerting pressure on the Government in the area of expenditure, then we will actually forego one channel or tool to pressurize the Government.

The purpose of my current plan is to first boost the coffers of the Government to a level that it is on the verge of bursting. Of course, you may say that this is unfair, and ask why we have to boost the coffers, as the Government should not collect a cent more. But it actually will not collect more, for the purpose of boosting the coffers of the Government is to make it spend the money on the disadvantaged groups, and for education or environmental purposes, and all these require money. In fact, the purpose of

boosting the coffers of the Government is to force it to spend more. Of course, you can say that I should not employ such tactics, and that I should force it to boost its spending. However, from our experiences over the years, and Ms Margaret NG, you have been in this Council for so many years, have you ever succeeded in forcing the Government to take out money smoothly? There is not even one example of success and we always had a hard time in squeezing money out of the Government. Almost none of the issues mentioned by Dr Fernando CHEUNG yesterday has been dealt with successfully. Though you can certainly say that even if we succeeded in boosting and bursting the coffers of the Government and making it collect more money, we may still be unable to squeeze money from the Government. However, can you think of it as a way to exert additional pressure on the Government? Can we apply such imagination politically and consider whether this can enable us to help the most needy, or promote environmental protection and education? I hope that I can persuade Members to make a last-ditch effort to apply this kind of imagination politically.

Thank you, Chairman.

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

(Ms Margaret NG raised her hand)

CHAIRMAN (in Cantonese): Ms Margaret NG, speaking for the second time.

MS MARGARET NG (in Cantonese): I am sorry, Chairman. Mr LEE Cheuk-yan has just made a very good point and I would like to respond briefly. I have great respect for Mr LEE Cheuk-yan's way of thinking, which is not unfamiliar to me.

Chairman, both you and I have served in this Council since the time when Hong Kong was under the British-Hong Kong rule, and this Government has never ever changed. Mr LEE Cheuk-yan, do you think that the Government will have no alternative but to give in to your pressure if it has more money in its

treasury? It certainly will not do so. What this Government can do best when it has more money is to find ways to hide the money here and there and to spend the money on this and that, with the ultimate goal of telling us that it has no money. That is it. Our Government is very capable of doing this.

Therefore, if we make a group of people, who could originally enjoy tax reduction, pay more tax instead and use this as a force to indirectly pressurize the Government into reducing tax, it will certainly not do so, for this Government is very thick-skinned and has a lot of "political manoeuvres" to hide away lots of money. On the contrary, if we tell the Government that if it wishes to reduce tax, then it should give us money; if the Government wishes to reduce tax and does not wish to exclude the consortiums from the reduction, then please give us money and allocate funds to support public policies. This, I think, is a better strategy.

Of course, we are very familiar with Mr LEE Cheuk-yan's position, but we do not think that the results can meet our expectations, so I think maybe we should try something new. Chairman, I fully understand the views of Mr LEE Cheuk-yan, and although his voting preference today may be somewhat different from ours today, our goal is still the same.

Thank you, Chairman.

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

DR FERNANDO CHEUNG (in Cantonese): With regard to the standard tax rate, I do have several points to further discuss and clarify with colleagues.

Mrs Selina CHOW said earlier that the tax system of the United States is very complicated and it would be miserable to live there. I had lived in the United States for 15 years and I had also filed tax returns there for many years. Perhaps it was because I had a relatively small income that I did not have to seek the service of an accountant in filing tax returns. I felt very "comfortable" about filing tax returns because I think that the United States is a country which has made commitments towards its citizens. I have paid tax and I am the only person who has an income in my family of five. If you just look at my salaries

tax, then you will find that the Government has taken away a quarter of my income, but after taking into account other complicated figures (and that is, the calculations which Mrs Selina CHOW does not like to make), then my salaries tax will be reduced to about 10% of my income and I do not have any complaint about this.

Before I left the United States, I got a letter from the Social Security Administration of the United States Government, telling me that since I had worked in the United States for more than 10 years, if I were 65 years old, that is of retirement age today, then from now on, I will receive a monthly pension of a certain amount. I looked at the amount and found that it is sufficient to cover my living expenses. The letter goes on to say that if I passed away, then my dependants, including my non-adult children and my wife, will receive a certain amount of money each month. I looked at the amount and found that it is also adequate to cover their living expenses. The letter then goes on to say that if I were so unfortunate as to become disabled and have lost my ability to work, then my family members and I would be entitled to a certain amount of disability insurance each month. After reading the letter, I found that the sums could basically cover all our living expenses. Chairman, I felt very much at ease because I discovered that I would be rewarded for working and paying tax in that country, but in Hong Kong, there are no such benefits. But, is the tax rate of Hong Kong very low? The tax rate of Hong Kong is not low at all, and even if one does not have to pay salaries tax officially, every one of us has to pay some price under the high land price policy. Everything that we buy, wear and eat, or even the modes of transport are all related to unfair competition and the high land price policy, and we also have to pay a price in the rents we paid and the price of our properties.

We are now talking about salaries tax and personal income tax, of which the rates are actually not high at all as compared to those of the rest of the world. As regards the figures alone, our tax rates are on the low side. What we now target at are those with an annual income of over \$2.75 million (as of this year), or the so-called unincorporated profits taxpayers. In fact, the number of wage earners involved is 19 000, but they are definitely not the middle-class who, as Mrs Selina CHOW said earlier, will suffer badly if we do not lower their tax rate. She argued that these hard-working middle-class people cannot earn more

by working more. This group of people is not the middle-class, as there are only some 10 000 of them, and we have more than 3 million wage earners, so how could this group of people be regarded as the middle-class? They are the "wage-earning nobles".

The second point I would like to clarify is — I would like to say this in the capacity of taxpayer in the United States. I returned to Hong Kong many years ago, but I was still a citizen of the United States then and had to file tax returns in both places. Chairman, if I were one of the "wage-earning nobles", then I would not thank the Government either. Why? This is because I have to report the deducted tax payment to the United States Government, which means that I still have to pay the tax. If I pay tax in Hong Kong, the money will go to the Hong Kong Government and I contribute some resources to Hong Kong because I live here; but if my tax is reduced, I have to report to the United States and the United States Government will say that since my tax is reduced, I have to pay that part of my tax to the United States. In other words, the United States Government will thank the SAR Government.

I was a United States citizen, but as I had renounced my citizenship when I ran for the Legislative Council election, I no longer have to worry about paying tax in the United States. However, Chairman, please consider how many of these 19 000 "kings of employees" are United States or other citizenships holders who have to pay tax according to the concept of global taxation? I do not know, and I have no idea about it, but Prof CHAN may have some idea. However, with regard to this group of people, like what Dr KWOK Kai-ki said yesterday, the Government has actually wasted its efforts in doing something meaningless because these people will not thank the Government for the tax reduction since it will not benefit them, and they still have to pay tax anyway. Even if they do not have to pay Hong Kong tax, they still have to pay the tax of the United States, so what is the point of returning money to them? Is it to be regarded as a form of foreign aid for the United States? It is impossible. So, is this really "the more you work, the more you earn" like what you think, and will these people be thankful to you?

Talking about "the more you work, the more you earn", Chairman, is it really true that those who work more will earn more in our society nowadays? As compared to taxi-drivers who sit in their cars for 10 or 12 hours, people who stand for 11 hours attending to guests in hotel lavatories, people who serve us tea and coffee, and people who stand in the markets to cull chickens and chop up

meat for us, is this group of "kings of employees" more hard-working? Are they more hard-working than the elderly people who collect garbage in the backstreets? Are they more hard-working than cleaning workers in outsourced jobs? Are those people who sit in offices with transparent glass windows and comfortable luxurious facilities, and earn millions or tens of millions of dollars when stock prices go up or down one or two notches, the most hard-working, while many other wage earners are not hard-working? Is it that earning tens of millions of dollars when stock prices go up or down one or two notches something that they can take for granted and can this be regarded as earning more from working more? Are those people who struggle for a living not hard-working? This does not make sense, and I do not need to go into further details.

The whole structure of earnings in Hong Kong is extremely abnormal and uneven. Chairman, you will find that this is true if you think of the fact that our median income has remained as \$10,000 for so many years. The meaning of median income is that the monthly salaries of half of our wage earners are lower than \$10,000. Can you imagine that in the 21st century, while the Gross Domestic Product per capita of Hong Kong ranks among the highest in the world, our median income is still \$10,000? The income of half of our wage earners is less than \$10,000. What kind of life can those people lead with an income of \$10,000 in Hong Kong today? Apart from paying rent, transport fares and meals, Chairman, people with a monthly income of \$10,000 also have to pay tax. But will they benefit from the reduction of standard rate? No, only those with an annual income of \$2.75 million will benefit from it.

Our whole earnings structure is seriously leaning towards the low-side, with the vast majority of our wage earners receiving an income which is disproportionate to their work. Not only are they unable to earn more by working more, they even cannot maintain a basic living standard. Otherwise, we do not need to discuss minimum wages or other issues. Since the distribution of income is already so uneven in the first round and the earnings structure is already so polarized, it is definitely unfair to further propose that the tax rate of the highest income group has to be lowered.

I have read the minutes of the Bills Committee and remember that some members had asked the Government whether it should consider the impact of the

reduction of the standard tax and profits tax rates on the wealth disparity between the rich and the poor? What impact will it have on the Gini Coefficient? Chairman, the ranking of our Gini Coefficient in the world is only comparable to that of New Guinea and other third world countries, because wealth gap in all advanced countries is not as serious as ours. The Government is certainly unwilling to find out the impact of lowering the standard and profits tax rates on our Gini Coefficient, but it must have got the figures and is clearly aware that such measures will further widen the disparity between the rich and the poor. As such, should we be doing something in the opposition direction? When a society is so unbalanced and the wealth gap is becoming more and more serious, it means that this measure is unhealthy and unjust. Do not tell me that the low-income people cannot earn more because they are lazy. I do not think that they are lazy and their work hours may even be longer than yours and mine. On one side, the Government offers a monthly salary of \$100,000 to \$200,000 for appointing an Under Secretary or Political Assistant, allowing university graduates with a few years of working experience to earn monthly salaries of \$100,000 to \$200,000; while on the other side, how many people will ever imagine earning a salary of that amount in their lives? Under such an earnings structure, why do we still return something more to the highest-income earners?

I understand that an increase in revenue and expenditure may be two separate issues. Mrs Selina CHOW said earlier that Prof CHAN is not the responsible Secretary for he is only responsible for collecting revenues, but in fact, he is also responsible for spending money. Our Budget is consisted of two parts, one is revenue and the other is expenditure, and if we do not have a certain amount of revenue, it will be impossible to meet a certain amount of expenditure. The Basic Law also specifies that we should keep expenditure within the limits of revenue. If we do not have resources, how can we help our society?

Imagine that Hong Kong people do not have to worry when they become ill for we have first-class medical facilities; students do not have to fight compete fiercely for school places and can be admitted to Direct Subsidy Scheme Schools or schools charging more and more expensive tuition fees and parents can freely choose Chinese or English as the medium of instruction for their children; people

have a good living environment, with good air quality and convenient transport services. Imagine that young people can have more opportunities to develop different skills and talents; the elderly will be taken care of, without having to wait for months or years for specialist medical treatment which currently requires a waiting period of several months or even a year; and they do not have to worry about residential care homes for the aged because there will always be places available, or they do not even have to live in these homes for there is adequate support in the community to allow them to live independently. Imagine that people with disabilities can move around in our community smoothly and do not have to worry that some places are inaccessible to them, and that if they go out with several friends, they will have to get on different train compartments when travelling on the MTR?

Can we use some imagination to make Hong Kong a society of higher quality, and improve the quality of living for all people? All these visions require resources and these resources are now in our hands. Even if all these resources are generated by a very low tax regime, we still cannot just leave it alone and say that we would rather go without these resources, that we would rather not contribute any resources, that we would rather not make any improvement and not to have any vision, and that we can only consider maintaining Hong Kong as an Asian financial centre and we would talk about nothing but finance. Hong Kong is not a society like this. Hong Kong has already progressed to become a society which does not only set eyes on finance and business. Hong Kong is a diversified society which needs different resources to improve the quality of living of Hong Kong people. Therefore, I definitely do not agree to the tax reduction, in particular the standard tax rate of the "kings of employees".

Chairman, I so submit.

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

(Mr Frederick FUNG raised his hand)

CHAIRMAN (in Cantonese): Mr Frederick FUNG, before you speak, I would like to remind Members that for the points which you have already made during the debate on the Resumption of the Second Reading of the Bill, I think Members should be as brief as possible even if you wish to make those points again in a different way, otherwise, we will be hearing the same arguments over and over again. I would like to allow Members to speak as far as possible, but I think that Members should not repeat the points which they have already made.

Mr Frederick FUNG, I am definitely not pinpointing at you, (*Laughter*) I just wish to remind Members of this.

MR FREDERICK FUNG (in Cantonese): However, I do feel a bit that way. (*Laughter*)

Chairman, I would like to be brief and concise in my speech. I totally agree with what Dr Fernando CHEUNG said earlier but I would like to add a few words and join Mr LEE Cheuk-yan in persuading the Civic Party to join us in rejecting or opposing the current proposal of the Government. In fact, the whole proposal is not about the figures of the standard tax rate or profits tax, but rather the several values behind and these values are precisely those which I mentioned yesterday when I answered Mr Ronny TONG's question.

There are four values which I would like to put forward for the reference of Members (in particular Members of the Civic Party). Firstly, whether our tax regime promotes the policy of the "ability to pay"? This is something which the Government often mentions when it asks for allocation of funds but does not mention in giving out money, and that is, it mentions the ability to pay when it collects revenues, but does not mention it when reducing tax and that is, it does not mention the ability to pay when it collects tax.

With regard to people affected by the profits tax or standard tax rate mentioned earlier — I would like to stress once again and echo what Dr Fernando CHEUNG said earlier that people who will have their tax payment reduced are really not the middle-class. If this is said to be lowering the tax rate for the middle-class, then this is just a smoke screen and an illusion, so who will

actually be benefited? As regards profits tax, we do not allow companies earning a profit of \$10 million or above to enjoy the tax reduction, and this only involves 5% of the companies which earned the most profits. As regards the standard tax rate, those are the people with an annual income of \$2.75 million, and according to what Dr Fernando CHEUNG said earlier, about 19 000 people are involved, which is 0.6% of all wage earners, and that is 0.6% of the 3 million people. Are those people the middle-class? They are certainly not the middle-class. Therefore, these figures show that the reduction of the standard tax rate and corporate profits tax rate will only benefit the richest people.

I am not jealous of the wealth of other people, and what we are talking about is whether those who have the means in our society should pay more, and these are the people who have taken advantage of our social resources, other people in society, or even the social system to increase their own income. Of course, they can do so also because of their own talents and knowledge, but when they have earned more money, can they contribute a bit more and give it back to society? I am not talking about the system but individual opinions.

Secondly, about individual opinions, we always say that the more you work, the more you earn, and this is also a principle upheld in a free market and capitalist society. However, now our society may have changed. I remember that a very rich property tycoon has said that — those who are in the real estate business are already very rich, and we wage earners are working for the property tycoons almost all our lives — this property tycoon said that his income from the real estate business over the past 50 years was actually less than his income last year. The income of just one year can be more than the total earnings in the real estate business for 50 years.

Dr Fernando CHEUNG has already mentioned the situation of wage earners earlier, but I would like to tell Members some more examples. If Members have the opportunity or if the Secretary is interested, I can take them to the backstreets of Shum Shui Po. Some people are washing dishes in the backstreets of restaurants and those women or housewives are making use of the time when their children are away at school to earn an hourly wage of \$14 to \$16. They are definitely not people who do not work, shun jobs or just "stick

out their hand" to collect CSSA payment. They are just not that kind of people. In fact, it is no longer true that one can earn more by working more, for labourers are now selling their labour cheaply, and it is so cheap that they cannot support themselves or their families. As such, this is also against the principle of hard-working upheld in a capitalist society or free market. Being hard-working does not pay off, and it turns out that the income of one year can be comparable to that of 50 years without having to work hard.

The third value is I have just talked about individuals, and now the third value is about the system as a whole and this is certainly related to the Government, for it now controls the tax regime. In fact, it is found in all academic researches that the tax regime is the most effective way for dealing with the disparity between the rich and the poor. When loopholes occur in the operation of the free market or the capitalist society, adjustments can be made through the tax regime or the social welfare system. But what will be adjusted? It will be up to the system to straighten out any distortion or discrepancy, instead of going to the extremes and further worsening the situation. I think that the Government really has to answer Dr Fernando CHEUNG's earlier question on whether the reduction of the two tax rates will serve to improve or worsen the disparity between the rich and the poor.

Secretary, I was first elected as a Member of the Legislative Council in 1991, and since then I have sponsored a motion debate in every term of the Legislative Council to discuss the disparity between the rich and the poor. I have moved the same motion in each term, but the Government has never made any response. Since the Government is a wealth controlling mechanism, will its reduction of tax or lowering of the tax rate further worsen the disparity between the rich and the poor? If yes, why? If the situation can be improved, then why has the Government not done so? Has the Government ever viewed things from this perspective? Has it ever made any effort in this regard? I think the person in control of this machinery must answer, face up to and deal with this question.

The fourth value is also something which the person who controls this system should address. We have a surplus of \$120 billion this year but has this

\$120 billion been distributed properly, appropriately and reasonably? I am not asking for the kind of equal distribution as in a communist system. I am only asking whether the surplus is distributed in a reasonable and appropriate manner. This may not be achieved even in a socialist society. However, Hong Kong is a wealthy society full of loving care for other people, and as shown in the serious floods in the past or the more recent Sichuan earthquake, we can see the strong compassion of Hong Kong people. As a Government in possession of a \$120 billion surplus, how would it allocate this sum of money to show that it is "compassionate" towards the people of Hong Kong?

Let me give some examples which Mr LEE Cheuk-yan has also mentioned, but I did not speak from this angle yesterday. The two proposals on tax reduction made by the Government for the benefit of the business sector is not a "one-off" measure, and as long as the tax rate is not raised in future, the reduction will be in force every year, thus it is a long-term measure, but how has the Government treated the poor? All the measures for them are one-off in nature, including the one-off increase in Old Age Allowance payment; the electricity charges subsidy, which may perhaps benefit all people, is still one-off; the one-off rates waiver (which is applicable to both the rich and the poor); and one-off injection of funds into the Mandatory Provident Fund account of low-income earners. Regardless of whether it is a reduction of \$5 billion (it still falls short of this amount) or even \$10 billion, all the measures are just one-off in nature but now, the Government proposes a reduction of \$5.4 billion each year, which means \$54 billion in 10 years, so there is a big difference.

Furthermore, what is the focus of the Government? The target now is the 5% of companies which made the most profits and the 0.6% of employees with the highest income, but has the Government targeted any action on the poorest people? We have had many, many discussions with regard to the poorest people at meetings of the Panel on Welfare Services, and every Member had talked about this in our speeches to such extent that our gums bled, but the Government still cannot hear us. A lot has been said about the problems of the elderly, the problem concerning homes for the elderly and the problem of working poverty — I seldom use this word, but working poverty is the biggest "disgrace" of the Government. I seldom use this word to criticize others or the Government but I really think that this is a disgrace indeed.

Hong Kong is a wealthy society with a Gross Domestic Product per capita of US\$25,000 per annum, which is \$18,000 per month on the average for each person when converted to Hong Kong dollars. The average size of a Hong Kong household is 3.1 persons, so in other words, the average monthly income for each household should be \$54,000, but I would like to ask: How many households actually have an average monthly income of \$54,000? Chairman, our current median income is \$10,000 and the median household income is \$19,000. In theory, while the average income for each family should be \$54,000, the fact is that there are more than 1.2 million people with an income less than half of the median income.

The current tax reduction proposal of the Government only applies to people in the highest strata, but Chairman, the problems of the lowest strata have already existed for many years, and no one has paid any attention to them over the past eight or 10 years. These values and the targets of the current tax reduction proposals have completely failed to reflect the situation which I mentioned earlier, and that is, Hong Kong people are very wealthy and compassionate, who donate money to the neighbouring countries when they are in trouble — I am not asking the Government to donate money, and this is not about donating money, but rather a responsibility and the values, but the Government has refused to do it.

In fact, I have said so much only because I hope to secure more votes. Though we may not be able to pass the amendment even if we manage to secure a few more votes, I hope that the Civic Party, colleagues with whom we are more acquainted and who often hold meetings with us, will stand on our side and vote against the Government.

Thank you, Chairman.

MR CHIM PUI-CHUNG (in Cantonese): Chairman, taxation is an issue which each and every government in the world has to face, regardless of whether it is rich or poor. There is a saying that every family has its own problems. Hong Kong has a population of 7 million people, and according to what Mr Frederick FUNG said earlier, there is an average of 3.1 people in each family, and in other words, there are 2.3 million households in Hong Kong. Under such

circumstances, how many problems have we got? Thus, we can see that it is impossible for the Government to strike a balance among the different requests of different sectors and solve all their problems. Chairman, this is precisely a question of the Government's fiscal policy, and undoubtedly it calls for a proper review. If we can complete the review in one go to save our successors from troubles and provide them with an established standard, then everyone can live in peace and happiness.

We understand that the Scandinavian countries, such as Sweden, Switzerland, the Netherlands and Norway, have the best welfare systems in the world, but they also have very high tax rates. But in spite of their high tax rates, as these countries have been free from war, and enjoying stability, they have always worked to protect the people's rights. Their efforts finally pay off, and after the passing of several decades or a century or so, these countries have become the archetypes. Our problem is whether we can make such a decision or have this starting point.

It is certainly worthwhile for the SAR Government to conduct a review in the light of the experiences of foreign countries. There are many factors which contribute to the success of foreign countries, for example

CHAIRMAN (in Cantonese): Mr CHIM, we are discussing the standard tax rate, why have you

MR CHIM PUI-CHUNG (in Cantonese): Chairman, I will come to the standard tax rate in a while and I will try to review the issue by dividing the population of Hong Kong into three groups. Please forgive me, for this is the first time I speak

CHAIRMAN (in Cantonese): You are quite right on this point.

MR CHIM PUI-CHUNG (in Cantonese): They have all spoken dozens of time, (*Laughter*) in fact many members of the public have become bored. Everyone knows what they are going to say as soon as they stand up, so please bear with me, regardless of what I say. (*Laughter*) I believe many people are watching me when I speak. (*Laughter*)

As such, how can we make the people of Hong Kong understand and appreciate the tax rates? The SAR Government has always upheld a low tax regime and I do understand that this has been well-tested. As compared to many places and countries in the world, Hong Kong has no resources. The situation of some small countries like Singapore and Monaco are relatively similar to that of Hong Kong and it can be said that their success is all attributable to their intellectual ability. Though we can say that they are lucky, we can also say that they are good at making plans. So, under the long-standing low tax policy of Hong Kong, investors or companies from all over the world have hopes that when they invest or participate in business activities in Hong Kong, they will not be subject to intangible exploitation.

Against such a background, let us try to divide Hong Kong into three classes. The first class consists of 19 000 people, as mentioned by some Members earlier, and that is, the so-called upper class. We can appreciate their feelings about the levying of tax on them or paying tax. As I said, Hong Kong implements a low tax rate policy, and as far as I know, the rate of profits tax is rarely over 20%. It is now proposed that the tax rate should be lowered from 17.5% to 16.5%, and though the rate of reduction is only 1%, it is still a reduction to them. What will these taxpayers think and feel about this reduction? No doubt they can enjoy the facilities of high-class venues such as the Deep Water Bay golf course, Hong Kong Jockey Club and Hong Kong Club, but they have to pay a price to become members of these organizations before they can enjoy their facilities and privileges. These are not charities from the Government or something which they receive in return for paying tax. As such, their feeling is that though they have an obligation to pay tax, what can they enjoy in return? This is something which they will reflect upon. Now the

Government returns the so-called surplus money to them, and as I said earlier, though they may not care very much about it, this is still their right and entitlement.

Well, the second group of people, including professionals, is what we refer to as the middle-class people. Under the regulations of Hong Kong, it is very hard for this group of people to avoid tax. We understand that it is against the law and an offence to evade tax in Hong Kong. Though there are lawful ways to avoid tax, this group of people can hardly take advantage of the mechanism to achieve the objective of tax avoidance. Professionals certainly include lawyers, accountants and doctors — I dare not say doctors do not have any channel to avoid or even evade tax. Under such circumstances, they have to fulfil their obligation to pay tax, but what can they enjoy from society in return? Even if the Government gives them a tax rebate, they may not really benefit from it very much.

What remains is the so-called working class or the relatively we should not call these people the lower class, for they are only the working class in society, and also the group for which several Members of the Legislative Council had fought very hard earlier and yesterday. We can see that in front of the Hong Kong Bank and in the vicinity of the IFC, the people there know how to enjoy their rights, and these places are full of people who are enjoying their rights there on holidays and at weekends. It is not that these people do not know their rights, but they understand that most of them do not pay tax. I am not discriminating against them for not paying tax, for the Government does not require them to do so. Under such circumstances, these people do not dare and have no intention to ask for direct rebates for they have not made any contribution. They understand that they have not made any contribution. Of course, many of our colleagues are very eloquent in speaking up for them and fighting for their rights and what they said also make sense.

Under such circumstances, the Government has to understand why are there still so many noises? No matter what they said is right or wrong, the Government should still listen. If it sounds to be right, then it should review the future policy and adjust the tax regime accordingly, so that Members can be

accountable to the people and the Government can also do what it has to do. I proposed that the Government should give everyone \$10,000 when the tax regime came under review. We often said that the Government has a surplus of \$120 billion and since there are 7 million people in Hong Kong, if the Government gives everyone \$10,000, regardless of whether they have paid tax or not, then it will need to spend \$70 billion on this. If there are five or six persons in a family, then this family will receive \$50,000 to \$60,000, and the funds may be sufficient for buying a small house in a remote village of China. Even if it may not be enough, it will give the people a little hope anyway. The SAR Government is certainly slow in its response, and it can even be said to have no response at all, for it does not have the guts to implement such innovative suggestions, but the Macao Government has the guts to think and act and has already implemented this measure. Though the Macao Government has only given out a relatively small sum of money, this is, after all, a way of "returning wealth to the people" to benefit all the people under the tax regime.

Chairman, what I am more concerned about is that we cannot avoid the problem of so-called "affinity differences". Our Chief Executive has also openly discussed this issue. There are two types of political parties in the Legislative Council; the pan-democratic camp certainly has their own justifications and the pro-government camp also has its own position. However, I often feel that the Government is like a very passive elephant. Some Legislative Council Members who support the sluggish policy of the Government seem to have turned into rats on the street and dare not utter a word. The Government is a big loser and should thus examine itself properly. If the Government introduces certain policies, it must naturally ensure that the policies are correct before they are implemented. If the policies are incorrect, then Members who support the Government will not win the approval and support of the people, and will thus be placed in a disadvantaged position in the election or other activities. If a Government is righteous and operates very normally, then how is it possible that it cannot win the approval and support of the people? This is a joke and warrants the Government's this concerns not only the Budget and tax reduction under discussion today or other policy issues, but also the overall government policies.

We certainly understand that people who are in certain posts may have different views, perspectives, stances and backgrounds, and once they left their positions and posts, they may also have entirely different attitudes and views and their comments may also be entirely different.

As such, Chairman, the key point of my speech I also very much share the views of some Members, but what is most important is that we should not take advantage of this tax issue or other social issues to cause divisions and sow discord in society and we have to help the Government must also really listen to what Members have said.

I have said many times that Hong Kong cannot do without the system of the separation of powers. We can see that all government policies, proposals and motions need the approval and support of the Legislative Council. Therefore, the Government must be sincere and open-minded in studying the speeches of Members to see whether they are justified and reasonable. If so, then we should all work together for the good of Hong Kong. Why do we have to cause oppositions among our society which will result in an alternative form of disharmony instead of boosting our spirits?

Regardless of whether the legislation and the Bill can be passed, we will not be able to achieve a 100% gain, and the losses may even outweigh the gains. Under such circumstances, what is most important is not the whole package of government policies. So, Chairman, once again, I would like to take this opportunity of our discussion on tax reduction and sharing the fruits of society today to urge the community as a whole not to cause opposition and divisions among ourselves. Hong Kong does not have any resources and completely rely on intellect ability and labour, and it is only when the two complement each other that we can create benefits for our society for enjoyment by everyone in future. It will be constructive and beneficial to society as a whole only if we can make the "pie" bigger.

Chairman, I so submit.

DR KWOK KA-KI (in Cantonese): I speak in opposition to further lowering the standard tax rate and in support of Mr LEE Cheuk-yan's amendment.

Chairman, I just heard Chairman say that some colleagues are repetitive in their speeches. I understand your point but we have actually done this for a reason. Colleagues spent a long time expounding our ideas during the Second Reading debate yesterday, but it was quite disappointing and regrettable that the Secretary had only read out from his script in his response. The Secretary is an academic, and he should show some sincerity and scholarly thoughts when he discusses this crucial tax issue with us in this Council today. As an academic who has studied the wealth disparity and public policies for many years, the Secretary has failed to show any sincerity and scholarly thoughts today as he just read out what is written on a script. I would like to urge the Secretary to refrain from doing so; we are very disappointed with the response of such quality from an official of such quality. It does not matter if he has his own justifications, but we urge him to discuss the issue with us, for the Legislative Council is prepared to debate with him. However, his performance is really a disappointment to us.

We raised many important points yesterday, including further narrowing the tax base; the lack of an underlying principle for the tax reduction in the Budget and the failure to cater for the needs of many essential public services of our concern; persistent lack of resources; the actual disparity between the rich and the poor, and the fact that the Government has not only failed to make use of the resources from people with higher income to help the socially disadvantaged, but even sought to return money to the richest people in society, though the money is of little importance to them.

I have many friends who pay tax at the standard rate. Whenever I talk to them, especially on the recent health financing contribution options, they all indicate, as if by prior arrangement, that the Government actually does not have to reduce the standard tax rate. In fact, with regard to this group of high-income earners who have an annual income of over \$2 million and constitute less than 2% of the total population of Hong Kong, their quality of living or whatsoever will not change in any way because of that 1%. They are not going to be affected. They also feel that they are duty-bound to contribute to society what they have gained from society. However, I have to say once again that the Government is taking away valuable social resources and giving

them to people who are better off and who are willing to help building a more harmonious society. What it has done is superfluous and meaningless and it is giving away the money for nothing.

I have conducted opinion polls at some of my lunch and dinner gatherings and interviewed many of my friends who belong to the above-mentioned group. They said that for many of the so-called "king of employees", this is actually quite meaningless. According to the figures provided by the Inland Revenue Department, the "king of employees" of this year was said to have paid \$65 million in tax. If the Government returns 1% of the \$65 million to him, I really do not know what it means to him. I would say that the money that he can readily forfeit at all times will be more than this amount. However, to people of other social strata, this sum of money is very important. Why does the Government not give us a direct response? Why has the Government said that the tax base is too narrow on one hand but further narrows the already fragile tax base of Hong Kong on the other? What kind of rationale is this?

I would like to say to the Secretary through the Chairman that since he is more knowledgeable than us and should have a better understanding of economics and social policies, he should feel free to express his ideas, instead of reading from his script and wasting our time.

Chairman, what distressed me most is that, as Mr CHIM Pui-chung said earlier, the Government treats people differently according to their affinity with the Government, and the same also applies to its treatment of different social strata. Some people just plainly described this as continuation of actions to thank its supporters. In fact, no one will deny that those who will benefit most from the tax reduction are the richest people in society and the most important members of the small circle. However, the truth is, this group of people really does not need the money, and they are not the ones most in need of the money. The Government says that it does not matter if they do not need the money, and it will stuff the money into their pockets anyway and will continue to do so, even if the money will only fall onto the ground.

This will only make society more unharmonious, especially in respect of those with low income though the existing proposal has nothing to do with people with low income, the fact is that people who are involved in the health care financing options are those with middle, middle-middle and lower-middle income, and that is, people with an income of some \$10,000. They are not very rich people, but they cannot see any hope from this concept, especially the standard tax rate.

This is very different from widening tax bands and increasing the amount of personal allowances, which I agree will actually be beneficial to many Hong Kong people with low, lower-middle and middle-middle income.

CHAIRMAN (in Cantonese): Dr Kwok Kai-ki, we are now discussing the standard tax rate and you should speak on this issue.

DR KWOK KA-KI (in Cantonese): Chairman, I will soon come to the point.

CHAIRMAN (in Cantonese): Your speech must be related to the topic and Members cannot just speak at will. Moreover, you have all spoken freely many times and I already allowed Members to speak as freely as possible last night, so Members should be self-disciplined today.

DR KWOK KA-KI (in Cantonese): Yes, Chairman. Thank you, Chairman. I will soon come to the point. I have repeated myself only because the Secretary has not responded yesterday, and I will still continue to speak until he responds.

As regards the current standard tax rate issue, had we seen that the Government got a clear rationale and moved in the direction agreeable to us, then basically, the subject would not have been so controversial. However, the

Government is a coward and has not given us a direct response after reducing the tax rate, so I will not support the proposal. I am waiting for the Secretary's response.

Thank you, Chairman.

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

MR ALBERT CHAN (in Cantonese): As regards the tax rates and the disparity between the rich and poor, which are issues related to the economic system, Members have repeatedly expressed their views, and I will not talk about this in great length. Chairman, though this is the first time I speak on this issue, you may find me straying a bit away from the subject in some of my comments.

The standard tax rate is actually a reflection of the basic principle of the overall distribution of fiscal resources, since it has placed a ceiling on the overall percentage of tax to be levied. The specified ceiling is the highest percentage and limit of taxpayers' tax obligations. The highest tax rate, be it for profits tax or income tax, is often more than 50% in many overseas countries, and the higher the profits or income, the higher the tax rate.

As other Members have said, there is really a tendency in Hong Kong as a whole to accord different treatments according to the affinity with the Government, and our system is skewed. Our political system is skewed in favour of consortiums. From the composition of the functional constituencies and the 800-member small circle election, we can see that the electoral system is controlled and manipulated by influential and powerful people.

In the day-to-day operation of the Government, the Secretaries of Department, Directors of Bureau and the Chief Executive like to meet with influential and powerful people. Whenever Central leaders visit Hong Kong, we can see that those who are seated closest to the leaders and with senior government officials are generally super tycoons, major real estate developers

and heads of banks. When have we ever seen representatives of ordinary citizens sitting with these important figures? There is the practice of affinity differentiation in the day-to-day operation of the Government.

The taxation policy itself also reflects this affinity differentiation practised by the Government. It is obvious that there should be a principle behind our taxation policy on the distribution and redistribution of public and social resources, and that is, public finance has to rely on stable revenue in order to better safeguard expenditure. Now that the Government reduces the standard tax rate, which is like saying that those who have the ability to earn money can pay less tax. What about the expenditure? This is an interactive relationship. The more the revenue, the more room for manoeuvre in the considerations of expenditure, such as increasing the CSSA payments, Old Age Allowance, community facilities or making great adjustments in the area of infrastructure. And, even if the Government wishes to buy the tunnels, it also needs a certain source of funding.

As such, the fact that the Government considers reducing the standard tax rate as part of its overall fiscal consideration obviously shows that its public fiscal philosophy is in favour of those who earn big money, the big bosses and big consortiums. Such further favouritism will definitely further worsen the problem of wealth disparity in Hong Kong. Many comments have been made by academic researchers of Hong Kong and international organizations on the problems of Hong Kong, in particular the disparity between the rich and the poor and impoverishment. Therefore, the taxation arrangement put forward in the latest Budget is of no help at all to alleviating, not to mention solving, the problem of poverty in Hong Kong, and it is also of no help at all to changing the situation of the wealth disparity. Furthermore, the lowering of the standard tax rate will further aggravate the actual situation of the disparity between the rich and the poor. This is because after the lowering of the standard tax rate, the social resources which can be distributed and justifiably redistributed through taxation arrangements will not be able to provide any assistance to the poor by way of increasing tax. Though such tax revenue may not provide comprehensive and direct assistance to the poor, the lowering of the standard tax

rate will first of all, undoubtedly lead to a direct and immediate decrease in the revenue of the Hong Kong Government and secondly, enable the rich people to get more.

As regard favouritism in taxation, I really hope that the Secretary can give us an explanation later. While Members are accusing the Government of taking a skewed position in relationship and on matters of interests and its failure to address the problems of wealth disparity and impoverishment, what practical assistance will be provided in implementing this measure? When the League of Social Democrats submitted our suggestions on the Budget to the Government, we have not only of course, apart from requesting the Government to carry out tax reforms, we have also called for an increase in the profits and standard tax rates, for this is a reasonable arrangement for the overall distribution of financial resources and will practically help solving the wealth disparity between the rich and the poor.

Therefore, Chairman, today, we will vote in support of Mr LEE Cheuk-yan's amendment and against the Government's ridiculous and unacceptable measure of lowering the standard tax rate.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, you can speak now.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, today we are debating the Revenue Bill 2008 (the Bill). Last night, we had debated for three hours and today, we have debated for two hours. What I have heard in the debate is just marvellous. I had also shared my views with several Members yesterday and told them that their speeches were marvellous.

This debate is not only a conclusion of discussions on the Budget, but can also be said to be a debate on the whole policy address. Speaking of the policy address, I would first like to remind Members that we uphold several principles in governance, and that is, we hope that the development of Hong Kong's economy will be economy-oriented. In addition, we will take care of the socially disadvantaged groups, and this is a policy which this Government will persistently carry through and uphold. Both the Financial Secretary and the Secretary for Financial Services and the Treasury will allocate resources to support the implementation of our policy of assisting Hong Kong people to solve their livelihood problems, such as those encountered by the disadvantaged. These are the policies that we will put into practice and we will allocate resources to provide support.

Today, we are discussing a Bill relating to revenue, and the issue under debate in this session is the lowering of the standard tax rate, but our discussion will certainly involve other tax issues. Why have we come up with such a proposal? Mr Albert CHAN and other Members asked earlier whether our policy is only skewed in favour of the rich people and what we have done for people living in poverty. We must all bear in mind that the Bill is proposed on the basis of a whole set of rules for considering the tax base and allowances. Some Members said that they are fond of certain parts and would wish to retain those parts, but not this part on reduction.

Why have we come up with the whole proposal? The reason is actually very simple and as I mentioned last night, our economy was very bad in the wake of the year 2002-2003, so the Government had increase tax back then in the hope that all sectors of society would ride out the storm together. We have not lowered the tax rates when our economy turned the corner because we must be prudent with our finances and did not wish to do so until we had carefully assessed the situation and when society had discussed this issue and reached a consensus. Some Members said that we must now lower the standard tax and profits tax rates because the Chief Executive made this undertaking in his election platform. The Government does listen to public opinions and we have only made this move after listening to public opinions. In the course of consultation on the Budget, we heard different opinions, many of which considered this to be fair. Lowering the tax rates which were previously increased when the economy has improved is in line with our policy. Leaving

wealth with the people is also a consensus of the SAR Government, the Hong Kong community and the people. We would only take what we need and what we have taken in excess would be refunded and returned. This spirit has actually been realized through the current Budget. I hope that in considering this Bill, Honourable colleagues and Members will not only look at one single issue. Rather, they have to look at the overall layout and measures of the whole Budget.

Today, I have the opportunity to listen to Members' views on the Budget. "Ah Yan"'s arguments are actually splendid; so are those of Members but I regret to say that the suggestions I heard are not only on tax reductions but also on changing our tax regime. You can say that we are only asking for a small reduction, especially since the tax rates were raised in the year 2002-2003 and what we are doing is only to bring them back to the level then instead of asking for fundamental changes in the tax regime. If there is no such intention, then this suggestion would be quite fair. However, when we say that the tax rates should not be lowered due to the "ability to pay" principle and that we are in favour of a progressive tax regime, then this is virtually introducing fundamental changes to the Hong Kong tax regime. Though you can say that it is only 1%, if we go down this path, I would think that this would be a very bad start.

In fact, over the years, the Hong Kong tax regime has been Dr Kwok told me about the views of the academia on this issue earlier, but the views of the academia certainly will not be unanimous. However, in terms of the global economy, it can be said that the Hong Kong tax system is the envy of many people. Mr CHIM Pui-chung has made a very good point. Hong Kong does not have its own resources, and ours is a "small economy" and an open economy. If we do not rely on a tax regime which can attract talents and capitals, what else can Hong Kong rely on? Some Members are in favour of a progressive tax regime with many deductions, but is this a tax system which Hong Kong people would wish to see? Can it really allow every wage earner and all business operators in Hong Kong to create a better tomorrow for themselves under a low tax regime which is simple, uncomplicated and fair?

Over the years, Hong Kong has shown the world that a simple low tax regime is actually an effective tax regime which can take forward economic development. In the course of this debate, I hope Members will not forget this point and will not push Hong Kong into a progressive tax regime just because of certain situations and certain ideas. Several Members are actually trying to do so, but we think this should be put forward for discussions in society. If they really want to do so, then they should allow society to discuss whether Hong Kong should give up the former tax regime and adopt a progressive and high tax regime? I think there is no consensus in society over this issue.

At this point, I do not wish to say too much about the tax regime. I think Hong Kong people are very fair and Hong Kong has never failed to provide a good social security net under a low tax regime and the "ability to pay" has always been our guiding principle. As regards salaries tax, we all know that many Hong Kong people only pay very small amounts of salaries tax. Everyone is aware of this point, and it has always been the case that those who have the ability pay more, just that some Members do not only wish to see these people "pay more", but "pay much, much more" and they wish to make the system complex so as to achieve certain social policy objectives, but I think no consensus has yet been reached on this.

As regards our current tax reduction proposal, many Members have objected to our proposal because they think that the Government will collect less revenue from tax and government spending will be inadequate. I hope that Members will take a look at all the measures of the Budget again. I agree that it is impossible for everyone to be happy about each and every expenditure item, and the Government does have room for improvement in respect of policy implementation. We are very happy to listen to people's wishes and their views on how to make improvements, but are these very relevant to the issue under debate today? I said earlier that if there are needs for us to formulate policies which can help the people and facilitate the effective use of public funds, both the Financial Secretary and I will definitely allocate resources to meet such needs. No doubt expenditure and tax revenue are not unrelated, but they are not directly proportional, and Members must not forget that many other areas are covered in this Budget. Firstly, we think we should leave wealth with the people and taxes which were collected in excess should be returned. Since we have increased the

tax rates in the year 2002-2003, we should now lower them if possible. Even if we lower the tax rates, we are not doing so in favour of those with the highest income, because we are also skewed towards the middle and lower income groups.

Apart from leaving wealth with the people, our Budget has also injected most of our funds for taking care of the disadvantaged groups. Members may still recall that they considered the measures proposed in the Budget to be quite good. Of course, such measures may appear to be inadequate now and the Government will listen to suggestions in this regard. Though this is not something which can be resolved by just one Budget or debate, we are determined to accomplish this task in order to help the community. This is a policy which the Government will implement and Members are welcome to monitor our work. However, please bear in mind that today we are only discussing one part of the Revenue Bill 2008.

Furthermore, apart from leaving wealth with the people and taking care of the socially disadvantaged, the Budget has also mentioned ways to make long-term investments. As regards taking care of the disadvantaged, I do not wish to go into great details, but I only wish to point out that the Government has already provided assistance and support for CSSA payment recipients on all fronts and also provided the Disability Allowance. Members are actually aware of and welcome such measures, and we have taken on board the suggestions put forward by Members to the Government. As regards the question of why we have not increased the amount of Old Age Allowance payments for the elderly, it is not that we will not increase the payment, but we only think that there is a need for an overall review. We have undertaken to conduct a review after the one-off grant of the Old Age Allowance payment. This does not mean that the Government is not sincere in doing so. It is precisely because we are sincere in doing so that we have taken this step to review the whole system.

As regards health care financing, the Chief Executive has undertaken to increase the percentage of health care expenditure in total government expenditure, and we have undertaken to do this. The consultation on health care financing has only just started. The overall health care financing reform is not only an issue faced by Hong Kong, but one that has to be studied by each and

every society in the world. We should not turn down an option just because it requires contributions from the people. Discussion has not yet started, and we should keep an open mind on this issue. Moreover, I really cannot see any relation between this issue and today's discussion. Of course, I understand that Members are keen on meeting the pressing needs of the people and I do appreciate this and sympathize with their concern, but the Government is also keen on meeting the pressing needs of the people, only that we have to consider many different aspects when we are formulating policies.

I hope Members will understand that the Government will definitely work with Members to find a solution and we will certainly accept the opinions of Members and the public. My response may be a bit too long, but I only wish to state the simple fact about our rationale for lowering the standard tax rate to 15%. I hope Members will consider the Budget as a whole and also the expectations of the whole community on the Government and Members, so that we can achieve our objectives. I call upon Members to support the original proposal of the Government. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 7 stand part of the Bill

(Mr SIN Chung-kai raised his hand)

CHAIRMAN (in Cantonese): Mr SIN Chung-kai, you may speak now. As I cannot see your seat clearly from this angle, you may have to indicate to me if you wish to speak in the future.

MR SIN CHUNG-KAI (in Cantonese): It does not matter, Chairman.

I only wish to speak briefly. It will not be a long speech. But I hope that the Government will really listen to the views of the public. I have not heard any voices opposing the provision of additional care-and-attention homes. Why has the Government not implement this? I really have not heard anyone

opposing this. The Secretary has mentioned the standard rate just now. Even though the mainstream view is in favour of it, there are still other different views. But with respect to the provision of additional care-and-attention homes, I really have not heard any opposing voices. I have many friends from the middle class whose parents are waiting for places in the care-and-attention homes. They may think that the Government should not implement tax reduction. Instead, providing more care-and-attention homes can be of greater help to them in easing their pressure. This is more important to them. However, what does the Government like

CHAIRMAN (in Cantonese): Mr SIN Chung-kai, when gave Members a reminder just now, you were probably not in the Chamber.

MR SIN CHUNG-KAI (in Cantonese): I was in the Chamber.

CHAIRMAN (in Cantonese): Were you in the Chamber? I am not a computer. It is impossible for me to remember everything that you spoke yesterday. But I remember you did put forward these arguments yesterday. Please do not make any repetition as far as possible.

MR SIN CHUNG-KAI (in Cantonese): Chairman, I did talk about this, because I, Yes, in fact, I have not made any repetition. I have not spoken just now. But after the Secretary delivered his speech, I really have to debate this a bit. I have to debate this with the Secretary, so I talked about that.

In respect of changing the tax regime, I agree that an amendment to be proposed by LEE Cheuk-yan later has the effect of changing the tax regime. But a change can be something good. When we debate LEE Cheuk-yan's amendment later, we can further discuss that. However, the current proposal of lowering the standard rate does not change the tax regime. As a matter of fact, this rate was lowered in 1998, but was increased in 2003. Now the Government

wishes to lower the rate again. Taking a look at the past history, we can find that, in fact, the standard rate fluctuated in accordance with the actual needs. So, to argue that it involves changes to the tax regime is not convincing at all.

I have not finished my point about caring for those in the middle class just now — some colleagues of the Liberal Party have stressed the need to care for those in the middle class, but the key of the issue is that there are various requests among the middle class. Apart from hoping that there will not be too many increases in tax, they also hope that there will be an enhancement in the quality of education, and that the elderly will be better looked after. It cannot be denied that all these are the aspirations of the middle class.

Thus, I hope the Secretary will understand that our current financial expenditure has dropped to a record-low level of 16% of the gross domestic product (GDP). When the Government reduced expenditure, it claimed that as the public expenditure had accounted for 20% of the GDP, we had to compress and reduce expenditure. The current condition is not like that at all. On the contrary, we are having an enormous amount of money — the fiscal reserves together with the accumulated surplus amount to over \$1,000 billion. Then why do we not plan our expenditure in accordance with the actual needs? I emphasize that we are not being extravagant. We are only planning the expenditure in accordance with our actual needs. As a matter of fact, I do not agree to extravagant spending.

Chairman, I believe that the Bill will certainly be passed today. However, I hope that the Government, in reducing tax, will seriously listen to various voices of the public's aspirations for social services. Although I support the tax reduction — to a certain extent, I disagree with some parts of LEE Cheuk-yan's amendments — I also hope to see tax reduction. I share the view of Ms Margaret NG that the Government should not have amassed such huge reserves. It is in fact wrong for the Government to maintain a reserve of \$500 billion to \$600 billion. Money should be placed in the pockets of the public, not that of the Government. The rate of return of the reserves is 6.8% to 7% only, which is very low. Since this is the case, the Government should utilize the reserves in areas where money is needed. Otherwise, the Government should implement tax reduction. I hope that the Government will

listen to these views. But on this issue, the Democratic Party shares the view of LEE Cheuk-yan — although we disagree with certain reasons put forward by him — we will vote in support of him.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 7 stand part of the Bill. Will those in favour please raise their hands?

(Some Members did not know the question being put to vote so they did not raise their hands)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 7 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 LEE Cheuk-yan rose to claim a division.

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

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

CHAIRMAN (in Cantonese): Some Members have indicated their presence but have not voted. But Members may choose not to vote. Will Members please check

MR ALBERT CHAN (in Cantonese): Chairman, are we voting on Mr LEE Cheuk-yan's amendments now?

CHAIRMAN (in Cantonese): No.

MR ALBERT CHAN (in Cantonese): I am sorry.

CHAIRMAN (in Cantonese): We will now vote on clause 7, which is about reducing the standard rate from 16% to 15%. This is the original proposal of the Bill.

Are Members clear about the question put to vote now? If so, will Members please check their votes? If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Dr David LI, Ms Margaret NG, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr Albert CHENG, Mr KWONG Chi-kin and Mrs Anson CHAN voted for the motion.

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Albert CHAN, Mr Frederick FUNG, Mr LEE Wing-tat and Dr KWOK Ka-ki voted against the motion.

Ms LI Fung-ying abstained.

THE CHAIRMAN, Mrs Rita FAN, and Dr Fernando CHEUNG did not cast any vote.

THE CHAIRMAN announced that there were 52 Members present, 34 were in favour of the motion, 15 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the remaining clauses of the Revenue Bill 2008 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Ms Miriam LAU be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

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

I order that in the event of further divisions being claimed in respect of the Revenue Bill 2008 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CLERK (in Cantonese): Clause 10.

CHAIRMAN (in Cantonese): Before I ask Members to speak in the debate, I wish to remind Members once again not to repeat the arguments that they have put forward during the resumed Second Reading debate of the Bill and the debate on clause 7 just now. Even if the Chairman is unable to identify the repetition immediately, it will be clearly shown in the record of proceedings in the future that Members have repeated the same arguments, though using different wordings. So, your assistance is appreciated.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I move the amendments to clause 10 of the Bill. The following speech is made on behalf of the Bills Committee. I am not speaking in my personal capacity.

Clause 10 of the Bill proposes to lower the corporate profits tax rate from the existing 17.5% to 16.5% with effect from the 2008-2009 year of assessment. According to the Administration, this measure will cost the Government \$4.4 billion a year.

Some members of the Bills Committee support this proposal, as they consider that the lowering of the corporate tax rate will enhance Hong Kong's competitiveness and return wealth to the community. However, some members are of the view that the profits tax rate in Hong Kong is already very low, further lowering of the rate will result in a reduction of government revenue which, in

turn, may have impacts on the provision of resources for other policy initiatives. Some members opine that instead of lowering the corporate profits tax rate across the board, the Administration should explore the introduction of other tax incentives with a view to attracting foreign investments. Some members propose that small and medium enterprises (SMEs) making modest profits should be subject to a lower rate of profits tax than large corporations making huge profits. However, some members and the Administration disagree with this progressive approach.

After discussions, the Bills Committee has agreed to move an amendment in its name to amend clause 10(2) of the Bill to the effect that the first \$10 million of a corporation's assessable profits would be subject to the proposed reduced profits tax rate of 16.5%, while the remainder of the corporation's assessable profits would be subject to the existing tax rate of 17.5%.

Chairman, I will now speak in my personal capacity. I am not going to repeat the points that I have made. I had given an explanation yesterday and I have also explained this proposal earlier on.

Chairman, just now the Secretary mentioned that he did not propose this amendment because of the Chief Executive's election platform. He said that he proposed the amendment after he had listened to the views of the public. But I really do not know what kind of views he has listened to. In fact, the majority of public opinions has expressed the aspirations for the provision of additional care-and-attention homes, an increase of the "fruit grant", and so on. Yet, the Secretary has not listened to these views, and I wonder what kind of public opinions he has selectively listened to. I mentioned yesterday that certain members of the Commission on Strategic Development who represent the business sector had said that there was no need to reduce profits tax. As this is the case, when the Secretary said that he had listened to the views of the public, I do not know what exactly he had listened to. The Secretary said that the Government wished to leave wealth to the people. I think his proposal only aims at leaving wealth to the wealthy people.

Furthermore, Chairman, he said that my amendment would change the tax regime. I agree to that. It is true that I propose to adopt a progressive tax system, but we should choose to do what is right.

The Secretary said just now that there is neither discussion nor consultation being conducted on our proposals. Chairman, I would like to remind the Secretary that in fact, there is a dereliction of duty on the part of the Government. Over the years, the Government has been adopting a tax regime that has been in use for years. Has the Government ever conducted any consultation? With the exception of the Government's plan to introduce a sales tax, it has never conducted any consultation on the overall tax regime at all. At the time when consultation was conducted on a sales tax, we had proposed to introduce a progressive profits tax system. Thus, the progressive tax system is not a novelty. The proposal we put forward today had been introduced by us many years ago. However, all along there has been a dereliction of duty on the part of the Government in that it has not conducted any comprehensive consultation on how the overall tax regime should be developed. Nevertheless, the Secretary has indicated that consultation would be conducted on the Old Age Allowance. So, there has been a dereliction of duty on the part of the Government.

I was amazed by the Secretary's comments on skewing. He said that the Budget actually skewed in favour of the lower and middle classes. I do not know how the Government's policy has skewed in their favour. Just look at this proposal of lowering profits tax rate alone. It is already a permanent measure — I emphasize, permanent measure — which will cost the Government \$4.4 billion a year. In the course of 10 years, if we also factor in economic growth, it will cost the Government \$70 billion. So, how can this proposal not considered as an instance of skewing towards the rich people? We have asked the Government to provide transport allowance across the board, but the proposal has been refused by the Government. A provision of \$300 million is made for granting the transport allowance and the money has not yet been fully utilized. But the Government has refused to provide the allowance across the board. This is not even a permanent measure. As this is the case, the Secretary should blush with shame when he talked about skewing. I believe that we must have a sense of shame.

Finally, Chairman, the Secretary said that our discussion mainly focused on expenditure and that government spending is subject to monitoring. However, I would like to remind the public and the Government that monitoring by Members of the Legislative Council can only stop the Government from

spending too much, but not making the Government increase its spending. Why is that so? Members cannot propose to the Government to spend more. For instance, when the Government proposes an increase of \$100 for the "fruit grant", we cannot propose to increase it by \$200. We cannot introduce an amendment to amend \$100 to \$200. We do not have this power. Thus, the monitoring power of the Legislative Council is handicapped in this regard. I hope the public will understand that we propose these amendments because we cannot amend the details of the expenditure of the Government. But as I have just said, if we can successfully oppose the Government's proposal of lowering the profits tax rate across the board, we can actually pressurize the Government to do better in respect of expenditure.

Lastly, Chairman, I urge Members to support the amendments and after voting on the amendments, I urge Members to vote against the inclusion of the clause in the Bill. The former is to vote in favour of the adoption of a progressive profits tax system. The latter is to vote against lowering 1% of the profits tax in case my amendments are negated. Thank you, Chairman.

Proposed amendment

Clause 10 (see Annex II)

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

MR SIN CHUNG-KAI (in Cantonese): Chairman, during the Second Reading debate, I did not explain the reason why I support this amendment. I will talk about it now.

In fact, the Democratic Party has been advocating a progressive system for profits tax for many years. As far as I can remember, it was about the time when Antony LEUNG or Henry TANG took up the office of the Financial Secretary that we introduced the concept of progressive profits tax. The Democratic Party did not only propose progressive profits tax but also a progressive system for rates.

The relevant rationale is simple. First of all, we think that large enterprises can benefit from economy of scale as well as operational effectiveness. The scenario of small and medium enterprises (SMEs) is different. Those with a profit under \$10 million — as a matter of fact, those enterprises with a profit close to \$10 million should not be considered as SMEs — should be subject to a lower tax rate. In other words, this is a two-tier tax system, and this has been a proposal consistently put forward by the Democratic Party.

How should it be implemented? There is only one way to implement it. When there is a tax hike, we will only increase the tax of the wealthy enterprises or those making more profits only; and when there is a tax reduction, like the proposal of tax reduction this time around, we should only reduce the tax of those making smaller profits first. I am not going to elaborate on this.

I think this topic is rather academic. Why do I say that? I wish to ask LEE Cheuk-yan through the Chairman to do some researches when he has time. It is also worthwhile for the Secretary to do the same. He can ask his colleagues of the Inland Revenue Department to conduct studies and take a look at the annual reports of listed companies. Many large corporations are not paying tax at an effective tax rate of some 17%, but 14% to 15% or 13% to 14%. A lot of tools can be employed to enable them to pay less tax. David LI is staring at me now. Of course, he is an expert.

As a matter of fact, if you ask some experts for advice, you will understand why I believe SMEs may be benefited if a two-tier system of profits tax is put in place. This is because they will really be paying less tax. However, for companies with a profit of over \$10 million, those companies which I referred to when I asked LEE Cheuk-yan to do researches earlier, they actually do not pay tax at the standard tax rate. That is why I said that this is rather academic.

I hope that the Secretary will spend some time doing researches in this regard. Take a look at the listed companies, some large corporations in particular. They actually are not paying tax at the rate of 17.5%. Secretary, just take a look at their annual reports and then do some calculation, you will

easily find out how many companies are like this. If you can spare the time, please submit a report to the Legislative Council so that we can study and discuss the issue as well. Anyway, we support LEE Cheuk-yan's amendments.

Chairman, I wish to say something more. I am sorry, LEE Cheuk-yan, because when we vote on the inclusion of this clause in the Bill, we vote in favour of the tax reduction. This is based on the academic point of view I mentioned earlier. If we vote against it, there will not be any tax reduction for the SMEs and this, we think, is undesirable and so, tax reduction should be supported. Given that the Government is having such a huge surplus, it is not right not to use it and just leave it in the treasury. So, the Government should not levy so much tax.

CHAIRMAN (in Cantonese): I dare to speak only when I see you finally sit down. *(Laughter)* This is actually a joint debate on the original clause 10 and the amendments proposed by Mr LEE Cheuk-yan. Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): I will not repeat what I said yesterday. I would only like to respond to what the Secretary and some of our colleagues said just now. They said that there had not been discussions about progressive profits tax, that there might be arguments on the subject in society and that no consensus has been reached. The Frontier, like the Democratic Party or some other organizations, has been putting forward this proposal in our annual submission of our views to the Financial Secretary. However, the Administration has refused to consult the community on whether the tax regime should be changed. We cannot initiate the mechanism for making changes to the tax regime. The Secretary indicated just now that he represented the views of society in coming up with this proposal. Frankly speaking, whom does the Secretary represent? What qualifications, abilities and credibility does he have to represent society?

In respect of the constitutional system, people who have representativeness will make this clear to the voters every now and then. In September, they are going to say it again. However, nobody paid much attention to what they said. Now that people who have no representativeness nevertheless said that this system is representing all of us. I find this very ironical. So, Secretary, you cannot say that this proposal is "born" only today. It has been put forward for many years. There have been representatives of the Democratic Party in this Council since 1991. We have been in the Council for many years. We have put forward the relevant proposal in submitting our views on the Budget every year. A responsible Administration would have raised the issue for the discussion of the community even if it had refused to accept our proposal immediately. However, what were the issues raised for discussion? They were the most controversial ones, such as the introduction of sales tax with the aim of broadening the tax base, which was like snatching rice from a beggar's bowl. There are many proposals obviously supported by some Members, political parties and groups, because we all wish to adjust and address the wealth disparity between the rich and the poor and change the policies which are biased towards the wealthy people, but the Government has adopted an attitude of indifference. And today, the Administration even claims that we have not dealt with it before, that we have not discussed it, and that we have not reached a consensus. Of course there is no consensus. Even if we keep on talking about this to the officials until the seas run dry and the rocks crumble, we still will not reach a consensus, unless we are the Government. I think it is very irresponsible for the Government to act like this.

Chairman, what I am trying to say is that we have put forward this proposal for a very long time. But the Government has just neglected it. It has never taken the initiative to say, "You have so many votes with so much support, so you should have some justifications to support the relevant proposal. At least I should raise the issue for the discussion of everyone, and "play a big game". If there is a consensus in society, we will implement it. If there is opposition to it, we will have to further discuss it." But we are even denied of this opportunity. Whenever the proposal is put forward, the Government rejects it with the hackneyed excuse that there is no consensus. I really feel very angry about this.

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

DR KWOK KA-KI (in Cantonese): Chairman, Ms Emily LAU has used the word "qualification" just now, which is incisive and to the point. The Government is simply not qualified to do so. It was more than two years ago when the Government mentioned the Goods and Services Tax (GST). At that time I had the opportunity to meet with the then Financial Secretary. We had indicated very clearly that if a review had to be conducted on the tax regime, the Government would have to conduct a review on the overall tax regime, including whether the implementation of such a low profits tax rate should be continued, instead of just focusing on GST. We had said this very clearly and asked the Government to do this. Secretary, you have taken up office for quite some time now, and I would like to ask the Secretary through the Chairman when he has held basic discussion on the overall tax regime of Hong Kong with a view to improving the existing tax system. If he has not done that, he should not insist on it without giving us any proof. The Government is indeed irresponsible. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Financial Services and the Treasury to speak.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Madam Chairman, in the first speech I delivered just now, I have already talked about my view on a progressive tax system. I am not going to repeat it. The Government strongly opposes Mr LEE Cheuk-yan's amendments because I believe his amendments will certainly bring changes to a well-established tax regime publicly recognized as an effective system. The Member proposed such a tax system during the scrutiny of this Bill, and we

believed that the time for discussion was insufficient. Meanwhile, the Government also considers that a simple tax regime can indeed sustain and enhance the competitiveness of Hong Kong. Moreover, when we take a look at the global developments, we will find that everyone is heading in the direction of tax reduction. Therefore, I hope that Members will not ignore this point.

A Member has mentioned just now that during the consultation of the Goods and Service Tax (GST), we were asked whether progressive tax should be introduced to broaden the tax base. Our conclusion at that time was that this was not the mainstream view. With regard to the Bill under our scrutiny today, or GST or any other issues, I would suggest that we should be more careful with any proposal on which we have not conducted in-depth discussions. We must ensure that the competitiveness and standing of Hong Kong in the international community should not be adversely affected by any changes to our system.

I would like to point out that according to Mr LEE Cheuk-yan's amendments, he actually does not oppose the reduction of profits tax. But he is of the view that the beneficiaries should only be limited to general enterprises making modest profits. However, we would also like to point out that 70% of profits taxpayers are small and medium enterprises (SMEs) with an annual profit below \$1 million, and SMEs are precisely the major beneficiaries of this proposal of tax reduction. I hope Members would pay attention to this.

Thus, I would like to make a simple appeal. I urge Members to vote against Mr LEE Cheuk-yan's amendments. If the relevant amendments are negated later, I hope Members would temporarily put aside our different stances on the tax system and vote in support of the Government's original proposal of lowering the profits tax. This is the only way that small and medium enterprises which make up the majority of all profits taxpayers can be benefited. If the original proposal of the Government is not passed by the Legislative Council today, we will only arrive at a no-win situation where Members, SMEs and the Government will all be losers. I believe Members will not wish to see such an undesirable situation.

Madam Chairman, with these remarks, I hope that Members will vote against Mr LEE Cheuk-yan's amendments and support the proposal on lowering the profits tax rate put forward by the Government under clause 10 of the Bill.

MR LEE CHEUK-YAN (in Cantonese): Chairman, it seemed that the Secretary was misleading Members as well as the public just now. He said that the Government wished to help the SMEs, so there was a need to reduce tax. If the Government wishes to help the SMEs, it should adopt my proposal for it would be most helpful to SMEs. Even if a precedent is set this time around, it is still possible to lower the tax rate of the SMEs. It will not be necessary to bundle them up together. Therefore, if Members genuinely wish to help the SMEs, and to help them on a permanent basis, Members should vote in favour of my amendments, and then further press for tax reduction for the SMEs. This can help maintain a certain amount of revenue for Hong Kong. The Secretary said just now that 70% of profits taxpayers had an annual profit of below \$1 million. I would like to cite another figure. Only 0.5% of profits taxpayers have an annual profit of over \$10 million. If my amendments are passed, 95.5% of taxpayers will be able to enjoy the tax reduction. Only 0.5% will not be able to enjoy the lowering of tax. However, there is no need to lower tax for them because they are large consortia.

I clearly told Members yesterday that as compared to the tax rates of other places in the world, the tax rate for the large consortia of Hong Kong is the lowest but the tax rate for the SMEs is the highest. The Government refuses to face up to these facts stated by me and the comparison that I have drawn with places in the world. It is only reiterating that the global trend is tax reduction, so Hong Kong has to reduce tax as well. However, no matter how tax is reduced in other places in the world, the large consortia of Hong Kong are still enjoying the lowest tax rate, while the SMEs are still paying tax at the highest rate.

If Members can vote in support of my proposal, we will be able to help the SMEs in the long run. Then we can work to gradually delink the two, so that they will no longer be bundled up together. I have to specially emphasize that this, in fact, will do good to the SMEs. Thank you, Chairman.

MS EMILY LAU (in Cantonese): Chairman, I have mentioned just now, and the Secretary has also admitted that in fact, there had not been discussions in the community on whether progressive profits tax should be implemented in Hong Kong. I would like to ask the Secretary, taking into account the fact that so many Members are supportive of this system, if the Bill is passed later in the meeting, will the Administration consult the community on this proposal as soon as possible to find out whether there should be changes? Chairman, I hope that the Secretary will give me an answer.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I wish to respond to two points.

First, the Secretary said clearly just now that SMEs are the major beneficiaries of the profits tax reduction this time around. As Mr LEE Cheuk-yan has pointed out, the Secretary is attempting to mislead the public. A total of 74 200 companies have recorded profits. If reduction of profits tax is implemented, all of these 74 200 companies will be benefited. Among these companies, there are 52 100 companies — 70% of the 74 200 companies — with a taxable profit of \$1 million or below. Based on the reduction of profits tax this time around, assuming these companies have an annual average profit of \$500,000, that is, below \$1 million, each of these companies (70% of the total number of companies) will be able to pay \$5,000 less in tax. However, 1.3% of the companies or approximately 1 000 companies, have recorded an annual profit of over \$50 million. Assuming the annual average profit of each of these companies reaches an amount of \$100 million, each of them will be able to get back \$1 million. In comparison, while each of those 50 000-odd companies may be able to get back \$5,000, each of these 1 000 companies is able to get back an average amount of \$1 million, so which are the major beneficiaries of this tax reduction? Those 50 000-odd companies which will get back \$5,000 each, or those 1 000 large companies which will get back \$1 million or more each?

I would like to rectify the figures mentioned by Mr LEE Cheuk-yan. He said that only 0.5% of profits taxpayers have an annual profit of over \$10 million. As a matter of fact, the figure should be 5%, or to be more

accurate, 5.8%. The concept put forward by Mr LEE Cheuk-yan is that those companies that have made the largest profit only account for 5.8% of the 70 000-odd companies. These companies have an annual profit of over \$10 million. Chairman, not only are they making an annual profit of \$10 million, they are also enjoying many tax exemptions after calculations by many professional accountants as well as lawyers and yet, the taxable profits of these companies still stand at over \$10 million. So, even if the tax rate is maintained at 17.5%, they will not be affected at all.

Therefore, Chairman, I hope that when the Secretary speaks again later, he will not say that the SMEs are the major beneficiaries and the group which will benefit most from the reduction. Secretary, I believe you will not say this to your own child because this is obviously misleading. The major beneficiaries are in a very small number, accounting for around 1% of the 70 000-odd companies in total. Each of these companies will be able to get back over \$1 million annually after the tax reduction. This is the first point.

The second point I wish to talk about is that we have been saying all the time that our tax base is too narrow, and that the amount of our tax revenue is unstable. Despite a surplus, the source of our revenue contributing to the surplus is unstable, and largely relies on land sale and returns of investment. The tax being proposed to be reduced now is actually the most stable source of our revenue. Profits tax from these companies, salaries tax and tax under personal assessment constitute the most stable source of our revenue. Reduction of these taxes on a permanent basis will pose the most serious threat to our tax base. If we have been complaining that our tax base is narrow and our revenue is unstable, what we are doing is exactly the opposite thing that makes this situation even worse.

Chairman, with these remarks, I wish only to highlight the two points.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

(The Secretary for Financial Services and the Treasury shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): Before I put to you the question on Mr LEE Cheuk-yan's amendments to clause 10, I wish to remind Members that if these amendments are negated, Mr LEE Cheuk-yan may not move his remaining amendments.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr LEE Cheuk-yan 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 Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Kwok Ka-ki, Dr Fernando CHEUNG and Mr KWONG Chi-kin voted for the amendments.

Dr David LI, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Mr CHIM Pui-chung voted against the amendments.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat and Ronny TONG voted for the amendments.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mrs Anson CHAN voted against the amendments.

Mr TAM Yiu-chung abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 24 were present, eight were in favour of the amendments and 16 against them; while among the Members returned by geographical constituencies through direct elections, 24 were present, 14 were in favour of the amendments,

eight against them and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negatived.

CHAIRMAN (in Cantonese): As the amendments moved by Mr LEE Cheuk-yan's have been negatived, he may not move his amendments to clause 3, nor the Second Reading of new clauses 2A, 2B, 2C, 4A and 5A, which are inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 10 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 LEE Cheuk-yan rose to claim a division.

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

CHAIRMAN (in Cantonese): Members, please proceed to vote if you have decided to vote. Otherwise, you may choose not to vote. *(Laughter)*

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

Dr Raymond HO, Mr Martin LEE, Dr David LI, Mr Fred LI, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung and Mrs Anson CHAN voted for the motion.

Mr LEE Cheuk-yan, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Ms Emily LAU, Ms LI Fung-ying, Mr Frederick FUNG, Mr WONG Kwok-hing, Dr KWOK Ka-ki and Mr KWONG Chi-kin voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, and Dr Fernando CHEUNG did not cast any vote.

THE CHAIRMAN announced that there were 50 Members present, 38 were in favour of the motion and 10 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Clause 3.

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 clause 3 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

REVENUE BILL 2008

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

Revenue Bill 2008

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue Bill 2008 be read the Third time and do pass.

MR LEE CHEUK-YAN (in Cantonese): President, I just want to say a word.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you may speak, but please be as concise as possible.

MR LEE CHEUK YAN (in Cantonese): Yes, President. I just want to say a word. Members in this row of seats will just sit here but will not vote. We are clad in dull colours to jeer at this dull Government. *(Laughter)*

PRESIDENT (in Cantonese): I now propose

(Mr Frederick FUNG stood up)

MR FREDERICK FUNG (in Cantonese): President.

PRESIDENT (in Cantonese): Yes, Mr Frederick FUNG.

MR FREDERICK FUNG (in Cantonese): Apart from jeering at the Government, I wish to express my dissatisfaction with the Bill as well.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Revenue Bill 2008 be read the Third time and do pass.

Here, I must say that Mr LEE Cheuk-yan and Mr Frederick FUNG should have let me finish this sentence before they expressed their stances. *(Laughter)*

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

(Members raised their hands)

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

(No hands raised)

Mr LEE Cheuk-yan rose to claim a division.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr Raymond HO, Mr Martin LEE, Dr David LI, Mr Fred LI, Ms Margaret NG, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Mr KWONG Chi-kin and Mrs Anson CHAN voted for the motion.

THE CHAIRMAN Mrs Rita FAN, Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Mr Frederick FUNG, Dr KWOK Ka-ki and Dr Fernando CHEUNG did not cast any vote.

THE CHAIRMAN announced that there were 50 Members present and 43 were in favour of the motion. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Revenue Bill 2008.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Road Traffic Legislation (Amendment) Bill 2008.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

Resumption of debate on Second Reading which was moved on 20 February 2008

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

MS MIRIAM LAU (in Cantonese): Madam President, in my capacity as the Chairman of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2008 (the Bills Committee), I will give a brief account of the work of the Bills Committee. The Bills Committee held eight meetings and discussed the relevant matters with the Administration. The Bills Committee has also carried out public consultation to listen to the views of the transport trade and members of the public.

The main purposes of the Road Traffic Legislation (Amendment) Bill 2008 (the Bill) are to increase the penalties for the traffic offences of drink driving and dangerous driving causing death, to impose mandatory attendance and completion of driving improvement courses (DICs) on certain traffic offenders and to extend the Probationary Driving Licence scheme (PDL scheme) to cover novice drivers of private cars and light goods vehicles. The Bill also proposes to give police officers a general power to conduct random breath tests (RBTs) and introduce a pre-screening device to facilitate the tests. In principle, the Bills Committee supports the policy intent of the Bill to enhance road safety.

In the course of deliberation, Members had discussions on the appropriateness of the proposed penalties for the offences of drink driving and dangerous driving causing death and compared the proposed penalties with those in overseas countries. Members noted that whilst the level of fines and imprisonment terms for drink driving offences in Hong Kong are generally comparable with those in other overseas jurisdictions, offenders on first convictions in Hong Kong would not be disqualified from driving, as opposed to overseas practice where drink driving offenders would normally be disqualified from driving upon first convictions. The Bills Committee therefore supports in principle the proposal of disqualifying a drink driving offender from driving on first conviction, and requiring him to attend and complete a DIC on a mandatory basis.

However, given the seriousness of drink driving offences, some members considered that the disqualification period upon first conviction of drink driving should be lengthened, so as to achieve the desired deterrent effect.

The Administration advised the Bills Committee that the proposed three-month disqualification period upon first conviction is a minimum rather than a maximum penalty. A drink driving offender should be disqualified from driving upon first conviction for at least three months. The Court may, if it sees fit having considered all the relevant circumstances of a case, hand down a sentence of disqualification of any duration longer than three months. Judgments on drink driving offences indicate that the Court considers many factors when handing down a sentence. These include, for example, the level

of alcohol concentration, whether there was a traffic accident, whether there were and if so, the number of persons injured, whether the offender entered a guilty plea, the circumstances behind a case, and so on.

In the light of the fact that the proposed disqualification for not less than three months on first conviction is but one deterrent out of a proposed package of other additional measures to deter drink driving, and the decisions of the appellate courts on the relevance of alcohol concentration in addition to other relevant factors in determining the appropriate sentence, the Administration suggested that the proposed package of deterrent measures against drink driving should first be introduced. It would closely monitor the effectiveness of the new legislation upon its enactment, including the trends on the hit rate of RBT and accident and prosecution statistics, and consider introducing heavier penalties on drink driving offences as necessary.

The majority of the members of the Bills Committee considered that the proposed penalties for drink driving appropriate. However, the Bills Committee noted that Mr Andrew CHENG held a different view. He would move Committee stage amendments to lengthen the disqualification period on first conviction of the offence of drink driving or failure to provide samples of blood, urine or breath for testing under specified circumstances from the proposed period of not less than three months to not less than six months.

The Bills Committee has also reviewed the proposed arrangements to be adopted by the police for conducting RBTs. The Bills Committee noted that drink driving has increasingly been regarded as a serious offence that could bring about grave consequences not only to the drivers of the vehicle concerned but also to other road users. As such, the Bills Committee agreed that the proposal to empower the police to require drivers to conduct RBTs without the need for reasonable suspicion would be a strong deterrent. In order to give greater confidence to the public that the police will discharge the added power in the most responsible manner, the Bills Committee has examined in detail the arrangements for conducting RBTs. The Bills Committee was assured by the police that a full record of all RBTs conducted would be kept to facilitate

aggrieved parties in lodging complaints. The Administration would also first consult the views of the Panel on Transport if it proposes to make any changes to the proposed arrangements for RBT operations.

Whilst the Bills Committee supports the introduction of the pre-screening device to reduce inconvenience to motorists during RBT operations, it considers that a driver should not be required to conduct a Screening Breath Test (SBT) simply because he is found to have any level of alcohol in his body irrespective of the level of alcohol concentration in his breath specimen detected by the pre-screening device.

Taking into account members' views, the Administration proposed that the pre-screening device be calibrated to activate a signal if 20 or more micrograms of alcohol in 100 milliliters of breath is detected. This indicates that the proportion of alcohol in the person's breath has reached such a level that it is likely to exceed the existing statutory "prescribed limit" (that is, 22 micrograms of alcohol in 100 millilitres of breath). Only in these circumstances should the driver then be required to conduct SBT. The Administration will move a relevant amendment later for the purpose of the above arrangements.

The Bills Committee was also concerned about the accuracy and reliability of the pre-screening device and the relevant approved procedures to be adopted. The Administration advised that the police is now contacting various manufacturers. When the suitable screening devices are available, the police will arrange tests to be conducted on their accuracy and reliability by the Government Laboratory or an independent laboratory.

The Bills Committee has also examined whether the provisions on RBT would be in breach of the human rights provisions under the Basic law or compromise the protection against self-incrimination of the person concerned. The Administration advised that the Bill is in conformity with the Basic Law, including the provisions concerning human rights. Regarding whether such interference is permissible, it requires a balancing of the circumstances having regard to the principle of proportionality. The relevant circumstances to be considered include the fact that drink driving can bring about grave

consequences, RBT will greatly deter people from driving after drinking alcohol, as well as the fact that the proposed breath test under the RBT operations will be brief and non-intrusive.

Regarding whether the requirement for specimen of breath may raise the issue of self-incrimination, the Administration pointed out that the privilege against self-incrimination is not absolute, but rather a qualified right. The Privy Council and European Court of Human Rights have recognized that limited qualification of certain rights is acceptable if the qualification is reasonably directed by the authorities towards a clear and proper public objective and is also not out of proportion.

The Bills Committee accepted the Administration's explanation but urged the Administration to conduct further research on case law in other areas which are analogous to RBTs, so as to prepare themselves for possible legal challenge in future.

The Bills Committee unanimously supported the other proposals in the Bill on enhancing road safety.

Finally, on behalf of the Bills Committee, I support the resumption of the Second Reading of the Bill.

Next, I am going to speak in my personal capacity to express my own views and those of the Liberal Party on the Bill.

Madam President, all along, I strongly support a rule of driving, which is, "If you drink, don't drive!" The transport trade also agrees very much to this rule. Apart from urging members of the trade to exercise self-discipline all the time, the trade also strongly supports the Government in taking measures to combat drink driving. Therefore, the transport trade supported the Government in tightening the statutory limit for alcohol concentration in 1999 and today, it also supports the Government in raising the penalties and taking measures to deter drink driving.

In fact, the transport trade generally attaches great importance to road safety. Their concern may be even greater than that of the general public and other drivers because they spend a lot of time on the road. They are professional drivers and often have to drive on the road for eight to 10 hours each day. Their chance of having a traffic accident is higher than ordinary drivers. Therefore, they often organize activities to promote road safety, such as organizing workshops, together with the Transport Department and the Road Safety Council. The trade generally supports the Government's various proposals for combating inappropriate driving behaviour, so as to enhance road safety. The transport trade will not condone those black sheep who disregard the safety of other road users. However, they also demand that the legislation must be fair and reasonable and any prosecution action must also be fair and just.

In recent years, the public is very concerned about accidents resulting from dangerous driving and drink driving. In the past five years, there were on average, 99 cases of traffic accidents involving drink driving each year. They accounted for just 0.66% of all traffic accidents but the percentage of fatalities and serious injuries in these accidents is much higher than traffic accidents in general. As for the number of cases of dangerous driving causing death, there were 81 cases in the past five years. There were only 10-odd cases or less than 20 cases each year and so, some people considered the number not too great. However, the attitude that we should take regarding these cases should be: "One such accident is already too many.". Members of the public generally hope that the Government can impose heavier penalties and take effective measures to enhance the deterrent effect, so as to reduce the number of such cases. Regarding penalties, at least two judges have recommended in their judgments that the maximum penalty be raised for dangerous driving causing death. One of them even specifically recommended that the maximum period of imprisonment be raised from five years at present to 10 years. In fact, if we look back at past cases, in many cases, the court handed down the maximum penalty, that is, five years of imprisonment. These data show that the court may in fact wish to impose a sentence of more than five years of imprisonment but it could not do so under the existing law. The present proposal made by the Government in the Bill this time has in fact responded to the aspiration of the public. It has at least responded to the recommendations of some judicial officers by appropriately raising the penalties and enhancing the awareness of safe driving. The Liberal Party very much supports it.

One important point in the Bill is to give police officers the power to conduct RBTs and to introduce a pre-screening device to facilitate the tests. The Liberal Party supports the Government's proposal. However, we consider that when giving police officers such power, we must at the same time ensure that the police will not abuse this power and members of the public will not be subject to unnecessary inconvenience. The police has given the assurance that it would reduce any inconvenience it may cause the public as far as possible and would exercise the power to conduct RBTs according to the arrangements as explained to the Bills Committee. The Administration has also undertaken to first consult the views of the Panel on Transport if it proposes to make any changes to the arrangements. Moreover, a full record of all RBTs conducted would be kept. In case of any complaint — for example, some professional drivers or ordinary drivers may claim that the police targets them deliberately — information will be available for the purpose of investigation. The pre-screening device proposed to be introduced is also a rather simple hand-held pre-screening device similar to a mobile phone. The entire RBT can be completed within a very short time (10 seconds), so this is very fast and convenient. If one passes the RBT, which takes less than 10 seconds, and when the green light of the device is on, the driver can leave immediately. If one fails the test and the red light of the device is on, then, sorry, the driver will have to stay and take the "breathalysing" test which takes a longer time. The Liberal Party notes that at present, in a number of overseas countries (for example, Australia, France, Sweden, the Netherlands, Belgium and New Zealand) in which RBT is currently carried out, no pre-screening device is used. It means that whenever a driver is stopped, he will have to undergo a more time-consuming regular screening breath test for alcohol concentration. We think that when implementing this new measure in Hong Kong, it is not necessary to follow the practice in overseas countries. Rather, we should try to reduce the inconvenience to the public as far as possible. This is very important. Therefore, we support the police in using the proposed pre-screening device.

The purpose of introducing the mechanism of RBT is to deter motorists from drink driving, so that they can no longer trust to luck. We found that among those people who like to drink, many consider themselves to be skilful drivers, and they think that they surely will not be intercepted by the police even if they drive after drinking. It has been suggested that in future, when motorists

can no longer trust to luck, they have to buy this kind of mobile phone-like pre-screening device to test their own alcohol concentration. If it is found to be above the prescribed limit, they will not drive. In fact, this is not a bad idea. I know that some people do so in such overseas countries as Japan and Korea. However, I think that the safest and best thing to do is still: "If you drink, don't drive!"

Another proposal in the Bill is to impose mandatory attendance of DICs. When DICs were first introduced in 2002, I already expressed the wish that more people would attend this kind of courses, so that they can learn more about road safety, enhance their awareness of road safety and cultivate good driving behaviour. Safe driving is mainly an attitude that comes from the heart of the drivers. If drivers can always bear in mind that they have to drive safely and always remind themselves to drive carefully, many traffic accidents can actually be avoided. Therefore, the Liberal Party strongly supports the Government's present proposal to impose mandatory attendance of DICs on certain traffic offenders. We believe that more drivers will benefit from such courses. Of course, the Government has to ensure that adequate courses are available and the fees must also be reasonable. More importantly, the Government also has to ensure that the quality of the relevant courses can achieve the goals of the Government.

Regarding Mr Andrew CHENG's amendment, the Liberal Party holds that it is already a major change for the Government to propose changing the current penalty that offenders on first convictions would not be disqualified from driving to disqualification of offenders from driving upon first conviction for at least three months. In addition, there is also a mechanism for conducting RBTs. Madam President, this is in fact a comprehensive programme to deter drink driving and should be able to achieve a certain level of deterrent effect. Furthermore, the three-month disqualification period proposed by the Government is just a minimum penalty. The court will hand down a sentence of disqualification of an appropriate duration in accordance with the gravity of the case. There were many previous cases indicating that when handing down a sentence on drink driving offences, the court would certainly consider the level of alcohol concentration and other factors, such as whether there was a traffic accident. The court has in fact laid down some criteria. Looking back on the cases, we can find that if the alcohol level exceeds the prescribed limit by only a

small margin, a relatively short period of disqualification would be imposed. Where the excess is substantial, the period of disqualification could be very long. According to previous cases, the period of disqualification ranged from one month to 36 months. Therefore, the duration can be very long and it is not true that many people would be let off in the absence of a minimum duration of six months. The court will hand down a sentence of disqualification of an appropriate duration in accordance with the level of alcohol. Therefore, I am not worried at all that the court may mete out too lenient a sentence as I have also seen quite a number of previous cases in which the court would hand down a sentence of disqualification with duration which appropriately reflects the gravity of each case. When the alcohol level exceeded the prescribed limit by only a small margin, for example, a level of 50 or 55 mg, a shorter duration would be imposed but when it reached 80 or 100 mg, the court would impose a very heavy sentence. There were also cases in which a disqualification period of as long as 36 months was imposed. In view of these, I cannot see why we have to tie the hands of the court by setting down a "minimum charge" of disqualification for six months. If we do so, when the court deals with cases in which the offence is minor or the offence is committed in special circumstances, or there are extenuating circumstances, that is, if the alcohol level exceeds the prescribed limit by only a small margin and nothing else has happened, if there are such cases or special circumstances, the court will have no alternative as it is already specified in the legislation that a six-month disqualification period is the minimum. Even if the judge is very sympathetic towards the defendant, he has no choice because his hands are tied as he must impose the minimum sentence of six-month disqualification from driving under the law. In this way, the court will lack flexibility in sentencing, and it may not be very fair to the defendant. The Liberal Party considers that the penalty proposed by the Government is more reasonable as it has struck a balance between public interest and the interests of drivers.

The Liberal Party hopes that after the passage of the Bill, the offences of dangerous driving and drink driving can be effectively combated offences. At the same time, we also urge the Government to step up public education, as this can yield twice the result with half the effort.

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

MR CHEUNG HOK-MING (in Cantonese): Madam President, I trust we all agree that road safety is extremely important and the alertness and attitude of drivers are closely related to improving road safety. In recent years, there was an upward trend in the number of traffic accidents caused by drink driving and the core of the problem is precisely related to the trust-to-luck driving attitude of the drivers. They think that they will not likely be intercepted by law-enforcement officers as there are so many vehicles on the road and there will not be any accident if they are extra cautious. This kind of traffic accidents caused by human factors can be avoided. Under the legislation currently in force in the SAR, the maximum penalty for the offence of drink driving alone is a fine of \$25,000 and imprisonment for three years. However, it is not provided that the driver must be disqualified from driving on first conviction. Moreover, in everyday law enforcement, the police must have reasonable ground before they can conduct a breath test on drivers. Therefore, we support the Administration's Amendment Bill to further strengthen the legal provisions and the power of the police in law enforcement in order to stem traffic accidents caused by dangerous driving.

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

The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will not support the amendment proposed by Mr Andrew CHENG to lengthen the disqualification period on first conviction of the offence of drink driving from not less than three months, as proposed by the Administration, to not less than six months. This is because the proposed three-month disqualification period is only a minimum penalty. The court may, depending on the actual circumstances of a case, hand down a sentence of disqualification of any duration longer than three months as appropriate. Moreover, drink driving offenders will be liable to a maximum term of three years' imprisonment. Even for a first offender, he can still be liable on summary conviction to imprisonment for six months. Deputy President, having considered the term of imprisonment, we think that disqualification for not less than three months is an appropriate measure which can create a deterrent effect. Moreover, the Bill tabled by the Government on this occasion has set out many proposals including giving the police the power to conduct random breath tests, imposing mandatory

attendance of driving improvement courses on drivers, and so on. Disqualification from driving for not less than three months on first conviction is not the only measure but just one of the measures. Moreover, so far there is no objective evidence or information to show that there is any obvious difference in the effectiveness in deterring drink driving between a disqualification period of not less than three months and one for not less than six months. As mentioned before, what matters most is the driving attitude of drivers. The Administration proposed a disqualification period of not less than three months. Coupled with the RBT operations of the police, this will make drivers more alert and produce a deterrent effect. This would also discourage drivers from taking a trust-to-luck attitude. The Bill proposed by the Administration seeks to enhance road safety by adopting appropriate measures in view of the present situation.

However, in the long run, it is necessary to devise a package of positive and proactive proposals to help drivers develop correct concepts of driving, so that drivers can exercise due care for themselves and others and fully appreciate the serious consequences of drink driving. On the Mainland, nationwide thematic control actions against drink driving were taken for a period of two weeks last year, and there are measures worthy of our consideration. These include encouraging members of the public to report cases of unlawful behaviour of drink driving; publicizing the danger of drink driving on such publicity platforms as the short message service of mobile phones or television screens on the road; encouraging the catering establishments to actively persuade drivers to refrain from drink driving by displaying posters at premises like restaurants and pubs as a friendly reminder to drivers. It is worthwhile for us to copy these measures. Deputy President, with these remarks, I support the Bill tabled by the Administration.

MR ANDREW CHENG (in Cantonese): Deputy President, on behalf of the Democratic Party, I will express its views on the Road Traffic Legislation (Amendment) Bill 2008 (the Bill). Generally speaking, the Democratic Party supports the resumption of the Second Reading debate of the Bill.

I will focus on the road traffic legislation that this Bill deals with in my speech, including imposing heavier penalties for causing death by dangerous driving, imposing mandatory attendance of driving improvement courses (DICs)

on drivers, conducting random breath tests (RBTs) and extending the probationary driving licence scheme to novice drivers of private cars and light goods vehicles. As regards the provisions concerning the penalty of disqualification from driving for the offence of drink driving, I will wait until the Committee stage and spend the greater part of my time explaining my position. However, in the resumed debate on the Second Reading, I also wish to give a footnote on why I will propose an amendment concerning the suspension of licence for first-time offenders of drink driving on behalf of the Democratic Party.

Deputy President, I hope Members will understand that the number of drink driving cases has seen a rising trend. However, of course, as to the trend of increase and whether fatal accidents many fatal accidents tell us that it is necessary to take preventive measures and we hope to put across a strong and powerful message from legislators. Deputy President, just now when you spoke on behalf of the Liberal Party, I also understand that the Liberal Party or the DAB does not want to have their hands tied and they do not wish that the legislation enacted by the Legislative Council will tie the hands of Judicial officers, even though the period of disqualification is less than six months, for example, for three or four months, thus making it unfair to drivers whose alcohol levels have just exceeded the limit by a small margin.

Deputy President, I wish to stress one point. Drink driving or driving after drinking is not right, irrespective of the level of alcohol concentration in the body of a driver. We believe that not only will people who deliberately challenge the law cause harm to themselves, they may also cause harm to other road users. For this reason, we hope that legislators can deliver a strong and powerful message and create a deterrent effect in legislation. Moreover, if we look back on past court cases — Deputy President, we have made reference to those binding appeal cases in the High Court against the rulings of magistrates — in the past, the number of cases in which the drivers were disqualified from driving for less than six months was really scarce as there were only one or two such cases. Moreover, some judges also drew the line clearly by saying that disqualification for more than 12 months should not be imposed only in cases in which the level had been exceeded by a small margin.

Deputy President, I wish to stress that the starting point of disqualification is now 12 months, that is, the period of disqualification from driving that many judges would like to impose on drink driving offenders is between 12 months and 18 months. They have adopted 12 months as the minimum duration of disqualification. For this reason, if the Government proposes a disqualification period of three months, may I ask Members if this means that we, as legislators, would have to tell the judges in those past court cases, "Your worship, is it not too harsh for you to impose a disqualification period of 12 months? Let us not do this. What about three months?" I believe this message is inappropriate and this is also the point that I most disagree with the Government, the Liberal Party and the DAB. Therefore, I hope Honourable colleagues will understand that if the court now uses disqualification for not less than 12 months as the starting point, the amendment of three-month disqualification proposed by the Government will put across a feeble message, instead of creating a strong and powerful deterrent. This will induce drivers to trust to luck, thus harming themselves and others. This is the reason for proposing the amendment.

Of course, some people may ask me: This being so, why do you not propose a period of 12 months? Deputy President, I believe you understand me very well because often, you and I would have discussions in the meetings. In fact, initially, I really wanted to amend it to 12 months but I often think that since I hope that this amendment can gain the support of more Members, I should steer the middle course, so between three months and 12 months, I decided on six months. Moreover, I have also made reference to the standards of other countries, so I hope six months can be adopted as the starting point.

Deputy President, later on, I will continue to elaborate on some cases I have mentioned just now in relation to my amendment and the comments of some judges made in their judgments. As regards other aspects, for example, the proposal to raise the maximum term of imprisonment for causing death by dangerous driving, they have in fact been discussed in the Legislative Council for some time. In particular, after the serious traffic accident on King's Road in 2004, in which two public light buses jumped the red light at high speed and collided with a taxi, causing two deaths and 18 injuries, many members of the public have requested that the maximum imprisonment term for causing death by dangerous driving be raised from five to 10 years, in order to achieve a deterrent

effect. Meanwhile, in 2006, in the judgment on this case, the High Court Judge also pointed out that the maximum imprisonment term for this offence in Hong Kong should be increased.

Deputy President, apart from the accident on King's Road, from the serious traffic accidents over the past few years, including two traffic accidents, one in which a bus fell down the hillside from the Tuen Mun Highway in 2003 and the other one at Sai Kung last month with the highest casualties in the history of Hong Kong, we find that professional drivers are usually more prone to commit the offence of dangerous driving. Of course, I believe the majority of professional drivers have a good driving attitude, only that those professional drivers who committed the offence of dangerous driving may take a trust-to-luck attitude. Since they are professional drivers, they spend more time driving on the road. So, if they drive faster, they may be able to make one more trip (this is particularly so for public light buses), or they may be able to do one more transaction, resulting in more dangerous driving behaviour by these drivers on the road. We are gravely concerned about this.

To raise the maximum imprisonment term for causing death by dangerous driving can precisely prompt all drivers, including professional drivers, to be alert to their driving behaviour and avoid possible serious consequences from their momentary reckless behaviour.

The Democratic Party hopes that in future the Government can review the penalties for dangerous driving causing death, including the term of imprisonment, the level of fine and the disqualification period and put forward proposals on raising the relevant penalties to the Legislative Council for discussion, if prosecution statistics show that the trend of dangerous driving is worsening.

Deputy President, the Democratic Party also supports the Government's proposal to extend the probationary driving licence scheme to private cars and light goods vehicles. In fact, as early as eight years ago when the Government proposed to introduce a similar scheme for motorcyclists under the Road Traffic Legislation (Amendment) Bill 1999, on behalf of the Democratic Party, I already proposed an amendment similar to the amendment put forward by the Government today, requesting that private cars and light goods vehicles be also included in the scheme. However, since the amendment concerned related to

public expenditure, the President had ruled against it, so it could not be proposed for discussion in the Legislative Council at that time. Eight years have passed and the Government has now of course realized that it will surely enhance road safety further if the probationary driving licence scheme is extended to private cars and light goods vehicles. Although I regret to see that the Government has been slow-reacting, it is better late than never.

As the Government pointed out in the Legislative Council Brief, the accident involvement rates of both first-year private car and light goods vehicles drivers are higher than those with over one year's driving experience. On average, the annual accident involvement rate for light goods vehicles drivers with less than one year's driving experience is 3.72 per 1 000 drivers, as compared to 2.15 for light goods vehicles drivers with driving experience of one year or more. For private car drivers, the average annual accident involvement rate of those with less than one year's driving experience is 6.95 per 1 000 drivers, as compared to 3.51 for those with driving experience of one year or more.

All these show clearly that over the past eight years, there have been quite many traffic accidents involving novice drivers due to the Government's delayed implementation of the Probationary Driving Licence scheme. In fact, this is precisely like the way the Government handled the issue of disqualification for drink driving back then. At that time, the Government did not want to adopt the measure of disqualification on first conviction. However, this time, it proposed this amendment — back in that year, it was exactly me who proposed on behalf of the Democratic Party that the measure of disqualification on first conviction should be introduced — the Government invariably acts only after several years of delay. Of course, it has many explanations, for example, it says that further observation and reviews are needed. However, I hope the Secretary can understand that the lack of road safety can lead to fatal accidents. Precious human lives could be lost and there would be no chance to have a "take-two" or to start again just because the Government has not conducted a review and it has dragged its feet. The Government's belated amendments or rather lax policies can often lead to the loss of precious lives.

Deputy President, in overseas countries, restrictions are also imposed on certain behaviour of novice drivers by means of legislation and some even have to comply with night-time driving and passenger restrictions. Now, the Government's proposal will also impose restrictions on novice drivers, for

example, they must keep the driving speed at or below 70 km/h and refrain from driving on the offside lane of expressways where there are three or more traffic lanes. Moreover, when a novice driver is convicted of a minor traffic offence, the probation period will be extended by six months, and his probationary driving license will even be cancelled upon conviction of a serious road traffic offence. We hope that after the passage of the Bill, the accident rate of novice drivers can be reduced.

Regarding the mandatory attendance of DICs, the Democratic Party supports the proposal concerned. The Government also indicated that after reviewing the effectiveness and execution of the DICs, it would propose an amendment to require a person who has committed a serious road traffic offence or incurred 10 or more driving-offence points within two years to attend a DIC on a mandatory basis, and the Commissioner for Transport may cancel all of the driving licences of the driver who refuses to attend the DIC until he has completed the DIC as required. The Democratic Party thinks that these amendments can further refine the DIC regime and help improve the attitude of traffic offenders.

I believe the introduction of RBT is a more controversial clause in this amendment exercise. It is controversial not because Members of the Legislative Council are opposed to the improvement of road safety, but because we are concerned about how to ensure road safety while at the same time making sure that the human rights issues that may arise from the RBTs will not be overlooked. For this reason, during the scrutiny of the Bill, Mr James TO kept asking questions on legal disputes that may arise from the introduction of breath tests. This does not mean that we in the Democratic Party are against this proposal; rather, we hope that when the Government pays attention to road safety, it can also protect and respect the human rights of the public.

Under the existing law, the police can require a driver to conduct a Screening Breath Test (SBT) only if there is a reasonable cause to suspect that he has alcohol in his body when driving or attempting to drive a vehicle on a road, or if he has been involved in a traffic accident, or has committed a traffic offence while the vehicle is in motion. After the legislation is amended, police officers in uniform can require a person who is driving or attempting to drive a vehicle on a road to conduct a breath test without the need for reasonable suspicion.

However, the Democratic Party hopes that the Secretary can further elaborate on the various administrative arrangements for breath tests to be conducted by the police in the future when she speaks during this resumed debate on the Second Reading of the Bill.

Deputy President, regarding the penalty of disqualification from driving for the offence of drink driving, just now I have already spent several minutes on the amendment that I will propose on behalf of the Democratic Party, that is, to change the proposed disqualification period from three months to six months. I will further elaborate on the arguments later. I do not wish to take up too much of Members' time now, as the President has already reminded us during the debate on the previous bill not to make repetitions. Not many Members are in the Chamber now. I understand that the chance is slim for my amendment to be passed, just as the amendments I proposed in the past. However, just like the amendments I proposed over the years, the Government will adopt them several years later.

I hope that the Government can understand that what I am doing today is not to propose an amendment for the sake of doing so. Rather, I hope the Government will understand that since it may propose the amendments sooner or later and it is preferable for these amendments on road safety legislation to be stringent rather than lax, I hope the Government can learn from the past experience and create a strong deterrent effect by means of road safety legislation, so as to enhance our road safety.

Deputy President, I so submit.

MISS TAM HEUNG-MAN (in Cantonese): Deputy President, the traffic accident in Sai Kung last month claimed 19 lives and the driver was arrested for suspected dangerous driving. At the end of last year, a family of five, which was about to have a wedding celebration, had a traffic accident and two were killed and three were seriously injured. Hong Kong is so crowded with people and vehicles that on the roads we can often see vehicles weaving in and out, cutting lanes without putting on any indicator, and there are even instances of drink driving, speeding and jumping red lights. More than 10 years ago, I came back to Hong Kong from the United Kingdom. On seeing such traffic situation, although I had a driving licence which allowed me to drive, I gave up

the idea of driving in Hong Kong because I was afraid I would have a collision. When watching news report every morning, we can always hear that traffic accidents have happened somewhere. Without a set of stringent road traffic legislation, it is really unconceivable that the vision of "Zero Accidents on the Road, Hong Kong's Goal" can be realized in Hong Kong.

Today, I speak in support of the resumption of the Second Reading debate on the Road Traffic Legislation (Amendment) Bill 2008 proposed by the Government. We support tightening the existing road traffic legislation and meting out severe punishment on those impulsive and reckless drivers who totally disregard the safety of other road users, including tightening the penalties for dangerous driving causing death and drink driving.

Let me first talk about the penalties for dangerous driving. It is proposed in the Bill that the maximum term of imprisonment for causing death by dangerous driving be increased from five to 10 years. Theoretically, such an amendment can achieve a deterrent effect. But in fact, whether or not the amended legislation can achieve the expected result depends very much on the sentence handed down by the court.

In 2003, an accident in which a bus fell down the hillside from the Tuen Mun Highway resulted in 20 deaths. The container truck driver concerned was sentenced to one and a half years of imprisonment for dangerous driving. Another example is that in 2004, two public light bus drivers who were competing for passengers were involved in a reckless car chase on King's Road in North Point. In the end, the two public light buses collided, resulting in two deaths and seven people injured. Subsequently, the two drivers who flouted the law were sentenced to two years and two and a half years of imprisonment respectively. The penalty was increased to an imprisonment term of five years only on appeal by the Government. The court imposed the maximum penalty under the Ordinance only after the two drivers had been put on trial time and again. We have to ask if the court is too lenient when dealing with dangerous driving cases.

Therefore, even if the Bill can be successfully read the Third time today, the court must also revise its sentencing guidelines. Otherwise, as it is a common law principle that precedent cases will become the sentencing

guidelines, in the future, in the event that someone stages a reckless car chase again and if the driver is still sentenced to just five years or so of imprisonment, the Government will not achieve the aim of imposing heavier penalties for a stronger deterrent effect.

Deputy President, I wish to talk further about the issue of drink driving. I believe that all Members are aware of the Government's slogans: "Alcohol causes lifelong harm to people" and "If you drink, don't drive.". However, many drivers still turn a deaf ear to these slogans. We can no longer behave like "mothers nagging their sons", persuading them not to drive after drinking. The only effective way is to severely punish those drink drivers who show blatant disregard of the laws by imposing harsh penalties and enacting draconian laws. I agree with the amendment proposed by Mr Andrew CHENG to provide for a disqualification period for drink driving of not less than six months.

Many of the traffic accidents resulting from drink driving were caused by private car drivers. Relatively speaking, fewer commercial vehicle drivers were involved in drink driving. It is not difficult at all to explain such a phenomenon. Generally speaking, commercial vehicle drivers live from hand to mouth. It will be extremely difficult for them financially if they are disqualified from driving for even one to two months because of drink driving. Therefore, most professional drivers will not do such a thing because they are aware of the consequences.

However, what about private car drivers? Once they are caught by the police for drink driving and if no one is killed or injured, at the most, they will just get a fine, incur driving offence points and be disqualified from driving for one or two months. To them, it may not lead to any hardship if they do not drive for one or two months or if they incur some driving offence points. In their mind, they can naturally let themselves indulge in such behaviour.

If a driver is to be disqualified from driving for not less than half a year for drink driving upon conviction, things will be completely different. I believe that many drivers will be scared of being disqualified from driving for half a year or for an even longer time. This will scare them. As long as this group of people is scared, they will not lightly commit drink driving.

Deputy President, I hope that through today's legislation, those drivers who still commit dangerous acts knowing the dangers involved, those who like car racing and driving at high speed recklessly as well as those drink drivers, will be aware of the serious consequences of such behaviour early, so that they will turn over a new leaf and be law-abiding smart drivers again.

With these remarks, I support the resumption of the Second Reading debate of the Bill. Thank you, Deputy President.

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

(No Member indicated a wish to speak).

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Transport and Housing to reply. After the Secretary for Transport and

(Mr James TO entered the Chamber in haste and indicated his wish to speak.)

DEPUTY PRESIDENT (in Cantonese): Mr James TO, you may speak now.

MR JAMES TO (in Cantonese): I am sorry, Deputy President, because I was upstairs just now. Deputy President, I will briefly talk about my views on this piece of legislation. I will not repeat the viewpoints of Mr Andrew CHENG because he has already expressed them on behalf of our Democratic Party. I just wish to talk about two points in particular.

Firstly, even if we pass this piece of legislation, there will still be a loophole which, I think, warrants care and attention by the Government. In overseas countries, offenders of the drink driving legislation may sometimes show behaviour that is very difficult for law-enforcement officers to handle. Let me give an example because in overseas countries, legislation has already been enacted to plug the loophole in this area. How is the scenario like? At present, checks are conducted randomly. In any case, whether it be random

checks, setting up a road block or detecting smell of alcohol, if, for example, one of your duties is to prevent drink driving and at a certain road block, a driver has already spotted the road block from a far distance (except that if he is so drunk that he is not sober at all), but if he is still on guard and alert enough — this has once taken place overseas — he then get off his car at once, grabbed a bottle of wine and kept pouring the wine down his throat, drinking like an elephant. What does this mean?

In court, it is true that he can be prosecuted for having been found to have exceeded the prescribed concentration of alcohol at the time of the test but he can claim that the excessive concentration of alcohol was due to the wine he had just poured down his throat. In other words, he can argue that he was very dissatisfied with the traffic congestion, so he immediately made himself drunk so as not to be disturbed by the further worsening of the congestion on the road.

Of course, what he said is perhaps just an excuse, is it not? However, this may cause doubts in the mind of the judge. Did the driver really have an excessive concentration of alcohol when he was driving? Or did the excessive concentration result from the large quantity of wine taken in by him just before the test? Therefore, there is a loophole because the driver had been drinking from the bottle of whisky or brandy after getting off the car.

The preventive measure taken in overseas countries is to enact legislation to prohibit (on a mandatory basis) any storage of alcoholic drink inside a vehicle. In other words, once a driver is seen to be drinking after alighting, it means that there is alcoholic drink stored in the car, so at least he can be prosecuted under the new legislation. I hope the Secretary can pay attention to this area. Of course, in saying this, it does not mean that I intend to be at odds with the Government and make it impossible for the authorities to enact this legislation. However, in fact, there are already such examples in overseas countries. Nowadays, with such advancement in information technology, this is no guarantee that no one will follow suit. I only hope that the Government will be careful and it should be prepared for such a case instead of doing something only at the eleventh hour. Otherwise, it may be very difficult to enforce the law.

Someone has considered — and I have also considered — whether, in that event, the driver can be charged with obstructing a police officer in the execution of duty because he knows full well that an alcohol test was about to be conducted but still, he drank until he was intoxicated. However, the worst thing is that even though the police has set up a road block, it is not necessarily for conducting alcohol tests. It can be for operations against illegal immigrants, right? If the driver just alighted and drank, how did he obstruct the police in law enforcement? Can anyone be dead sure that he can be prosecuted successfully? Not really. Therefore, this is the first point I wish to make.

The second point is about law enforcement and publicity. Even though we have enacted legislation to enhance the deterrent effect or raise the penalties, I still think that the most important thing is publicity in fact, to my understanding (of course, I cannot conduct a very scientific survey but I think the Government is in a position to obtain some information), an overwhelming number of drink drivers are not lonely drinkers. There may also be other people in his car, perhaps his girlfriend or other friends who have just watched a football match together with him of course, if it is a lonely drinker, we would have nothing to say. He has probably been on his way home after drinking alone. However, very often, these drink drivers have just come out from certain entertainment premises with a large group of people.

Therefore, I think the most important focus of publicity should actually be: "Keep an eye on your friend, don't let him drink and drive.". For example, if, after singing together in a karaoke lounge, friends can keep an eye on one another one surely knows what mode of transport his friends will take to go home. If one knows full well that a friend has come in his own car and that his friend will drive him home but after boarding his car, he found that his friend is drink driving, then one should know that this will endanger not only their lives, but also other people's lives.

To my knowledge (of course, I do not mean to say that we must do this right now), there is already legislation in Japan stipulating that if the passenger next to the driver's seat gets in and sits down next to the driver, and if the passenger knows or has reason to believe that the driver is drink driving, then the

passenger is already considered to have committed an offence and the offence is equivalent to drink driving. When I tried to understand this piece of legislation, I also had some queries as to why Japan has enacted such legislation.

Of course, the social culture and the level of public acceptance in Japan may not be the same as those in Hong Kong. However, I have made inquiries with some Members of Parliament in Japan on the underlying spirit. They said that it was very simple, when you are going home with the driver or being driven home, if, you know full well what is happening and you still let your friend take the risk, or even make other people take the risk or put other people's lives at risk, you actually should not have got in the car. Of course, I can also imagine that even if I do not get in the car, the driver will still drive home all the same and there will also be problems, will there not? Moreover, some people would say that they get in the car in order to keep watch over the driver, so that in case something happens, they can stop it. However, I can only say that the spirit of the legislation is that if you do not get in the car, that may be taken as a sort of remonstrance to force the driver either to give up driving, or at least, to stay behind for a bit longer so that the hang over will lapse, or even let him drink some more water or a cup of ginseng tea. In this way an accident can be avoided.

Therefore, in overseas countries, a series of relevant measures have really been put in place. Whether by way of publicity or legislation, these measures can enable others to have the last chance to dissuade drivers from driving after having drinks or singing karaoke or gatherings with the drivers, and if — just like the song called "Sit For a While" by ex-singer Cally KWONG— if one can make the driver sit for a while and drink some more water or tea, a traffic accident and danger can perhaps be avoided. In fact, all these can be made the focus of publicity and education.

Lastly, I wish to say that the Administration can really promote some new devices or even make it mandatory that they be installed on board of vehicles. At present, some countries have already adopted such practices, for example, it is a mandatory requirement to install an alcohol-sensitive device on board of a car, so that once alcohol is detected on board, the engine will stall automatically.

Even if the driver wants to drive, he cannot start the engine. Even if one wants to drive after drinking, one simply cannot do so. Of course, I hope the Government can monitor closely whether the devices concerned have developed to a mature stage.

Moreover, there are also some micro or mini devices, such as a key which can be set to a certain reading. This reading may have an effect similar to that of preliminary tests conducted by the Government. However, a car key is handier and it is only necessary to turn the car key for it to detect alcohol, and if alcohol is detected, it will not be possible to start the engine at all. This is one approach. Allow me to banter a little. If a husband drinks after work each evening, his wife would rather give him such a car key or even put away or discard all the other car keys and force him to use this particular car key because if the husband uses it, the wife can at least ensure that her husband will be safe and sound. Therefore, the Government can really consider from wider perspectives how to stop drink driving or avoid situations that may endanger other people's lives.

Finally, what I wish to say is that, just as Mr Andrew CHNEG said, regarding the queries that I raised from a legal viewpoint in the Bills Committee, although my concerns have not been addressed, from a broader perspective, if the Government considers that this Ordinance is not in breach of the Bill of Rights Ordinance at all and that the issue of self-incrimination and mandatory requirement to give testimony can pass the test of the Bill of Rights and the constitutional laws, I have to wish the Government good luck.

However, recently, I have read the judgments on several cases. In particular, in a Magistrate's verdict — although his rank is lower and in the judicial system, he is a rather junior magistrate, I find that the queries he raised are really quite important. To the Government, this is not just a question of whether the appeals made in future will succeed or not — we do not know the result yet and I will not make any speculation or interference here — but it is stated in the verdict that when invoking a law, whether for dealing a minor offence or a serious offence, we still have to apply the same strict standards for, say, obtaining information or conducting tests on a mandatory basis. Therefore, I hope the Government can reconsider this matter. There is no guarantee that the Government will definitely succeed in an appeal. If it lost in an appeal, thus leading to queries about some very important powers — even the

powers conferred by this piece of legislation are also very important — once these powers are questioned, it would be impossible for our law-enforcement officers or front-line officers to exercise adequate power in performing their duties. This will be highly undesirable.

Therefore, I hope the Government can make contingency plans to prepare for both eventualities and must not think that it will surely win in an appeal. In case anything goes wrong or in the event that it is forced to declare some provisions invalid, I still hope that the Government can immediately put forward another more refined and well-thought-out proposal, so that we can have a sound legal framework to deal with this problem.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Transport and Housing to reply. This debate will come to a close after the Secretary for Transport and Housing has replied.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy President, first of all, I would like to convey my sincere thanks to the Chairman — that is, the Deputy President — and members of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2008 (the Bill) for the effort they made in the scrutiny of this Bill. In particular, members of the Bills Committee have raised some views that can further refine the Bill. We have drafted amendments with reference to these views, and I will move the relevant amendments at the Committee stage.

The Government has all along been striven to promote road safety to prevent accidents as far as possible. In fact, one fatal accident is already too many. Apart from daily traffic management, law enforcement, education and publicity, legislation is a strong and powerful measure to make drivers pay more

attention to road safety and improve their driving attitude to forestall problems. The main purpose of the Bill is to amend the Road Traffic Ordinance, the Road Traffic (Driving Licences) Regulations and the Road Traffic (Driving-offence Points) Ordinance to introduce a package of measures to enhance road safety.

One of the major amendments in the Bill is to extend the Probationary Driving Licence (PDL) scheme presently applicable to newly qualified motorcyclists to novice drivers of private cars and light goods vehicles. The PDL scheme was first introduced for motorcyclists in October 2000. Under the scheme, newly qualified motorcyclists can only be issued with PDLs and during the probationary driving period, they are subject to certain restrictions, including carrying "P" plates on their vehicles. Novice drivers are required to undergo a mandatory 12-month probationary driving period before being issued with full driving licences. Statistics show that after the introduction of the PDL scheme, the average accident involvement rate of newly qualified motorcyclists has dropped and the scheme has lasting benefit. In view of the results of the PDL scheme for motorcyclists, the higher accident involvement rates of novice private car and light goods vehicle drivers and overseas practices, we decided to extend the PDL scheme to novice drivers of private cars and light goods vehicles. The scheme can be considered as extended training for inexperienced drivers, allowing them to accumulate sufficient on-road driving experience. At the same time, the display of "P" plates would help remind other drivers to be more cautious of and patient with novice drivers.

Another major amendment in the Bill is to require a driver to attend a driving improvement course (DIC) on a mandatory basis if he falls within any of the following two categories: The first category is repeat traffic offenders who have accumulated 10 or more driving offence points within a period of two years. The second category is persons convicted of serious traffic offences such as drink driving and dangerous driving. Moreover, we also propose to raise the penalties and introduce new penalties for a person failing to attend the mandatory DIC as required. We hope that apart from punishing drivers who have committed traffic offences, we can also instill through education in drivers a stronger sense of road safety and good driving behaviour.

The Bill also proposes amendments to increase the maximum imprisonment term for causing death by dangerous driving from five to 10 years

to combat inappropriate driving behaviour and enhance the deterrent effect. Dangerous driving causing death is a serious offence. We have made reference to court judgments and the penalties for relevant offences in overseas countries before making the proposal of doubling the maximum imprisonment term for the offence to 10 years. By increasing the maximum imprisonment term to 10 years, it will bring the penalty for the offence in Hong Kong closer to the level in countries with heavier penalties.

Just now, some Members said that the court has usually handed down sentences lower than the maximum term. We understand the concern of Members and the public. We understand that the judges usually take into account the maximum penalty and all relevant circumstances before imposing a sentence. Hence, if the maximum penalty for a certain offence is raised, it would demonstrate the view of the legislature and the community on the seriousness of the offence. We expect to see the revised maximum imprisonment term to be reflected in future sentences. It is also worth noting that the offence of causing death by dangerous driving may be tried either summarily or on indictment, which means that a defendant may be tried for the offence either at magistrates or district courts. In the past, most cases were tried at the magistracy level. Only a small number of cases involving serious or exceptional circumstances were heard in the district courts. By doubling the maximum sentence of dangerous driving causing death from five years to 10 years, these cases in future will more likely be tried in the High Court or district courts instead of the magistrate courts, and heavier penalties will more likely be imposed.

Another major amendment proposed in the Bill is to implement a package of proposals to deter drink driving. At present, drink driving offenders are liable to a maximum fine of \$25,000 and three years of imprisonment. They are also liable to be disqualified from driving for not less than two years for a second or subsequent conviction. The police can only require a person to conduct a Screening Breath Test (SBT) if there is a reasonable cause to suspect that he has alcohol in his body when driving a vehicle on a road, or if he has been involved in a traffic accident, or has committed a traffic offence while the vehicle is in motion.

The average Killed and Serious Injuries rate in drink driving accidents was relatively high and they usually lead to grave consequences not only to the

drivers concerned but also to other road users. In view of this and in response to the requests of the public and the Legislative Council, we propose to implement a series of measures to further combat drink driving. We propose to disqualify all drink driving offenders from driving for not less than three months on a first conviction, and require them to attend DICs on a mandatory basis. We also propose to empower the police to conduct random breath tests (RBTs). With a view to reducing delay and inconvenience to motorists during RBT operations, the police are actively examining the use of a quick and simple hand-held pre-screening device to speed up the RBT checking process.

I thank the Bills Committee for supporting the proposal of empowering the police to conduct RBTs. This measure can help deter drivers who would otherwise try their luck by driving after drinking. I fully understand the concern of Members and the public about how the police is going to exercise such power. In this connection, the police has already proposed the arrangements for exercising this power to conduct RBTs. The major arrangements are as follows:

Firstly, RBT will initially be restricted to traffic officers already trained in handling drink-driving cases because they have the requisite knowledge and experience to conduct such checks whilst ensuring both their own and the public's safety.

Secondly, for the safety of the officers concerned, and to minimize the inconvenience caused by such tests to the drivers concerned and other motorists, RBTs will normally be conducted during roadblock operations or as part of other traffic enforcement checks. RBTs will not normally target vehicles in motion.

Thirdly, the police will not impose restrictions on the time or location of conducting RBTs as this would defeat the "random" nature of the checks, from which the deterrent effect is derived.

Fourthly, the police will not place any rank restrictions on officers conducting RBTs as currently, police officers are all vested with considerable powers and they are exercising such powers in a responsible manner.

Fifthly and lastly, the police is considering the introduction of a quick and simple pre-screening device to speed up the RBT process. Taking into account the views of the Bills Committee, the police will calibrate the pre-screening device to activate a positive signal if 20 or more micrograms of alcohol in 100 milliliters of breath is detected, which forms the basis for requiring the driver to conduct a SBT subsequently. That is to say, if a positive signal is displayed after the test, the driver will be required to conduct a SBT. If a negative signal shows, he will not be required to conduct a SBT. We propose that the pre-screening device be calibrated to this alcohol concentration level because this level is close to the prescribed limit, which is 22 micrograms of alcohol in 100 millilitres of breath, and does form a basis for the police to establish reasonable suspicion that the person's alcohol concentration in his body is likely to exceed the prescribed limit.

After the introduction of this power to conduct RBTs, the police will definitely discharge such power with care, abide by the law when taking action and closely monitor its effectiveness. The initial experience will be taken into consideration when the police considers further law enforcement actions relating to RBTs. The police will keep in view the experience in implementation and consult the Panel on Transport of the Legislative Council if they propose to make any changes to the aforementioned five proposed arrangements for RBT operations.

The proposal of empowering the police to conduct RBTs is but one deterrent out of a proposed package of other additional measures to deter drink driving. The Bill also proposes to raise the penalties for drink driving offence for a stronger deterrent effect. We propose to require all drink driving offenders to attend DICs on a mandatory basis and disqualify them from driving for not less than three months on a first conviction.

Under the series of measures proposed in the Bill, even if the driver is not involved in any traffic accident, or has not committed any traffic offence, the police can still find out by means of RBT that the driver has consumed alcoholic drinks and that the alcohol concentration in his body is above the prescribed limit. The driver may hence be prosecuted for and convicted of drink driving. On conviction, the driver is liable to a fine and imprisonment in pursuance with existing legislation, and in pursuance with the proposed new penalties, he can be

disqualified from driving for not less than three months and be required to attend DICs on a mandatory basis. We think that this package of penalty measures would be a strong deterrence against drink driving, and would discourage drink driving by drivers who would otherwise take a trust-to-luck attitude in driving after drinking.

Mr Andrew CHENG said that the period of disqualification should be not less than six months on a first conviction of drink driving and he would introduce an amendment at the Committee stage to this effect. At the Committee stage, I will further elaborate on the detailed justifications for setting the period of disqualification at not less than three months instead of six months on a first conviction.

At the present stage, I wish to stress that the court judgments relating to drink driving offences indicate that the court would consider many factors when handing down a sentence. These include, for example, the level of alcohol concentration, whether the driver has committed any other traffic offence when arrested, whether there was a traffic accident, whether there were and if so the number of persons injured, the circumstances behind a guilty plea, and so on. Based on the above reasons and other reasons that I will elaborate further, we consider that the proposed three-month disqualification period is a minimum rather than a maximum penalty and we therefore think that the proposal is reasonable and appropriate.

Just now, Mr James TO talked about law enforcement and reminded us of some problems that may arise from roadblock operations. The police is aware of the situation described by Mr James TO, and will handle this having regard to the circumstances in individual cases. In fact, the existing legislation provides that it is unlawful for a person to be driving, to have driven, or to be attempting to drive when his alcohol concentration has exceeded the limit. We believe that the existing legislation can already deal with the circumstances pointed out by Mr James TO.

Apart from proposing the series of legislative proposals as mentioned above in the Bill to enhance road safety, we also propose that the power to review certain decisions made by the Commissioner for Transport in relation to driving licences and driving instructor's licences be given to a Transport Tribunal, and the cases need not be heard by the Chief Executive in Council.

Such proposal would only change the channel of appeal without affecting the public's right to file a case for a review of the Commissioner's decisions on these licensing matters.

Deputy President, the basket of measures for enhancing road safety has previously been discussed many times in the Panel on Transport of the Legislative Council. Moreover, we have also carried out extensive public consultation on these proposals and they all won general support from various sectors of the community. We believe that the present proposals in the Bill have struck a balance among the various views from various sectors of the community.

I am glad that the Bills Committee generally supports the Bill. I implore Members to support the passage of this Bill to enable us to implement the measures as soon as possible, so as to further enhance road safety. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Traffic Legislation (Amendment) Bill 2008 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Road Traffic Legislation (Amendment) Bill 2008.

Council went into Committee.

Committee Stage

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

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Road Traffic Legislation (Amendment) Bill 2008.

CLERK (in Cantonese): Clauses 1, 2, 4, 5, 6, 12 to 19, 21 to 24, 26, 27, 30 to 33, 35, 36, 38 to 49, 51 to 58 and 61 to 70.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 9, 11, 20, 25, 28, 29, 34, 37, 50, 59 and 60.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. I will now briefly explain the major amendments.

Clauses 3, 9(1) and 11 seek to introduce a pre-screening device to enable the police to use a quick and simple device to speed up the checking process during random breath test operations, with a view to reducing delay and inconvenience to motorists. The original intention of these clauses is to make it clear that the pre-screening device is for providing an indication whether a person has any alcohol in his body; and if a person has provided a specimen of breath to be tested by an approved pre-screening device, and the test does not indicate that the person has any alcohol in his body, the person will not be required to provide a specimen of breath for a Screening Breath Test (SBT).

The Bills Committee supports the introduction of a pre-screening device, but considers that a driver should not be required to conduct a SBT just because he is found to have any alcohol in his body irrespective of the level of alcohol concentration in his breath specimen as detected by the pre-screening device.

In response to the views of the Bills Committee, we propose amendments to clauses 3, 9(1) and 11 to make it clear that an approved pre-screening device is defined to mean a device for indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit; and if a person has provided a specimen of breath to be tested by an approved pre-screening device, the person should be required to conduct a SBT only when the test indicates that the proportion of alcohol in the person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit.

I move an amendment to clause 20 for the purpose of ensuring consistency in legislative provisions. In the relevant provisions of the existing Road Traffic Ordinance, there is reference to "court or magistrate". To enhance clarity and consistency of the provisions, we have inserted "or magistrate" after the reference to "court" in a number of provisions in the Ordinance in the Bill, but we have not made similar amendments to section 72A. The Bills Committee is of the view that a consistent approach should be taken. Therefore, we propose an amendment to remove the definition of "court" in section 72A, and add "or magistrate" after each reference to "court" in this section.

I move amendments to clauses 25, 28, 29 and 37(2)(b), (c), (d) and (e) mainly for the purpose of making some technical amendments to the provisions concerned. The Road Traffic (Driving Licences) (Amendment) Regulation 2008 (L.N. 3 and 55 of 2008), which seeks to amend the Road Traffic (Driving Licences) Regulations, came into effect in March 2008, which was after the introduction of the Bill. Certain references in clause 28 of the Bill relating to regulation 11 of the Road Traffic (Driving Licences) Regulations are now inconsistent with regulation 11 as amended by the above Amendment Regulation. We therefore propose amendments to rectify these inconsistencies, mostly by renumbering the paragraphs in the regulation.

I move amendments to clauses 34, 37(2)(a), 50, 59 and 60 for the purpose of enhancing the clarity of the Chinese text of the Road Traffic (Driving-offence Points) Ordinance, which provides the statutory framework for the operation of a driving-offence point system. In the English version of the Ordinance, "points incurred" refers to the accumulation of appropriate number of driving-offence points if a person is convicted, or becomes liable to a fixed penalty, of a scheduled offence, whilst in the Chinese text of the Ordinance, the term "扣分" is used. To enhance the clarity of the Chinese text and to better reflect the actual operation of the driving-offence point system, as well as to achieve consistency with the title of the Ordinance, we propose an amendment to substitute the term "記分" for "扣分" in the Chinese text wherever it appears in the provisions concerned in the Bill.

Deputy Chairman, all the above amendments are supported by the Bills Committee. I implore Members to endorse the amendments moved by me.

Thank you, Deputy Chairman.

Proposed Amendments

Clause 3 (see Annex III)

Clause 9 (see Annex III)

Clause 11 (see Annex III)

Clause 20 (see Annex III)

Clause 25 (see Annex III)

Clause 28 (see Annex III)

Clause 29 (see Annex III)

Clause 34 (see Annex III)

Clause 37 (see Annex III)

Clause 50 (see Annex III)

Clause 59 (see Annex III)

Clause 60 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 11, 20, 25, 28, 29, 34, 37, 50, 59 and 60 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 7, 8 and 10.

MR ANDREW CHENG (in Cantonese): Deputy Chairman, I move the amendments to clauses 7, 8 and 10, and further amendments to clause 9.

Deputy Chairman, during the resumed of the Second Reading debate just now, we have already touched upon the proposal I put forward this time on whether or not more stringent penalties of licence suspension should be imposed on first conviction of drink driving. As I mentioned when I spoke for the first time earlier on, over the past decade, I had in fact proposed quite a number of amendments to legislation relating to road traffic safety introduced by the Government. But some of these amendments could not be raised because they involved public money. For instance, the requirement of displaying "P" plates proposed for the so-called "novice drivers" of private cars and light goods vehicles, similar to that applicable to motorcycles. However, the Government has made this proposal this time around.

(THE CHAIRMAN resumed the Chair)

Concerning the requirement for motorists who have incurred more than 10 driving-offence points to attend certain driving improvement courses on a mandatory basis, I had also raised such proposal at that time, but the Government considered it unnecessary. I had also raised the proposal of suspending the driving licence upon first conviction of drink driving, but again, the Government said that it was unnecessary at that time and was of the view that licence suspension was only necessary upon second conviction. Over the past decade, for the amendments to various policy aspects proposed by me, the major difference with the Government is that the Government always considered it necessary to conduct further reviews, and maintained that there might not be the need to implement my proposals and that further consideration in the light of the road traffic conditions would be required.

Madam Chairman, I would like to stress once again today for record purpose that I understand it may be difficult to persuade my colleagues on a number of transport policies, such as certain proposals I raised on the rail merger. However, being a Member, apart from putting this on record, I also hope the public can understand that when I give views on behalf of the Democratic Party in this regard, it is really not the case that I am opposing for

the sake of opposing the Government. Perhaps it should not be taken as objection, as we just consider that there are some inadequacies on the part of the Government. We are neither amending for the sake of amending, nor arguing for the sake of arguing. That is not the case. I just hope you all can have a better understanding of the reasons and justifications for proposing the amendments this time.

Let me stress once again, Madam Chairman, that legislation on road safety should be on the side of stringency. Many of us here have driving licences. When driving, we believe that accidents will not occur to us, and as we are so experienced, the problem does not come from us but others, or other motorists. Madam Chairman, the more the drinkers drink, the higher their emotions. The higher their emotions, the more they consider they are not drunk, and thus the more they believe that it should not be a problem for them to drive. Therefore, I hope that on the problem of drink driving, we can tell everyone in society, particularly motorists, that they may face very serious consequences if they drive after drinking. It is not only a threat to human lives, but their driving licences may also be suspended for a very long time during which they are not allowed to drive. If we cannot put across this message to society, most of the motorists and those who drive after drinking may tend to trust to luck and take the risk, particularly as the period of a licence suspension is only not less than three months after the legislation is amended. After getting this message instead, many motorists may say, "It is three months only. Even when 15 points are incurred, there will only be a licence suspension for three months." Some motorists may think that the worst scenario is to rest for three months, or they can even hire drivers. Owing to such mentality, in case traffic accidents really occur, not only will these motorists hurt themselves, but some innocent road users may also lose their lives as a result.

Many colleagues said that the court will have its hands tied by Andrew CHENG's proposal of imposing a licence suspension for not less than six months, as it may not want to impose a six-month suspension and it may only wish to make it three months or four months instead. Some people consider that motorists who have just exceeded the prescribed limit are innocent if a licence suspension for six months is imposed on them. Regarding this comment, what I would like my colleagues to respond first is that in view of their opinions, it would be better not to stipulate even a three-month suspension period. It is because according to the court guidelines that we have read, many

judges said that the existing guidelines actually set the line at 12 to 18 months. Madam Chairman, that is to say, according to court guidelines, a licence suspension for 12 to 18 months should be imposed upon first conviction, and a suspension for less than 12 months may only be imposed on those who have exceeded the prescribed limit by a very small margin. As the court has handled so many cases in this way, it is meaningless for the Government to propose a three-month suspension. According to the logic of colleagues or the Government, the requirement of a three-month suspension can even be crossed out because the court will at least impose a licence suspension for 12 to 18 months automatically and take it as a reference. Therefore, in deciding on the principle of whether a temporary licence suspension should be imposed upon first conviction of drink driving, we should not just say that the period is too restrictive.

Looking back on the amendments made in the past, the Government considered that a temporary licence suspension for two years should only be imposed upon second conviction. The Government considered it unnecessary upon first conviction, but it now says that it is necessary this time around. Taking other countries as examples, in Singapore, a temporary licence suspension for not less than one year is imposed upon first conviction; in the United Kingdom, the period is also not less than one year; in New Zealand, it is six months; and in other places, different tiers of penalties will be imposed according to the alcohol concentration. For instance, in New South Wales of Australia, if the alcohol concentration is not too high, a temporary licence suspension for three to six months will be imposed; if there is 80 to 150 mg of alcohol per 100 ml of blood, a licence suspension for not less than six months will be imposed; if the alcohol concentration exceeds 100 mg, a licence suspension for not less than one year will be imposed. The Government has not adopted a tiered system. Rather, it has adopted a broad-brush approach, adding that the alcohol concentration level prescribed in Hong Kong is more stringent as compared to that in other places and thus, there is no need to adopt a tiered system. Since the Government will not follow the practice of other countries of adopting a tiered system for different levels of alcohol concentration but will only adopt a broad-brush approach, and since Hong Kong is more stringent as compared to other places, is this not precisely the reason for us to have a relatively more stringent system accordingly? Since the Government has proposed a screening system this time — though some colleagues have queried

whether this amendment will give excessive powers to the police, we ultimately agree to implement such a system — Hong Kong, as a whole, should continue to adopt an approach as stringent as that of the alcohol concentration levels against drink driving from the law enforcement, administrative measures of the police and legal aspects, and the various penalties and licence suspension imposed upon first conviction should also be equally stringent. Therefore, I hope colleagues can understand that I do not want to convey this message to judges.

Over the past decade, I have collected on the Internet 18 appeal cases handled by the High Court against the judgments of the Magistracy. All these cases have binding effect. Among these 18 cases, Madam Chairman, all are related to licence suspension upon first conviction. There is only one case in which the licence is suspended for less than six months; the licence is suspended for six to nine months in three cases; and in most of the cases, or 13 cases in total, it is 12 to 18 months; and there is even one case of more than 18 months. In other words, the court is in fact very strict. A number of cases have already stressed that court guidelines set the line at 12 to 18 months; Madam Chairman, what I am talking about is licence suspension upon first conviction. Therefore, if court guidelines are so stringent while the amendment made by the Legislative Council is only a period for not less than three months, will it give an impression to judges that court guidelines are even more stringent than the requirement set by the Legislative Council and the Government? I really do not want to put across this message. The Government will, of course, refute this and argue that as there is no such provision in the past and this is a new penalty that did not exist before, it would be better not to impose any restrictions on judges.

Madam Chairman, as I have also mentioned just now, I am not convinced by such logic because when the Government imposed a new penalty by stipulating the starting point for sentencing in respect of licence suspension, the Government is in fact conveying a message to the public, telling them what it thinks the minimum penalty for drink driving upon first conviction should be to reflect the seriousness of the offence. Is it a three-month, six-month, nine-month, 12-month or even 18-month suspension? As many large cities around the world with road safety penalties comparable to those in Hong Kong also adopt a minimum period for six-month as a starting point, why is the Government so conservative on this issue?

Madam Chairman, concerning this amendment, the Government will certainly consider the public's views, and the public may also opine that the Democratic Party is conducting a survey for its own purpose, with a view to leading the public to put forward supportive views or giving an impression that everyone hopes that the system can be more stringent. But anyway, I still wish to reflect the views collected from members of the public. According to a survey conducted by us recently, 38% of the respondents consider the Government's proposal of imposing penalties of licence suspension for three months upon first conviction too lenient whilst 38% consider it appropriate. Of course, the Government can argue that the percentage of respondents who find it appropriate is 38%, but that of respondents who find it too lenient is also 38%. And among those who find it too lenient, 40% consider that there should at least be a licence suspension for not less than six months, while 30% consider that a licence suspension for not less than one year should be imposed. Among all respondents, 65% support the amendment proposed by the Democratic Party that the penalty of licence suspension upon first conviction of drink driving should be increased from not less than three months to not less than six months.

Madam Chairman, I hope this proposed amendment will not arouse too much controversy. I am not prepared to debate with Members again and again on this issue, as Members may have different opinions on the standards of and concepts on road safety. I do hope to stress once again that I had in the past already proposed to extend the requirement of displaying "P" plates to novice drivers of private cars and light goods vehicles and require motorists who have incurred more than 10 driving-offence points to attend courses on a mandatory basis. I had already advised the Government to do so and put forward my proposals. However, it is not until 10 years later that the Government has proposed some policies which are long overdue. The incumbent Secretary is a new one. I put forward again the proposal of imposition of a six-month licence suspension upon first conviction of drink driving today, as I do not want to see more injuries and deaths. I do hope the Government can listen to these views and propose the amendments as soon as possible.

Madam Chairman, I so submit.

Proposed Amendments

Clause 7 (see Annex III)

Clause 8 (see Annex III)

Clause 10 (see Annex III)

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

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

MS MIRIAM LAU (in Cantonese): Chairman, during the Second Reading debate earlier on, I have basically elaborated the reasons why the Liberal Party supports the Government's proposal of imposing a three-month licence suspension upon first conviction, and Mr Andrew CHENG has also explained in detail his reasons for proposing this amendment. Therefore, I just want to briefly make a few points.

The first point is about the situation of drink driving in Hong Kong. Is such situation becoming more and more serious? Of course, I have to make it clear that regarding these cases of drink driving, one case is already too many. But is the figure keep on increasing? The figure before us does not seem to be the case. In 2003, there were 106 accidents involving drink driving in total, while 104 cases were recorded in 2007, showing that the figure had dropped slightly. However, it is noteworthy that during the period from 2004 to 2006, the figure had in fact dropped to less than 100 cases, just that the figure of last year had unfortunately increased by a few cases. We still make every effort to combat drink driving, but it seems that it may not be necessary to adopt the most stringent legislation as mentioned by Members. Of course, this is a matter of different viewpoints and perspectives. We cannot rule out the possibility that further tightening of laws may be required in case the future situation is unsatisfactory or the existing legislative amendments cannot make any

improvements. During the Second Reading debate earlier on, the Secretary has also mentioned in her response that a review will be conducted in future if necessary. This is the first point.

The second point is about whether the court will have its hands tied. Mr Andrew CHENG has done some research and so have I. This is why I mentioned during the Second Reading debate earlier that we also notice that over the past few years, the sentence on first conviction handed down by the court ranges from one month to 36 months. As for serious cases, the court is never hesitant in imposing heavy penalties. However, under certain circumstances, the court may only hand down a sentence of licence suspension for a very short period, say, for one month only. Even the findings of the survey provided by Mr Andrew CHENG also indicate that in some cases, the sentence is less than six months. Of course, as the Secretary has told us, the court will consider many factors in various aspects when handing down a sentence, including the level of alcohol concentration, the situation when the incident occurred and whether accidents or injuries were resulted. We should therefore believe that the court will impose appropriate penalties rather than the "minimum charge" set by us. It is because even if it is appropriate to impose a licence suspension for less than six months, the court would be unable to exercise its power to hand down a sentence for less than six months. This is the proposal which, as I have described earlier, will tie the hands of the court. I have also studied many cases and I consider that the sentences handed down by the court are all very appropriate.

Rather, I consider that what we have to publicize and make known to the general public is not whether the licence suspension should be three months or six months, or the message that a six-month suspension does have a deterrent effect whilst a three-month suspension does not. For the cases mentioned by Mr Andrew CHENG and me earlier on, most of them involved sentences handed down on first conviction. However, under the existing legislation which has not been amended, there is no compulsory or mandatory requirement for licence suspension on first conviction. In those cases, we notice that the court will hand down a sentence of licence suspension. The court absolutely has the power to do so and it has done so in the past. Therefore, what we have to publicize instead is to tell the general public that there is no way to escape punishment. The random breath tests make it impossible for them to escape

from the court proceedings. No matter whether the relevant legislation is in place or not, the court will still hand down a sentence of licence suspension. We must tell the public that it will bring about very serious consequences, and so, they must never act in defiance of the law. In my opinion, what we have to publicize is in fact this message, rather than stating that it is useless to suspend the licence for three months but a six-month suspension will help. We should not publicize such message, but should instead tell them that their licences will be suspended and heavy penalties will be imposed by the court. It does not matter what is stipulated in law. Even a three-month suspension is stipulated, we should not expect that the court will definitely hand down a three-month sentence, because in reality, the court has imposed a 36-month licence suspension before. Therefore, what we have to publicize is a message with deterrent effect, that is, licence suspension. And such suspension can be of a long duration, subject fully to the driver's act at that time and the level of alcohol concentration.

The third point is that I would like to respond to the comments on overseas practices made by Mr Andrew CHENG just now. Some of Mr Andrew CHENG's comments are not correct. He pointed out that some cities would hand down a sentence of mandatory licence suspension on first conviction. In fact, this is one of the reasons why we support the Government. We notice that many countries will hand down a sentence of mandatory licence suspension on first conviction and so, we support such arrangement as we cannot lag behind other countries. But after studying the legislation of other countries, we do not think that we are lagging behind them in terms of penalties.

For instance, the threshold in Hong Kong is set at containing more than 50 mg of alcohol per 100 ml of blood. Earlier on, Mr Andrew CHENG has also mentioned the progressive thresholds adopted in New South Wales of Australia. If it is tested that the blood contains 50 to 80 mg of alcohol, a licence suspension for three to six months will be imposed on first conviction. I wish to point out that such arrangement indicates that if the blood contains a lower level of alcohol concentration, a sentence for three months may be handed down. However, if the blood contains a higher level of alcohol concentration, a sentence for six months may be handed down. If the level of alcohol concentration is about 50 mg or 55 mg, a licence suspension for about three months may be imposed in New South Wales. However, in Hong Kong, no one can guarantee that a "minimum charge" of a three-month licence suspension will

be imposed if the level of alcohol concentration is 55 mg. It is because at present, there is neither legislation nor cases to prevent the court from imposing heavy penalties on those who have just exceeded the prescribed limit slightly and handing down a sentence heavier than the six-month licence suspension in New South Wales. The system adopted in New South Wales is to hand down a sentence of licence suspension for more than six months for cases in which the level of alcohol concentration is 80 to 150 mg. This seems to indicate that for cases in which the level of alcohol concentration reaches 80 mg, the starting point for sentencing is six months, whilst in Hong Kong, the threshold is 50 mg, which is more stringent than that in Australia. If the level of alcohol concentration exceeds 150 mg, a licence suspension for more than one year will be imposed. Therefore, what is adopted in Australia is a progressive scale of penalties.

Basically, I also support a progressive scale of penalties and have also proposed at the meeting of the Bills Committee that the Government should set a threshold for licence suspension if the level of alcohol concentration reaches 50 mg, and if such level reaches 80 mg, a licence suspension for a longer period should be imposed. However, can Hong Kong do so? The Government has responded that such an arrangement is too complicated and may give people an impression that it does not matter if the level of alcohol concentration is low. The Government is concerned about giving the general public a wrong message that there will not be any problem for drinking just a little bit. However, we basically want to convey a message to the public and educate them that no drinking before driving is the best. The Government is concerned about sending out a wrong message. Although I will reluctantly accept the Government's explanation at this stage, I think we can consider handing down sentences according to different levels of alcohol concentration if necessary in future. This will be fairer.

Mr Andrew CHENG has also mentioned the situation in Singapore earlier on. Our threshold is set at 50 mg of alcohol whilst that of Singapore is set at 80 mg. What is the result? In Singapore, if the level of alcohol concentration of a motorist is 79 mg, not to mention 50 mg, no penalty will be imposed. However, in Hong Kong, even the level of alcohol concentration is just 51 mg, it will be regarded as an offence of drink driving. This is the same in Quebec of

Canada and also in the United Kingdom, as both places have set the threshold at 80 mg of alcohol, that is, 80 mg of alcohol per 100 mg of blood. This threshold is not as stringent as that in Hong Kong, because it will be regarded as an offence of drink driving if there is 50 mg of alcohol per 100 mg of blood.

The situation in New Zealand is also the same, where the threshold is set at 80 mg of alcohol per 100 mg of blood for imposing a six-month licence suspension. What I am saying is that, as compared to the threshold of 80 mg of alcohol for imposing a six-month licence suspension, it is not too harsh for us to set the threshold at 50 mg of alcohol for imposing a three-month licence suspension. I consider this proposal proportionate.

The threshold adopted in Arizona of the United States is also set at 80 to 150 mg of alcohol per 100 mg of blood, or it can even be exceeding 150 mg of alcohol. Such a threshold is a little bit strange and Mr Andrew CHENG may have deliberately avoided this point, and a three-month licence suspension will be imposed upon first conviction. Perhaps Mr Andrew CHENG considers that such a threshold is not in favour of his proposal and so he has not mentioned it at all. This is the threshold adopted in Arizona of the United States. Therefore, in Arizona, a driver with 79 mg of alcohol per 100 mg of blood does not commit an offence. Even if the level of alcohol concentration exceeds 80 mg or even 150 mg, only a three-month licence suspension will be imposed. I think the United States may also need to consider whether the penalty is too lenient. However, this example seems to be able to support that the imposition of a three-month licence suspension upon first conviction is proportionate and well-balanced.

On the other hand, the regulation in Japan is even more stringent than that in Hong Kong. A driver with more than 34 mg of alcohol per 100 mg of blood will commit an offence of drink driving. However, if we take a look at the penalty to be imposed, we can see that the licence suspension period is no more than two years. In others words, the duration of licence suspension ranges from zero to two years. The threshold adopted in Japan is quite extraordinary, for a maximum duration of licence suspension is stipulated. For the more serious cases, the penalty will be a licence suspension for two years, whereas for those

which are less serious, the penalty will be a licence suspension for no more than two years. To a certain extent, this also supports our proposal of imposing a three-month licence suspension on first offenders. Even if we compare with other places, I do not think we are lagging behind or others have done better than us. In fact, we are more stringent than other places in many aspects and we have done better than them.

Chairman, based on the above reasons, coupled with my analysis made during the Second Reading debate, I consider that we can support the Government's current proposal of imposing a licence suspension for not less than three months upon first conviction. If necessary, we will be willing to explore with the Government on whether further tightening of legislation is required in future.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, Secretary for Transport and Housing, do you wish to speak?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam Chairman, we understand the purpose of Mr Andrew CHENG for proposing a period of disqualification from driving for not less than six months on first conviction. In fact, I am also aware that most Members who have spoken just now have different considerations. Some of them indicate that they support the Government's proposal on the disqualification from driving for not less than three months on first conviction in the Bill.

Mr Andrew CHENG has certainly done some research and so have we. In considering the overseas experiences, we cannot just focus on the penalties, their thresholds should also be taken into account. As what I have just said, and in fact, as also mentioned by Ms Miriam LAU earlier, taking New Zealand, the

United Kingdom and Singapore as examples, their thresholds are set at 80 mg of alcohol per 100 ml of blood whilst our limit is obviously more stringent, as it is an offence if the level of alcohol concentration reaches 50 mg per 100 ml of blood. Therefore, we cannot just focus on the penalties, the thresholds should also be considered.

We have also made reference to the system in Australia. Ms Miriam LAU has also mentioned earlier that both Australia and Hong Kong have adopted a more stringent threshold of statutory alcohol concentration and implemented random breath tests. In Australia, the shortest disqualification period from driving on first conviction is three months, which is the same as the period proposed by us.

What I would like to stress is that judgments on drink driving offences have indicated that the court will consider many factors when handing down a sentence. These include, for example, the level of alcohol concentration, whether the driver had committed other traffic offences when being arrested, whether there was a traffic accident, whether there were and if so the number of persons injured and the circumstances behind a guilty plea, and so on. Although it is not stipulated in the existing legislation that the driver shall be disqualified from driving upon first conviction, the court has in some cases handed down sentences of disqualification from driving on first offenders with different durations having regard to relevant considerations (those factors that I have just mentioned), and among these cases, some have caused no injuries. Moreover, although the existing legislation stipulates that drivers are liable to be disqualified from driving for not less than two years for a second or subsequent conviction of drink driving, the court has in fact imposed a penalty of disqualification from driving for three years on repeated offenders in some cases, and among them, some have caused no injuries either. This illustrates that the court is really very strict and will make judgments according to the circumstances of each case.

As also pointed out by Members in support of the proposed disqualification from driving for not less than three months on first conviction in the Bill when they spoke just now, the proposed three-month disqualification from driving is only a minimum rather than a maximum penalty. We consider that for any sentence of disqualification for more than three months, it should be determined by the court having regard to the relevant circumstances of the case.

Moreover, I have to reiterate a very important point and that is, what we have proposed this time is a package of new measures to deter drink driving and such objective can be achieved through various measures, whilst the proposed disqualification from driving for not less than three months under our discussion now is but one deterrent out of the whole package of measures. Under these proposed measures to deter drink driving, even if a driver is not involved in any traffic accidents or has not committed any traffic offences before, if the police finds that the driver has consumed alcoholic drinks when driving through the random breath tests, and the level of alcohol concentration has exceeded the statutory limit, the driver may also be charged with the offence of drink driving. Apart from the fine and imprisonment stipulated under the existing legislation, a person convicted of this offence is also liable to disqualification from driving for not less than three months and mandatory attendance of driving improvement courses according to the proposed new penalties. Therefore, what we have proposed is not a single measure, but a package of measures with a strong deterrent effect on drivers, which helps to deter those drivers who will otherwise have taken a chance from driving after drinking.

We have also conducted extensive consultations on the Bill and the proposal has generally been supported by various sectors of the community. We believe that the proposal has struck a balance among different views from various parties.

We will certainly closely monitor the effectiveness of the new legislation upon its enactment, including the trends on the hit rate of screening breath tests as well as the prosecution and accident statistics. We will definitely consider introducing heavier penalties on drink driving offences as necessary.

Based on the above reasons, we do not agree to accept Mr Andrew CHENG's proposal. I implore Members to vote against this amendment. Thank you, Madam Chairman.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I would like to respond to a few points on the speeches given by Ms Miriam LAU and the Secretary.

First of all, regarding the problem of tying the hands of the court, as Ms Miriam LAU has mentioned for several times that there were cases in the past in which only a one-month licence suspension was imposed, I would like to discuss these cases. The Government has proposed a period of three months and as some officials have cited cases in which the driver was disqualified for one month, can it not be regarded as tying the hands of the court as well? I hope Members can understand that logically, I am not convinced by the views given by Honourable colleagues. Members may consider that there were cases in the past in which only a one-month licence suspension was imposed. But the Government has proposed a three-month suspension this time. From the past when no licence suspension was imposed on first conviction to the introduction of a disqualification period at present, how should we position ourselves? In my opinion, the logic of "tying the hands of the court" does not stand, but I agree that we can discuss the starting point of the penalty with reference to the seriousness of the offence. However, I do not agree with the viewpoint that the court will have its hands tied because if it is really the case, the Government should not have proposed a disqualification period of three months.

Madam Chairman, concerning the figures of traffic accidents, Ms Miriam LAU said that I did not cite the example of Arizona of the United States. This is because in debating, we will of course cite the most convincing information to support our own arguments. So, there is no reason for me to quote the example of Arizona and query why the Government does not follow Arizona in adopting such rash (this is only my personal view), simple and lax penalties. In fact, Ms Miriam LAU has quoted some figures of traffic accidents in Hong Kong in the past because such information is conducive to her arguments. But I have yet mentioned the figures on hand just now. Madam Chairman, according to the figures that I have obtained, there were 94 traffic accidents involving drink driving on average each year during the period from 2002 to 2006, with an average of 154 casualties each year and among them, 35 were killed or seriously injured each year on average. The average rate of deaths and serious injuries in this kind of traffic accidents is 22.5%, which is higher than the rate of 15.8% in all traffic accidents.

I am aware that neither the figures on traffic accidents involving drink driving obtained by Ms Miriam LAU, nor the numbers of summons issued and prosecutions instituted for committing drink driving offences during the period from 2002 to 2006 indicate a substantial increase. However, the average rate of deaths and serious injuries in traffic accidents involving drink driving is higher than that of offences in breach of other road safety legislation, which are 22.5% and 15.8% respectively.

Therefore, I hope Members can all understand that the impact of drink driving on road safety should not be overlooked. I stress once again that when proposing the amendments, apart from adopting stringent enforcement actions and conducting random tests, we should take a more stringent attitude in setting the threshold of licence suspension upon first conviction. As for publicity, Ms Miriam LAU said that we should publicize that the Government will impose a three-month licence suspension or a six-month licence suspension if Andrew CHENG's amendments can luckily be endorsed. As such, will they support a six-month suspension which has a stronger publicity effect? I think it would be better to produce a quality announcement of public interest (API) to state clearly that one should not drive after drinking.

Reviewing the Government's publicity on television or radio in the past, one or two APIs on drink driving had in fact created a stunning effect and they often spring up in my mind. One of them is about a newly-wed couple planning for the decoration works but suddenly, there is a "bang" The Government's publicity of this sort is in fact not bad; it is quite good and has a strong impact. However, why do traffic accidents involving drink driving still occur from time to time in society and the rate of deaths or serious injuries is higher than those of other accidents? It is because such kind of accidents is devastating and traumatic. Therefore, if the legislation publicized by the Government is more stringent and the licence suspension is of a stronger deterrent effect — I, being a driver, will also consider a six-month suspension as a stronger deterrent than a three-month period. Of course, I did propose at the very beginning a 12-month disqualification period. However, Madam Chairman, I am so naïve as to believe that by shortening the duration of licence suspension from 12 months to six months, I will obtain support from more colleagues and there will be a chance for the Government to accept my proposal and agree to propose the relevant amendment. However, my hope is again shattered.

I had put forward many views on transport policies in the past, for example, I made some suggestions regarding the toll for Route 8 previously. At the very beginning, the Government stated that the toll should not be so low, and it would not charge a flat toll across the board. But I said I would propose amendments if the Government did not do so. I suggested the Government charging a flat toll across the board by pitching the toll at \$8 charged by the Lion Rock Tunnel. The Government had eventually done so under pressure, and I was so happy about this. Although some people said that I had been hijacked by the Government, frankly speaking, Members are always hijacked by the Government now, aren't they? For instance, concerning the legislation on smoking ban, I had also proposed a complete ban on smoking in parks, beaches and bus terminals, and the Government had done so. Another example is the requirement for drivers who have to display "P" plate to attend courses again. I had made such proposal before. But what distressed me is that whenever I put forward proposals, it is not until a few years later can they be implemented by the Government. If this legislation concerning road safety cannot be implemented until a few years later, Madam Chairman, according to the figures which I have read out just now, that is, 35 people are killed or seriously injured each year, a delay of every one year would mean more than 30 people being killed or seriously injured. Of course, even with the enactment of the legislation, it does not mean that there will be no casualties. But I just hope that we can at least send out a strong and convincing message to our society expeditiously, with a view to rectifying drivers' mentality of trusting to luck, so that they will never commit drink driving again. As such, we can save lives as far as possible.

Lastly, Ms Miriam LAU has read out a list of penalties imposed on drink driving offences by other countries. This is the only point on which Ms Miriam LAU and I see eye to eye with each other, and we also have a consensus on this: Why did the Government not consider adopting a tiered system? Taking New South Wales of Australia as an example, if the justification of the Government is to discourage people from trusting to luck and so, it does not wish to hand down penalties according to the levels of alcohol concentration, that is to say, the Government does not want to hand down a lenient penalty if the concentration is relatively low; a medium penalty if the concentration is medium; and a heavier penalty if the concentration is relatively high. I wish the Government can really consider these views. I very much agree with Ms Miriam LAU on what she has mentioned just now, that is, in the review to be launched shortly, if the system adopted in Hong Kong is intended to be more stringent, I consider that we should

make reference to other places, such as New South Wales of Australia, and stipulate a level of alcohol concentration of 50 to 80 mg per 100 ml of blood as the first tier; a level of 80 to 100 mg as the second tier and a level exceeding 150 mg as the third tier. By imposing stringent penalties, we can put across a message that drink driving is absolutely wrong. Even if the level of alcohol concentration in blood is only 50 to 80 mg, there will at least be a licence suspension for three months or six months, and the more serious the limit is exceeded, the heavier the penalties. I hope the Government can get this message.

I will not trust to luck, thinking that there is a chance for my amendments to be endorsed, but I will continue to make every effort to achieve this. Madam Chairman, I will not speak any more as we still have a number of agenda items to be discussed today. Secretary Stephen LAM is ready to deal with the issues on legislation relating to privileges. I will not speak any more but I still wish to put my speeches on record and hope that the Secretary can listen to the different messages in the Legislative Council. Penalties on road safety should be on the side of stringency. I hope we can work jointly to enhance road safety so that the number of lives lost in drink driving or dangerous driving each year can be minimized.

Madam Chairman, I so submit.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr Andrew CHENG 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 Andrew CHENG rose to claim a division.

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

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendments.

Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Prof Patrick LAU voted against the amendments.

Ms LI Fung-ying and Mr WONG Kwok-hing abstained.

Geographical Constituencies:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr Ronny TONG, Mr Albert CHENG and Mrs Anson CHAN voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendments.

Miss CHAN Yuen-han abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, five were in favour of the amendments, 15 against them and two abstained; while among the Members returned by geographical constituencies through direct elections, 21 were present, 13 were in favour of the amendments, six against them and one abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendments were negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 7, 8 and 10 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 9 as amended.

CHAIRMAN (in Cantonese): As the Committee has earlier on passed the Secretary for Transport and Housing's amendments to clause 9, I now put the

question to you and that is: That clause 9 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 62A "記" substituted for "扣"

New clause 62B "扣減" substituted for "補回".

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Madam Chairman, I move that the new clauses 62A and 62B, as printed on the paper circularized to Members, be read the Second time.

New clause 62A seeks to substitute the term "記分" for "扣分" in the Chinese text wherever it appears in the provisions concerned in the Road Traffic (Driving-offence Points) Ordinance, so as to enhance the clarity of the provisions.

New clause 62B seeks to substitute "扣減" for "補回" correspondingly after substituting the term "記分" for "扣分" in the Chinese text wherever it appears in the provisions concerned in the Road Traffic (Driving-offence Points) Ordinance, so as to better reflect the meaning of the terms "deducted" or "deduction" used in the English version. These two new clauses are supported by the Bills Committee. I implore Members to support these two clauses.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be read the Second time.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clauses 62A and 62B.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed Additions

New clause 62A (see Annex III)

New clause 62B (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the new clauses read out just now be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, the

Road Traffic Legislation (Amendment) Bill 2008

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Road Traffic Legislation (Amendment) Bill 2008 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Road Traffic Legislation (Amendment) Bill 2008.

MOTIONS

PRESIDENT (in Cantonese): Motions. Two proposed resolutions under the Mutual Legal Assistance in Criminal Matters Ordinance.

I will call upon the Secretary for Constitutional and Mainland Affairs to speak on and move his motions one by one.

PRESIDENT (in Cantonese): First motion: Approving the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I move that the resolution to make the Mutual

Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (the Order), as printed on the Agenda, be passed.

The United Nations Convention Against Transnational Organized Crime (the Convention) has come into force for Hong Kong since September 2006. Most of the requirements in the Convention can be fulfilled by existing legislation and administrative measures. New legislation, however, is required to give effect to the obligations in respect of, *inter alia*, mutual legal assistance in criminal matters under the Convention.

Articles 14 and 18 of the Convention require that States Parties shall, under their relevant laws, afford one another the widest measure of mutual legal assistance in relation to the offences covered by the Convention, and if so requested by another State Party, give priority consideration to returning confiscated proceeds of crime or property to the requesting State Party.

The Mutual Legal Assistance in Criminal Matters Ordinance provides the statutory framework for implementing mutual legal assistance arrangements between Hong Kong and other jurisdictions, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance, the Chief Executive in Council has made the Order to implement the mutual legal assistance obligations under the Convention. By applying the Mutual Legal Assistance in Criminal Matters Ordinance between Hong Kong and other States Parties of the Convention, the Order allows assistance to be provided or obtained in accordance with the procedures set out in the Ordinance and the relevant provisions in the Convention. The mutual legal assistance arrangements under the Convention are in conformity with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

The Legislative Council set up a Subcommittee in April 2008 to scrutinize the Order. I would like to thank the Chairman of the Subcommittee, the Honourable James TO, and other Members for their examination of the Order.

The Subcommittee has enquired about the effect of the Order. The Order, which recites the Convention in Schedule 1, directs that the Mutual Legal Assistance in Criminal Matters Ordinance shall, subject to the modifications specified in Schedule 2 to the Order, apply as between Hong Kong and the foreign States Parties of the Convention. Schedule 2 to the Order modifies section 17(3)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance such that the safe conduct period of a person who consents to give evidence in a proceeding in the territory of the requesting State Party will be the period agreed upon by the requesting and the requested States Parties or, if no such agreement is made between the two Parties, 15 days, as stipulated in Article 18(27) of the Convention.

It is very important for the Order to be made. Apart from fulfilling Hong Kong's international obligations on mutual legal assistance under the Convention, it also considerably strengthens Hong Kong's co-operation with foreign jurisdictions in mutual legal assistance in criminal matters.

I implore Members to approve the making of the Order.

Thank you, Madam President.

The Secretary for Constitutional and Mainland Affairs moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order, made by the Chief Executive in Council on 8 April 2008, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Constitutional and Mainland Affairs be passed.

MR JAMES TO (in Cantonese): Madam President, I speak on the motion moved by the Secretary for Constitutional and Mainland Affairs in my capacity as the Chairman of the Subcommittee on Subsidiary Legislation to Implement the

Obligations under the United Nations Convention Against Transnational Organized Crime (the Convention).

The Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (the Order) is one of the subsidiary legislation scrutinized by the Subcommittee. The Subcommittee notes that Schedule 2 to the Order modifies section 17(3)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance such that the safe conduct period of a person who consents to give evidence in a proceeding in the territory of the requesting State Party will be the period agreed upon by the requesting and requested State Parties or, if no such agreement is made between the two Parties, 15 consecutive days.

The Subcommittee supports the making of the Order to implement the obligations on mutual legal assistance under the Convention.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to reply?

(The Secretary for Constitutional and Mainland Affairs shook his head to indicate that he did not wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Second motion: Approving the Mutual Legal Assistance in Criminal Matters (Finland) Order.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Finland) Order (the Finland Order), as printed on the Agenda, be passed.

Hong Kong has been actively co-operating with other jurisdictions in combating serious crime, and is committed to concluding bilateral agreements with partners who intend to provide closer co-operation in mutual legal assistance in criminal matters. These bilateral agreements ensure reciprocal assistance between the contracting parties, and are conducive to enhancing international co-operation in the fight against transnational crime.

The Mutual Legal Assistance in Criminal Matters Ordinance provides the statutory framework for implementing agreements on mutual legal assistance signed between Hong Kong and other jurisdictions, enabling assistance to be provided to or obtained from foreign jurisdictions in the investigation and prosecution of criminal offences, which includes the taking of evidence, search and seizure, production of material, transfer of persons to give evidence and confiscation of the proceeds of crime.

Pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance, the Chief Executive in Council has made the Finland Order to implement the bilateral agreement on mutual legal assistance in criminal matters signed between Hong Kong and Finland. By applying the Mutual Legal Assistance in Criminal Matters Ordinance between Hong Kong and Finland, the Order allows Hong Kong to provide and obtain assistance in accordance with the procedures set out in the Ordinance and the provisions under the agreement. As the legislation and arrangements on mutual legal assistance in criminal matters vary from

jurisdiction to jurisdiction, modifying certain provisions of the Mutual Legal Assistance in Criminal Matters Ordinance to reflect the practices of individual jurisdictions in implementing the orders on the bilateral agreements concerned is often required. Such modifications are necessary to enable Hong Kong to discharge its obligations under the bilateral agreements concerned. The modifications made for the bilateral agreement between Hong Kong and Finland are specified in Schedule 2 to the Order. These modifications do not affect the substantial conformity of the Order with the provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

The Legislative Council set up a Subcommittee in May 2008 to scrutinize the Order. I would like to thank the Chairman of the Subcommittee, the Honourable James TO, and other Members for their comments on the Order.

The Subcommittee asked us to explain the scope of assistance that might be provided by a "witness" referred to in Article 15(1) of the bilateral agreement between Hong Kong and Finland on mutual legal assistance in criminal matters. Since the law of Finland permits the transfer of prisoners only if they are to appear as witnesses in the requesting party, Article 15(1) provides that the requested party may transfer a person in custody to the requesting party as a witness. A "witness" refers to a person who gives evidence in any pre-trial investigation or judicial proceedings of the requesting party. Such assistance is within the scope of assistance permitted under sections 16 and 23 of the Mutual Legal Assistance in Criminal Matters Ordinance.

Article 21(2) provides that the Agreement shall apply to offences committed before and after its entry into force. The Subcommittee enquired whether the provision was in conformity with the Mutual Legal Assistance in Criminal Matters Ordinance and the relevant human rights safeguards. We have explained to the Subcommittee that the Mutual Legal Assistance in Criminal Matters Ordinance covers offences committed before and after the entry into force of relevant bilateral agreements. Indeed, the bilateral agreements on mutual legal assistance signed between Hong Kong and many other jurisdictions contain provisions similar to Article 21(2). That provision is consistent with the Mutual Legal Assistance in Criminal Matters Ordinance as well as Hong Kong law concerning human rights.

The making of the Finland Order will enable the implementation of the bilateral agreement signed between Hong Kong and Finland on mutual legal

assistance in criminal matters. This is very important to the strengthening of Hong Kong's co-operation with foreign jurisdictions in mutual legal assistance in criminal matters.

I implore Members to approve the making of the Finland Order.

Thank you, Madam President.

The Secretary for Constitutional and Mainland Affairs moved the following motion:

"RESOLVED that the Mutual Legal Assistance in Criminal Matters (Finland) Order, made by the Chief Executive in Council on 22 April 2008, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Constitutional and Mainland Affairs be passed.

MR JAMES TO (in Cantonese): Madam President, I speak on the motion moved by the Secretary for Constitutional and Mainland Affairs in my capacity as the Chairman of the Subcommittee to study the Mutual Legal Assistance in Criminal Matters (Finland) Order (the Subcommittee).

The Mutual Legal Assistance in Criminal Matters (Finland) Order (the Finland Order) sets out the mutual agreement on mutual legal assistance in criminal matters signed between the Hong Kong Special Administrative Region and Finland, and the modifications to the Mutual Legal Assistance in Criminal Matters Ordinance.

As for how to enforce the requirements stipulated in Article 12(6) of the Agreement, the Administration has explained that, for instance, where a person is served any document in Hong Kong upon a request from Finland, the person will not be liable for any penalty for non-compliance with the requirements in the document. However, if the person subsequently enters Finland of his own free

will and is duly summoned by the Finland authority, the person cannot claim protection on the ground that he has been served the document in Hong Kong.

The Subcommittee has expressed concern about whether the provision for application of offences committed before the entry into force of the Agreement stipulated in Article 21(2) of the Agreement would be in compliance with the Mutual Legal Assistance in Criminal Matters Ordinance and the human rights protections provided under the Hong Kong Bill of Rights Ordinance.

The Administration has explained that, pursuant to the Mutual Legal Assistance in Criminal Matters Ordinance, requests for legal assistance are not subject to any limitations relating to the timing of the entry into force of any agreement on mutual legal assistance. As for human rights safeguards, the scope of assistance under the Agreement is restricted to the investigation and prosecution of crimes committed before or after the entry into force of the Agreement, and the related proceedings. It does not in any way create retrospective criminal liability or penalty. The Administration therefore considers that Article 21(2) of the Agreement is in conformity with Hong Kong law concerning human rights.

Madam President, the Subcommittee supports the passage of the Finland Order.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Constitutional and Mainland Affairs, do you wish to reply?

(The Secretary for Constitutional and Mainland Affairs shook his head to indicate that he did not wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' BILLS

Second Reading of Members' Bills

Resumption of Second Reading Debate on Members' Bills

PRESIDENT (in Cantonese): Members' Bill. We now resume the Second Reading debate on The Hong Kong University of Science and Technology (Amendment) Bill 2008.

THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY (AMENDMENT) BILL 2008

Resumption of debate on Second Reading which was moved on 11 June 2008

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

MR ABRAHAM SHEK (in Cantonese): President, Mr CHEUNG Man-kwong has raised a query. Since we have now reduced the number of University

Council members and several government officials will cease to be appointed to the Council, Mr CHEUNG is worried that the Government will make arrangements for other people to join the Council in future. However, the Government has informed me that it will not do so. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That The Hong Kong University of Science and Technology (Amendment) Bill 2008, be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Hong Kong University of Science and Technology (Amendment) Bill 2008.

Council went into Committee.

Committee Stage

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

**THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY
(AMENDMENT) BILL 2008**

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of The Hong Kong University of Science and Technology (Amendment) Bill 2008.

CLERK (in Cantonese): Clauses 1 to 8.

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 clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Members' Bills

PRESIDENT (in Cantonese): Members' Bill. Third Reading.

**THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY
(AMENDMENT) BILL 2008**

MR ABRAHAM SHEK: President,

The Hong Kong University of Science and Technology (Amendment) Bill 2008

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That The Hong Kong University of Science and Technology (Amendment) Bill 2008 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): The Hong Kong University of Science and Technology (Amendment) Bill 2008.

MEMBERS' MOTIONS

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

PRESIDENT (in Cantonese): Members' motion. First motion: Proposed resolution under the Interpretation and General Clauses Ordinance to repeal the Pensions Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008.

I now call upon Mr LEE Cheuk-yan to speak and move his motion.

MR LEE CHEUK-YAN (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The motion seeks to repeal the existing Pensions Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (the Amendment Order) of the Government. The main purpose of the Amendment Order is to convert Model Scale 1 (MOD 1) Category B staff to Category A status. However, as the staff in question will not enjoy the same benefits after the conversion and are also subject to certain potential risks, I move this motion to repeal the Amendment Order, so that the staff can continue to enjoy their original benefits. However, this does not mean that I am satisfied with their original status, and it is my wish that MOD 1 staff will eventually succeed in their fight for truly equal treatment.

They now belong to Category B and the greatest difference between their benefits and those of Category A officers is a difference of nine leave days. The proposal of the Government is very strange in that it is unwilling to allow MOD 1 staff to enjoy the same number of leave days upon their conversion to Category A status, so what advantage will there be for such workers? On the contrary, the conversion will be of great advantage to the Government and why

is that? It is because when such workers are converted to Category A status, the Government will enjoy the right of central posting. Then, what is the right of central posting? It is a right which allows the Government to have flexibility in staff deployment when staff mismatch occurs in different government departments or when there is an excess of staff in a certain department and shortage in the other. Members may think that nothing is wrong with inter-departmental posting, but that is not actually the case. If some junior workers are transferred to other departments to take up duties that are different from their normal duties, they may be forced to resign or retire early in the face of work pressure. As such, MOD 1 workers are most unhappy with this central posting right.

President, I would like to raise one point in particular and that is, the Government has often stressed that it will continue to review the need for outsourcing services in light of the overall development of public services in future. We all know that the outsourcing of government services will result in exploitation of outsourced workers, while the existing civil servants will then be made redundant, which means continuously screening out civil servants and then outsourcing their jobs, and the Government will eventually be able to hire workers at the cheapest wages, thus resulting in the exploitation of outsourced workers. This outsourcing mechanism has always been in operation and has now reached a stage that the Government cannot outsource any more of its services, though it has always longed to do so, for the relevant civil servants are still in service. So, whenever civil servants leave the service, part of their job will be outsourced.

So, what can be done, now that civil servants are still in service? I do not know whether the Government will employ such a tactic or not, and that is, implementing central posting by first converting those staff to Category A status. Though the Government has promised not to make any changes within two years, nobody knows what will happen two years later. If, two years later, the Government said that some jobs have to be outsourced, then it will result in redundancy. Under the new arrangement, redundant staff may have to be transferred to other departments, and these civil servants will feel very insecure.

We hope that if the Government is really sincere in treating all civil servants equally, then it should offer them equal terms of employment.

However, if the Government is not sincere in treating them equally, and if it only pretends to do so while its underlying intention is to transfer them to other departments, then it is still meaningless to grant them more leave days, and the whole thing will only turn into a sugar-coated poison. Once the arrangement of central posting is implemented in future, the jobs of MOD 1 workers at the basic ranks will be greatly threatened.

As such, President, I am moving this motion in the hope that Members will consider not to support this deployment proposal of the Government. I also hope that Members will continue to support us in fighting for their real conversion to Category A status, instead of just giving them a Category A status nominally without offering them equal treatments in substance. And, what we are most dissatisfied with is the absence of equal treatment. President, I move this motion with the intention of repealing this Order of the Government.

I would also like to make another point and that is, the Government has failed to consult MOD 1 workers in the course of the whole exercise. Of course, you may say that the Government has already consulted the MOD 1 Staff Consultative Council (MOD 1 SCC), but the staff are kept in the dark. Therefore, if the Government wishes to conduct consultation, it should do so on an extensive basis, before bringing the issue back to the MOD 1 SCC. It means that the Government should first listen to the views of the staff before considering the final decision of the MOD 1 SCC. However, the Government has not done so in the course of the whole consultation exercise. Therefore, we protest against the fact that the Government has not conducted consultation, and we also think that the way which it handled the matter as a whole is improper. As such, we hope to draw the attention of the Government to the fact that if it wishes to implement similar measures in future, it should consult all staff on an extensive basis.

Regardless of the outcome of this motion, and even if the Government's Amendment Order is passed, the staff can still opt against the conversion and they can indeed make a choice freely. Today, I just wish to express my dissatisfaction over the lack of consultation and the whole arrangement. Finally, even if the Amendment Order were passed, the staff will still opt against conversion. As such, the Amendment Order will actually not make any headway and nothing will be achieved.

I would also like to take this opportunity to urge the Government to offer those workers genuinely equal treatments as soon as possible. Today, Hong Kong should no longer categorize civil servants by so many ranks left behind from the colonial days. The MOD 1 scale should not exist at all and all staff should be incorporated into the Master Pay Scale and fitted into the lowest rank as a start. All staff should be remunerated on a suitable pay scale and enjoy equal benefits, and there should not be so many different ranks as in the colonial days. To completely resolve the problem is the greatest wish of MOD 1 staff, a wish which we now express on their behalf.

Thank you, President.

Mr LEE Cheuk-yan moved the following motion:

"RESOLVED that the Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008, published in the Gazette as Legal Notice No. 104 of 2008 and laid on the table of the Legislative Council on 7 May 2008, be repealed."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed.

PRESIDENT (in Cantonese): Secretary for the Civil Service.

(The Secretary for the Civil Service shook her head to indicate that she did not wish to speak)

MS LI FUNG-YING (in Cantonese): Madam President, I speak in the capacity of a member of the Subcommittee on Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order and report on the deliberations of the Subcommittee.

The Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order seeks to include MOD 1 grades as established offices, so as to enable civil servants of this grade to become Category A officers.

The Subcommittee held three meetings with the Administration to discuss the relevant issue and listened to the views of staff representatives. The Subcommittee noted that the request of the staff side of the MOD 1 Staff Consultative Council (MOD 1 SCC) for conversion to Category A status stems from a desire for greater security in employment and better safeguard in terms of disciplinary and related procedures. As such, the majority of members of the Subcommittee, staff associations and unions giving views to the Subcommittee have indicated support for the proposed conversion.

However, the Subcommittee noted that the conversion proposal cannot fully satisfy the demands of the staff side. Some staff associations and unions have requested that the leave earning rate of their staff should be enhanced after the conversion and the option period should be lengthened to one year. The Subcommittee noted that the staff side holds a strong view regarding the inter-departmental posting arrangement. Under the Administration's proposal, MOD 1 common grade staff who opt for and are converted to Category status will be subject to inter-departmental posting at the discretion of the management to fill posts in the same grades. The staff side is also worried that the Government may make use of this flexibility to speed up the outsourcing of government services.

Furthermore, due to variation in organization culture and job requirements and skills among different departments, the affected staff may find it difficult to adapt, thus affecting their performance. Eventually, they may be treated like "human ball" and kicked between different departments or forced to retire. The staff side, therefore, requests that the inter-departmental posting arrangements at the discretion of the management be deleted from the conversion proposal. Some staff associations and unions also hold the view that the consultation conducted by the management is not adequate and request that another round of consultation be conducted.

Considering the strong views expressed by the staff side, the Subcommittee asked the Administration to consider deleting the condition on inter-departmental posting at the discretion of the management from the conversion proposal. The Administration advised that the inter-department posting condition is part and parcel of the conversion proposal. The purpose of the proposal is not to speed up the outsourcing of government services but rather to enhance staff deployment flexibility within the Civil Service and optimize

utilization of MOD 1 staffing resources, so as to deal with the problem of mismatch between MOD 1 common grade posts and staff which may occur in future.

In response to members' request, the Administration formulated the following guiding principles for effecting future staff posting arrangement.

- (i) Staff who have tendered a notice of retirement/resignation or have less than five years' remaining service prior to their normal retirement age will not be considered for inter-departmental posting;
- (ii) Serving staff appointed to designated work stream will only be considered for inter-departmental posting to the same work stream and not other work streams in another Bureau/Department;
- (iii) Due regard will be given, as far as possible, to the location of the new workplace, the requirements of the job, and the work experience, skills and qualifications of the pool of staff available for inter-departmental posting; and
- (iv) reference will be made to the "last in, first out" principle in arranging the release of staff when a mismatch situation arises.

The Administration advised that staff posted from one Bureau/Department to another under the central clearing house mechanism will not normally be allowed to revert to the original department following the inter-departmental posting. However, the Administration will deal with each case on its own merits.

On the proposal to lengthen the duration of the option period for the conversion, the Administration agreed to extend the option period to around six months to allow more time for MOD 1 staff to consider before making a decision. The staff side of MOD 1 SCC supported the decision of the Administration. The Subcommittee has also examined why the Administration has refused to improve the terms and conditions of employment for those MOD 1 staff who opt to change to Category A status. The Administration's view is that in the absence of any major change in the duties and skills required of MOD 1

staff, there is no justification to alter the terms and conditions of employment for MOD 1 staff. The Subcommittee noted that the staff side of MOD 1 SCC, including all its constituent staff unions, expressed support for the Order and the implementation of the conversion proposal, so that individual MOD 1 staff could make their own choice on whether to opt for the conversion.

Furthermore, the Administration has undertaken that no serving civil servant would be made redundant due to outsourcing. In considering that the maximum number of MOD 1 common grade staff who would be subject to inter-departmental posting is only in the region of some 4 000, and that the Administration has undertaken to consider allowing staff posted from one Bureau/Department to another under the central clearing house mechanism to revert to the original department under exceptional circumstance and refraining from constantly posting the staff in question from one Bureau/Department to another, the majority of the members of the Subcommittee are in support of the Order.

Thank you, Madam President.

Madam President, I will now speak in my personal capacity.

In the course of the deliberations by the Subcommittee on Pension Benefits Ordinance (Established Offices) (Amendment) (No. 2) Order 2008, the staff side has expressed different views, both for and against the proposal with their own justifications. What we have to criticize, however, is the fact that the Government has taken advantage of MOD 1 civil servants' honest and simple wish for inclusion into the Master Pay Scale without taking into account the work pressure and worries of the staff appointed at basic ranks. As a result, the advantage of job stability enjoyed by MOD 1 staff has been undermined by the conversion. The management policy which differentiates the Master Pay Scale from the MOD 1 Pay Scale in civil service recruitment is discriminatory in nature.

MOD 1 staff on the Pay Scale with only 13 salary points are often labeled as lower rank civil servants and in no way comparable to staff on the Master Pay Scale with 49 salary points. Over the past 10 years or so, the MOD 1 SCC has fought for their conversion to established offices under the Master Pay Scale so that they will no longer be labeled in such a way. Today, as a result of the

efforts made in the past decade or so, it has finally obtained the Government's consent to give MOD 1 staff the option of conversion to established offices of Category A status. In addition to their converted status, the leave accumulation limit of the staff will also be increased, and in the event of their failing to pass the probation bar in relation to application for other posts, the staff in question may revert to their original posts. The staff side representatives of the MOD 1 SCC have agreed to all these terms.

However, while agreeing to the conversion of the MOD 1 staff, the Government has added a new condition to the MOD 1 staff's terms of employment to provide for inter-departmental posting after the conversion. This condition has a very profound impact for it has seriously threatened the job stability of MOD 1 staff, and inter-departmental posting has also become a requirement for the future recruitment of civil servants appointed at basic ranks, thus making it all the more difficult for disadvantaged workers to join the Civil Service.

I can appreciate why the Administration has stressed that the inter-departmental posting arrangement is part and parcel of the conversion exercise, in order to enhance staff deployment flexibility within the Civil Service and optimize utilization of staffing resources. However, as the inter-departmental posting arrangement is a major change in MOD 1 staff's job requirements and they will lose their job stability as a result, it will be very unfair to the staff who have opted for the conversion if the Government does not give them any material compensation or reflect this on their salary scale.

In the documents submitted to this Council, the Government pointed out that it is reasonable to give an option to serving MOD 1 staff to decide whether or not to convert from Category B to Category A status on condition that the conversion should not lead to any substantial change in the pay and conditions of service of MOD 1 staff, having regard to the fact that the change in status will not give rise to any major change to their duties and skills.

If this statement is true, then how come there is another position stressed by the Government? That is, the position that the inter-departmental posting is part and parcel of the conversion proposal. The fact that the new arrangement

of inter-departmental posting is part and parcel of the conversion proposal has precisely reflected that there are major changes in the MOD 1 staff's conditions of service. This conversion arrangement can be best described by a Chinese slang "eat and take away at the same time", used by the former Secretary for Civil Service, Mr Joseph WONG, in his article criticizing the further development of the accountability system. The Government has, on one hand, tried to take advantage of the inter-departmental posting, but is unwilling to make compensation on the other.

In order to dispel the worries of the staff over job instability, the Government has put forward some alleviation measures. A key measure is that the Administration will only make inter-departmental posting in the event of any mismatch between MOD 1 common grade posts and staff and it does not anticipate any such mismatch between 2009 and 2010. However, as in the Chinese character of official (官) which has two mouths, members of the public are not unfamiliar with the performance of the Government on its projection of staff surplus or staff shortage. Several years ago, when the Government was downsizing the Civil Service on a continuous basis, it had tried, by carrot and stick, to ask the staff whom it regarded as redundant to leave the Civil Service by various voluntary departure schemes. But it was subsequently found that there was actually a shortage of staff and recruitments had to restart again. We can all remember these vividly.

As such, how can the Government guarantee that inter-departmental posting will only be made in the event of a mismatch? We are worried about this and hope that the Government will not repeat the mistakes it made in downsizing the civil service establishment.

The staff are worried that they will be transferred away one after another on the excuse of a mismatch and new staff will then be recruited by way of outsourcing on the excuse of staff shortage. This is what the labour unions and I are worried about. As regards staff deployments, the Government has made an undertaking in regard to certain principles, for example, staff who will soon retire will not be considered for transfers, staff will not be transferred to a different work stream, and so on. However, such arrangements are all minor

adjustments and cannot cover the fact that the conversion will change the job requirements of MOD 1 staff.

Though the staff are free to choose whether or not to opt for the conversion, it is the responsibility of the Government to establish a reasonable system and the availability of options to staff should not be used as an excuse to absolve itself from its dereliction of duty. As things now stand, the arrangement has caused a rift among MOD 1 staff and this is similar what happens here today as a colleague proposes to repeal the subsidiary legislation. It is most regrettable that a proposal which could have improved the rights of civil servants appointed at basic ranks will end up in causing further rifts among labour associations.

Finally, Madam President, I have to clarify my voting preference. As a representative of the labour sector in the Legislative Council, I respect the outcome of the negotiation between the staff unions and the Government and this is the fundamental principle which I have adhered to in scrutinizing the subsidiary legislation. Nevertheless, I still hope that the Government and the staff side will continue to carry out further discussions on the unreasonable aspects of the conversion and rectify the defects and imperfections of the proposal. The Government and the staff side should share the common goal of giving play to justice, so as to safeguard labour rights.

Madam President, I so submit.

MR CHEUNG MAN-KWONG (in Cantonese): President, Members discussed the issue of MOD 1 staff status at the meeting of the Legislative Council Panel on Public Service on 21 April this year. The Government proposed that MOD 1 staff should be given an option to convert to Category A status or retain Category B status, and those who opt for the conversion can enjoy the more specific job security of existing Category A civil servants.

However, the staff have not found such safeguards and advantages totally acceptable. As the Government has insisted that the conversion should not lead to any change in the pay and condition of service, some civil service unions have expressed their dissatisfaction, worries and agonies on the following grounds:

- (1) Junior Category A officers are entitled to 31 days of vacation leave but the leave entitlement of staff who have opted for the conversion only remains at 22 days. As this is different from the case of Artisan grade staff whose leave entitlement can be increased to 31 days upon their conversion from MOD 1 to Category A status 20 years ago, the staff consider that the Government owes them nine leave days and an Overseas Education Allowance to which Category A staff are originally entitled;
- (2) Staff who have opted for the conversion must accept the inter-departmental posting arrangement of the Administration. They are of the opinion that since they are mainly responsible for departmental technical duties, their current expertise can hardly be transferred to the new department. For example, hawker control personnel may have to start afresh upon posting to a new department. This can result in the minor problem of disrupting their work and living habits or the more serious problem of them becoming "human balls" or redundant;
- (3) Mismatch in manpower supply and demand may be used as an excuse for posting them out of the department arbitrarily, in order to achieve the goal of speeding up the pace of outsourcing in certain departments; and
- (4) Inadequate consultation, and the option period of three months for the conversion is also too short.

President, the main reason why a proposal which can apparently improve the job security of the staff has ended up in arousing all sorts of suspicions and worries among the staff is that, on one hand, the proposal of the Government is not a complete conversion scheme, for it has only allowed MOD 1 staff to convert to Category A status in name only without actually allowing them to enjoy all the benefits of Category A staff; on the other hand, the staff side lacks confidence in the Government and thus takes every precaution to prevent the Government from getting rid of them under the pretext of manpower mismatch.

As such, this conversion proposal has turned into something which is not worth keeping and yet not bad enough to be disposed of. While it does not offer the staff many advantages, it also poses certain risks. However, since the staff

can decide whether or not to opt for the conversion in accordance with their personal circumstances, the Democratic Party does not wish to cause obstacles to the staff in making their own choice or force them to convert their status. We only hope that the staff who are affected can obtain what they need. Even though the proposal is of little worthiness, it is still better than nothing; and if they do not wish to opt for conversion, they are also free to do so. As such, the Democratic Party will abstain from voting.

I so submit.

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

MISS CHAN YUEN-HAN (in Cantonese): President, ever since our economy took a downturn in 1997, gone were the good old times when Hong Kong's wage earners did not need to worry about losing their jobs. People are now becoming more and more worried about losing their jobs. At first, this only applies to older people in their thirties or forties, but eventually even people with high education levels also begin to experience difficulties in employment. But now, even the employment rate of the younger group between 14 to 19 years old is also on the low side.

President, the reason I mention such facts is that I have been going through the 2008 civil service reform. A lot of problems have actually occurred in the wake of the civil service reform and in the process, I was also involved in dealing with the relevant labour disputes. All these cases have one thing in common and that is, the workers in question, who are workers at basic ranks or those with skills but have not yet reached a professional level, are all easily found in the market.

We always come across great difficulties when we work on such cases each time. The difficulties come from the Government, department heads in particular, who would say: "Do you want the job? If you do not want it, many people are waiting to do it." Of course, the Secretary may say later that: "No, this is not true, for those people are not civil servants." Wrong! In fact, civil servants and staff on non-civil service contract terms were involved in the cases which I have handled. I have handled many such cases since 1998, and it was only until WONG Kwok-hing joined the Legislative Council in this term that my workload has been eased as I can refer the cases to him. He has handled a lot of

similar cases which involved civil servants at basic ranks. Under such circumstances, President, I was actually in great agony when I scrutinized this Order.

As Ms LI Fung-ying said earlier, when we met with the staff representatives of the Model Scale 1 Staff Consultative Council (MOD 1 SCC), we knew that they were fully aware that such terms of employment are of little worthiness and yet not bad enough to be disposed of. Since they are evidently civil servants, why should they be differentiated as Category A or B? This is downright discriminating! Why should civil servants and workers who are all working for the Government and serving the Hong Kong society be divided into two categories? Over the years, they hope that they could be granted the title of Category A officers and their request is actually reasonable and justified for it was extremely unfair for the colonial government to repress civil servants appointed at basic ranks in this manner in civil service recruitment.

President, we found ourselves being put in a very difficult position as we were sandwiched between the staff and the Government when we met the representatives of the MOD 1 SCC in this Council and found that they were offered such a proposal of little worthiness while they have been fighting for fair and reasonable terms, because we can see the whole picture, as well as problems in front of them and other problems. The problems are explained by Ms LI Fung-ying in her earlier report made on behalf of Mr KWONG Chi-kin on the views we put forward in the Subcommittee. For example, MOD 1 staff will not be entitled to benefits enjoyed by Category A staff upon their conversion, and they will have less vacation days and no Overseas Education Allowance for their children. However, they will be subject to one constraint, and that is, the central clearing house mechanism for inter-departmental posting. I believe the President may have also heard about this. That is, the Government cannot terminate the service of a civil servant under normal circumstances, but has the right to do so if there is a surplus of staff or posts in a certain rank.

I remember clearly that workers of the Cheung Sha Wan Slaughterhouse, where cows and pigs are slaughtered, were also civil servants, but when the Government said that the place would no longer be used as a slaughterhouse and all facilities would be moved to Sheung Shui, what happened? The Government said that the workers had to be made redundant because there would be no more equivalent for the Butcher grade. LAM Woon-kwong, the acting Secretary back then, was a very good Secretary and he was faced with the situation in

which this group of people would all be dismissed if there were no similar posts to accommodate them. These workers were also civil servants, only that they belonged to the MOD 1 grade. Eventually, LAM Woon-kwong could also appreciate our difficulties. We approached many departments in seek of help and we went to see TUNG Chee-hwa. LAM Woon-kwong finally proposed that we should first deal with the issue at hand, and then find ways to hire those workers. See how miserable the workers were back then! But things have never been the same since then. I have quite a good impression of LAM Woon-kwong because he was willing to find a solution from the perspective of the grassroots. Why do I say that such cases have never got a chance to be handled in this way again? President, this is because I have got many cases at hand, some of which are even taken to court or transferred to the Civil Service Bureau but the staff at basic ranks have lost in all of these cases. What kind of situation is this?

President, under the mechanism of inter-departmental posting — and we are not even talking about conversion from Category B to Category A status, but only a case of transfer in the same category. There was a MOD 1 staff who served in the Civil Service for more than 10 years, and though he was his same old self after his transfer to a new post, he was accused of being slow and having poor eyesight in the new department. It was very strange that he had never been accused of being slow and having poor eyesight in the former department where he had worked for 10 to 20 years, but he was being constantly transferred at the new department.

President, I have dealt with several similar cases, including one in which the staff in question was a very young woman in her thirties who eventually suffered from a mental problem. Her whole family and I had written to the Civil Service Bureau many times. So, when I saw the Order at the Subcommittee, I told the Government that if it could handle a case which gives me favourable experience like the case of the Cheung Sha Wan slaughterhouse handled by LAM Woon-kwong, then I would still have faith in the Government. However, in most of my cases at hand and cases which I handled in the past, the staff always lost — that is, they lost under the appeal mechanism, and our side was said to be wrong in each and every case, and I find this unjustified, totally unjustified! Among the cases which I have handled, there were some in which the father, brothers and sisters of the MOD 1 staff and the staff in question, had made the appeal together. Sometimes I would feel very sad when I see such situations. They would often say: "We are not doing this with any motive,

except that we hope to see our child getting a job, for no one outside the Government would employ him again after he left the Civil Service."

Secretary, please try to take a look at my cases. I have made very severe criticisms in front of your officials when I scrutinized this Order. You tell me that there is a so-called central clearing house mechanism today, but the *status quo* will only be maintained for two years and you promised us that nothing will be changed in two years, but will there be any outsourcing in future? You have not said anything about this. What about the manpower? Nothing has been mentioned. You then said that the staff has already agreed to this. This made me feel very unhappy because when facing this group of people who are less competitive in the market, the heads of government departments just cannot regard them as uncompetitive. This is a question of how the entire Government views this group of civil servants who have always been dedicated to their work. You have never considered this and you only consider things from the market perspective. If you ask for my opinion on this Order, I will say that the attitude of the Government is this: I will not offer you (the staff) the salary that you fight for and will not give you the benefits; I can even make use of the central clearing house mechanism to "cook you up and eat you" in future and you will not even know what has happened. I find this very unacceptable.

President, I am saying this because from the cases which I have handled, I find that the terms offered by the Government during our negotiations over the demands of our MOD 1 SCC staff are too harsh. On one hand, the Government is aware of the wish of the staff for an equal status, and that such a wish is shared by civil servants at rank I or II, and in Category A or Category B, for they all wish to fight for a fair and equal civil servant status. However, when the Government sees what they are fighting for, it is not willing to grant them their entitlements and worse still, it has even planted this time bomb of a central clearing house mechanism.

As such, in the course of our entire scrutiny, we have held several meetings for an Order, which is actually very simple, and things were not settled until the Government put forward the terms that Ms LI Fung-ying mentioned earlier. Well, we have discussed the terms but so what? There are still many unresolved issues which I need to reconsider what to do. Friends of the MOD 1 SCC, including those for and against the conversion, will sometimes say to me:

"Miss CHAN, this is almost acceptable. At least, they have given us a little something extra."

Frankly speaking, I am extremely dissatisfied and I have voiced my dissatisfaction in my speech earlier, and that is: Secretary, can officials in charge of civil service matters change their views on the MOD 1 staff? Why can Category A staff enjoy more vacation days than Category B staff, but when Category B staff are converted to Category A status, they are not offered the same terms? Why is it that when they are converted to Category A status, their children cannot enjoy the same education benefits as children of their counterparts? This conversion is actually a fake according to our philosophy. Since the performance of the staff is considered as good, and if he is given Category A status at least in title, I think this title should be seen as a form of respect for their work. However, from the position of workers, we will ask: why are they not offered the same terms of employment? I hope that the Secretary can tell Hong Kong people later why you have promised to allow them to convert their status in the negotiation, but failed to offer them the benefits of Category A staff. Is it because they are not worthy of such terms and conditions? Is it because they will still be considered as secondary civil servants even if they are converted to Category A status? Or is it because you really do not want to pay any attention to them and you only hope to get rid of them, and once their jobs are outsourced, such staff will be finished and their posts will also be deleted? Is that the case?

I hope the Secretary can give me an explanation, because I have serious complaints against the officials who first came to our meetings. Later, the situation became better when the Director of the MOD 1 grade came to our meetings, because he is familiar with the views of staff side of MOD 1 SCC and Category B civil servants. At least, he was willing to do something in certain areas and that is after all better than nothing, and an example in this regard is item (b). When we were scrutinizing the Order, he eventually agreed to negotiate with the labour unions. Ms LI Fung-ying has already read out the relevant part earlier, but here I would like to make a little analysis. Item (b) provides that "serving staff appointed to designated work streams will only be considered for inter-departmental posting to the same work stream and not other work streams." Furthermore, item (c) also states that "due regard will be given, as far as possible, to the location of the new workplace, the requirements of the job, and the work experience, skills and qualifications of the pool of staff

available for inter-departmental posting." Such provisions have been added by the Government after consulting us.

I have also asked whether a few more provisions could be added, such as taking into account the staff's place of residence, health conditions, and so on. These are the problems which I have encountered in the past when I dealt with such cases, for postings were often made with the intention of causing certain inconveniences to the staff. For example, the Administration is aware that a certain staff lives in Wan Chai and therefore transfers him to Tin Shui Wai and even requires him to report duty on time, because the Administration thinks that the staff in question would not be able to hold onto his job for a long time. Since transport fares are high and Category B civil servants are not highly paid, it is believed that the staff cannot hang on for a long time. The Administration may also transfer the staff constantly from one post to another and will also ask them to leave the service on medical grounds. Though we have always mentioned such situations, the officials have not listed them in the guiding principles for department heads. I cannot remember whether it is LI Fung-ying or KWONG Chi-kin who once said this: "government offices are like iron and officials are like running water".

Today, the Director of the MOD 1 grade is very sympathetic towards the staff and can fully understand the issues I have raised. He also knows that the staff lost their cases every time even when they appealed to the Civil Service Bureau. Under such circumstances, he is willing to add some footnotes, but as regards what I mentioned earlier — such as cases that the staff may be posted to workplaces which are very far away from their homes without regard to the fact they cannot afford exorbitant transport fares, or they may still be late for work even if they leave their homes very early in the morning and are forced to quit, the Administration still thinks that it is the problem of the staff themselves and the staff will be reprimanded for not obeying orders when they encounter problems as a result of the transfer. The second reason which may cause the staff to resign is that they will feel mentally distressed by the inter-departmental transfers and eventually be asked to resign of their own accord — all these have not been included in the guiding principles.

Today, I have brought along all the relevant documents. In the paper submitted to the Legislative Council, he has also mentioned factors such as medical condition. In paragraph 4 of the paper (CB (1)1759/07-08/1), it was

said that any relevant special considerations, for example, medical condition, will be taken into account. However, this has not been mentioned in the provisions of the Order. I think that, Secretary, if you are really sincere (I will put aside the issue of benefits for the time being, but will come back to it later), will you consider a bit more carefully about adding another provision in future, or will you openly give me a more detailed answer in your reply, so as to clear the doubts that we may have about you?

I think what the Government is doing now is planting a sugar-coated bomb. On the surface, it is a piece of very delicious candy, but in reality, it is seeking to transfer MOD 1 staff arbitrarily, staff who can be replaced by cheap labour which it thinks can be easily found in the market. I hope that the Secretary can give me a reply in this regard. President, I may say something more in this relation after the Secretary has given me a reply. My speech will end here for the time being, but I will speak again later. Thank you, President.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, I am sorry to disappoint you. As we are now debating on a resolution and the Council is not in Committee stage, each Member can only speak once with a speaking time limit of 15 minutes.

Does any other Member wish to speak? If not

(Mr WONG Kwok-hing raised his hand)

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, you may speak now.

MR WONG KWOK-HING (in Cantonese): President, since Ms LI Fung-ying and Miss CHAN Yuen-han have fully expressed the views of Members representing the labour sector, and since this has already been a very long meeting, I will not repeat what has already been said. As such, I will be brief and concise in saying a few words.

There is no doubt that the current arrangement is a piece of "chicken rib" which has little or no value, and I hope that the SAR Government and the Secretary could be more sympathetic, so that the rights, salaries and benefits of

these long-serving civil servants appointed at basic ranks can be safeguarded in the future conversion exercise, and that various measures can be adopted to gradually turn this "chicken rib" into a "chicken leg". In her response later on, can the Secretary help us to find a way to turn the "chicken rib" into a "chicken leg", a real "chicken leg" which is edible and tasty and greatly appreciated by the people? This is my first expectation.

President, my second expectation is to earnestly make an appeal to the Government. Since the labour unions have already fought for this for many years and their dreams may come true now, it is most essential that the "chicken rib" will not turn into "chicken bone" for people may be easily choked if they eat chicken bone, and if it is turned into "chicken shit", then the situation of the staff will be even more miserable. Therefore, I hope that the Government will tell us that it will not let this change or improvement become an excuse or condition for further expanding the outsourcing of government services, or further undermining the rights of these staff. So, I hope that the "chicken rib" will not turn into "chicken bone" and most importantly, it will never turn into "chicken shit". I hope to hear a response from the Secretary. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for the Civil Service to speak.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the purpose of the Pensions Ordinance (Established Offices) (Amendment) (No. 2) Order 2008 (the Amendment Order) is to declare Model Scale 1 (MOD 1) grades as established offices, so as to allow all serving MOD 1 staff to opt freely on whether or not to convert to Category A status, and to allow newly recruited MOD 1 civil servants to become Category A staff in future.

The Subcommittee established by the Legislative Council for the purpose of scrutinizing the Amendment Order has discussed in detail the proposal of converting MOD 1 civil servants from Category B to Category A status, in

particular the arrangement under which MOD 1 common grade staff who have converted to Category A status will be subject to inter-departmental posting when the need arises. Here, I would like to thank Mr KWONG Chi-kin, the Chairman, and all members of the Subcommittee. We are very happy to learn that the majority of members of the Subcommittee have indicated their support for the Amendment Order and the relevant arrangements.

Before I respond to the earlier speeches of Members, I would like to give an account of the background, basic principles and justifications of the conversion proposal.

Currently, all serving MOD 1 civil servants are Category B civil servants while the majority of all other civil servants are Category A civil servants. In short, MOD 1 civil servants are employed on month-to-month terms, while Category A civil servants are employed on permanent terms, thus the latter enjoy greater job security. Furthermore, Category A civil servants transferred to other grades through internal recruitment may revert to the parent grade if they fail to pass the trial bar, whereas Category B civil servants cannot do so and have to leave the Civil Service. Compared with a Category B officer, a Category A officer also enjoys better safeguard in respect of disciplinary and related procedures, in the sense that the Public Service Commission should be consulted before a decision is made on the punishment of a Category A officer or before requiring a Category A officer to retire in the public interest, but such arrangements are not applicable to a Category B officer.

For many years, the Staff Side of the MOD 1 Staff Consultative Council (MOD 1 SCC) has consistently fought for conversion from Category B to Category A status. In response to the Staff Side of the MOD 1 SCC's request, we have assessed the long-term service needs for a workforce of MOD 1 staff, and found it necessary to retain the workforce. We thus agreed that MOD 1 officers should be awarded Category A status, and their terms of employment, disciplinary and related procedures arrangements should be in line with the majority of other civil servants. As the conversion to Category A status involves a change in the terms of employment, and that is, from employment on month-to-month terms to permanent terms, we propose that serving MOD 1 staff should be given an option to decide whether or not to convert from Category B to Category A status.

As the main purpose of the conversion is to establish the Category A status of MOD 1 staff and does not involve any major change in duties and skills requirement, we are of the opinion that MOD 1 staff should be converted to Category A status under the principle of no change in pay and conditions of service. In short, the conversion should not lead to additional financial implications.

Under the existing terms and conditions of service, apart from the Supplies Attendant grade which belongs to the MOD 1 general grade, MOD 1 staff employed and managed by individual Heads of Department are not subject to inter-departmental posting arrangement. For example, in the event that there is surplus manpower in the MOD 1 common grade (such as Workman I and Workman II) in a certain department, the surplus manpower could not be transferred to other departments which have vacancies in the same grade. Under such circumstances, we find it necessary to enhance staff deployment flexibility within the Civil Service, so as to avoid any possible mismatch between posts and staff, so as to better utilize MOD 1 staffing resources. In this connection, we proposed that in the event of any mismatch between MOD 1 common grade posts and staff, serving MOD 1 common grade staff who have opted and converted to Category A status should be subject to inter-departmental posting to other posts in the same grade as arranged by the Administration. As the terms of employment for all MOD 1 staff who have opted to retain their Category B status will remain unchanged, the inter-departmental posting arrangement will not be applicable to them.

In order to encourage MOD 1 staff to opt for the conversion and thus achieve our goal of optimizing the utilization of MOD 1 staffing resources, we also proposed to slightly increase the leave accumulation limit of MOD 1 staff on local terms and are converted to Category A status: that is, the leave accumulation limit for staff with 10 years of service or more will be increased from 90 days to 100 days and that for staff with less than 10 years' service will be increased from 45 days to 50 days.

We have started to consult the Staff Side of the MOD 1 SCC on the conversion proposal since the end of last year. And, all constituent staff unions of the Staff Side of MOD 1 SCC have unanimously agreed to the early implementation of the conversion proposal. The conversion proposal was also supported by the Standing Commission on Civil Service Salaries and Conditions of Service (Standing Commission). If the Amendment Order is approved by the

Legislative Council, we will start the option period for the conversion as soon as possible and implement the conversion proposal in the fourth quarter of this year.

In the course of the Subcommittee's deliberations and from what Members said earlier, we find that there are several points which Members are more concerned about.

Some Members and Staff Side representatives are most concerned that MOD 1 common grades staff who have opted and converted to Category A status will be subject to the inter-departmental posting arrangement if and when the need arises. Their concern is two-fold: firstly, the adaptability of the relevant staff; and secondly, whether the inter-departmental posting arrangement is introduced with the intention of speeding up the pace of outsourcing of services.

First of all, we will not effect inter-departmental posting arbitrarily when the need does not arise. Inter-departmental posting will only be arranged when there is a mismatch between MOD 1 common grade posts and staff (that is, vacant MOD 1 common grade posts in a department and surplus Category A MOD 1 common grade staff of the same grade in another department) through the central clearing house mechanism. In effecting inter-departmental posting, we will adopt a balanced and pragmatic approach by adhering to the four guiding principles as follows:

- (a) Serving Category A MOD 1 common grade staff appointed to designated work will only be considered for inter-departmental posting to the same work stream and not other work streams of another department;
- (b) Due regard will be given, as far as possible, to the location of the new workplace, the requirements of the job, and the work experience, skills and qualifications of the pool of Category A MOD 1 common grade staff available for inter-departmental posting;
- (c) Category A MOD 1 common grade staff who have tendered a notice of retirement/resignation or have less than five years' of remaining

service prior to their normal retirement age will not be considered for inter-departmental posting; and

- (d) Subject to the three principles mentioned above, reference will be made to the "last in, first out" principle in arranging the release of Category A MOD 1 common grade staff for inter-departmental posting.

This set of guiding principles has already adopted the various proposals of the Staff Side and taken into account the operational needs of various departments. Subject to the passage of the Amendment Order, the Civil Service Bureau Circular to be issued in relation to the conversion proposal will also briefly describe such guiding principles, to alleviate the worries of the staff. In assessing the suitability of the Category A MOD 1 common grade staff for inter-departmental posting, the central clearing house mechanism will also take into account any special considerations of the relevant staff (for example, medical condition).

Staff posted from one department to another under the central clearing house mechanism will not normally be allowed to revert to the original department. It is the responsibility of individual department to look after the interest and well-being of staff under their management and will make every effort to address job-related difficulties or adaptation problems encountered by Category A MOD 1 common grade staff on inter-departmental posting, for example, through staff counselling, customized training as appropriate. Arranging a staff to revert to his original department may not be the only or the best solution. However, if there is a case which warrants special consideration, it will be dealt with on their own merits.

Staff Side representatives are worried that staff who have difficulties in adapting to new posts may be treated like "human balls" and may be constantly posted from one department to another. I have to stress that the Management of a department cannot post Category A MOD 1 staff to another department at their own discretion and inter-departmental posting arrangements may only be made through the central clearing house mechanism under the Civil Service Bureau if and when there is a mismatch between posts and staff. In short, Category A MOD 1 staff will not be constantly posted from one department to another.

Some Members are worried that the inter-departmental posting arrangement may speed up the pace of the outsourcing of government services. It is the established policy of the Government to strive to deliver public services in the most cost-effective and efficient manner, and to use capabilities in the private sector where appropriate. When drawing up large-scale outsourcing proposals which would have impact on civil servants, departments will consult the civil servants convened through staff forums, meetings, departmental consultative committees, and so on. The Administration's stance is that no serving civil servant would be made redundant due to outsourcing. Where necessary, affected staff would be redeployed within the Civil Service or managed through natural wastage.

The proposed inter-departmental posting arrangement for MOD 1 common grade staff who decide to opt for Category A status is not designed to speed up the pace of outsourcing, but to enhance staff deployment flexibility within the Civil Service and optimize utilization of MOD 1 staffing resources, in the event of any mismatch between MOD 1 common grade posts and staff in future.

Staff Side representatives and some Members are of the opinion that MOD 1 staff converted to Category A status should be remunerated on the Master Pay Scale and their leaving earning rate should be aligned with that applicable to junior civil servants remunerated on the Master Pay Scale and this proposal was made with reference to the arrangement for Senior Artisan and Artisan grades when they were converted to the Master Pay Scale in early 1990s. Here, I would like to point out that the current conversion could not be compared to the arrangement in the 1990s. The Senior Artisan and Artisan grades were converted to the Master Pay Scale back then on the recommendation made by the Standing Commission in the Second Report on 1989 Salary Structure Review on the justification that the job requirements and nature of the Senior Artisan/Artisan grades were similar to that of other basic ranks remunerated on the Master Pay Scale. After a number of reviews with regard to the situation of MOD 1 staff back then and also recently, the Standing Commission considered that there was no adequate justification for MOD 1 staff to be converted to the Master Pay Scale. Furthermore, some individual Members are of the view that the MOD 1 Pay Scale are discriminatory in nature or has a labelling effect. I would like to point out that different categories of civil servants are currently remunerated on different pay scales and such arrangement is in no way

discriminating against or has any elements of disrespect for any group of civil servants.

The leave earning rate for all junior civil servants (regardless of Category A or Category B status, and regardless of whether they are remunerated on the MOD 1 Pay Scale or Master Pay Scale) currently employed under the new terms on or after June 2000 is 14 days or 18 days per annum for those with less than 10 years of service or more than 10 years of service respectively. Currently, all serving MOD 1 staff were employed before June 2000 and their leave earning rate is 14 days for those with a service of less than 10 years and 21 or 22 days for those with a service of more than 10 years, as appropriate in accordance with their terms of employment. As such, the leave earning rate for MOD 1 staff with 10 years of service or above is more favourable than that of newly recruited junior civil servants. Furthermore, according to the findings of the 2006 Pay Level Survey, the leave days enjoyed by MOD 1 staff in the Civil Service is more than that of their counterparts performing similar services in the private sector. As such, we do not see any justification for increasing the annual leave earning rate of MOD 1 staff. The Standing Commission also shared our views.

Some Members raised the issue of Overseas Education Allowance earlier. Currently, MOD 1 civil servants are not eligible for Overseas Education Allowance. As the Overseas Education Allowance has already become obsolete, the Administration has ceased to offer Overseas Education Allowance to civil servants employed on or after 1 August 1996. As such, we see no justification for offering Overseas Education Allowance to MOD 1 staff who have converted to Category A status under the conversion proposal.

Some Members said earlier that the Administration has not conducted a thorough consultation on the conversion proposal, which is not true. The Civil Service has in place an effective consultative system, which includes four civil service central consultative councils, and the MOD 1 Consultative Council is the central consultative council responsible for handling matters relating to MOD 1 staff. We have already consulted the Staff Side of the MOD 1 SCC on the conversion proposal through the established consultation mechanism, and the conversion proposal was only drawn up after considering the views we have collected. We understand that some MOD 1 staff have asked for an increase in benefits but as there has not been any major change in the requirement on duties

and skills of the relevant staff, we cannot accept such proposals. To enable MOD 1 staff to have a better understanding of the conversion arrangement at an earlier time, we took the initiative to write to all MOD 1 staff in March this year to give them an account of the latest progress and how they would be affected by the conversion through their departments. All in all, we have maintained good communications with the Staff Side of the MOD 1 SCC and MOD 1 staff on matters relating to the conversion and will continue to do so in future.

Finally, I would like to talk about the option period. We originally planned to offer an option period of three months to allow MOD 1 staff to consider whether or not to opt for the conversion. Having taken into account the views of Members and representatives of the Staff Side, the option period will be extended to around six months to allow more time for consideration by MOD 1 staff before making a decision. To meet the aspiration of staff who wish to convert to Category A status at an earlier date, the conversion will take effect on 1 October 2008 for those who return their option forms on or before 30 September 2008; and on 1 January 2009 for those who return their option forms between 1 October 2008 and 31 December 2008, subject to the passage of the Amendment Order by the Legislative Council. The Staff Side of the MOD 1 SCC is in support of the relevant arrangement.

Madam President, the proposal for conversion from Category B to Category A status to allow MOD 1 staff greater security in employment and provide them with better safeguards in disciplinary and related procedures so as to align with the terms of service of the majority of other civil servants has been pursued by the Staff Side of the MOD 1 SCC for many years. The proposal on voluntary conversion has also been supported by all constituent staff unions of the Staff Side of MOD 1 SCC. Subject to the passage of the Amendment Order, all serving MOD 1 staff could opt freely on whether or not to convert to Category A status in accordance with their own circumstances, and the conditions of service for those who do not opt for the conversion would not be affected in any way. I, therefore, hope that all Members would support the Amendment Order and vote against Mr LEE Cheuk-yan's motion on repealing the Amendment Order. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr LEE Cheuk-yan to reply.

MR LEE CHEUK-YAN (in Cantonese): President, I will be very brief, for I understand that everyone is waiting for the Chief Executive.

The earlier speech of the Secretary has proven that the worries of MOD 1 staff mentioned by me when I spoke for the first time are well-founded, as the Secretary clearly indicated that to the Government, the most important thing is the power of central deployment. In exchange for this flexibility, the Government is willing to offer Category B staff a little benefit so that they will convert to Category A status. She has made this point very clear. Therefore, I think that though she has denied that the purpose is to speed up the pace of outsourcing, it is obvious that the whole arrangement aims to secure the power of posting. Why does the Government have to secure the power of posting? It is because in this way, it does not have to find other excuses when it outsources its services in future.

As such, I would like to point out in today's debate that the continuous outsourcing of government services will not do any good to the people. I hope that the Government will clarify this point. The so-called guiding principles for inter-departmental posting mentioned by the Secretary are actually quite meaningless, and they make no difference at all to those who are transferred, for it remains that they would rather die than live. So, I urge Members to object to the Secretary's Amendment Order.

The Secretary said earlier that Senior Artisans were converted to the Master Pay Scale in the 1990s and that was something in the past because the Standing Commission had justification to do that. In fact, it all boils down to whether the Government is willing to do something; if the Government is willing to do something for these MOD 1 staff, then it will be able to come up with some justifications and I can also provide it with some justifications, but the question is whether or not it will do so and whether or not it has the determination to do so.

As such, I hope that the Secretary will really continue to do something for MOD 1 staff instead of just thinking about sending them away and focusing only on securing the power of posting to the neglect of their request for equal treatment. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Mr LEE Cheuk-yan and other Members raised their hands)

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, we are now voting on your motion. Are you voting against it?

MR LEE CHEUK-YAN (in Cantonese): Sorry, I am in favour of it. *(Laughter)*

PRESIDENT (in Cantonese): Let us put this to vote again. I now put the question to you and that is: That the motion moved by Mr LEE Cheuk-yan be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

(Mr WONG Kwok-hing spoke in his seat)

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, the meeting is now in progress. Please do not speak aloud. I declare the motion negatived.

ADDRESS BY THE CHIEF EXECUTIVE

The Chief Executive to address the Council, under Rule 8(a) of the Rules of Procedure, on the Further Development of the Political Appointment System.

PRESIDENT (in Cantonese): Members, Rule 8 of the Rules of Procedure on the Attendance of the Chief Executive stipulates that: "The Chief Executive may at his discretion attend meetings of the Council, or any committee or subcommittee thereof, for the following purposes — (a) addressing the Council at any time as he shall think fit, including during a special meeting."

The Secretary General of the Legislative Council received a letter from the Director of Administration at around noon today, indicating that the Chief Executive wishes to address the Council on the Further Development of the Political Appointment System before we move onto the second motion under "Members' Motion" on our Agenda.

The Chief Executive does have this power under the Rules of Procedure. So, Members should have received copies of the revised Agenda and Script, as well as the letter from the Director of Administration to the Secretary General of the Legislative Council.

Mr Martin LEE, is it a point of order?

MR MARTIN LEE (in Cantonese): Yes, a point of order.

PRESIDENT (in Cantonese): Please go on.

MR MARTIN LEE (in Cantonese): With regard to Rule 8 of the Rules of Procedure, President, you have read out subrule (a) earlier, and there is the word "and" in subrule (b) that follows. Subrule (b) reads: "answering Members' questions put to him on the work of the Government; and". As such, does it

mean that the Chief Executive needs to do all the things as set out respectively under subrules (a), (b) and (c) once he comes to the Legislative Council under Rule 8?

PRESIDENT (in Cantonese): No. *(Laughter)* Mr Martin LEE has raised a very good question. In fact, it is under Rule 8(b) that the Chief Executive attends the Questions and Answers session of this Council and so, subrules (a), (b) and (c) can be dealt with separately.

Are there other points of order? If not, Members please stand while the Chief Executive enters the Chamber.

PRESIDENT (in Cantonese): The Chief Executive will address the Council on the Further Development of the Political Appointment System.

CHIEF EXECUTIVE (in Cantonese): Madam President, I came to this Council at such a short notice today to fulfil one wish and that is, I hope to give this Council and the public a comprehensive and full explanation on this controversial issue through this address.

Today, I speak

PRESIDENT (in Cantonese): Chief Executive, could you please wear your microphone a bit higher?

CHIEF EXECUTIVE (in Cantonese): I think this should not be the problem.

PRESIDENT (in Cantonese): Is the microphone not working? Sorry, Chief Executive, I have to apologize for that. As our meeting has been in progress, the technicians could not come in to fix the problem.

(The Chief Executive tested the microphone)

PRESIDENT (in Cantonese): Steward, please ask a technician to fix the problem immediately. Why does this happen?

(The technician checked the microphone)

CHIEF EXECUTIVE (in Cantonese): Do not worry. Things may be much better after moving to the Tamar site in future.

PRESIDENT (in Cantonese): I believe that such technical problems can be immediately solved after we moved to the new Chamber.

(The Chief Executive continued to test the microphone while the technician continued to check the microphone)

PRESIDENT (in Cantonese): Is it still not working? Chief Executive, do you mind coming up here? We have tested the microphone earlier at this position, so there should not be any problem.

(The Chief Executive stood next to the President and the technician put the microphone on him)

PRESIDENT (in Cantonese): Technician, please adjust the microphone to a slightly higher position for the Chief Executive.

(The technician adjusted the position of the microphone)

CHIEF EXECUTIVE (in Cantonese): I feel quite superior in this position. *(Laughter)* I do not really mean it. Can you all hear me clearly?

PRESIDENT (in Cantonese): Very clearly. Chief Executive, please speak.

CHIEF EXECUTIVE (in Cantonese): Madam President, I came to this Council at such a short notice today to fulfil one wish and that is, I hope to give this Council and all people of Hong Kong a comprehensive and full explanation on this controversial issue through this address.

I will explain the concept and design of the expansion of the Accountability System, and the Chief Secretary for Administration, Secretary for Justice, Secretary for Constitutional and Mainland Affairs, Secretary for the Civil Service and Secretary for Education will speak later in the ensuing motion debate on invoking the Legislative Council (Powers and Privileges) Ordinance, to clarify matters regarding the Political Appointment System, principles of the Basic Law, the selection procedures and recruitment process, so as to dispel any misunderstanding that the public may have regarding the expansion of the Accountability System. Today, I believe that internal conflicts between the executive authorities and the legislature should end, and instead, we should work in concert and focus all attention on practical issues for the benefit of the people's livelihood.

On the ongoing political disputes arising from the expansion of the Accountability System, I must admit that I did feel a bit sorry and disappointed at first, but on second thought, I realize that the contentions are a process which could not and should not be avoided in the course of the constitutional development of the Hong Kong Special Administrative Region (SAR), for it is only through rational public debates and in-depth review could the Accountability System be continuously rectified and the whole system become more mature, thus building up a foundation for extensive public recognition and acceptance.

On 12 October 2005, I delivered my maiden policy address entitled "Strong Governance for the People" in the Legislative Council. Back then, I was of the opinion that the Accountability System for Principal Officials, which had been implemented for three years, had proven to be beneficial to the effective administration of Hong Kong and the people of Hong Kong also approved of the System in general and hoped that it could be further consolidated and perfected. In my election platform for the Chief Executive election published on 2 February 2007, I pointed out that the political democratization must be complemented by corresponding reforms and as the expansion of political appointment system, which allows for more officials to assume responsibilities of an ever-expanding portfolio political work, is the general

trend, I promised the public that I would put into practice the proposal on expanding the accountability and appointment system within my term of office.

The current design of a three-tier Political Appointment System comprising of Secretaries, Under Secretaries and Political Assistants, seeks to form a political governing team to work together with me, in order to be accountable to the public in a more timely and efficient manner while maintaining the political neutrality of the Civil Service. This is an inevitable trend of democratic development, the infrastructure of Hong Kong's constitutional development and an indispensable part in the transition to democracy in Hong Kong.

No doubt the expansion of the Accountability System itself is a controversial issue, due to the fact that Hong Kong is now at a transitional stage of moving towards dual universal suffrage. But to make preparations by carrying out corresponding reforms for the future implementation of universal suffrage is my job in my term of office and a responsibility which I must not shirk.

In the course of implementation, the expansion of the Political Accountability System has gone through extensive public consultations and discussions in the relevant Panels and the Finance Committee (FC) of the Legislative Council, and the creation, establishment and remuneration of the positions of Under Secretaries and Political Assistants to Directors of Bureau were endorsed by the FC. Subsequently, the Appointment Committee chaired by me was formed and interviewing panels were established under it. The interviewing panel for Under Secretaries was chaired by Mr Henry TANG, Chief Secretary for Administration, while that for Political Assistants was chaired by Mr Norman CHAN, Director of the Chief Executive's Office or Mr Stephen LAM, Secretary for Constitutional and Mainland Affairs. After going through the interviews and selections, the list of the first batch of politically appointed officials was announced on 20 and 22 May. The Political Appointment System, though different from the civil service recruitment system, is subject to a set of rules and regulations as well as internal check and balance, and the duty of the Chief Executive's Office is to support and assist the work of the Appointment Committee. I would like to stress that the whole recruitment procedure, from the establishment of interviewing panels, assessments of candidates and salary levels to making decisions on their postings, is all

scrutinized and approved by the Appointment Committee. There is no question of any decision being made by just one person.

First of all, I would like to talk about the principle of the appointment system. The expansion of the Accountability System is a task of political appointment, which is entirely different from the civil service recruitment system. This system has also been adopted by government leaders all over the world in appointing officials to the Cabinet. After my election as the Chief Executive in March last year, I was the only person responsible for making decisions on the selection of cabinet members to the new Government, before making recommendations to the Central Government for appointment.

The current expansion of the Accountability System is decided by the Appointment Committee which I chaired, and members of the Committee include the three Secretaries of Department for they are the most senior members of my Cabinet. But, in order to select talents in a more equitable manner, we introduced the interviewing panel mechanism, for the purpose of involving more Directors of Bureau in the selection process, so as to meet the principles of collective decision-making and meritocracy. The political appointment arrangement has given due consideration the requirements of impartiality and internal check and balance.

Although the practice of open recruitment normally used for civil service recruitment was not adopted in the selection of Under Secretaries and Political Assistants, Secretary Stephen LAM openly urged members of all sectors of society to put forward nominations or self-nominations in December last year. On the nomination of candidates, apart from political parties, all Secretaries of Department, Directors of Bureau and the Central Policy Unit were also encouraged to put forward nominations for the following two reasons: firstly, they have their own networks; and secondly, they are all key members of the accountability team, and in the future, the Under Secretaries and Political Assistants will assist and work closely with the Secretaries of Department and Directors of Bureau in implementing the political platform of the Chief Executive. However, regardless of who has made the nomination, whether a nominee is appointed or not fully depends on whether he/she can pass the assessments of the interviewing panels and the Appointment Committee.

After the results were announced, the first issue which aroused controversy was the nationality issue, and in this connection, I have repeatedly

indicated that there is no room for concessions for this involves the very solemn principle of the rule of law. The people of Hong Kong may recall that at the time when the Legislative Council scrutinized the Hong Kong Court of Final Appeal Bill before the reunification of Hong Kong, Members who opposed the Bill had left no stone unturned in fighting for the appointment of one more expatriate judge to the Final Court of Appeal. Today, when the Basic Law has not imposed any restriction, they nevertheless advocate to narrow down the flexibility and inclusiveness under "a high degree of autonomy" on our own initiative. This is not in line with the long-term interests of Hong Kong.

What can the Government do to attract political talents under the specific conditions of Hong Kong? The constitutional development of Hong Kong is now at a transitional stage and will eventually move in the direction of universal suffrage, the timetable of which has been explicitly laid down by the Standing Committee of the National People's Congress last December. The implementation of universal suffrage must be complemented by political infrastructure and cannot be achieved in one go. Under the executive-led framework laid down by the Basic Law, Democracy in Hong Kong does not develop along the line of parliament-led models as in the West, under which the government is formed by the majority party in the Parliament and changes regularly according to the results of parliamentary assembly elections. What is designed under the Basic Law is that our Government will be formed by a Chief Executive returned through an independent election. So, there is a need for us to design an alternative model which complies with the provisions of the Basic Law by nurturing and training political talents for governing Hong Kong in the executive authorities.

Under the current circumstances, the talents appointed as Deputy Directors of Bureau and Political Assistants mainly come from political parties, civil servants, political groups, think tanks, the academia and the media. There is definitely no question of favouring individual political parties over the others in the appointment of political party members. Those who join the team of accountability officials must agree with the Chief Executive's policy objectives and fully support the Chief Executive's commitments to the people and specific policies; otherwise it will be impossible for the team to operate.

Hong Kong is an international commercial, trade and financial centre with a large number of outstanding talents in the professional and commercial sectors, but those who are interested in taking up full-time political work are indeed

limited in number. Apart from joining political parties, another platform for people with political aspirations and interest in public policy work to participate in political discussions is the various think tanks and political groups. In Hong Kong where the development of political infrastructure is still immature, the circle of think tanks and political groups is still relatively small. We can see that several of the Under Secretaries and Political Assistants who have been appointed this time have joined think tanks and political groups at the same time and are also serving in the Central Policy Unit.

As the Director of the Chief Executive's Office has worked for the Government and the Hong Kong Monetary Authority for over 30 years and has participated in the founding of the Bauhinia Foundation Research Centre in recent years, he is acquainted with many people who have participated enthusiastically in public policies. However, it is unfair to the appointees if we assume that all who have worked with or are acquainted with him are appointed under his nomination, and that they are all his right-hand men and members of his "stable", for this means ignoring their abilities, and their passion and commitment in serving the community. This has also disregarded the fact that decisions were made collectively and the principle of meritocracy was upheld in the appointment process.

Today, the Government has opened up an avenue for full-time political participation to people with political aspirations. Let us be more accommodating towards this new generation of political hopefuls. That they are willing to join this "hot kitchen" shows their courage and commitment to serving the society of Hong Kong. The controversy over the past months is in a way a good test to them.

Madam President, I understand that everyone attaches great importance to whether public funds are well-spent. The purpose of expanding the Accountability System is to enable the Government to make more timely response to public opinions and enhance the accountability of the Government. If a politically accountable official makes a serious political mistake, or mishandles a major issue, then he/she will have to be accountable and step down. Though the infrastructure of Hong Kong's political system is still at a development stage, public expectation has become higher and higher, and the political environment has also become more complicated. The job of an accountable official is a high risk one.

There is no completely objective standard for assessing the price that one has to pay in joining the team of accountable officials and shouldering political risks, and their value cannot be determined by the civil service remuneration. We have listed the upper and lower limits of their salaries in the papers submitted to the Legislative Council, and the objective is to provide a certain degree of flexibility to cope with the different backgrounds of the accountable officials, and their salaries have also been approved by the FC. In fact, the value-for-money of political work can only be assessed after the accountable officials have assumed office, so no conclusions should be drawn at this stage. As accountable officials are constantly and closely monitored by stakeholders, the Legislative Council and the media, they will have to leave if their performance is not up to standard, so we do not need to be overly worried.

Most of my life has been spent in the Civil Service and I am deeply aware that the Government must always follow rules and regulations in its work and must never step out of line and sway from the standard practice; otherwise the public will lose confidence in us. These political appointments are made in accordance with a set of rules. Although the rules are different from the general civil service recruitment procedures, there are still a mechanism, checks and balances and principles.

It is now time to end the disputes, for the nationalities and specific salaries of the officials have been made public, the appointment mechanism and procedures have been openly clarified and all information which can be made public has been released.

Hong Kong's economy has started to revive since 2003 and our unemployment rate has continued to drop, so the Government now has more resources for improving the livelihood of the people. However, we are currently faced with the threats of avian flu, high oil prices and inflation which have affected the livelihood of the grassroots. What the public is most concerned about now are issues like soaring prices, environmental pollution, education and health care reform. I am starting to make preparations for the policy address. I very much hope that the executive and the legislature can be of one mind, and focus on people's livelihood, instead of prolonging internal conflicts which would otherwise lead to depletion of our energy. Today, the interests of Hong Kong society are varied and diversified, and under such

circumstances, the Government needs the full support of this Council in order to be able to work for the people. It is only with everyone's full co-operation can we do more and better for the people in a more expedient manner.

Madam President, I understand that the public is disappointed with the arrangements for the appointment of Under Secretaries and Political Assistants. But throughout my some 40 years of life in the Civil Service, I have only one purpose in my work, and that is "get the job done and do not let Hong Kong people down". In order to achieve this goal, apart from persevering with what is good and right, I am always ready to accept good advice. I must firmly uphold the core values of Hong Kong; and as regards the opinions and comments from different sectors of the community, I must listen to them more and think about them more. To strike a balance among different interests is the greatest test to a politician and this, I believe, is also the spirit of the Accountability System.

Madam President, I believe that individual Members may wish to ask follow-up questions after my address, but there is no need to rush, for all your questions will be answered by the principal officials who attend today's debate. I have also promised to come to this Council on 16 July to answer Members' questions. So, if Members would still like to seek clarifications on relevant specific issues or if the answers today are still unclear, I would be very happy to answer Members' questions again.

Thank you, Madam President.

MR JAMES TO (in Cantonese): President, a point of order.

PRESIDENT (in Cantonese): Mr James TO, do you wish to raise a point of order?

MR JAMES TO (in Cantonese): President, under Rule 8 of the Rules of Procedures, if the Chief Executive is willing to answer questions and with the permission of the President, a decision can be immediately made to allow Members to ask questions in relation to the earlier address of the Chief

Executive, and the Chief Executive to answer questions from Members. President, I would now like to put this request to the Chief Executive through you and if he is willing the Council actually has time for questions and we do not have to leave the questions for his officials to answer.

PRESIDENT (in Cantonese): The Chief Executive already said in his earlier address that he would answer Members' questions on 16 July. However, as Rule 8 of the Rules of Procedure has not stated whether or not he can answer questions, I think I have to respect the wish of the Chief Executive.

Chief Executive, do you wish to answer questions today or wait until 16 July?

CHIEF EXECUTIVE (in Cantonese): As in the case of my policy address, it is under Rule 8(a) that I come to the Legislative Council today and made my earlier address, and Rule 8(a) does not include arrangements for questions and answers. Questions and answers should be dealt with separately as a procedure under Rule 8(b). So, these must be clearly distinguished.

I understand that a motion debate will soon follow, so if Members have any queries or questions on my address, my colleagues will certainly be able to grasp the essence of my address and answer Members' questions.

Furthermore, as I said earlier, Mr TO, if there are still questions which have not been answered clearly, I will come again on 16 July to answer Members' questions, is that alright? Thank you, Madam President. Thank you, Members.

PRESIDENT (in Cantonese): The Chief Executive will now leave the Chamber. Will Members please stand?

(The Chief Executive left the Chamber)

PRESIDENT (in Cantonese): Will Members please sit?

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Second motion: Seeking papers, books, records and documents regarding the salary and fringe benefits of Under Secretaries and Political Assistants.

PRESIDENT (in Cantonese): I now call upon Mr LEE Wing-tat to speak and move his motion.

SEEKING PAPERS, BOOKS, RECORDS AND DOCUMENTS REGARDING THE SALARY AND FRINGE BENEFITS OF UNDER SECRETARIES AND POLITICAL ASSISTANTS

MR LEE WING-TAT (in Cantonese): President, pursuant to the Rules of Procedure, I move the following motion: "That, pursuant to section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), this Council orders the Director of Chief Executive's Office of the Hong Kong Special Administrative Region to attend before the Council on 2 July 2008 to produce any papers, books, records or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants."

President, actually I have prepared a speech to be delivered in this meeting. However, having heard the speech of the Chief Executive, who informed us this morning that he would attend this meeting, I would like to give my response.

President, the Democratic Party agrees that we, as representatives of the public, should have the power to monitor the executive authorities and to work with them to improve people's livelihood. When dealing with the issue regarding the remuneration of the Under Secretaries, we always go by the principle of maintaining Hong Kong's core values, one of which is an open-minded, transparent and responsible government that is directly accountable to the public. But what we have seen from this issue is that all of

these core values have been reversed. At the early stage, the Government's attitude towards the issue was so evasive. When responding to the enquiries from the public and the Legislative Council, it just gave out information bit by bit like squeezing a toothpaste tube. The officials concerned were not held accountable to the public and the media. It was only in the last stage that under enormous pressure from the public, they began to respond bit by bit. In fact, according to what the Chief Executive said today, he is not willing to submit documents and books in relation to the salary and fringe benefits of the Under Secretaries and Political Assistants. I am so disappointed at this.

I would like to respond to some of the points made by the Chief Executive. Firstly, he said that the introduction of the whole system aimed at absorbing political talents and grooming political hopefuls for the next generation. President, the Democratic Party has a clear stand on the issue. We think that without the foundation of democratization, the Political Accountability System could possibly become a private policy system based on the interest of government officials instead of public opinions. The Chief Executive just delivered a speech of up to 20 minutes. However, he did not mention anything about the foundation. In democratic countries such as Britain, the United States or any others, a political accountability system is founded on a responsible government elected by its people. Such governments know that if the political talents and political theorists selected by them are not the right persons, they will be ousted in the next election. But for the Chief Executive, this is not a point that has to be considered.

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

Deputy President, regardless of this aspect, the most important of all is that Hong Kong is moving towards the direction of universal suffrage. Now the question is: Has the Chief Executive fully built up the so-called accountability system which is said to be gradually becoming a politically accountable one? Since the formation of the SAR Government, what phenomenon have we seen in the Executive Council and the several hundred advisory and statutory bodies? Many people use one word to describe that phenomenon, that is, "inbreeding". We have found that many of these advisory and statutory bodies no longer have or we should say that fewer and fewer of these bodies are comprised of people with different political views. On more than one occasions, I have asked

several Directors of Bureau with whom I am familiar this question: What good does it do to the Government? Yes, all 15 people appointed by you do speak for you. But what good does it do to you?

Hence, Deputy President, what the Chief Executive just said is not true. There is no such broadminded person who allows those with different political views to join the various advisory and statutory bodies. Actually I do not need to cite any examples. Just take a look at the chairmen and members appointed by him to the statutory bodies and you will know the truth. There is often affinity difference. In the implementation of policies, those who are first to be informed and benefited are the political allies of the Government. To make it plainly, they are the Liberal Party, Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and the Alliance. This practice might not be wrong. If the Liberal Party, the DAB and the Alliance were real allies of a united government, with which they would share glory and shame, or if they always support the bills proposed by the Government, we would not have seen those strange scenarios that we have mentioned so many times especially now Secretary Dr CHOW is in this meeting. Regarding the bills proposed by Dr CHOW, you never know whether they will get the support from the Democratic Party or the Liberal Party. It gives us a feeling that both the Government and its allies are not willing to take their responsibilities after getting the benefits from the system. Actually the merit of this system is that those in authority are also those held accountable, and if you ally with a government, you have to support it. In good times, you can win at the election. In bad times, you have to step down. However, what we have now is neither fish nor fowl.

Deputy President, even without the voice of the Democratic Party or Lee Wing-tat, people will still notice the so-called affinity difference as well as the scenario of favouring one and ignoring others. You may ask the people in the street if they think that the Government appointed these Under Secretaries and Political Assistants on the principle of meritocracy. It is not something created by us. Three weeks ago, the *South China Morning Post* published the result of a survey, which shows that 78% of the citizens object to the way that the Government handled this issue. This data is not made up by the Democratic Party and the pan-democratic camp.

Deputy President, the Chief Executive also asked just now if we should show more tolerance to the newly appointed politicians. I agree that we should be more tolerant of them. But at the same time, I hope that the Chief Executive

will also show tolerance to all the representatives of the public. We are elected by the public. Mr Andrew CHENG got several hundred thousand votes. I got fewer, but still had 60 000 votes. For Mrs CHAN, she got more than 170 000. When the Chief Executive requests the Legislative Council to be tolerant of the new political talents, why does he not show the same tolerance to all the representatives of the public? Or I should put it this way: Why does he not show the same respect for them? This respect is not merely for LEE Wing-tat, the Democratic Party, Anson CHAN, Audrey EU and Alan LEONG, but also for the public opinions supported by them. When a politician despises and ignores the representatives of public opinions or even shows no respect for them, Deputy President, he is actually showing disrespect not to these representatives, but to the general public who support them.

I hope the Chief Executive has heard what I said. When he keeps on requesting the Legislative Council to be tolerant of the political talents, I hope that he can think about showing the same tolerance to the citizens who criticize him, accuse him and have high expectations on him. In fact, these people are his real bosses.

Deputy President, the Chief Executive just said that we should not apply the same criteria for the civil service to those political talents. Yes, they are not civil servants. However, when it comes to political appointments, we have a proven system, just like the civil service system. There is also another option, which is like the well-developed checks and balances system implemented in other countries. As we all know, in other countries, the appointment of key officials is not decided by one person, whether the President or the Prime Minister. In the United States, the appointment of most or even all of the ministers, Chief Justices and ambassadors to foreign countries has been debated and approved by the Senate through voting.

What about our system? The only thing that we have is the Finance Committee. After the Finance Committee's discussion on the salary range of individual appointees, Members of the Legislative Council can no longer have a say on it. The Chief Executive asked if we had applied the inappropriate criteria to this group of people. My answer is no. The Democratic Party and other democrats request for the monitoring of these political talents, which means that their jobs should be carefully monitored and arranged to ensure the public's acceptance of their remuneration.

The Chief Executive just did not respond to one question: Regardless of how competent these political talents are, why is none of them remunerated at the entry point? No matter how capable they are, what really matters is their performance. If their performance is good, two to three or even four increments can be granted to them next year. Now the problem is that the qualifications and political experience of those appointees are not commonly known. Therefore, it gives me a feeling that the Government is using the money of taxpayers to benefit the Under Secretaries, whom we think do not have any political experience. Their salaries are just too high to be acceptable by the public.

Deputy President, today is the very first time in history that the Chief Executive attended the meeting of this Council to respond to this issue. Though he did not answer my question, I am glad that he attended the meeting because this is also a way to show his accountability to the public and this Council. I hope the Chief Executive and the accountable officials will respond to the aspirations of the public in a more open and responsible way in future. Of course, I also sincerely hope that the Chief Executive and his accountability team, having learnt a real lesson from this issue, will truly take into account public opinions in implementing the Government's policies in future. In fact, the public's expectations are rather simple, Deputy President. All they want are humble civil servants willing to listen to the public instead of haughty, stuck-up politicians who only know spin tactics.

With these remarks, Deputy President, I beg to move.

Mr LEE Wing-tat moved the following motion: (Translation)

"That, pursuant to section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), this Council orders the Director of Chief Executive's Office of the Hong Kong Special Administrative Region to attend before the Council on 2 July 2008 to produce any papers, books, records or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LEE Wing-tat be passed.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): Deputy President, although the motion moved by Mr LEE Wing-tat today is about the remuneration of the Under Secretaries and Political Assistants, first of all, I would like to review the relationship between the further development of the Political Appointment System and the constitutional development in Hong Kong so that we can have a better understanding of the background of the policy that we are debating today.

At the time of the reunification in 1997, we kept the whole team of Directors of Bureau and Secretaries of Department comprising civil servants, which played an important role in maintaining social stability and ensuring smooth transition.

However, things have changed as time passes. In the first term of the SAR Government, several administrative malpractices led to strong requests for accountability of the relevant officials. But the Government failed to fully respond to the public concerns, which directly brought a negative impact on good governance. As a result, a comprehensive review was made on the issue.

The Legislative Council Election was introduced to Hong Kong in 1985. Before and after the reunification, all 60 seats of the Council were produced by elections, while the posts of Directors of Bureau and Secretaries of Department were still filled by civil servants. It means that from the mid-1980s to the several years after the 1997 reunification, despite the significant changes in the political situation outside the Government as well as the increasing politicization of society, the civil service system of the Government did not change accordingly.

Our conclusion at that time was that the expectations of society and the public on the Government could no longer be met if only civil servants could take up the posts of Directors of Bureau and Secretaries of Department. For example, in case of a serious incident, it would be hard to find an official of the highest rank to come out and take up the responsibility for the sake of accountability. As the civic awareness of Hong Kong people was increasing, this system was deemed unsustainable and bound to be changed.

Hence, we decided to implement the Accountability System for Principal Officials (the Accountability System) in 2002. Under this system, all Directors of Bureau and Secretaries of Department are politically appointed for a fixed tenure of five years to tie in with the term of office of the Chief Executive who

nominated them. These principal officials have to face political pressure and take responsibilities in times of need, whereas senior officials in the civil service can concentrate on the policy work without having to face political pressure. The formation of such a governing team responsible for political work and bound by political responsibilities facilitates the maintenance of a politically neutral, professional and permanent civil service system.

In fact, it is proven that the Accountability System has helped the Government make better responses to the concerns of the people from all walks of life and achieve better governance. However, when implementing the Political Appointment System in 2002, we already realized that with less than 20 politically appointed officials, it was hard to cope with the political liaison work with different sectors and different parties in the community.

In last year's election, the Chief Executive clearly said in his election platform that he would lead the SAR Government to perform two important tasks. The first one is to foster democracy by the promotion of dual universal suffrage in the SAR. The second one is to further develop the Political Appointment System as a reformation measure to support the democratization of the political system with a view to paving the way for universal suffrage.

In fact, within six months after the assumption of office, the third SAR Government has successfully striven for a timetable for universal suffrage in Hong Kong. According to this timetable, there will be a Chief Executive election by universal suffrage in 2017 and a Legislative Council election by universal suffrage in 2020.

Like the practice in other free and open societies, the Chief Executive, to be returned by an election, must have a team to help him work out an election platform and launch an electioneering campaign. After the election, the Chief Executive-elect also needs a governing team who agrees with his principles of governance to help him fulfil the promises made in the election.

(THE PRESIDENT resumed the Chair)

In order to pave the way for the Chief Executive election by universal suffrage, one of the most important tasks now is to widen the channel for

political participation. This will allow those from different political parties, professions, academia, media or other backgrounds to be politically appointed as Principal Officials, Under Secretaries or Political Assistants in the Government.

Hence, we issued a public consultation paper on the further development of the Political Appointment System in October 2006 and had discussions with Members in different stages.

In this paper, we proposed to expand the political team comprised of 15 Directors of Bureau and Secretaries of Department to a team of 40, including Under Secretaries and Political Assistants. Compared with the cabinet teams in foreign countries, the size of our political team is actually not big.

From now to 2017, the year in which the Chief Executive election by universal suffrage is implemented, the Government will have two more terms of office. Actually, it is not a long time. Assuming that at least 40 officials will be politically appointed for each term of office before the election, the number is still limited.

In fact, different political parties, including the pan-democratic camp, agree in principle that the Chief Executive, as the leader of the SAR Government, needs a team to help him carry out the policies stated in his election platform after the election. This is not only a political rule but also a common practice in free, open and democratic societies in the world, which at the same time meets the needs of Hong Kong. Therefore, our argument is not about whether we should implement a political appointment system like the cabinet system or ministerial system. It is all about when and under what circumstances it should be implemented.

The SAR Government thinks that this is a question of chickens and eggs. If we do not further develop the Political Appointment System to widen the channel for political participation and to build up a reserve of political talents now, how can the Chief Executive, to be elected by universal suffrage nine years later, find a group of talents with policy experience and political capabilities to form a political team?

Actually, the development of political parties in Hong Kong only has a history of less than 20 years. Compared with other places in the world, our development is not totally mature. Each of all political parties, except one, only

has a membership of several hundred. When we take a look at this year's Legislative Council election, it is quite obvious that the competition is keen. Many second and third tier members of the political parties, who have been engaging in district affairs for a long time, may not be able to get a chance to run in the election.

There are only nine years left before the Chief Executive election by universal suffrage. We cannot stand still without moving forward. It is time to create more room for political participation in the coming two terms of office of our Government. This time we have created more than 20 politically appointed positions. From now on, apart from running in the Legislative Council and District Council elections, people with political aspirations can have another option, that is, joining the Government. I can foresee that in the coming 10 years, more political talents will start their careers in politics.

Recently, we have heard the opinions of various Members on the remuneration of the Under Secretaries and Political Assistants on different occasions. In fact, this issue, which is related to today's motion, has been addressed. Firstly, the salaries of individual Under Secretaries and Political Assistants were already made public on 10 June. Secondly, on 16 June, the Government clearly said that all Under Secretaries and Political Assistants appointed in future would be informed of the fact that their remuneration stated in their contracts would be made public.

Hence, today's motion actually comes a little late in the day. Therefore, I call on Members to vote against Mr LEE Wing-tat's motion.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, Members, regarding the motion debate today, we have known from Mr LEE Wing-tat's speech that Members will surely have extensive discussion on the appointment of Under Secretaries and Political Assistants as well as the policy behind it, in order to expound the arguments for either supporting or opposing the motion. As the Chief Executive just said, the debate may also involve various considerations about the expansion of the whole Accountability System. In view of this and Mr LEE's mentioning of the Government's stance on and approach for the handling of information in his speech, we think that a more thorough clarification on the issue is needed.

Here I would like to clarify the appointment of Under Secretaries and Political Assistants, including the issue of nationality from the legal viewpoints of the Basic Law.

Madam President, the creation of the posts of Under Secretaries and Political Assistants is totally in compliance with the Basic Law. Except for principal officials, the Basic Law does not stipulate the criteria for any posts in the Offices of the Secretaries of Departments, Bureaux and Departments; nor does it stipulate the organization structure of the officials in these executive authorities of the SAR Government.

There are specific articles in the Basic Law which stated in detail whether those with a foreign nationality or the right of abode in a foreign country can fill the posts in the SAR Government.

First of all, Article 61 of the Basic Law clearly states that the principal officials of the SAR Government shall be Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country and have ordinarily resided in Hong Kong for a continuous period of not less than 15 years. Under Article 48(5), provisions are made in relation to the principal officials include Secretaries of Departments (that is, our three Secretaries of Department), Deputy Secretaries of Departments (no appointment to this post right now), Directors of Bureaux (that is, the existing 12 Bureau Directors), Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise. The principal officials do not include any Under Secretaries.

In addition, the first paragraph of Article 101 of the Basic Law stipulates that the SAR Government "may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise."

It means that excluding the above principal officials, the posts of other public servants in the SAR can be filled by British and other foreign nationals

with permanent identity cards of the Region. The list of principal officials who must be Chinese citizens as stated in the first paragraph of Article 101 of the Basic Law does not include Under Secretaries of Bureaux.

There are views that since there was no such post as Under Secretary when the Basic Law was formulated, we cannot infer that the Under Secretaries can have the right of abode in a foreign country on the ground that it is not stipulated in the Basic Law. However, we do not agree with this point of view.

First of all, there is sufficient evidence to show that it was a well thought out decision for not including Under Secretaries in the list of principal officials and not setting any requirement for the nationality and right of abode of Under Secretaries in the Basic Law.

The Secretary for Constitutional and Mainland Affairs made a statement on this earlier. Please allow me to emphasize this once again. According to the Draft Basic Law for Solicitation of Opinions in 1988, and I quote, "Only Chinese citizens among permanent residents of the Region may fill the following posts: the Secretary and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit" Please note that after these are "Deputy Directors for Security and Civil Service, Commissioner and Deputy Commissioners of Police, Commissioner and Deputy Commissioners of External Affairs, Commissioner of Immigration and Inspector General of Customs and Excise". (End of quote)

We can see that during the formulation of the Basic Law, consideration was made to apply the requirement for the nationality of principal officials to at least two Deputy Directors, namely, Deputy Directors for Security and Civil Service. However, in the Basic Law promulgated in 1990, the posts of the above Deputy Directors and some Deputy Commissioners were deleted from the articles that I mentioned to Members just now.

In fact, at the time of the drafting and promulgation of the Basic Law, there were deputy posts in the Government's Policy Bureaux, though they were known as Deputy Secretaries at that time. These were the posts as referred to

by the "Deputy Directors for Security and Civil Service" that I quoted from the Draft Basic Law for Solicitation of Opinions just now. At that time, these Deputy Directors or Deputy Secretaries could also be appointed as Acting Directors.

To what kind of officials in the SAR should the requirement of not possessing a foreign nationality or the right of abode in a foreign country apply? Should the posts of Under Secretaries be filled by those without a foreign nationality or the right of abode in a foreign country only? These are questions that have definitely been taken into serious consideration. In fact, those who drafted the Basic Law did give full consideration to these questions. There is no question of an "unexpected scenario".

Hence, the legislative intent of the Basic Law in this respect is very clear, that is, only the posts of Secretaries and Deputy Secretaries of the Departments, Directors of Bureaux, and the several departmental heads that I mentioned just now have to be filled by Chinese citizens among permanent residents of the HKSAR with no right of abode in any foreign country. In this regard, the SAR Government's decision of not applying the requirement of not possessing a foreign nationality or the right of abode in a foreign country to the Under Secretaries is in compliance with the Basic Law.

As for the Political Assistants, since they are not principal officials and their rank is lower than that of the Under Secretaries

MR ALBERT HO (in Cantonese): President, a point of order. Can I ask the Secretary for Justice to clarify what he has just said?

PRESIDENT (in Cantonese): Please say it.

MR ALBERT HO (in Cantonese): The Secretary for Justice has just pointed out in detail that the Administration has taken into consideration the requirement for Deputy Directors or Deputy Secretaries stated in the Basic Law and Draft Basic

Law for Solicitation of Opinions. However, he has not mentioned anything about the Sino-British Joint Declaration (Joint Declaration). Could the Secretary for Justice clarify if he has ever taken into consideration paragraph (4) of the "basic policies" in the Joint Declaration? It is mentioned in that paragraph that public servants, except principal officials and their deputies, can be foreign nationals. Moreover, the Basic Law must be in compliance with the Joint Declaration. Could the Secretary clarify this point?

PRESIDENT (in Cantonese): Secretary for Justice, you can choose to respond or not.

SECRETARY FOR JUSTICE (in Cantonese): Madam President, perhaps let me finish this part of the speech first, alright?

Lastly, what I would like to mainly point out is that as for the Political Assistants, since they are not principal officials and their rank is lower than that of the Under Secretaries, the requirement of not possessing a foreign nationality or the right of abode in a foreign country is not applicable to them according to the law or the Basic Law.

Madam President, the Member asked just now if I have ever taken the Joint Declaration into consideration. My answer is yes. But the key to the question actually lies in the articles of the Basic Law, especially Article 101, which states clearly which principal officials are required for not possessing the right of abode in a foreign country. I think what the Member has just mentioned can be best described by paragraph 74 of the Joint Declaration. We can see that the same concept is also incorporated into Article 101 of the Basic Law. We can also see clearly what they considered at that time was also the interpretation of the relevant definitions stated in the Joint Declaration. Regarding the interpretation in the Basic Law not interpretation but stipulation, we can clearly see that there was such a requirement for principal officials, that is, those clearly listed in the articles of the Basic Law mentioned by me just now. As for other officials, including those like Under Secretaries, there was no such requirement at that time. The statements in the Joint Declaration have already been taken into consideration.

Madam President, this is my speech on the issue. I hope the above clarification, which is the main aim for delivering this speech, can help to end some unnecessary controversies on this issue. Thank you, Madam President.

PRESIDENT (in Cantonese): I would call upon the officials participating in this motion debate to speak. If you do not wish to speak, you can let me know.

SECRETARY FOR EDUCATION (in Cantonese): President, I would like to listen to Members' speeches first. Then I will give a response to their speeches.

PRESIDENT (in Cantonese): Secretary for the Civil Service.

(The Secretary for the Civil Service shook her head to indicate that she did not wish to speak)

PRESIDENT (in Cantonese): Secretary for Constitutional and Mainland Affairs.

(The Secretary for Constitutional and Mainland Affairs shook his head to indicate that he did not wish to speak)

MR MARTIN LEE (in Cantonese): President, when you asked the Secretaries if they wished to speak, they all just shook their heads. I do not think that their responses can be recorded in the verbatim transcripts.

PRESIDENT (in Cantonese): Mr Martin LEE, our verbatim recording is sophisticated. The Secretaries' indication of not wishing to speak by shaking heads will be clearly stated in bracket. *(Laughter)*

MR RONNY TONG (in Cantonese): President, this so-called expansion of the Political Appointment System, up till today, President, has filled me with great

disappointment and regret. It is disappointing and regrettable that we have to invoke the Legislative Council (Powers and Privileges) Ordinance (the Ordinance) in order to force the Government to explain what actually is in their duties to the people of Hong Kong.

President, as for the Ordinance, when I first joined this Council, veteran Member Ms Margaret NG, who is sitting next to me, briefed me on its application, such as summoning ordinary citizens or non-government organizations to this Council to assist in inquiries or submission of documents or evidence to this Council to facilitate execution of our pledges to the public. However, never did I think that this Ordinance would have to be invoked on the Government. President, it is the fundamental duty of the Government to face the people. The Government has the duty to give a thorough explanation on all the surrounding circumstances of this matter, especially as it costs us \$40 million a year.

After the motion was proposed, during lunch today, the President revealed to us that the Chief Executive would come to the Legislative Council. At that time, I was given the illusion, President, that the Chief Executive had finally seen the light and understood what the people wanted, and that he would give us a thorough explanation or even comprehensive response to our motion. With this illusion, I was thinking whether I should discard my prepared speech or discuss with my colleagues on withdrawing the motion or abstaining from voting. The illusion lasted more than one hour. Unfortunately, after listening to the Chief Executive's speech and the speeches of the two Secretaries of Department, I was totally disillusioned.

President, if we have not made it clear in the past few weeks, then let me make it clear once again. The clear picture we want to be given is not what the Government has just kept repeating. I just want to know the criteria for the expansion of the Political Appointment System and what kind of talents the Government wants. This label of "political talents" sounds grand, but what kind of political talents are they? What qualifications, backgrounds and experiences do they have? How are they assigned to the bureaux? Is it just by random matching? Say, in the meeting, the one who seems to match well with Secretary Stephen LAM will be assigned to him, and the one who seems to match well with Secretary Frederick MA will join his team. Or is there a mechanism to match their contributions to the agenda of the respective bureaux? President, we do not have a clue.

Another important question, which I raised several weeks ago and am still waiting for a reply is: Why do we need these new positions and how are they related to the civil service system? We already have three Secretaries of Department and 12 Directors of Bureau. Are they all incompetent for their jobs? Or are they all overloaded with work, like going overseas for marches sorry, not marches but visits? I do not mean vacations as such overseas visits may well be part of their jobs. Or is it because there are no other gatekeepers here to handle the noise-makers in the Legislative Council when they are out of town? Or, though Hong Kong's civil service system is one of the finest in Southeast Asia, there are simply not enough competent deputies who can provide assistance to these Secretaries and Directors, so that we need to recruit smarter and more experienced people from outside? Which of the above is the reason? Or are they recruited as shields? If so, then these shields of over \$40 million are very expensive.

President, what is even more baffling is the key point in the Chief Executive's speech, that is, the grooming of political talents. President, this is an exasperating rationale. The grooming of political talents? Why do political talents have to be groomed in this way? We do, to say the least, have popular election, an election system. Now we are working for the expansion of this electoral system, with universal suffrage as the goal. Why is this path bypassed for the appointment path? What is the reason?

Is it because only appointees are talents, but not the elected ones? The Chief Executive pointed out that the appointment system could also be found in many countries. Undoubtedly, there are such systems in both autocratic and democratic countries. But I think our system is just like a jackdaw in peacock's feathers. In democratic countries, the governments have popular support and mandate. With the people's mandate, the governments are authorized to appoint talents to put their election platform into practice. But it is different in autocratic countries. Autocratic countries have the overriding power to appoint at will. In fact, which direction are we heading?

Hence, we were so irritated when the Chief Executive told us that this was the only way to groom political talents. If he really thinks so, then please be specific and tell us here what the principles and rationale behind his statement are.

President, I think this system is totally unjustified, lacking in mandate, confusing, dubious and unfair.

President, there is still the nationality issue. The Secretary for Justice has just given us a list of legal grounds. But President, I would just like to respond to one simple question. He said that Under Secretaries were not mentioned when the Basic Law was drafted, so without doubt this post cannot be found in the Basic Law. As for constitutional documents, we have to understand that constitution is aspirational in nature. Unlike laws, constitutional documents are generalized, aspirational and visionary. Laws, on the other hand, are rules which require strict compliance.

Hence, when the Chief Executive said on television that their appointment was totally legal, we were choked with laughter. Being legal means that the requirement is met. Is this too low a standard?

If we want to fulfil the spirit or the lofty vision of the Basic Law, we have to spare a thought for the definition of principal officials, that is, the leadership of Hong Kong — they are different from civil servants. Then, are the Under Secretaries civil servants? Or do they belong to the leadership?

Secretary Frederick MA is a good example. He is ill and our thoughts go out to him. After his resignation, theoretically, his post should be filled by the Under Secretary. In this case, the Under Secretary has to give up his foreign nationality. We cannot ignore this question until the Secretary is incapacitated by illness or some other reasons. Furthermore, if the Under Secretaries belong to the leadership and are held politically accountable, how can their appointment fit in with our "Hong Kong people ruling Hong Kong" concept? Yes, I agree that they break no laws by possessing a foreign nationality. However, being legal cannot be considered as a standard.

In addition, I would like to talk about their remuneration. President, this is indeed very disappointing. We do not know why we have to spend more than \$40 million on this every year. President, I went to Tai Po for district work a couple of days ago and two elderly came to me and swore loudly. But President, I cannot repeat what they said here in this Chamber. They swore so loudly and it scared my assistant. I am often sworn at in the street. Then my assistant went up to them at once, probably wanted to protect me. Then I said to him, "Take it easy, they are not swearing at me. They are swearing at the

Chief Executive." Why did they do that? They are just ordinary citizens. You can say that their viewpoint is simplistic. But you can also say that their way of thinking is direct and to the point. One of them said, "I have asked the Government to raise the Old Age Allowance by \$300 for so many times, but the Government refuses to spare it. Now these people are hired and I do not know who they are. Why do Hong Kong people have to take them and pay them so much? Can you tell me why?" I did not know how to answer him. Even if I did, I would not come to the Chief Executive's defense because I am totally against this system.

President, I have to thank Mr LEE Wing-tat for putting forward this motion, though I wish the scope of the motion could be broader. But at least it is a start. We really want to know the criteria set by the Government for the appointment of this group of people, the rationales for assigning them to their respective bureaux, and the justification for their high salaries. We have an entry point in each pay scale. Why do their salaries not start from the entry point? Is it because of their impressive qualifications and experience? Or is it because the Government thinks that it has to compete with the business sector for these people and therefore must hire them on commercial principles? If it is the latter, I would find it really pathetic because here in Hong Kong, we can attract political talents to serve the community only by commercial terms. We have to lure them with high salaries. None of the Members in this Chamber are here for the remuneration of Legislative Council Members, not even one. Then what message have these appointments conveyed to the people of Hong Kong? In other words, it means only those hired with high salaries are talents. As for those with low pays, you cannot have any expectations on them.

There is one more question. Now they are hired with high salaries, but what will we get? Will they devote themselves to politics as expected? When universal suffrage finally comes to Hong Kong, will they serve the public through election? If they are not willing to participate in politics through elections today, then why do you think that they will change their mind after serving for five years and pocketing tens of millions of dollars in pay?

I do not know if the newspaper reports were correct. It was said that some appointees had asked for a no pay leave from their current employers. When I read this piece of news, I found it so ironic. Why did they ask for a no pay leave when you expect them to commit themselves to serving the people of

Hong Kong? Do they want to go back to their former jobs after this one is completed? Or do they, like so many former senior officials, see the appointment as a revolving door for putting on airs and graces, which will allow them to secure a cushy job with double or triple pay after retirement? I am not criticizing the civil servants who have joined the business sector after retirement. I just think that as long as we have this system, we have to perfect it. Anyway, this is not in our agenda today.

However, the point is that if these people are lured by high salaries from the start, according to common sense, they can also be lured away when there are higher offers. The talents that we want to find are not those who can be attracted by high salaries. We want talents with a strong commitment to Hong Kong people, and a strong conviction and vision for the future of Hong Kong. This requirement cannot possibly be met by someone with a foreign passport and a monthly salary of more than \$200,000.

President, the day before yesterday, many people asked me, "Why can you not accept foreign passport holders? Do you think that with a Canadian passport, my loyalty is pledged to the Canadian government? Or do you think that a British passport holder is really loyal to the Queen? It is not like that." President, I agree that Hong Kong people with foreign passports are not necessarily loyal to their adopted countries. Then why do Hong Kong people still hold a foreign passport? It is because that passport can be their escape door. If anything happens in Hong Kong, they can leave immediately. Therefore, this is not a matter of loyalty, but a matter of commitment to Hong Kong. Foreign passport holders may have in mind exercising the privilege granted by his nationality and leaving Hong Kong one day. However, we do not want these people to be our officials. The officials that we really want are those with a commitment to Hong Kong.

Thank you, President.

MS MARGARET NG (in Cantonese): President, today I would like to specifically discuss two things in connection with Mr LEE Wing-tat's motion: first, system; second, papers. System refers to the system of political appointment. Papers refer to those on salary pertinent to the political appointments made this time around.

President, we did not expect that the Chief Executive would attend the meeting of this Council. As the Chief Executive was to come here in person and to speak to us, his words surely would provide some information or views with regard to Mr LEE Wing-tat's motion, and would thus help our debate of today. However, I had listened carefully to the Chief Executive's speech, and when making mention of system, what did he say? He said that regarding the system of political appointment, he had given explanation both before and after the delivery of his policy Address, that there was nothing new to add and that he would just repeat once. He had repeated once. But what sort of system is it? The system is one chosen by him. It does not matter whether they are Secretaries, Under Secretaries, or Political Assistants, all political appointees are selected by him. He added that the system is adopted by other countries and territories too.

President, let us, for the time being, put aside the question of whether this system is right or not. In the first place, regarding the system, he actually had nothing new to tell us. No further information was forthcoming. He merely said that what he had to say had all been said before, and that there was no new information today. Then, how about papers? As for papers, the Chief Executive said that all that could be made public had been made public, and that the procedures had already been explained. In other words, he was saying that there is no need for us to consider whether or not to pass Mr LEE Wing-tat's motion because even if it is passed, he still has no new information for us. Nevertheless, the words "that could be made public" do have some implications. He did not say that all the papers had been made public. Instead, he said, "all that could be made public had been made public". Is there anything else that cannot be made public? Why can that not be made public? On this, he made no explanation whatsoever. So, President, the Chief Executive's address today is utterly devoid of new information, with nothing to inform us. I find it very strange. The Chief Executive came here, but had utterly no information for us. Why did he come here to speak? I try very hard to figure it out but still find it unfathomable.

President, perhaps the Chief Executive really does not quite understand what is meant by system. According to him, all matters were decided by him. In the process, he alone actually three most senior officials and he jointly made the selections. They were involved from the beginning till the end. Can this be regarded as system? He said that in the United States, the President is allowed to make a lot of political appointments, but they have to be approved by

a democratically elected Congress. That is their system. The system in England is different. Their Prime Minister may appoint cabinet members of his own choice. However, all appointees are Members of Parliament elected by the people. This is the British system. How is accountability achieved under the British system? When something happens, for example, an incident in the health department, is it that an official holding the rank equivalent to that of Secretary Dr York CHOW is to be asked to step down with a bow? Or, when something happens in the area of education, is it that an official holding the rank equivalent to that of Secretary Michael SUEN to be asked to step down with a bow? It is not so. Every time when there is an accountability issue, or an issue of no confidence in the cabinet, the Prime Minister invariably gets involved. Hence, to avoid the ousting of the entire cabinet, on some occasions certain officials are asked to step down. That can be said to be a gesture saying sorry to the entire nation. This is the system of other people.

What sort of system is ours? President, even about salary, what is the system of others? A political appointment to a public office gets the salary of a public office. So long as one is now holding the post, one gets the emoluments of that post. Whether he is rich or poor does not matter; nor does it matter whether he worked on the fields or studied in school the day before.

President, in the old days, many nobles in England took part in politics. The emoluments for all of them were the same. They took their emoluments just the same. But they did not spend what they got. Instead, they returned them to the government's treasury. They did that not because their families were rich and they did not need to worry. It was not like that. This is system. We, Members of this Council, also draw standardized emoluments. Among us, there are probably some whose families are very rich. However, they will not be given extra emoluments. Some are already holding very senior positions in major corporations. They still do not get extra emoluments. Some are paid wages that are not very high. However, that will not drive down their emoluments. Quite a number of us are graduates from British or American universities — I do not know whether or not there are any Oxford graduates, but there are at least those graduated from Cambridge — but they will not get additional emoluments for that. This is system. However, the presence of such system is currently not visible to us. In explaining to us after the appointments were made why the salary was set at the mid-point, Secretary

Stephen LAM said it was not set at the starting point because the amount was not quite enough. What sort of system or criterion is this? Who said these words?

President, in reality, our demand that there should be a system was made long before today. Over the past decade or so, that is to say, both before and after the year 1997, the Legislative Council has always been making the point that when public officers are to be appointed, it is necessary to select competent, decent and well qualified persons to fill the positions by following the principles of fairness and openness. In the past, we conducted several studies to see what overseas criteria and systems were available for our reference. Hence, several years ago (I think it is 1999), our Research and Library Services Division already provided us with information. That is on England's so-called Nolan Principles, that is, the principles and systems to be observed by those appointed to their public offices. We have spoken on this many times. It came up in the discussions on the West Kowloon Cultural District Authority and West Kowloon Cultural District. The Government, however, has all along turned a deaf ear to our words, unwilling to listen to the principles and criteria that we presented. Had our principles been adopted well beforehand, we would have drawn up the principles for the SAR to appoint public officers. Then we would have a system, and there would not be the need to argue over the question as to what the system should be when something went wrong today.

President, system brooks no retrospective consideration. President, we should not have a system tailor-made for a certain person for him to be a parliamentary assembly member because we want him to be so. On the contrary, we already have in place a set of system and criteria. To be a parliamentary assembly member, a person must first meet the system and criteria.

President, perhaps let us refer to the Nolan Principles applied by others when making appointments to public offices to see what the particulars and yardsticks are. First, the Minister responsible for making appointments is required to shoulder the responsibility. He must, first of all, put forward a set of appointment criteria acceptable to all. That is to say, what the requirements expected of the said public office are. They allow no modification once a decision is made. No modification is allowed during the tenure of the public officer. However, let us take a look at the political appointments made this time around. At one time, it was said to be about political talent. At another time, it was said to be about communication. Sometimes it was said to be this, and at

another time, it was that. It just kept changing. The next thing is to make all candidates satisfy the set of publicly drawn up criteria just mentioned. This is the first step. As for the second step, all persons must satisfy this objective standard. Depending on the requirements of the relevant public office, a candidate must prove whether or not his qualification, performance, experience and personality are in line with those criteria. The third step is that there must be independent selection. What is meant by independent selection? It means that if someone is to be appointed, let it be dictated by nobody. As there are already objective criteria, it is, therefore, necessary to assess his suitability objectively. It should not be done in the way Donald TSANG did, by holding discussions behind closed door among just a few persons. What follows is something very important. It is that throughout the entire procedure, the discussion must seek to find out whether or not that candidate has conflict of interests. Information on his background has to be provided well in advance in order to detect as soon as possible the likelihood of any conflict of interests. The proceedings of any discussion about conflict of interests must be recorded after there is consideration as to what has got to be recorded. Finally, there are the questions of openness, transparency, and accountability. How to be open, transparent and accountable? There should be records for every stage of discussion and dialogue. Such information must be able to stand scrutiny in the future. In other words, even if it is not to be made public immediately, or to make disclosure the next day after taking up a post, still it should be available any time when someone made such request.

The Chief Executive need not tell us today that all that can be made public has been made public. He may tell Mr LEE Wing-tat that there is no such need. He can ask Mr LEE Wing-tat what he wants. As far as related papers, inclusive of books, records and documents, are concerned, he is prepared to supply. But it turned out to be zero, because nothing is on record. In that case, how contented will you be, Mr LEE Wing-tat? Hence, there has to be a principle. All proceedings must be put on record. Putting on record does not mean jotting down a few words randomly. It has to be recorded so clearly as to allow others to later scrutinize the process involved on the basis of these documents to see how it was done, whether or not certain matters were touched on, and whether or not certain conditions were satisfied.

Finally, sometimes not all the steps can be followed as there may be need for flexibility. However, any flexible change or variation must be put on record

to point out that it is a special case, an exception, a special concession or something else. But it has got to be recorded.

President, we must have such a set of system and criteria. When these requirements are met, there will be papers for us. So long as we have the papers, the motion for the production of all papers, books, records, or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants moved by Mr LEE Wing-tat today can then have some real "biting power". There being neither a system nor record, even if this motion is passed, I think we are still not going to understand this matter any better.

President, I indeed find this matter somewhat ridiculous, when the head of the SAR could come here to tell us that the way he appointed people constituted the system, and that all he could show us was that much. Such an approach and such a SAR Government really give us the impression of a local tyrant. I am very ashamed of our SAR Government indeed.

President, I am very grateful to Mr LEE Wing-tat for moving this motion, which I support. Thank you.

DR KWOK KA-KI (in Cantonese): Madam President, I first thank Mr LEE Wing-tat for moving this motion, which gives us an opportunity to discuss this issue, one drawing much public attention recently.

In fact, I feel very disappointed today. I originally expected the Chief Executive (as he paid a rare visit to attend a motion debate of the Legislative Council) to say something worthy to the people, something we might be able to swallow upon hearing him out. But nothing. Still nothing. He was still adamant that he had done nothing wrong. Earlier on I saw that quite a number of government officials were present. As a matter of fact, these government officials did not come to listen to our speeches. In fact, they came to support the Chief Executive.

So, this brings my mind back to the words that appeared in the press some time ago when the accountability system of principal officials ran into problems. When asked about these officials' nationality and certain crucial information, the

government source said certain persons with ulterior motive were making irresponsible remarks. Apparently, the Government has not only failed to reflect upon the whole thing but even sought to pass the buck. As a matter of fact, in coming here today, the Chief Executive still has not changed his line of thinking. Basically, he still thinks that the Government has not done anything wrong in this matter.

Those not knowing the picture may probably find it reasonable after hearing his words as information that one would like to know has already been made public, such as that on nationality and salary. Is this really the case? The answer is certainly in the negative. When information about nationality and salary was sought on the first day, it was regarded as confidential information and privacy. Folks, all these posts are on public payroll. An Under Secretary can, at any moment, act as Secretary, the position of a principal official. This is not privacy information. However, at that time, the Government actually regarded such information as privacy. From this, we can see that this is the view of the Government, especially that of the Chief Executive. With due respect, I would say that those hired on this occasion are all his domestic servants. That is to say, it is a matter of his household, about which we are in no position to comment. He can hire, or even charter, any person he finds to be trustworthy. He is to be responsible for everything. Let there be no more irresponsible remarks. This is the Chief Executive's attitude.

I clearly remember that when the development of the case reached a midway point, two former senior government officials, namely, Joseph WONG and John CHAN, came forward and spoke out. I noticed that these two retired senior government officials seldom comment on government measures. It is my belief that they have got accustomed to a practice of civil servants, namely, to abstain from involvement in political matters as far as possible when they are no longer in office. Then, why did these two former senior government officials also come forward and speak out? I see the reason. It is the Government, especially this Administration — Donald TSANG has in fact destroyed something very important, namely, the entire civil service system in the Government. When it was learned that the starting salary of a Political Assistant, a nouveau riche, is actually the same as the salary being drawn by a Permanent Secretary who has worked for 20 years and who is holding a doctoral degree, then I came to know why the two of them came forward and spoke out. We all along hold that it is necessary to nurture new blood. However, in so doing now, the Government is definitely nurturing another type of new blood.

That is to bring up "smart guys" almost the same as Donald TSANG, that is, people who tend to "play smart".

As a matter of fact, in this case, there are a few points worth learning from them. In the first place, one must know how to look for the right place. One will be in luck if one can win others' appreciation on finding the appropriate position and political party, or a pro-government think tank. The reason is that one with a few years' experience might at any moment rise up to directorate or higher rank and be so remunerated. Otherwise, one will have to work painstakingly. One must pass some tests before joining the Government to be an Administrative Officer and work all the way up rank by rank. This is the slow lane.

But Hong Kong people are very smart. In particular, we have a very smart Chief Executive and a group of very smart officials. They told us a story, saying that there is a fast lane. Guess how the young people may respond. I also noted from the press a very apt description: "to eat and to take away at the same time". What does "to eat and to take away at the same time" mean? First, "to eat" is to gain the position of Under Secretary, right? The reason is that this is the path to power and wealth. The salary is not bad (amounting to over \$200,000 a month or more than \$2 million a year). "To take away" is to keep one's original nationality. As pointed out by Members earlier on, this is the most important life jacket. How can they know whether or not they are fit for the posts? How can they know whether or not this Government will set itself ablaze by doing this? How can they know whether or not there will be ever lasting esteem from others? With so many "unknowns" out there, it is naturally necessary for one to get insurance for oneself. Such insurance is one's original nationality.

What disappointed us was the Government's response. The Government stated that many people have been holding foreign passports since the reunification, that this will do no harm, that in reality Hong Kong is like this, and that as so many people are such holders, they are no exceptions. I just do not know how to comment on those who said such things. We have always been promoting national education. Every day I watch promos on national education. However, I just cannot bring myself to smile when my eyes turn next to those Under Secretaries. No matter how many times the national anthem is sung or how many sets of promos are shown, all the Under Secretaries are still holding foreign passports, a most dynamic example. Yet they later told our SAR Government that they, being unwaveringly devoted to Hong Kong

people, wanted to come out to serve the people but they still had to keep their foreign nationalities. How should we tell all these to the next generation? Though a lot of efforts have been put on national education, they are just futile. Now this piece of news is the best national education teaching our next generation "to eat and to take away at the same time".

Donald TSANG earlier on made mention of stepping down to fulfil the pledge of accountability. Any officials (I think he should also be included) failing to handle any policy matters properly should be held accountable and step down. In my opinion, today we can ask any unbiased Hong Kong citizen to say whether or not he should be held responsible for today's mess regarding the case of the Under Secretaries. Is it that the accountability system just mentioned by the Chief Executive only represents him and the officials accountable to him? In fact I do not know who are involved. It is said that Norman CHAN and Secretary Stephen LAM are among those who have the say. Just now it was also said that Henry TANG was a member of the committee. Should these Secretaries and principal officials step down on account of accountability? They certainly will not do so. This is just empty talk. In the first place, they will not step down even if they know it very well. In the second place, what are they accountable for? Are they accountable to the people? Of course not.

In my opinion, the Chief Executive is somehow having hallucinations, and has come to the firm belief that he is elected by the people. In his hallucinations, he is under the illusion that he has the people's mandate to govern Hong Kong. Surely, he is not. Let us take a look carefully. The political system remains unchanged. It is still a small-circle election with 800 voters with absolutely no change. This administration and team derived from such a system basically are devoid of a spirit of accountability, and, therefore, not qualified to speak to us on the accountability system. Speak to us again on the accountability system when the SAR really can run an one-person-one-vote election that is fair and open to all. Then I will submit myself. Today, he is not qualified to talk about this.

Secondly, according to the Government, career is open to the talents on the principle of meritocracy. We only see nepotism. As a matter of fact, many Under Secretaries and Political Assistants are of unknown origins. I have seen a lot of reports. I think what is said about their background in the reports would lead us to think of the same source: certain think-tanks, certain private institutions, certain public institutions. These are the places where they choose

and pick their footmen. How would the people find it agreeable when such methods are used to select those so-called political nouveau riches?

In fact, what the Government said is correct too. The Government is very ostentatious, once even saying that tens of million dollars meant nothing. Involved here is a sum amounting to tens of million dollars only. Please do not get into their way. What a big mission it is, isn't it? However, the point is that the people care very little about the tens of million dollars. In fact, the people only wish to know this: How are these people going to consolidate the political system, realize the spirit of accountability, inspire those interested to join the Government, and make Hong Kong more democratic? However, none of these can be achieved. Today, we can see that many individuals have been serving the public by joining the District Councils and even spending years in certain political parties, and waiting for long years with a wish to have an ultimate opportunity to play an important or greater role in politics and political system. The Government should be responsible for the stagnant growth of the political system.

Today, if we can see to it that all candidates are elected through direct election and more seats are returned by direct election so that Hong Kong will have genuine democratic election, and those interested in politics can join the system and be gradually groomed to become responsible members of the governing team, this will be the only way of help to Hong Kong. However, the moves at present in fact only constitute a clandestine swap of concepts. I just cannot see how it can nurture the democratization of the political system. Earlier on Donald TSANG mentioned, again and again, democratization. Madam President, I really wanted to ask him some questions. However, we were not allowed to ask questions. I consider his performance just now to be a "hit and run" act. Sorry, Madam President. I mean that he spoke and then he left right away. That, in my opinion, was a very bad act, being rather sneaky, rather evasive. However, that perhaps fit his profile. If he was indeed genuine and brave, he should take his stand and have talks and discussions with us. However, he would not do it. He chose to let a group of colleagues do it for him. Perhaps some officials have nothing to do with the issue. However, the point is that this is a team. All members have to do it together.

There is another point, one that makes us find the system quite disappointing. For example, salary. Earlier on Ms LI Fung-ying was not in the Chamber. That day I attended the meeting of the Establishment

Subcommittee, and saw how the Government gave its explanation. When, for example, the discussion was on the salary of Political Assistants, it was said that it ranged from Point 1 to Point 5, meaning that there was a salary scale mechanism. Yet, the Government now despotically said that there is only the mid-point salary. How possibly can a government say things like that? Things made public before are totally different from what is done in handling a matter. Well, how can we teach the next generation? Should we tell them that a salary scale that ranges from Point 1 to Point 5 was actually not mentioned, and that only the mid-point salary was discussed? Could the Government please be honest next time? Madam President, I demand that Secretary LAM be more honest. He must not set a bad example for our children, right? That is to say, they must not be deceitful in their words, saying things like only the mid-point salary should be discussed. How possibly can they say such things?

Besides, there is still another point, which was stated by the Chief Executive earlier on. He made denial, saying that there is no question of affinity difference, and that he was treating all political parties equally without discrimination. Honourable Members, I was so shocked that my head almost came off. Was he out of his mind? How could he tell such a lie? I do not mind the Chief Executive choosing from pro-government parties a few persons to be his footmen. This is fine. However, please do not tell a lie like this in broad day light, claiming that all political parties are being treated equally without discrimination. Is it not obvious that there is partisan politics of friends or foes? Yet it still claimed that all political parties are being treated equally without discrimination. Please do not say such things. In fact, I know the outcome of the debate. Mr LEE Wing-tat's motion will definitely go down in defeat. The outcome can be learned in advance by counting the votes. Now all the people are standing there and counting the votes. However, what matters most is that, as the people can also see, how in this matter the Government can make use of a political system devoid of democracy and accountability, and that can be so horrifying. The flames are in fact moving up.

I think today Donald TSANG came forward and spoke because the recent public opinion polls had come to his notice. First, his popularity rating has been dropping. Second, the public opinion poll conducted by the University of Hong Kong has published its results today, showing that the people's confidence in the administration of the government and the future of Hong Kong has

dwindled. Discernible by the public is the way in which these people in the Government handle things, and the continuation of these officials' so-called accountability system. I wonder how the people can possibly have confidence in our administration and future. Seeing that the Government can say such things to distort facts, how possibly would the people submit to such a government? The Government began by making total denial, even lashing out at certain Members of this Council. Some nasty words were said. Up to today, the Government has something done, and that is treated as something done of its own accord. The picture is, of course, not like this. Everything has been the result of arm-twisting. It is like squeezing a tube of toothpaste. Everything is the result of arm-twisting. This includes his appearance before us for an address today. That was also the result of arm-twisting. Had Mr LEE Wing-tat not moved the motion in the Legislative Council, Donald TSANG, I believe, would not have come here. He would have remained in hiding, and got away with a shrug.

In my opinion, any system not making our administration better and not implementing a democratic political system but driving down the morale of the civil service and leading young people of the next generation to a wrong path, that is, "playing smart", can be of no help to Hong Kong. I am going to support Mr LEE Wing-tat's motion. These are my remarks. Thank you, Madam President.

MR JAMES TO (in Cantonese): President, when we were having lunch and learned that the Chief Executive, in an unprecedented move, was coming here to speak, my guess was that there would be something special. We believed that as the Chief Executive, being head of the Government, wanted to speak before the debate of an important motion, there was bound to be a crucial affirmation. Quoting from international politics, this must be pre-emption or a pre-emptive strike, which means defensive attack or defensive treatment. While having our meal upstairs, our colleagues did some guesswork on this. Reporters also made speculation on what he was going to do. Probably because of his awareness of his nose-dived popularity rating, he understands that the people do pay attention to matters like whether or not the Government has accorded different treatment to people depending on their affinity with the Government whether or not the officials have made random picks for him, whether or not there is a violation of the principle of value for money, and whether or not there is unfairness. So, let there be a review. Let there be an affirmation. Let there be proper

explanation to the people so as to state that it is not a matter of poor public relations, and that for some matters it is indeed necessary to be receptive of good advice.

Surprisingly, we were all disappointed. Earlier on, my wish was for him to face Members' questions. The reason is that under Rule 8(b) of the Rules of Procedure, he may indeed do so. So, I originally wanted to give him one more chance. For the Chief Executive to speak before the delivery of replies by various Secretaries of Department in fact could reflect his sense of political commitment, and demonstrate his breadth of mind. At least, it would set a model for those coming to learn. Furthermore, he also has an unshirkable duty to give replies right away. The Secretaries of Department and Bureau Directors can then supply additional details or answer questions following the answers made by him. However, the Chief Executive, as Dr KWOK Ka-ki has said, chose to "hit and run", not having the guts to face Members.

Originally I had no wish to make such criticism in such a tone as I at first wanted to give him a chance. He, however, did not choose to show expansive breadth of political mind. Thinking that it was very risky to make direct replies, he preferred to let Secretaries of Department and Bureau Directors give the answers, so that after everybody had raised questions, he could go back to study them carefully to see how to answer them on the 16th. That was indicative of a lack of confidence, a lack of sense of political commitment, and a lack of breadth of political mind. I am very unhappy with this as our Chief Executive is only of such calibre. Let me sum up the words said by the Chief Executive just now. They are absolutely unrepentant, harping on the same old tune, and devoid of new ideas.

The Government is unable to supply any information on matters of concern to the people. According to many veteran journalists and commentators, members of the public are in fact very much victimized. In the coming days, the public coffers will have to pay out annually tens of million dollars only to be wasted as salary paid in vain. Why? The reason is that after going through this episode, this system of the appointment of Under Secretaries and Political Assistants is to remain "one wasting medical expenses even if treated". According to many commentaries in newspapers, the Government will not dare to fill the remaining posts after this fiasco. However, how about those already appointed? This is indeed the saddest part.

Here is what was originally on my mind. Given the fact that these people will have to make their way in the world to do a lot of political work, political lobbying, and political bargaining, I wonder who else, apart from them, will work for him. What are their qualifications that qualify them for the work? What political ability do they have for those jobs? It is heartbreaking for me to say these words as there are candidates who do have some sense of commitment, some will power and certain ability. They are also known to certain Members who are now present. However, it is a great pity that only some According to our observation, the basic requirement for the nurturing of political talent is that there must at least be a sense of political commitment and political wisdom even if there is to be no political show.

We can see that among those appointed are certain retirees. (It is, of course, perfectly fine for retirees to have "a second spring".) Regrettable is the point that when enquiries were made to colleagues of their former departments, every person expressed disagreement and even wondered who gave the Chief Executive such "words of advice" and recommended such a bad candidate. My enquiry was so shocking that almost every member in that department fell to the ground. There is rumour that he is the playmate of a Bureau Director at ball games. I still do not know whether this is true or not, and am still checking. If it is true, it is very easy to get the answer through enquiry.

Some persons are graduates of elite universities, and yet humbly work for certain organizations as ordinary managers. However, I must not look down upon them as there is the possibility that they are persons of considerable political talent and have enormous breadth of mind. Anyway, if it is claimed that a certain person now appointed is a person with political potentials, all his potentials must have been hidden. The reason is that never before has he published half an article or an iota of political view. Had some individuals addressed the think-tanks earlier on mentioned by the Chief Executive, such as the Bauhinia Foundation Research Centre, and the Group of Thirty, it should have been possible for us to see that the speakers were systematic and willing to interact with different parties. However, it can be noticed that many of the appointees have absolutely not done so.

Regarding political commitment, if an appointee has the pay of his original post suspended and the position reserved for him, I wonder what sort of political commitment this is. According to the Chief Executive, the real situation will be known only after assumption of duties because those appointment posts are very risky and it is hard to have yardsticks, and so, it is necessary for us to be more

lenient to them. LEE Wing-tat has mentioned this before. However, please bear in mind that the general public will have to spend \$100,000-odd or even \$200,000 well in advance, and yet whether they are dragons or phoenixes can only be known after their assumption of duties. If they had fundamental qualities and fundamental political statements, at least they would have been known to some people, or their words would have been heard, and it would have been possible to ascertain their competence in formulating public policies. However, they are utterly devoid of such experience, depending totally on luck.

Finally, on the issue of stable theory. Why is it that this world has stable theory? Earlier on the Chief Executive tried to give explanation — someone gave explanation some time ago too. According to him, it so happens that these appointees are from several fields, such as the Central Policy Unit and think-tanks, catering to all areas and, by chance, acquainted with Norman CHAN. They all know Norman CHAN. He who does not know Norman CHAN is no talent. The Chief Executive further said that he, unable to find talents, asked several Directors of Bureau to recommend candidates. But the Directors of Bureau were not acquainted with political talents. Only those acquainted with Norman CHAN in the fields to which he is related are persons with political talent.

What I am thinking is that it is only reasonable for the officials and Bureau Directors now present to know many persons. To be honest, I do not know if they had invited applications from those working in NGOs, that is, those non-governmental organizations, that had dealings with them. I also do not know how many of them did attend interviews. I know many staff members of statutory bodies, and am acquainted with many members of the Government's advisory bodies. In my opinion, some individuals are of quite high calibre. With regard to two of those known to me, I even made a pledge to give them full help should they run for the position of Chief Executive. They are not democrats. They are very open-minded; they have ideals, and can formulate public policies. They even show a passion for people and society.

The Chief Executive might ask me why I did not recommend them. I notice the breadth of mind that the Government now has. Those at the top have such breadth of mind; so do those at the bottom. There being such arrogance, I wonder how possibly I can recommend them. I remember that there are tons of people listed in the so-called talent net with the Home Affairs Bureau. It has come to our notice that many people have been appointed under the "six boards, six years" rule. This shows that some people are very capable and extremely

competent because they have been on 10-odd or 20 committees for years. It is only reasonable for them to be persons of great competence. They can offer very good advice to the Government on every policy. Are they not talents capable of taking charge on their own? Of course, I wonder if those who can take charge on their own are prepared to work together with such a current government. That is another story.

However, the problem is that if no ideal talent can be found I remember that renowned talk show host Chip TSAO once said, "Appoint just a few individuals. Such appointments can give a fresh look, and will not bring about any censure. They should demonstrate power and authority. Those individuals can report for work right away, and everybody will find that OK." However, the Chief Executive, being greedy, appointed 10 to 20 persons at one go. Then his weakest spot was caught and he got a good beating. Why is the Government like that? This is the procedure of the current appointment as well as the quality of appointment. Our advisory committees and statutory bodies have a lot of talents. To be honest, given such salaries, the talents to be recruited will, I believe, far surpass the current ones in calibre, provided that those persons are treated with deference, the recruitment is conducted in an open and fair manner to take in talent, and affinity differentiation is given no room.

The renowned writer NGAI Hong is very witty. Sometimes he can hit the nail on the head. I once heard him saying in a show: "Ha, ha, ha! Is it possible for a boss not to know his employees' wages? Wow, this is really ridiculous, ha, ha, ha!" Surely, my acting is not good. However, I really find him terrific. It is impossible for the boss not to know his subordinates' wages. Is this not horrendous absurdity? However, at first the Government refused to disclose this and that on the ground that this would impact management. Gradually the concession reached the point where those Under Secretaries and Political Assistants made the disclosure themselves. We used to have rules and regulations as well as systems, and do things openly and with transparency. Such information, of course, ought to be disclosed by the Government. This is basic information. It is now made public by the persons concerned themselves. What if in the future such appointments are made again, yet the appointees refuse to make disclosure? Then came the words of Secretary Stephen LAM: There is no need to worry. In future, it can be put down in the terms of appointment that they are required to disclose such information.

Is there something out of order here? Payment is made out of the public coffers. The Government pays the wages. However, the public is the real boss. Although this is not a government returned by one-person-one-vote election, the public at least ought to know those persons' salaries. This is a very basic principle. It is a matter of system that brooks no dodging. We must not allow the persons concerned to decide for themselves whether or not to make disclosure. What if they refuse to make disclosure? How come the existing system of the Government is like this?

I can only comment on the way in which the Government now handles things. If it is indeed for Donald TSANG to come here on this occasion to make the conclusion or affirmation, then I can only consider him to be ignorant of the people's concern. He does not understand why the people are unhappy with the storm over the Political Appointment System for Under Secretaries and Political Assistants. He also fails to learn his lesson. So, starting from him, all officials (they probably think that the boss is advocating strong leadership) are absolutely unrepentant, admitting no mistake even when error is made. The Commissioner of Police is also like this. When his subordinates have said something wrong, they are likewise told not to admit. He prefers to overturn it on the radio several months later by describing that as a misunderstanding then. What is more, the blame will be passed onto the media whenever there is an incident. For reasons unknown, the Director of Immigration made exaggerating remarks on an incident, and then came out in a bid to make remedies, describing it as a mistake on the part of the media. So, in every matter, the blame goes to the media. In every matter, it is the people who get it wrong. In every matter, it is the legislators who make exaggeration to stir up things.

Provided that there are political commitment and calibre, it is possible to pull through any political storm. No matter what political dispute there is, no matter how the society is rushing at him, he must still show his calibre of leadership as well as breadth of political mind. Only in this way can the standard expected of our Chief Executive, accountable principal officials, and the team of accountability be achieved. This is the people's expectation. It is also the basic requirement only achievable by a strong government.

President, I speak in support of LEE Wing-tat's motion.

MRS ANSON CHAN (in Cantonese): Madam President, the Chief Executive today came to the meeting of this Council. His appearance can be said to be a tardy act. But it is better late than never. It is, however, a pity that the Chief Executive's words are devoid of new ideas. They even added a thick layer of political make-up incapable of dispelling the doubts of the public and this Council with regard to the episode over the appointment of Under Secretaries and Political Assistants.

In delivering this speech, I have a heartbreaking feeling because of what I saw the Government has been doing these days. From this episode over the appointment of Under Secretaries and Political Assistants we can clearly see tyranny, obstinacy, disregard for public opinions, and unwillingness to right wrongs on the part of the Chief Executive and the Government. Besides, there were insincere words of "apology" and the attempt to "shrug" off responsibilities out of a wish to end the matter. To put it in simple words, members of the public are being treated as nonexistent. Last Sunday, the Government, in response to my "Letter to Hong Kong", adamantly said that the decision of appointing their own men "had gone through a stringent process and was made on a collective basis". It was even said to be a highly transparent decision. I would like to tell the Chief Executive and the Government that the Government has gone too far in insulting the people's intelligence.

Over the past month, the people have been expressing strong misgivings and discontent because of the hiring by the Government, on high pays, of persons with no political experience to be Under Secretaries or Political Assistants. However, in dealing with Members' queries, the Secretary just kept on sidetracking the issue in a bid to "give Members a tour of the garden". Or, he is just like a broken recorder repeatedly playing the Government's lines to take, saying "We are hiring people on account of their talent, showing high transparency and stringency; and making decisions on a collective basis". I think the people are already very fed up with, and utterly disappointed by, words from the Government, which neither tell the whole story nor give the truth.

Over the past few years, I have been stressing that to have the Political Appointment System expanded recklessly before the SAR has genuine democracy and the Chief Executive is returned by universal suffrage constitutes a dangerous situation allowing the Chief Executive to have autocratic power for himself with no accountability to the people. In fact, the Chief Executive is completely destroying a well-tested civil service system, ruining a set of good

concepts of value. In my opinion, the consequence is too dreadful to contemplate.

In dealing with the whole episode, the Government has, right from the start, the evil intention to cover up the issues of nationality and actual salary, using privacy as an excuse to conceal facts. Information was then disclosed "in the manner of squeezing a tube of toothpaste" when the plot was exposed. Ultimately, the officials concerned were forced to disclose their nationalities and salaries themselves. Judging from this, the Government is trying to pass the buck and has no sense of ethics. After this storm, it is in fact going to be very difficult for those appointed to be Under Secretaries or Political Assistants to gain the respect and co-operation of the public and this Council.

For a government to appoint officials, there have to be rules and regulations. Beside educational requirements, there has to be a set of clear standards for judging qualifications, experience and salary. Obviously, there is no way for the people to be satisfied with the Government's explanation. How did the Government select this batch of people? How to determine that they do meet the requirements, and have the relevant abilities to get their jobs done? What are the standards used by the Government to decide that these people are well justified to be paid salaries several times higher than those of their original jobs on the basis of their qualifications and abilities? How come certain individuals with little experience are, in addition to having their salaries increased by several times, being offered pay above the starting point? The pay structure of our manpower market similarly has fixed logic as well as market rules and principles. This time the private sector likewise calls into question the Government's yardsticks. I wonder whether or not the Government, by so doing on this occasion, is seeking to prove that these people were underpaid by the private sector in the past. Or is it that the Government is overpaying them?

I would like to defend the civil service against an injustice too. As we all know, to be successfully recruited into the Government, an Administrative Officer (AO) must beat down several thousand candidates. Once in the Government, one has to proceed step by step to build up decision-making experience in various fields. It takes at least 10-odd years' efforts to reach the ranks and salaries enjoyed by Under Secretaries and Political Assistants. One just cannot reach the sky in one step. It does not matter how competent one is. What the Government did this time seriously undermines the morale of civil servants. Even though they respect and enjoy their jobs, I wonder how they

possibly can get on with their work ungrudgingly under such unfair conditions. Furthermore, I wonder if civil servants will be spared the trouble of having to come to this Council to do explanation and lobbying following the creation of the political posts of Under Secretaries and Political Assistants. So far, there is still no clear answer from the Government. If it is still going to be necessary for civil servants to do such political work, I wonder how to maintain their political neutrality. I have again and again raised the issue about the confusion between power and responsibility. It has yet to be resolved. Moreover, the Under Secretaries are on very high salaries. How come they cannot take up their work on assuming duty and come to this Council to do explanation? Why are several months needed for their training and integration before they have the guts to come out? This is definitely a waste of public money.

To put it in simple words, the process by which the Government recruited this batch of persons was actually the decisions of several individuals. If they are indeed "stringent decisions made on a collective basis", I wonder why the other Secretaries of Department and Bureau Directors have never stepped forward to defend, or say a few words for, these new subordinates.

Money is drawn from the public coffers to hire senior civil servants. It is necessary to report clearly to the people. The Government is at fault. With nowhere to pass the blame, the buck is being passed onto the Legislative Council. Most pan-democratic Members were against the entire proposal and appropriation in respect of the appointment of Under Secretaries and Political Assistants. Should the people wish to pursue responsibilities, they ought to ask those "royalists" and the pro-establishment Members.

It has always been my stand that the Legislative Council (Powers and Privileges) Ordinance should not be applied lightly. However, this time, pan-democratic Members spent a lot of time asking the Government to produce information explaining appointment principles, procedure, guidelines for setting salaries, contract terms, mid-term review, guidelines for increments, and so on. Though the pressure from public opinion is overwhelming, the Government still treats Members as nonexistent. So, in my opinion, I have no alternative but to support LEE Wing-tat's motion.

From the whole incident, the people can clearly see that unrestrained power corrupts. The Accountability System of Principal Officials has also been palmed off by the Government to become a "Political Appointment System".

At present, under the entire system, accountability is to the Chief Executive only. In order that there can be good governance and a government that is really transparent and accountable to the public, the only option is universal suffrage. So, to fight for the early realization of genuine universal suffrage, I call upon every person to join the 1 July march. Finally, I would like to say a few words to the Chief Executive. Just now the Chief Executive appealed to Members for forbearance and team spirit. I would like to tell the Chief Executive this. For forbearance, it has got to start with the Chief Executive himself and go down to all officials, inclusive of those from political appointments and civil servants.

Madam President, I so submit. *(Members tapped on the bench to mark the occasion)*

MR CHEUNG MAN-KWONG (in Cantonese): President, the furore over the creation of the posts of Under Secretaries and Political Assistants by the SAR Government has been in progress for more than a month. With the uproar over accountability escalating incessantly, there is impact on Donald TSANG's popularity rating, which has, as a result, reached an all-time low. It has degenerated into an administration crisis of the SAR. Members of the public are beginning to compare Donald TSANG with TUNG Chee-hwa. Even though the matter has yet to develop to a stage as earth-shattering as the incident on legislation for Article 23 of the Basic Law, and even though Donald TSANG, after all, did come to this Council to give explanation, the issue remains unsolved. What is more, there is enough in the storm over Under Secretaries for Donald TSANG to have serious reflection. How come the Government made mistakes again and again? Why is it sinking deeper and deeper into the swamp? How come more and more toothpaste is being squeezed out? Why does the Government keep on retreating in defeat before public opinion?

Earlier on Donald TSANG advised against internal conflicts. However, in order to stop internal conflicts, it is, first of all, necessary to have the mistakes summed up. Only by righting the wrongs can internal conflicts be reduced.

Wrongly taking over from TUNG Chee-hwa the torch of accountability and committing the error of expanding the inherently defective accountability system is the first mistake of Donald TSANG's administration. At the time of the inception of the accountability system, the democrats already pointed out that

an accountability system devoid of democracy is another form of tyranny used by TUNG Chee-hwa as a ploy to suppress senior civil servants in order to build, by his own nomination, his own team. Donald TSANG, a person with a career in the Civil Service behind him, naturally understands that an accountability system giving final say to one single person has conflict of power with the Civil Service, and also sows political discord with democracy. To further expand the accountability system at a time when the accountability system is still called into question, and the integration with the Civil Service and the conflict with democracy are riddled with problems is to add fuel to the flames of conflict and confrontation that are already in existence. This represents a political escapade and imprudence. Ultimately, there comes a bad fall resulting in cuts and bruises all over the body, just like what it is today.

Being self-willed and nepotistic is the second mistake of Donald TSANG's administration. Given the fact that accountable officials hold power today, and enjoy the opportunity to rise further up in the days to come, their appointment and composition surely draw much attention. With the Legislative Council being denied access to the papers requested, I wonder how we can possibly rely just on a few words from the Chief Executive, and then believe that the process of nomination, interview, recommendation and confirmation in respect of these nouveau riches of accountability, fellows suddenly coming into power, was or was not mainly manipulated by Norman CHAN, the Director of the Chief Executive's Office. Is it that the power to appoint these nouveau riches of accountability the sole monopoly of Chief Executive Donald TSANG? The appointment power of the Central Government has long been kicked aside. The power to select accountable officials has also been stripped. The SAR becomes an even smaller circle of palace politics. Up to now, the Chief Executive is still unwilling to produce papers. There is still ground for the public to have doubts. Is it that the Chief Executive uses Norman CHAN to build a stable to extend the existing power of the Chief Executive's Office or even to exert leverage on the opportunities to appoint officials of the next administration? Now the 17 political nouveau riches are reporting for duty one after another. However, the questions as to where these nouveau riches come from, how are they qualified, who nominated them, and who rapped the gavel all remain unsolved mysteries of the SAR. Is this the convergence of the three evils of dark room politics, stable politics and partisan politics of friends or foes? Does it highlight the ugliest side of a dictatorial government?

To have blind faith in political spinning but give little regard to public indignation is the third mistake of Donald TSANG's administration. During the era of TUNG Chee-hwa, he rejected political public relations work and spin doctors. It is now the era of Donald TSANG. The knack and cleverness of political spinning actually rise above the Government's true feelings and sincerity. The Government's administration tends to be meticulous about the packaging of policies. Lofty though the Government should be, it behaves like amoeba, going after the good but staying away from the dangerous, manipulating the media, and tampering with public opinions. Attention paid to popularity rating is more than that given to the quality of administration. Donald TSANG's administration, as is shown by this, has gone too far, not bearing in mind that his regime is devoid of the mandate of public opinion, letting go the modesty that a ruler ought to have, augmenting the pride of being able to exercise dominating power single-handedly, and fostering the flippancy of having the whole world under his feet. This time, when the expansion of the accountability system has caused an uproar, he still blindly believed that public opinions tended to fluctuate drastically, still thought that spinning could reverse the course of events, and that the path could be cleared by holding a firm stand for a week. The long-gathered fury of the public was underestimated. However, in the end, floodwater-like resentment came surging, spreading from nationality to salary, going from privacy to the Basic Law, and burning from Norman CHAN to Donald TSANG. When the faults in relation to the storm over the expansion of the accountability system were being exposed to the people in the manner of peeling an onion, not even a spin doctor can bring the dead back to life. It is time for Donald TSANG's popularity rating to hit an all-time low too.

Being politically reckless and too anxious to have accomplishment is the fourth mistake of Donald TSANG's administration. The accountability system constitutes the Government's core of power. Like Members of the Legislative Council, Bureau Directors are always subject to the restriction on nationality under the Basic Law. Nationality does not mean as narrow as just nationalism. To reflect their political commitment to the country, the nationality requirement is applied only to officials with supreme authority and legislators, persons keeping a watch on the Government. Donald TSANG stressed that the purpose of expanding the accountability system was to nurture political talent for Hong Kong. Let us, for the time being, say nothing about Donald TSANG's intention to belittle political parties. Being nurtured now is a batch of expatriate nouveau riches of accountability. Internally, they cannot serve as Secretaries.

Externally, they cannot run for the seats of legislators. With regard to political experience, they are freshmen, yet their salary level is that of top officials. Isn't this ridiculous? Here are just two most ridiculous examples. Among the 17 nouveau riches under the accountability system, more than one half of them have foreign nationalities or right of abode — more than one half — where lies political commitment? According to Donald TSANG, there are maximum points and minimum points for the salaries of those nouveau riches of accountability. Just now he said these words. I, however, wonder why all those nouveau riches of accountability are being remunerated above the mid-point of the salary range. Is there any regard for public money? How possibly can this be described as compliance with rules and regulations? This is sheer lawlessness. If we give this deeper thoughts, how come on the political side Donald TSANG lost sensitivity over nationality? Why is there disregard for the danger of excessively high salary? This proves that Donald TSANG is too reckless politically. The accountability system was launched hastily in order to showcase the style of strong governance, which reflected excessive arrogance and scant regard for public opinions and representative assemblies on the part of Donald TSANG's administration, and exposed his mindset, one bent on having its own way. Ultimately, they lost their footing right at the start and their boat capsized in the underground channel.

To shirk responsibility and pass the buck onto others is the fifth mistake of Donald TSANG's administration. Over the past few weeks, the Government has been leaking information, blaming all mistakes on Norman CHAN and the psychological warfare unit. But who is the Chief Executive of accountability? Who should shoulder the ultimate political responsibility in the face of political disaster? It's, of course, Donald TSANG. He allowed Norman CHAN to take charge, "pick the footmen", and even veto Secretaries' choices. He permitted those nouveau riches of accountability to start off with high pays to the neglect of government regulations with which he is so familiar. He refused to disclose Under Secretaries' nationalities and salaries, using the feeble excuse of privacy to deceive himself as well as others. He disclaimed all the responsibility due to the Chief Executive, leaving those Under Secretaries to face the ravaging public opinions. He shirked the blame for being self-willed, and merely apologized for the arrangement made for announcing the appointees. So far, he is still adamant about his pride and bureaucratic swagger, refusing to present papers to this Council, and, thus, leaving the truth of the case in the dark room. Instead of being ready to accept good advice as he claimed, this is to choose and follow what is bad. For all these man-made wrong decisions and all

these moves to pass the buck, Donald TSANG must be held responsible. He should not change his name to "Mr Disclaimer" and put the blame on others.

Hong Kong politics is like a dormant volcano. The people invariably express strong and clear public opinions at critical moments. The legislation for Article 23 of the Basic Law at the time of TUNG Chee-hwa was like that; so is the storm over Donald TSANG's accountability. Following their opposition to the legislation for Article 23 of the Basic Law, the people again sharpen their vigilance to be wary as absolute power of a dictatorship holding absolute authority is the path to corruption. Given the fact that Donald TSANG is trying to keep for himself all the weapons in the world, the Chief Executive's Office is sending pawns into different policy bureaux, political spins become the Government's religion, some members of the media are willingly dancing to the tune of the Government, and the royalists in the Legislative Council have disarmed themselves, the people reaffirm the value of checks and balances in politics. The real meaning of democracy is not just about election by universal suffrage. It denotes the supervision as well as checks and balances after an election by universal suffrage. It is especially so in Hong Kong, where the government party is dominant. It is especially so in the SAR, where the Western District is in charge. It is especially so with regard to the two systems, which have been subject to interference from the Central Government. To press for election by universal suffrage and keep the Government in check so as to forestall the emergence of a Hong Kong-style one-party dictatorship constitutes the real value of the democrats.

The storm over Under Secretaries has serious consequences. It has intensified the internal conflicts of the government party. It has stirred up the passive sentiments among civil servants. It has touched the Central Government's sensitive nerves. It has woken up the people's sense of righteousness. It has enriched the democrats' political role. It has made members of the media ponder on the responsibility of public opinions. It has propelled checks and balances in politics in Hong Kong. It marks a milestone in the course of the community's march to maturity. History is full of accidents and ironies. Donald TSANG has expedited the birth of monitoring by the general public. Unlike what he just said, such monitoring is not internal conflict. It denotes the fury and awakening of public opinions. It has given Hong Kong a valuable but expensive lesson.

Because of 10 major reasons, namely, the five abovementioned mistakes on the part of Donald TSANG, the need to watch over the Government's arrogance, the need to curb the power of government parties, the need to teach the overbearingness of political tyrannies a lesson, the need to uphold the people's right to know, the need to expose the darkness of the accountability system, the need to reveal the absurdity of politics of appointment, the need to prevent further wasting of public money, vigilance against the evil wind of political spin, and the need to hasten the awakening of the general public to monitoring, there is sufficient justification to support LEE Wing-tat's motion to order, pursuant to section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), the Director of Chief Executive's Office of the Hong Kong Special Administrative Region to attend before the Council on 2 July 2008 to produce any papers, books, records or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants.

President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): President, during lunch time today, you told us that before we would proceed to Mr LEE Wing-tat's motion, the Chief Executive would come to deliver an address, and because of that, you had to have a quick meal and make hasty departure in order to make arrangement for that. Following your departure, several Members had a discussion on why the Chief Executive chose such a moment to deliver his address. According to certain colleagues, this was certainly necessary as in recent days the Chief Executive's popularity has been taking a continuous nose-dive, and, consequently, he has to come out to give explanation.

President, if it is indeed for that reason, the Chief Executive's intelligence is, in my opinion, really substandard, and his political sensitiveness is indeed blunt. The reason is that public resentment has been around for some time before today. Should the Chief Executive really want to give explanation, he should not have waited until today. That should have been done much earlier so as to salvage his popularity rating. However, so far he has not done so. So, in my opinion, the Chief Executive came here to give explanation not because of his dropping popularity rating.

According to our guess, the second most likely reason is that we, pan-democrats, have decided to call upon the people to join the 1 July march for

democracy. One of the themes is about the accountability system. We are of the view that, regarding this accountability system, the Government owes the public a fair explanation with regard to both salary and nationality. So, our wish is for members of the public to take part in the march. President, just count the days. First of July is drawing near quickly. It is the coming week. Is it that the Chief Executive came here to give explanation to give vent to the people's resentment out of a wish to have fewer people take part in the march and, thus, avoid getting reprimand from the Central Government by averting a situation similar to that of the 2003 rally? This is likely to be one of the reasons. However, President, having heard the Chief Executive's entire address, I come to believe that if that is the reason, then he is not going to be able to achieve the goal. Why? Because the Chief Executive's address of 20 minutes just cannot dispel the people's resentment.

If we have gone to the districts these days to do publicity work, I believe many of us must have got into touch with many members of the public, who are now talking about issues concerning the accountability system, nationality and salary instead of matters of livelihood. As stated by Mr Ronny TONG just now, some people even sat down and lashed out angry words, not at Mr Ronny TONG, but at the accountability system and the Chief Executive for bringing about such a mess. This time we agree to add the issue of the accountability system to the themes of the 1 July march because we indeed sense the people's resentment. We would like to make available a platform so that the people can use the opportunity to speak out.

According to what the Chief Executive just said, the further expansion of the accountability system on this occasion was to fulfil his political platform and pledges, and it was the outcome of consultation. To whom did he present his political platform and pledges? President, the Chief Executive did not notice this. He failed to remember that his political platform in reality was only presented to voters of a small-circle election. His pledges were also just made to those in the small-circle election who were likely to vote for him. They were not made to members of the public.

When coming to the issue on consultation, I find it even more regrettable. President, when talking about the tax system in the previous part of our meeting, we asked for the adoption of progressive tax rates. However, according to Secretary Prof K C CHAN, there has yet to be consultation on this as the current tax system has been in use for years and proven to be effective, and it cannot be

changed right away when it is so demanded. Well, President, how long has this civil service system been in use? It probably is of a duration not shorter than that of the current tax system. How come the civil service system can be changed all of a sudden? Is it just up to the chief's will? Is it that only the magistrate is allowed to start a fire but the people may not even light a lamp? If it is really so, then I have nothing to say. Then, he is indeed arrogating all powers to himself, free to do whatever he likes. However, he still should not have come here to cheat us by saying that it was the outcome of consultation. This is definitely not true.

Also, according to what the Chief Executive just said, the accountability system and appointment system were essential for the development of democracy. I have a question for the Chief Executive. Why must the development of democracy be like this? What arguments does he have? Surely, the accountability system is in use in many countries. However, theirs is based on democracy. Their Chief Executives are returned by democratic elections. So, under them are cabinets as well as the accountability system. However, our present position is not like that. I wonder how we can possibly describe it as an essential part of the development of democracy.

Also, according to the Chief Executive, this was to bring in and groom political talent to pave the path for the implementation of universal suffrage in the future. President, granting this, I wonder if this is the only option. Are there some other possible options? When discussing the election of District Councils, we opposed the appointment system. However, the Government said that appointment system was one of the ways to look for and nurture talent as work in representative assemblies provided training to the talent. Let me first put aside the question as to whether or not the appointment system is correct. If there is indeed a need to train the talent, that can be done by developing representative assemblies at district level. It is not absolutely necessary to do it through this appointment cum accountability system. Why doesn't the Government, for the purpose of training, encourage them to run for seats in district representative assemblies? Why does it provide such a short cut? I, of course, am against the appointment system. The reason is that those of the appointment system have never been put to any test. Only those taking the challenges of elections in the process of democratization are tested. Only such an approach can be described as the nurturing of talent. However, our Chief Executive has not adopted this approach, but has provided this short cut instead.

Quite some Members have pointed out that this is not a short cut; it is actually nepotism, the recruitment of one's own gang. We, of course, understand that it is not something bad to recruit one's own gang. The reason is that in order to have smooth administration and implement its policies, a government may need to do so. However, we must have a system. What matters most is a system. I, however, wonder what the current system is like. Just now Ms Margaret NG also made it very clear. This system does not appear to be acceptable to the people in the areas of both nationality and salary. However, our Chief Executive stressed again and again that to take in these talents is to let them devote themselves completely to politics so that they will have commitments for Hong Kong, and they hence will be able to develop further. President, how can they show their commitments to Hong Kong? By holding dual nationalities, I am in a position to leave at any moment. Can this be indicative of my commitments to Hong Kong? I seek to keep my original post with suspended pay in order that I can go back any time the new job is found to be beyond me. Does this denote commitment to the job? If the Chief Executive really wants to have a group of persons who are prepared to go through thick and thin with him, who are indeed committed to serving Hong Kong, I wonder how he possibly can accept their dual nationalities and the arrangement allowing them to keep their original posts with suspended pay.

Just now the Secretary for Justice put forward many arguments from a legal viewpoint that ranged from the Basic Law to the Sino-British Joint Declaration, which was called into question by Mr Albert HO. From all these, he picked out a huge pile of so-called legal rationales. President, as individual citizens, we probably are unable to delve into the meaning behind the law. We place emphasis on spirit and personality as well as the integrity applied to the post. These, paradoxically, are what the people want to know and understand most. I wonder if we can still believe that a person holding dual nationalities can be loyal to our Administration. To put it plainly, when a person looks upon his job with the mentality of holding one job while looking out for a better one, I wonder if he will be in any way committed to his job. Hence, I cannot see how talent can possibly be nurtured and the path to our future election by universal suffrage be paved under this new accountability system as stated by the Chief Executive.

Furthermore, when we today asked for an explanation, the Chief Executive told us not to create internal conflicts, saying that it was time for us to pay attention to people's livelihood and to have earnest and sincere co-operation.

He even told us to work concertedly to properly deal with the problems related to people's livelihood. President, I do not think this is an issue concerning internal conflict. How possibly can we have internal conflict? This is a social issue, something involving all members of the public. Why is there the allegation that there is internal conflict among us when this Council raises queries and asks the Government to give explanation? We just bring up the discussion and raise queries for the people. Why should this be described as internal conflict? In my opinion, such an approach is very disrespectful, showing that public opinion is given little regard.

Towering upon us with such a high-handed approach, he asked us to stop squabbling and calm down so as to fix the problems of people's livelihood. President, this is not squabbling. We are looking for the truth. We want to settle the whole matter properly, and have all the issues clarified. In moving this motion today, Mr LEE Wing-tat wants the Government to give explanation to let everybody understand the inside story of the case. Why is this described as internal conflict?

To describe this as internal conflict depleting our own energy is a sign that the Government does not want to face the question. Or, it is that the Government has exhausted every argument, and is unable to give an explanation for the matter. So, we are told to stop squabbling, and just let the matter end there. Acting like a peacemaker, he asks us to stop squabbling so as to divert attention to the problems of people's livelihood. What is more, pressure is being put on us in this way with the allegation that we, the pan-democrats, often stir up troubles, and bring about all these issues instead of dealing with the problems of people's livelihood. He keeps on inciting people's denunciation against us. Is it fair to do so?

Of course, we all believe that problems of people's livelihood are very important and call for solutions. During this morning's debate, there was special reference to the huge wealth gap in Hong Kong. Many of those in the abyss of misery are looking forward to a helping hand from the Government. Has the Government extended to them a helping hand? Here are some examples. Several Members have also listed out many social problems, the solutions to which require additional appropriations from the Government. These include problems about residential care homes for the elderly, medications, and so on. My wish is for the Government to solve these problems. We are not saying that we do not mind the problems of people's livelihood; nor do we care little about the problems of people's livelihood. It's

just that the Government is not willing to put in effort. The Government should not allege that we are not co-operative or that we have not put in effort. We have been reminding the Government that there are many problems awaiting solutions, for example, problems of the elderly, health care issues, housing issues, and even education issues, and so on. It is also our wish for the Government to face and solve these problems. However, what is the Government's attitude? It is just "couldn't care less", turning a blind eye and a deaf ear to this. Yet, today he told us not to make a fuss, not to argue so much, and to make joint efforts to better the people's livelihood. His purpose was to divert attention. I think such a ploy shows that the Chief Executive is running out of tricks. He has no other reasons for the explanation of these questions. That is all.

I am very grateful to Mr LEE Wing-tat for moving this motion today, which makes it possible for us to put forward some views. It is also my wish for the Government to reflect on itself. Do not play such tricks again at a time when we are facing democratic political reform. Let there be no more such irregularities and deviations in politics. I hope the Government will be open, fair and impartial.

President, these are my remarks.

DR YEUNG SUM (in Cantonese): Madam President, this afternoon, some reporters broke the news that the Chief Executive would suddenly come to this Council. Then there were political whisperings all around me saying: "Brother Sum, something big is coming. Better listen carefully to the words to be said by the Chief Executive and the Secretaries of Department before making up your mind on the vote." Now, everybody has seen the Chief Executive in this Chamber. His performance was basically a desperate attempt to defend an indefensible act.

In fact, recently their popularity ratings have seen a sharp nose-dive. Things basically still go in a way contrary to his wishes even though he came today. Just take a look. Even all those of the royalist parties stayed away from the meeting, there being not a person gutsy enough to speak out in support of the Chief Executive. Why? Madam President, it is because the whole case can be said to be totally unjustifiable and indefensible. Suppose Mr LEE Wing-tat had not moved, on behalf of the Democratic Party, this motion pursuant to the Legislation Council (Powers and Privileges) Ordinance. Would the Chief

Executive have made a sudden appearance here? All the officials now present have to attend to a lot of official duties. However, on being summoned by him, they were suddenly all here.

Turning to this sort of disclosure, one in the manner of "squeezing a tube of toothpaste" — they love to use the expression "squeeze a tube of toothpaste" very much — if Honourable Members had not been hot on the trail of the matter or public opinions had not been totally critical of the Chief Executive because of his improper handling, I think there would not be any arrangement like that today.

Madam President, when Mrs Anson CHAN finished her speech just now, I could not help expressing my support for her words by tapping on the bench. That was especially with reference to one of her remarks. She well understands the operation of the Civil Service, and has deep affection for the civil service system. In my opinion, the success of Hong Kong does not rely on the rule of law alone. Also important are an open society and the civil service system. Ever since my school days, I have been expecting a lot from the Government in many aspects. However, I think this civil service system is very worth keeping. So, I well understand the heartbreaking feeling that she had when talking about this.

In her speech, she pointed out that discernible from the handling of the whole case was the insult to Hong Kong people's intelligence by the Chief Executive. Sometimes Members like us also do not quite notice this. The handling of public opinions is like walking on thin ice. Even a little carelessness is enough to "knock down" Members returned by direction election. It is because our society is already a very mature civil society. The citizens well understand their rights and privileges. They know how to hold the Government accountable and how to argue strongly with the Government peacefully and sensibly on just grounds.

Why is the whole case an insult to Hong Kong people's intelligence? There are mainly four reasons. First of all, just now I saw "Long Hair" bringing in a black box. In due course he definitely will speak. My belief is that the first point of his speech is definitely going to be like what I want to say, that the development of the whole case was one of "black box operation". It was not transparent; nor was it accountable. When the people pressed him with queries, he turned to those Under Secretaries and Political Assistants and said

that if they were willing to, they were to disclose their terms of appointment, and that the stand of the Government remained unchanged. He does not even want to take the blame himself. I would have felt very disheartened if I were his subordinate. My belief has been that the boss will acknowledge responsibility when things go wrong. However, in reality, the boss just "shrugs his shoulders" when things go wrong. If I were any competent person, I would not work my fingers to the bone for him.

Secondly, it is the little regard for the people's aspirations. When responding to reporters' interview for the first time, I pointed out that the Government is now spending public money, and that the payment is not made by the Chief Executive with money out of his own pocket. The people hold that public money ought to be spent properly, justly, rationally, sensibly and justifiably. Well, let us take a look. We have, again and again, pressed the Secretary for answers to our queries. Did Mr Norman CHAN nominate any candidate? How many candidates were nominated? How many persons out of his nomination list were chosen? If more than 100 candidates were nominated, how come those nominated by him had a particularly high success rate? Is it that he indeed monopolizes all the talent under the sky? We asked the Government to give explanation. Yet there has been no response from the Government.

The people have the feeling that this time the Government basically is using public money indiscreetly. This is the third point. Why does it not adopt the initial salary point when there is one? Let us ask Secretary Denise YUE, who picks the talents from a multitude of candidates to be AOs. Is it that normally there can be increment only when there is good performance? How come salary can start from the mid-point without having regard to performance? However, the Chief Executive just now explained carefully, describing it as a special system. We were asked not to make judgment on the basis of the old system. Well, there has got to be justification — there should be justification. This is hard-earned money from the people.

Fourthly, the Government distorts the truth and talks speciously. Just now the Secretary for Justice tried to explain to us by making reference to the Basic Law, saying that there is no provision in the Basic Law forbidding Under Secretaries to hold foreign passports. However, an Under Secretary might have to act as Secretary. Are they not relatively important officials? In fact, this is not a question of law. It is a matter of political ethics and commitment.

Suppose something happens to Hong Kong, yet these officials, the ones in charge, have a back-door, a fire-door, or a fire escape. Are they not supposed to weather the storm with us? Are they not supposed to fight on with us? The truth is that in the event that things go wrong, they can easily go abroad with their families. So, this is a question of political ethics, not a question about the presence or absence of such prohibition in law. It is that simple, yet so far neither the Chief Executive nor the Secretary for Justice has the courage to face it.

Madam President, my speaking time is not up yet. I would like to give a response to the Chief Secretary for Administration and the Chief Executive. The Chief Executive said that he sets up this system to let Hong Kong move towards election by universal suffrage, and that this system, complementing democracy and constituting a form of political infrastructure, is essential because Hong Kong people attach great importance to election by universal suffrage and there is now a timetable. However, Madam President, most preposterous is that the accountability system is absolutely not accountable. Why? It is because the person in charge — the Chief Executive — is not required to be held accountable. He does not have mandate from the people. He often says that in the West, cabinets are also formed in this way. However, whether in England or the United States, they are mainly returned by an election that is fair, open and reasonable. Surely, issues like direct election, indirect election and Election College are all open to debate, but still there is a fair, reasonable and open election, something different from ours, an election of only 800 voters.

In fact, I also feel a little ashamed. I, teaching at the university, am a voter of the education functional constituency. I, being a voter of Hong Kong Island, can cast my vote in direct election. I, being a Member of the Legislative Council, may cast my vote to elect the Chief Executive. What merit and ability qualify me for the right to exercise three votes? I should not have such a privilege. All people are born equal, Madam President — every person is born equal — giving each person one vote is social justice. It is basic human right. There should not be any difference on account of either scholarly attainment or social status. It is just that simple, yet we still are unable to materialize it.

The issue involved in the whole case hinges on having a political accountability system converted into a political appointment system. The Chief Executive uses public money to build up his influence, giving rise to an in-breeding system that is to grow much further and remain there for long.

What is meant by nepotism? What is meant by being open? There is nothing for us to see. According to him, there are rules and regulations. However, Madam President, has he, up to today or up to his appearance before this Chamber, presented to us one paper? Has he provided us with further information? Prior to his arrival here, I asked an official if the papers and information demanded by LEE Wing-tat had been prepared. He said, "Sorry, they are not available." All that the Chief Executive has done is just political public relations work. It is for the purpose of salvaging his own damage, and out of a wish to promote public relations for his own purposes. How much information has been given to the citizens and Members in this Chamber, or Members watching live television broadcast outside after his address? How much new information has been given? How many new documents have been produced? None. Who define those so-called rules and regulations? It is all under his control.

Thirdly, he pleaded to Members of this Council and the Government not to engage in internal conflict — I heard him seemingly say "internal conflict", not "internal discord". He did say "internal conflict" as I was listening attentively to his address. However, Madam President, I would like to say this. Who first started this internal conflict which has depleted our own energy? It was the Chief Executive himself. How much political tolerance has he got? Secretary Frederick MA was my hallmate at the time when I was staying at St. John's. I was then on the 3/F and he was on the 6/F. Although he now has risen to be the head of a political bureau, there is still some friendship between us. It is because we, after all, have known each other for several decades. I recall that when he bade us farewell yesterday, we could not help passing notes to him. He was sitting on a white sofa when he met the press. At the end of the press conference, he waved his hand to signify the close of his political career. At the press conference, he mentioned smooth administration and harmonious human ties as well as impartiality in dealing with persons of different political views. According to him, those lashing out at him most severely over the penny stock incident are now his best friends in this Council. Is the Chief Executive able to do so?

I call upon members of the press to conduct a survey on all government positions, appointed members of representative assemblies, and advisory committees to see how many members of the democratic camp have had opportunities for training. It is zero. In brief, it means keeping all benefits for one's own gang, and those who submit shall remain close; those who resist shall be exiled. Is such an act a sign of political tolerance? Make a comparison

with Frederick MA. That said, Frederick MA is one who grew up in the business sector. So he is more tactful. He is very suitable for the post — excuse me, I find him very suitable for the post. I also consider his departure to be a great pity. That is a loss to the Chief Executive too.

According to the Chief Executive, he is to solve the issue of election by universal suffrage during his term. The year 2012 is drawing near. We sought to talk about the arrangement for 2016 and 2017 with him. He, however, said sorry, because he would not talk about the arrangement for 2016 and 2017 during his term. We were even told to discuss that with the next Chief Executive. However, is there going to be election by universal suffrage in 2012? Recently he even stated in this Chamber that — Madam President, you also heard him — functional constituencies could be, after certain modifications, turned into election by universal suffrage. From the Chief Executive's mouth came words so absurd and contrary to international definition. I do not know whether the Secretary is going to repeat his words later by saying something to the effect that there will be solution to the issue of election by universal suffrage during his term. What a big joke!

He called upon us to work concertedly to solve the problems of people's livelihood. In fact Secretary Carrie LAM is really in a tight spot. Take a look at the issue concerning wall buildings. Those buildings are being completed one after another. The Government is even going to arrange a land exchange deal with Hopewell to let that company build a 93-storey building in Wan Chai. As that was approved by the Town Planning Board more than 10 years ago, he told the people to stop squabbling and accept the reality. The wealth gap is getting bigger and bigger. How much effort has the Chief Executive put in here? The population is ageing. Senior citizens wishing to move into elderly homes or residential care homes still cannot get a place even by the time they die. Yet Hong Kong is such an affluent society.

The Chief Executive asks us to put in efforts to fix the problems of people's livelihood because there is already a timetable for election by universal suffrage. Well, how much effort has the Government spent on the people's livelihood? It is often pointed out by the Government that growth in public expenditure must not exceed economic growth. It is often said that public expenditure must be kept at or below 16% or 20% of gross domestic product (GDP). This is why even though the Government has money, the money goes unspent. Even though the Government has money, that will not be handed out

to the poor unless the Government has this golden rule changed. However, the Chief Executive will not do that. So, stop telling us that the Government is very mindful of people's livelihood. He just goes by the golden rule instead of responding to the needs of the community. I also have a heartbreaking feeling whenever I come to this topic while teaching at the university. The students will seek to know why the money is not used as both the Government and the treasury are so affluent. I tell them that this is not possible as the Government claims that the money cannot be spent, always holding that all public expenditure must be kept at 16% of the GDP — it is 16% and nothing more.

Madam President, this time the Chief Executive has come quite late. Had Mr LEE Wing-tat not proposed to invoke the Legislative Council (Powers and Privileges) Ordinance, he would not have come. However, he has just made a leisurely tour here, not giving much explanation, not saying sorry, or thanking the Bureau Directors for taking all the trouble to shoulder his responsibility.

However, the people have discerning eyes. Some classical quotes can indeed be applied to this episode, Madam President. Indeed absolute power should not be allowed. Absolute power corrupts absolutely. So, it is still necessary for friends of the democratic camp to press on to bring into play the power to check and monitor the Government. Like Mrs Anson CHAN, I also call upon every person to take to the street on 1 July.

Thank you, Madam President.

MISS TAM HEUNG-MAN (in Cantonese): Madam President, the small animal that I am holding is a birthday gift my friend gave me this year. This birthday gift is called "TAM Heung-man's Qilin (麒麟)¹", but the situation is totally different from the erstwhile situation that I had when I was given the title of a member of the trio, the "scented Qilin" (香麒麟)². At that time, I was being "shuffled around" almost daily. It was alleged that certain person had talked with me. Then there was the question of whether or not I would make a U-turn.

However, the role is reversed today. The 17 Under Secretaries and Political Assistants, like this Qilin, are being "shuffled around". The shuffling started from the issue of nationality, then proceeded to the issue of salary and

¹ Qilin (麒麟) is a powerful mythological creature in China, similar to a unicorn.

² The Chinese words "香麒麟" consist of characters from the Chinese names of three Members, namely, Miss TAM Heung-man, Dr KWOK Ka-ki and Dr Joseph LEE.

then further proceeded to the issue of appointment. On stage is a farce. It was correctly put by Mrs CHAN earlier on. The Government or the Chief Executive, shrugging off responsibility, is immoral and unjust to these 17 persons. Would the Government regret what it has done seeing the consequences today? Had things been done openly and with transparency right from the start, today's political disaster would have been avoided. It would not have made it necessary even for the off-shore Chief Executive to make an impromptu appearance here to give explanation. However, his appearance was too late. If the Government had not taken the issue of nationality concerning those Under Secretaries to be a matter of low gravity, if they had not used a low key approach to announce these nouveau riches' appointment, if the selection procedure of Under Secretaries and the likes had not been of low transparency, and if their salaries were not way too high, the coming out of these nouveau riches of three "lows" and one "high" would not have been as stormy as yesterday's typhoon.

The Chief Executive pointed out in today's address that these political nouveau riches were not recruited openly like civil servants. However, it was disclosed in between the lines that persons including the Secretaries of Department and Bureau Directors were allowed to make the picks to form the team of accountability. To play in this way was to let them form their own "gangs", that is, partisan politics of friends or foes. He even asked us to tolerate such an expanded appointment system. The Chief Executive again stressed that the selection procedure of this occasion was determined on a collective basis. However, we still have to ask one question. Is there anyone whose nomination shows some bearing on the collective decision on account of his or her being nominated by a certain person?

Madam President, here I must ask this question. How many persons did Norman CHAN recommend for shortlisting? Earlier on the Government only responded by saying that the number was very small. However, it just has not made a clear explanation. I call upon the Government to give a clear account here. In circulation are the words saying that Norman CHAN's stable had the upper hand. Obviously, preference was given to "buddies". I hope that the person concerned will give an explanation. The reason is that this will definitely be fairer to him, and can also calm the storm. However, though I earlier on saw Mr Norman CHAN sitting in this Chamber with the Chief Executive, he is now not here. The Government also has not given him the chance to explain it. Is it that he has a guilty conscience and, for fear that things will get even murkier or even more chaotic, dare not stay behind to give explanation for this matter?

Here is another question, one earlier on raised by colleagues and mentioned by LEE Wing-tat too. How come all Under Secretaries or Political Assistants, regardless of their experience, have their salaries set at the mid-points of their pay scales? Colleagues have a lot of doubts. In recent years, members of the Hong Kong community have been attaching considerable importance to corporate governance, asking all public organizations and private organizations to be transparent and work strictly according to rules and regulations. This can be noted from the extensive public attention aroused by the Public Accounts Committee in following up on the management issues of the Hong Kong Tourism Board (HKTB). According to what the Chief Executive said just now, there are rules and regulations. However, when we put to him the questions what those rules and regulations were and how those persons were recruited, he was unable to furnish detailed information to dispel our doubts and worries. The Government is also an organization. It cannot impose this requirement only on others but not itself. On the one hand, the Government criticizes public organizations regarding corporate governance. On the other hand, the Government is very forgetful of the need to be fair, transparent, and in compliance with all rules and regulations in all matters with regard to its own corporate governance. Such a government cannot even gain the trust of the public, not to mention accountability and strong governance. Can the Government undertake to learn from this episode and really proceed to give effect to the accountability sought by the people instead of making remedies only when the matter gets out of hand or when the problem gets bigger and bigger?

As mentioned by colleagues earlier on, the President said at lunch time that the Chief Executive would come to the Legislative Council. In fact, last night a friend already informed Members of the democratic camp that the Chief Executive would come and that there was the possibility that information would be supplied. So, we were asked to consider abstaining from voting. We came to believe that the Government would indeed provide us with supplementary information. However, the address just now delivered by the Chief Executive is still devoid of new points. Most hilarious is that the Chief Executive had to speak from a "high" position. He being so "high", however, highlighted his refusal to repent, his mental state of "day dreaming", and his insistence on "remaining unyielding" even after saying things meaning nothing.

Just now the Chief Executive pointed out that the head of government in a foreign country may form his own cabinet after election. This is correct. A

foreign head of state may do so. I, however, would like to point out that the Chief Executive got it wrong. The reason is that in a foreign country, the head of government is returned by one-person-one-vote election on the basis of universal suffrage. How about the Chief Executive? He was returned by a small-circle election of 800 persons, not by "one person, one vote". He does not enjoy much recognition. Earlier on, I went to the Ante-Chamber to consult other Members after the delivery of the address by the Chief Executive. They are all Members from the royalist camp. One or two of them spoke to me, saying "Alas, it is a waste of time to come here. The information provided is devoid of new points. The things said mean nothing, worse than keeping his mouth shut." Some pointed out outright that it was "worse than before". Some others even said "I wish he did not come." All these are words from pro-government Members. This shows that the more explanation the Chief Executive tried to make to the Legislative Council, the worse the murkiness became. It turned out to be even more "devoid of substance" the more explanation was made.

Madam President, I surely know that today, with the royalists dominating the scene, this motion will definitely go down in defeat, and that the Government is not going to supply us with any information. The Government may utterly ignore corporate governance, go on with "black box operation", carry on underhand dealings, and vigorously keep on setting up their own stables. This is precisely because Hong Kong does not have genuine democratic election by universal suffrage. The annual 1 July march has been scheduled for next week. Earlier on several Members called upon the people to come out. Likewise, here I also call upon the people to give attention to the standard of corporate governance and be mindful of the injustice of the accountability system. I call upon them to go to Victoria Park to call on the SAR Government not to become another HKTB by governing with very low transparency.

With these remarks, I support the motion. Thank you, Madam President.

MR ALBERT HO (in Cantonese): Madam President, today the Chief Executive came to address the Legislative Council before the start of our debate. It was the wish of many colleagues for him to be forbearing and humble so as to be really ready to accept good advice, responsive to the aspirations of the community, and willing to make public information that the public ought to

know. Unfortunately, he paradoxically persisted in choosing and following what is bad, remaining thickheaded, and even keeping his head buried in the sand. I indeed have the worry that he might sink into depravity.

Madam President, it is in fact our wish to wake up the Chief Executive with this debate. According to recent public opinion poll, his approval rating is dropping. It was our wish to urge him to comprehensively review the matter and learn his lesson. However, it seems that no such result has been achieved. I want to state this solemnly here. My wish is for him not to assume that his approval rating is always high, and that he, in his own words, being a person with 40 years' experience in public service, can thus ignore public opinions, and even brazenly place himself above our long-established systems and well-observed principles. Not to mention that he lacks credibility for not being returned by the people. I would like to remind the Chief Executive one thing. Even if he were a leader returned by the people and once enjoyed sky-high approval rating as did Mrs THATCHER, he is still going to face failure and defeat when he totally ignores public opinions in the belief that he can push his way through on the strength of his own will.

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

I would like to again tell the Chief Executive and Secretary Stephen LAM not to repeat words to the effect that they, blessed with the resolutions of this Council, especially those of the Finance Committee, and enjoying the escort provided by most of the royalists, can brush aside, in the name of this Council, the voice of opposition inside and outside the Legislative Council, including strong public opinions. By now, many people have grown from being doubtful to being dissatisfied, and even being antagonized. We are not exaggerating these to scare people. These have been clearly shown in public opinion polls again and again.

Deputy President, I would like to point out clearly that underestimating public opinions is the current mistake of both the Chief Executive and the officials. It is not just an underestimate of public opinions. Also underestimated is the intelligence of the public. He thinks the people are so stupid that they know not what they ought to ask for, fight for or insist upon. He thinks that the people give expression to some public sentiments because of momentary incitement from others. In fact, this is underestimating the

intelligence and common sense of Hong Kong people. I would also like to point out that the problem with our Government now is not being slow in reacting. It is in fact suffering from insensitivity to such a point of becoming so arrogant and haughty that there is total ignorance of words of opposition from the community. Many basic systems, principles and even core values of ours have already been shaken. As a result, many people we met in the streets expressed strong views. Even many individuals long considered to be mainstream figures in the community also expressed their displeasure. They definitely do not come from any opposition parties, nor are they members of the opposition.

Mrs Anson CHAN aside, there are also Mr John CHAN and Mr Joseph WONG. The Chief Executive, I believe, probably dare not say that these people object for the sake of objection in a bid to disrupt our order, or that they do not trust the Government. How come the Government behaves like this? How come the Government so far is still unable to give this matter some comprehensive and deep thoughts?

Deputy President, today's motion is in fact very simple. It seeks to ask Mr Norman CHAN, the Director of the Chief Executive's Office, to produce any papers, books, records, or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants. Every person can see that the wording of the motion is clear, specific and restrictive. We purposely refrained from making it too wordy. The reason is that I really want to see Council come to a consensus. I have never expected that the Democratic Alliance for the Betterment and Progress of Hong Kong, the Liberal Party or some other people would have a reason to object to such a request. Should they still object to this request, then I wonder how they are going to face society and the public.

We, as a matter of fact, have said this many times. The purpose is to safeguard the people's most fundamental right to know. We have to safeguard the basic transparency of the operation of our political system. We have to see to it that the operation of our system is in line with certain objective, fair and sensible principles. We have to ensure that public money is being put to good uses and is not being spent abusively. We would like to see the Government really appoint people on their merits, not by favouritism. We would like to get on with good governance, not wishing to have it gradually jeopardized or debilitated. In the past we had a lot of tradition of good governance.

Deputy President, the entire appointment system for principal officials and the further development of political appointment system have indeed given rise to a lot of arguments. Our stand, that of the Democratic Party, and the stand of many Members of the pan-democratic camp are very clear. In our opinion, the powers of a government official must be commensurate with the check and balance of accountability that he is subject to as well as with his political mandate. So, when we have yet to fully implement the democratic system to ensure sufficient accountability, it is not advisable to drastically increase the personal powers of the Chief Executive or, worse still, allow the concentration of powers in his hands without check and balance.

Hence, on the basis of this basic concept, I have doubts about the whole system and my doubts are actually basic ones. Even if this point is to be put aside, I would never expect that the Government would violate not only some major principles, but also certain fundamental principles and core values that many Hong Kong people embrace and cherish in the course of actual implementation. The appointment system of public officers is part of the constitutional arrangement. As a matter of fact, if the Directors of Bureau and Secretaries of Department have the chance to walk around in the streets, they are at liberty to conduct signature campaigns to appeal to the people for support and chat with them. People ranging from those of the middle class to grassroots or individuals like professionals, executives and housewives, will all tell you that those hired now are not staff members of the Chief Executive's private company, that it is not membership recruitment for a club, and that it is not for individual official to set up his own stable. Members of the public, being taxpayers, are the bosses. Every person thinks that it is only right and proper to know the conditions of appointment of these public officers. This is the basic right to know. This is common knowledge.

Why are the people so furious? It is because the Government says that this is business contract and has to be kept confidential, and that disclosure will lead to difficult management as personal privacy is involved. How possibly can the Government put forward such arguments? Can the Secretary tell us how difficult the management is going to be? Will there be fights? Will some people feel very inferior? Hence, what he said is an insult to the people's common knowledge. This is the appointment of public officers. Can it possibly be described as business secrets?

The Chief Executive has said again and again that for each appointment, there are rules and regulations, a mechanism and a code, and that there is going to be value for money too. Or, as in the words of the Chief Secretary for Administration, this motion comes a bit late, and all that can be said has been said. What is my response to this? Sorry, the Government has said nothing. Put aside the point that nothing has been said about what we asked for. There is not even mention of some very basic matters, such as their salaries. It was individual Under Secretaries or Political Assistants who voluntarily made the disclosure through the Information Services Department. They had to make the disclosure with government approval. This is most pitiable. The Government often asks us to be forbearing. I must ask the Government to treat them with forbearance! In fact, they very much wished to make the disclosure, but the Government gave no approval. The Government imagined that such a move was for their protection. In reality, it was not. On the contrary, it did them harm. I wonder what is wrong with the disclosure. Why should they be put under so much pressure?

In the opinion of the public, knowing their salaries does not mean knowing everything. What we want to know are the salary bands. Then we can tell each person's actual salary level. This is to understand the Government's recruitment procedures and selection criteria. Then it is possible to tell whether or not public money is being put to good uses. This is only natural and reasonable, not a matter of curiosity. I told the Government that this issue about salary and appointment is indeed a serious matter. What is meant by serious matter? As the system is a good one, to whimsically make a crack or a small hole there is something we cannot tolerate. The reason is that once there is such tear and wear, a small crack will gradually grow deeper and bigger, and a small hole will gradually turn into a big one, thus leading to the disintegration or crumbling of the system. This is precisely the reason why we are so concerned. In fact, it is not that simple. Their integration with the Civil Service may also pose a big problem. I think Secretary Denise YUE will speak on this in due course.

Many people do feel concerned as the Code for these officials has yet to be formulated. The Civil Service is filled with discontent. The Government should in fact look into this. When some civil servants came to us to give their signatures in the streets, they said to us, "The Secretary is cheating you. It is not difficult to find out a civil servant's salary. The amount of pay can be worked out by knowing the starting point and pay scale. It is possible to find

out every civil servant's pay." Surely, these are officials by political appointment. Even the salaries of the Bureau Directors are disclosable. Why are the salaries of Under Secretaries not disclosable? Why is it that when the Government prefers so, they are described as officials by political appointment not to be compared with civil servants, and yet when the Government does not want to let others know, there is the claim that civil servants' salaries are not disclosable? How can this be justified?

Deputy President, the Chief Executive came here today. However, he came along with a tone of condemnation, seemingly accusing us of stirring up discord — though he did not use such words, he did mean that — and breeding internal conflicts which would lead to depletion of our own energy. It appears that he does not understand that many of those putting forward different views are like the nerve cells in the Government or society. Surely, what we do will give the Government pains and displeasure. Well, if he does not feel the pains or have such a feeling, I wonder how possibly he can know that there is something wrong with him. What we do is precisely this. Having sensed the people's discontent, we speak up. We are merely discharging our duty. Do not say that we are breeding internal conflicts. My wish is for the Chief Executive to reflect upon this properly.

DEPUTY PRESIDENT (in Cantonese): Your time is up.

MR FREDERICK FUNG (in Cantonese): Deputy President, insofar as this incident is concerned, I think there can be four different stances deriving from two major considerations. First, it is agreeing in principle the need to implement the Accountability System for Principal Officials ("accountability system), or the ministerial system as we referred to. Second, it is agreeing, or disagreeing, with the present implementation approach adopted by the Government. These two major considerations will give rise to four different stances. First, people agree with both the principle and the implementation approach of the accountability system adopted by the Government. Second, they disagree with the Government in principle and in the implementation of such a system. Third, people agree with the Government in principle but disagree with the Government's implementation approach. Fourth, people disagree with the Government in principle but agree with its implementation approach. Surely, I believe the last scenario is highly unlikely to happen. As for the other three stances, the Hong Kong Association for Democracy and People's

Livelihood (ADPL) and I take the third one, that is, we agree in principle with the implementation of the ministerial system or the accountability system, as the Government called it, but we consider that the present implementation approach and process totally unacceptable.

Let me give a brief account of the history in this respect. I share the views of the Government in some aspects, for I agree with the principle concerned. There may be common ground between us about the principle concerned. Back in those days before 1997, the ADPL had put forth certain post-1997 proposals to both the British and Chinese sides, and among these proposals was the ministerial system. In 2000, we formally brought up this issue again to the former Chief Executive TUNG Chee-hwa. We believed that a ministerial system had to be established, for the mode of governance with civil servants ruling Hong Kong adopted before 1997 was not feasible. Before 1997, civil servants were responsible for the formulation, implementation and review of policies, and all powers were concentrated in the civil service system. This was undesirable. Second, in the past, Governors of Hong Kong were appointed by the United Kingdom and they seldom deal with the internal policies of Hong Kong, and even if these policies were dealt with, they would be dealt with by the Civil Service.

After 1997, the Governor was replaced by the Chief Executive. The Chief Executive is returned by election, be it the election of a small coterie or universal suffrage in future, and different Chief Executives will adopt a different blueprint on the governance of Hong Kong. Even in the first election held for the selection of the Chief Executive, we noticed that the election platforms of the three candidates were different. There were three different platforms. Should the governance blueprint on Hong Kong put forth by Chief Executive A, Chief Executive B or Chief Executive C be implemented with the assistance of civil servants, using the system of civil servants ruling Hong Kong adopted during the colonial era before 1997? Or, should the Chief Executive be supported by his own team in taking forward his governance blueprint on Hong Kong? As I see it, under the systems now adopted by different places, societies or countries, be it dictatorial or democratic, the highest leaders are supported by a team in its governance. Therefore, from this perspective, I think that the previous mode of governance adopted during the colonial rule, which counted on civil servants to rule Hong Kong, cannot be carried forward.

More importantly, the difference is discernible by comparison. Members may recall that Mr TUNG, upon assuming office, had adopted a system obviously opposite to that adopted by Mr Chris PATTEN. The same person, Secretary Michael SUEN, who is now sitting next to us, was appointed as the officer-in-charge for constitutional affairs. Back then, Chris PATTEN decided to abolish the appointment system for the District Boards, and Secretary Michael SUEN, the then Secretary for Constitutional Affairs, went around lobbying for support. At that time, I supported the abolition of the appointment seats. After Mr TUNG came into office, Michael SUEN was again the Secretary for Constitutional Affairs, I am not sure if I am correct about his post title, and again, he went around lobbying for the reinstatement of the appointment system. After a lapse of three or four years, the very same Secretary who had went around lobbying for the abolition of the appointment system was lobbying for the reinstatement of the same system. Why? For he, being a civil servant in the same post, had to do so. However, the image he so projected was really disgraceful. Secretary Michael SUEN, before and after a period of four years, had taken a direction completely opposite to his previous stances on the same issue. What is going on?

Another "typical figure" of the accountability system is Secretary Frederick MA, but he is not in the Chamber today. At the beginning, he was an appointed Bureau Director who was not well-versed in the work on the political system of Hong Kong, and whose performance was unsatisfactory to a point that he had to bow to make an apology. But today, when he resigns on the grounds of ill health, we all feel sorry about it and keep asking why he does not stay. He is so outstanding. This reflects that a Bureau Director who wants to perform well and keep his or her job has to model on Secretary Frederick MA. On the contrary, under the civil service system before 1997, the Bureau Director concerned will remain a civil servant irrespective of his or her performance, and he or she will only be transferred from one bureau to another at most.

We then come to the second comparison. We all notice that the substandard piling works incident occurred before 1997 had caused a lot of problems and considerable controversy. However, not a single civil servant had been demoted, let alone being fired, because of the substandard piling works. On the contrary, we see that after 1997, a number of Secretaries of Department and Directors of Bureau, including Antony LEUNG, Regina IP and YEOH Eng-kiong, had stepped down for various political reasons, and so did

TUNG Chee-hwa. I think Members would not believe that he did step down because of a leg complaint, am I right? So, we can see the difference before and after the implementation of the accountability system. What makes the biggest difference is accountability. Officials' performance may still be unsatisfactory, but they have to be held accountable. For this reason, we agree with this approach in principle.

In addition, we agree that this approach should be implemented now. The implementation is indeed long overdue, for we think the issue should instead be dealt with during the 1997 transition period. Had there not been Sino-British row, a timetable and road map for the election of the Chief Executive and Members of the Legislative Council by universal suffrage after 1997 would have been drawn up. Then, by the time universal suffrage is implemented for the election of the Chief Executive, a more comprehensive and sound accountability system or ministerial system should have been put in place, enabling the Chief Executive elected to adopt the system. We all know that a system cannot be established in Hong Kong in one or two days. The enactment of legislation takes time, and more often than not, the procedure will take a couple of years. Had universal suffrage been implemented in 1997, and even if the discussion started in 1997, the discussion would last a couple of years, which means the system would only be adopted after 2000, or the second term, at the earliest. Therefore, if such a system is to be implemented, it should be carried out much earlier.

Nevertheless, should this be implemented in the absence of universal suffrage? From my personal point of view, this should still be implemented, but the situation will be different. I totally agree with the views stated by colleagues from the pan-democratic camp earlier that against a backdrop of universal suffrage, with the support and recognition of the public, the process will move on faster and smoother. But what should we do if there is no universal suffrage? In that case, this will only be achievable and successful when certain primary conditions are met. First, the Chief Executive has massive support from the public. Second, the entire process should be highly transparent, so that the public knows what is going on. Third, there should be a high degree of fairness, but such fairness must not be measured by its own yardstick but by that of the public. Fourth, it is more important to demonstrate full impartiality to the people. In the several motion debates held in the past —

Members all know that my views on this issue differ from those of the other colleagues of the pan-democratic camp — I have put forth a number of principles. The Secretary might have missed them, so I will repeat them now.

At the meeting of the Finance Committee on 14 December, I said that we could not accept the idea of employing some apprentices at a salary of more than \$100,000 to \$200,000. This is taxpayers' money. We consider it unacceptable. Only those who can work competently and undertake such responsibilities should be employed. I recalled the response given by the Secretary on that day. He said that these people whom they enlisted were "real fighters". This expression of "the real fighters" made headlines of newspapers the following day. But, from we can see today, I wonder where all the "real fighters" have gone. Secretary Frederick MA will soon leave office. Could the Under Secretary be his stand-in and fill the vacancy? The Political Assistants have already reported duty, but why have they not met the public so far? The army has been formed, but it remains invisible. They have nothing to do, nor can we see what they are doing. The Government said that we had to be patient and wait for one more month to allow them time to familiarize themselves with their job. But is one month enough? Will they actually need two or three months? Each of them is receiving a monthly salary of some \$100,000 to \$200,000. In that case, these "real fighters" are no "real fighters". This is exactly my prediction on that day — "no apprentice, please".

This issue was discussed the second time at the meeting on 23 April this year. In the Chamber of this Council, apart from putting forth the directions I proposed, I also brought up three issues. The first was a high degree of transparency, and as I have already mentioned it earlier, I will not repeat it now. Second, they should be subject to the monitoring of society. I mean when views on certain issues are expressed in society, they should pay heed to these views instead of resisting and opposing them. Nor should they try to "fight back" by rebuffing the dissenting views or public opinions. When the Chief Executive lacks credibility for not being returned by universal suffrage, and when the degree of support, transparency, fairness and impartiality of the Chief Executive are inadequate, he should be subject to monitoring. In addition to maintaining high transparency and subjecting to monitoring by society, there was a third criterion, that is, to avoid over-expansion. The number of persons involved, which should not be in a great number, should be fixed and observed. It should not be too ambitious. These comments are recorded in the Official Record of Proceedings of the meeting held on 23 April.

During another debate on the issue on 30 April, I put forth three proposals for the consideration of the Government. First, it must be dealt with in an open manner, which means no black-box operation. This is an issue of public concern, so it should be discussed openly and be subject to the examination of the public. Though the Chief Secretary for Administration said that there was already openness and that it had the approval of the Legislative Council, everything was kept in the dark outside the Legislative Council. Genuine openness was demonstrated only in this Chamber of the Legislative Council, but not outside this Council. How was the recruitment carried out? What were the employment terms and conditions, the salaries and the nationalities of these employees? No such information had been made public. Had the media not disclosed the details, no one would have known anything. How could one say that the incident was dealt with in an open manner? In the Legislative Council, it was dealt with in an open manner, but once outside this Council, nothing was made public. Second, there should be self-reflection. The Chief Executive should from time to time reflect on himself. Given the great importance and sensitivity of the issue and the lack of credibility of the Chief Executive, he should constantly reflect on himself and remain humble. Third, review should be carried out promptly. Once irregularity is identified, bold actions should be taken after the review and reform should be introduced. Otherwise, this approach was not going to work. All my remarks have been recorded in the Official Record of Proceedings. However, I find that the Government has turned a deaf ear to my words.

Deputy President, what is the problem this time? The ADPL and I are dissatisfied with a number of issues. First, the issue of nationality. Never have we said that nationality is a legal issue, but the ADPL has a very clear position on this. We stated in our documents presented to the Chinese and British sides before 1997 that we demanded that all Members of the Legislative Council should be persons of Chinese nationality. We also demanded that all principal officials, or officials with decision-making power, should have Chinese nationality. However, given China's backwardness in judiciary independence, we made mention on the judicial aspect. If the judicial system under the common law is to be adopted, we think that some prominent and authoritative judges from Western countries can help.

What is so important about having Chinese nationality? First, it is a matter of loyalty. Second, and most importantly, they can leave very easily when problems arise. And the decision made by those who have the conditions

to leave will be different. In brief, we may simply ask those who persuade gamblers to quit gambling about this. If the loss suffered by a gambler in stocks and foreign exchange investment will be underwritten in full, he will gamble as much as possible regardless of the risk involved, right? Is this good? Is this feasible? Certainly, the mindset will be different. When we are on the same boat, I will be more caring, for I will have to face the consequence with the people of Hong Kong if my policy is defective. In such circumstances, one will know how far one can go.

Insofar as this incident is concerned, I am most grateful to the media. The media in Hong Kong, in its present state, has precisely prevented the leaders of Hong Kong from being dictatorial and fishing in troubled waters. This incident, which reflects the worst scenario, is a case in point. Should the Chief Executive not be gripped by fear? Will the next Chief Executive dare to do the same? I think the motion proposed by LEE Wing-tat will bring about a positive effect on this issue, compelling the Chief Executive or the Government to properly set up a system. He should be open, fair and impartial. He should act cautiously as if he is skating on thin ice. He has to be humble, and he has to conduct review and reflect on himself. Otherwise, society will not give him a lot of chances. More often than not, one will only have the chance to do certain thing once, or at most twice, and sometimes, the second chance just never comes. If the Government, the Chief Executive in particular, wants to be an architect of a new system under the new system, if he wants to be a politician — "a political person", which is a more neutral term — but turns a deaf ear to the five principles I put forth earlier, those who originally support the ministerial system will eventually side with the opposition. This is the case now. Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, actually, I did have some expectations for the address delivered by the Chief Executive today. I thought he would announce some special information. But, obviously, this time, he is only We, of course, welcome him to this Council. But I do not think he comes to this Council for this purpose. Clearly enough, he comes here to try to salvage his dwindling popularity, hoping to remedy the situation. Regrettably, he comes here only to beat about the bush. By behaving this way, I think he is sure to fail in achieving his goal.

If he thinks he can count on these spin doctors and beat about the bush to salvage his dwindling popularity, he is doomed to fail. His address is nothing but an empty speech devoid of substance, which shows no hint of repentance. He kept defending an indefensible case and remarked that whatever information that could be made public had already been made public. His remarks imply that other information will not be made public, and what needs to be said has been said already, so there is nothing more to add.

Worst still, he refused to take any questions from us. If so, how can we have dialogues? This Chamber of the Legislative Council should be a place for debates. There should at least be time for debate, for questions and for having dialogues. But none of the above is allowed. He just left after giving the address and answered no questions at all. I think this is evident that the Chief Executive is totally insincere in addressing this Council today.

I guess, as an alternative strategy, his address today is meant to be a red herring. To put it crudely, by bringing up issues on live chickens, fuel prices and inflation, and so on, he tried to divert the attention of the public away from the discussion on the accountability system to livelihood issues. He even urged Members to stop engaging in internal conflicts. But, Deputy President, we desire no internal conflict with him. Indeed, he is the one who acted against the established core values of Hong Kong and violated the principles of fairness, impartiality and openness. Without transparency, the whole incident was in such a mess, leaving nothing but confusions. We initially expected that he came here to explain and give an account of the incident, but it turned out to be just the opposite, and he simply asked us to discuss livelihood issues.

We definitely have to discuss livelihood issues. The debate on the reduction of profits tax and salaries tax today is discussion on livelihood issues, for we hope that the Government will allocate more resources to help the needy, or to invest on education and health care services. We have been discussing livelihood issues all along. But the Government paid no heed to the livelihood issues brought up by us. Had the Government responded to the livelihood issues concerned, it would at least give us some incentives. Paradoxically, when we are now discussing the issue of governance, the Government urges us to turn to livelihood issues. Since the Government will not give any response, what is the point holding such discussions? When we discussed the issue of governance, the Government accused us of creating internal conflicts. Actually, governance is a matter of great importance. The Chief Executive

urged all of us to focus on livelihood issues and the bread-and-butter issue in times of high inflation, for he thought by doing so, the public would let go this Government that acts in its own way and performs poorly in governance. I think this is an insult to the intelligence of the people of Hong Kong. The public will not let the Government get away with this, for they need a government with good governance. The public understands that where there is corrupted governance, they can say nothing about livelihood issues. People's livelihood will not improve under poor governance. Only good governance will bring hope for better livelihood. Unfortunately, the Chief Executive chose the red herring approach, trying to gloss over the entire incident with livelihood issues.

Deputy President, as I said earlier, the Chief Executive has simply ignored the queries raised by the public. He did not answer the three major questions. The first major question is on the "stable" culture. What did he say about this? He said that Norman CHAN, the Director of the Chief Executive's Offices, knew many people, and that he, who used to work in the Hong Kong Monetary Authority, knew a lot of people. He considered it unfair to say that the appointees were nominated by Norman CHAN, that they are his followers, and that they belong to his stable simply because he knows a lot of people. To quote the words of the Chief Executive, it is unfair for us to say that these people are nominated by him. However, we have never said that the nominations are made by him, for we do not know he is the one to make the nominations. This is the crux of the problem. I remember I had asked Secretary Stephen LAM to give an answer on the number of appointees nominated by Norman CHAN and the number of them being appointed. But the Secretary has not answered this question so far.

Therefore, if the Chief Executive wishes to respond to the question of "stable", he cannot just say that he knows a lot of people, so how do you know that he is the one who make the nominations? How can we find out about this? This reveals the problem of a lack of transparency. This information should be provided clearly. For instance, he can tell us that Norman CHAN has not nominated anyone. It is better to make everything clear. For example, two out of the three candidates nominated by him have been appointed; or four out of the five candidates nominated by him have been appointed; or that all four candidates nominated by him have been appointed. Had he done so, we would at least know this information. However, no one has ever mentioned this.

Therefore, when the issue on a "stable" culture by Norman CHAN was brought up by the media, it revealed to the public the relationship involved clearly. We do not know whether or not he made the nominations. However, given the absence of transparency and the Government's failure to respond to the issue of a "stable" culture, the SAR Government has created all these problems. The black-box operation has fueled intense speculation, but even so, the Chief Executive did not respond to this point today.

The second major question is on remuneration. The problem of remuneration involves two main aspects. First, the political appointment system is introduced by the Government for the purpose of encouraging and nurturing talents to engage in politics. However, how is this related to the determination of remuneration? In what way is this related to the civil service system as a whole? Indeed, the Government is telling the public that if anyone is interested in entering politics, the best channel is to establish think tanks or political groups. If anyone happens to win the recognition of the authorities, he or she will earn a salary of some \$100,000 to \$200,000 despite that he only has a couple of years' experience. The Government is conveying a message on how to take short cuts and how to get to the top expeditiously.

This is not nurturing political talents; this is nurturing talents good at taking short cuts in politics. The message is loud and clear. Members may draw a comparison of three types of people. First, Political Assistants and Under Secretaries. Second, civil servants. Third, it is persons like me. I have been working for 30 years. I graduated from the University of Hong Kong with Secretary Stephen LAM in the same year. I have no other occupations but a no-paid job in the Hong Kong Confederation of Trade Unions (CTU). I am now earning a monthly salary of some \$50,000. I have no passport, nor have I ever applied for a British National (Overseas) Passport (BNO). But to this date, when I am still earning some \$50,000, these Political Assistants, who graduated only three years ago, are being paid some \$100,000 per month. From this comparison of these three types of people, people will probably say that I, LEE Cheuk-yan, am a real fool.

However, this is not just my problem. I do not mind being a fool, but what is important is the message conveyed by the Government. At present, anyone intended to run in the Legislative Council election has to raise funds, ranging from several hundred thousand to \$1 million-odd dollars, for election

engineering. But when they win the election, their remuneration is not even comparable to a Political Assistant who is but a fresh graduate. What kind of political talents is the Government looking for? For political talents who do not care about reward, they can stand for the election of the Legislative Council. For those who strive for rewards, they should hurry to reposition themselves. Under an objective and neutral system or structure, there is no reason to request people not to care about rewards. If reward is neglected, the Government is not training political talents but the like of LEI Feng.

If it is promoting the spirit of LEI Feng, a comparison should be drawn with the second type of people, the civil servants. A civil servant has to work for more than 10 years to earn a salary of some \$100,000, but for a Political Assistant, he or she will be earning some \$100,000 just three years after graduation. What is the message here? It is useless to work like a dog. If one has to get to the top, one should swiftly write more politics commentaries. This is the problem on remuneration.

What kind of political talents is the Government trying to nurture? How can the Government explain this to those civil servants who have been working hard all along? So, the remuneration issue has in fact revealed poor co-ordination of the system as a whole. The issue has created an absolute mess among Members of the Legislative Council, Political Assistants, Under Secretaries and civil servants. At the end of the day, the Government is not encouraging people to enter politics. For those who have already taken up the posts of Political Assistants or Under Secretaries, you are probably playing a trick on them to ask them to enter politics, for this is asking them to quit a job with some \$200,000 for a job paid at only some \$50,000. You must be kidding. It is evident that the system as a whole is devoid of co-ordination.

The final question is on nationality. In my view, it is not a must for these appointees to hold Chinese nationality, but they must state clearly their nationality. The Basic Law is silent on this, and I will not argue about it. Though it is not stipulated in the Basic Law, a clear statement on their nationality is needed. This will convey the message that despite the foreign nationality of the appointee, he or she is a talent, and we treasure talents. We believe that people holding foreign nationality can also love China and love Hong Kong. But they have to make it clear to the public. One day, when this person has to promote national education and national identification, he or she may as well

say, "Kids, national identification is one issue, and a person's wish to emigrate or not is a separate issue. This is Hong Kong." Those who have the guts may say so.

However, they do not act this way. Instead, they say in a wise and valiant tone, "We should uphold national identification and visit our country more frequently. We all wish to develop a sense of identification to our country." They then use their actions to tell others, "But if you prefer to emigrate, just go, it does not matter, for you are a talent after all." They cannot act in such an inconsistent manner. Otherwise, when these people promote national education one day, they should tell the public clearly that people must have a sense of identification to our country, except on the issue of nationality. People can hold different nationalities. It is not a problem, for Hong Kong is a cosmopolitan city. OK, let us defend this cosmopolitan city. But they should practise what they preach. If they keep changing their mind, they will not know what they are up to.

Finally, Deputy President, I think when the Chief Executive said that the entire incident was

(Mr LEUNG Kwok-hung interrupted to express his views)

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

MR LEE CHEUK-YAN (in Cantonese): Deputy President, the Chief Executive said earlier that he acted in compliance with rules and regulation in the entire incident and that he did not sway from the standard practice. However, it is obvious to all that no rules and regulations were followed in the incident and he has totally stepped out of line, and I would say there was no standard practice to speak of. On the one hand, the Government said that remuneration was privacy of individual appointees, but on the other, it stealthily disclosed the information via the Information Services Department and even said that the information was disclosed by the appointees voluntarily. Had there been a standard practice, it should have been stated in the contract that such information was no privacy and must be disclosed. Another issue which illustrates that the entire incident followed no rules and regulations is the criteria adopted for paying them at the mid-point salary, a question I often ask the Secretary, for the public is very

concerned about why salaries of appointees are set at the mid-point without justification. In the Secretary's reply, he said that some very outstanding and competent candidates, who are "real fighters", were identified in the selection exercise. But, as we see it today, this group of fighters has already crumbled.

When Secretary Frederick MA resigned and the Under Secretary was questioned on a related issue, he answered, "You are asking a hypothetical question, so I have no comment." I think his reply is utterly senseless. What did he mean by hypothetical? Secretary Frederick MA has already resigned, how can this be regarded as a hypothetical question? Had we conjured his resignation? It is not a hypothetical question. The question is indeed valid, but the Under Secretary had outrageously given such an answer. It is evident that the army has crumbled. However, the Government is now protecting them. These appointees have now become the protected species. I forecast that they will not meet the public until July, and I wonder if they will be ready by October. The Secretary spoke so highly of them as to describe them as "real fighters", but their expertise has never been demonstrated. From the point of view of the public, they really do not know on what criteria the Secretary gave such comments. He said that the ability of this group of people is definitely worth the mid-point salary, but no criterion could be provided. The only criterion is "my way or no way". In other words, "when I say he is capable, he is; if I say he is not capable, he is not. Now that I say he is capable, so criterion is out of question." The answer is as simple as that. However, the Secretary fails to demonstrate to us their competence. There is not a hint of evidence in this respect. Neither does the experience listed in their résumés prove that they are "real fighters" as claimed by the Secretary.

After all, Deputy President, this mess cannot be cleaned up today. The Chief Executive left this Chamber immediately after giving his address, and gave no explanation to those problems. All the questions I raised earlier remain unanswered. These questions have been put to the Secretary many times, and I do not think he will answer them today. Therefore, if we do not invoke the legislation on powers and privileges, it is impossible for us to investigate into the incident further, and we cannot demonstrate any transparency to the people of Hong Kong, while the black-box operation will just continue. Thank you, Deputy President.

MR MARTIN LEE (in Cantonese): Deputy President, today, the Chief Executive addresses this Council in accordance with Rule 8(a) of the Rules of Procedure. Actually, I have examined the nature of this kind of address and found that it belongs to the type of the policy address. During the British-Hong Kong era, policy addresses were delivered. At that time, the Governor of Hong Kong, on behalf of the Queen of England, would come to the Legislative Council to give an account of his governance in that year. This is like the address on governance in the coming year delivered by the Queen of England on behalf of the ruling party to the British Parliament, which was actually drafted by the Prime Minister.

Rule 8(a) of the Rules of Procedure stipulates that "the Chief Executive may at his discretion attend meetings of the Council , for the following purposes — (a) addressing the Council at any time as he shall think fit, including during a special meeting; (b) answering Members' questions put to him on the work of the Government; and (c) proposing any policy or question for debate by and in the Council". The three subrules, namely (a), (b) and (c), are included.

According to Article 64 of the Basic Law, a provision related to the Government's accountability to the Legislative Council, the Government must be accountable to the Legislative Council, and "it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council", as provided in Rule 8(a) and 8(b) of the Rules of Procedures mentioned by me earlier. As for the responsibility of Members of the Legislative Council, it is stipulated in Article 73(4) of the Basic Law. Article 73 specifies the powers and functions exercised by the Legislative Council. Members have to, according to para (4), receive and debate the policy addresses of the Chief Executive; according to para (5), raise questions on the work of the government; and according to para (6), debate any issue concerning public interests. These provisions are in fact very expressly written.

Today, the Chief Executive suddenly attended the meeting of the Legislative Council. I notice that the Script for this meeting has been revised a number of times, and there has never been so many amendments before. In the last revised version, the item "Address by the Chief Executive" was added between the debates on the two Members' Motions, which means the Chief Executive will speak after the debate on LEE Cheuk-yan's motion but before LEE Wing-tat's motion is proposed. The Chief Executive informed us in

writing that he would leave after the delivery of the address and Members intended to ask questions would have to do so on 16 July, which is 13 days later. What is the problem with such an arrangement? The Chief Executive was actually jumping the queue to cut LEE Wing-tat out, for his address was exactly related to the content of LEE Wing-tat's motion, but he wanted to speak before LEE Wing-tat. Such an arrangement was indeed peculiar. For according to the established procedure for Members' motion, the mover of the motion will speak first and government officials will then respond. In the first version of the Script, no government official was included. Later, amendment was made to include the attendance of five government officials, including two Secretaries of Department and three Directors of Bureau. Eventually, the Chief Executive was included and he would take the lead to address the Council. In other words, before LEE Wing-tat could propose his motion, the Chief Executive would have delivered his address but he would leave immediately after the address. Obviously, he has jumped the queue. This can be likened as a one-man show, or a one-man talk show. This is to deprive LEE Wing-tat of his right to speak. It can be said that he has abused his power. This is foul play. I think all of us have watched football games quite often recently. The Chief Executive's behaviour might not warrant a "red card", so the President was right to allow him to speak. But he should definitely be given a "yellow card" for breaching the rules and playing foul. What is his purpose of doing so? His purpose is to give a seemingly plausible explanation to the incident before LEE Wing-tat speaks. But is it really plausible? We are not allowed to ask questions. If government officials attend the meeting of this Council under Rule 28 of the Rules of Procedure, Members may put "short and succinct questions", but for the address by the Chief Executive, there is no such provision.

I will soon leave the Legislative Council, but I hope that the Legislative Council will consider amending the Rules of Procedure in future to prevent any more foul play from him. Actually, the provision under Rule 28(2) may be adopted to state clearly that if the Chief Executive attends the meeting of this Council to make an address on a certain question, Members will be allowed to ask questions. This is the right approach. Besides, the address cannot be made before a motion on the same issue is proposed by the Member concerned. This will not happen in Britain. The Queen of England will not go to the Parliament and make an address before a Member of the Parliament proposes his or her motion, will she? It is impossible. It is absolutely out of order. Certainly, LEE Wing-tat is open-minded, and he even welcomes the Chief Executive to the meeting. In fact, many Members welcome the Chief

Executive's attendance in this Council. However, from the constitutional perspective, the Chief Executive's act is obviously foul play.

Many Members have given some really excellent speeches, and I would like to respond to several points only. When the Chief Executive mentioned overseas judges coming to Hong Kong to handle cases at the Court of Final Appeal, he looked at me and asked why I strived so hard at that time against the change of the original word "judges", in its plural form, to "judge", a singular form. He asked me why I had to fight so hard at that time. It is true that we even called for the impeachment of Chris PATTEN back then. Why had I been so concerned about this at that time? For the discussion was held with the Central Government, not the British Government, nor the British-Hong Kong Government. The discussion was between me and LI Jusheng. It was hoped that a court of final appeal would be set up in Hong Kong after the reunification, and that the five judges, with three of them from other common law jurisdictions and two from Hong Kong, would handle a case together, so as to preserve the confidence of investors in Hong Kong. The arrangement would allay their worry that the rule of law in Hong Kong might deteriorate after the reunification to a state as bad as that in the Mainland. I did make these remarks to LI Jusheng in person. He understood it and asked if I had any proposal. I then proposed that a preferred arrangement was to recruit three of the five judges from overseas, who would return to their home countries after the adjudication of the case concerned. This arrangement would surely maintain the confidence of investors in Hong Kong and they would continue to invest here. As both civil and criminal cases can eventually be heard in the court of final appeal, they did not have to worry that the judges would be subject to the influence of the SAR Government or even the Central Government, for these overseas judges would eventually return to their home country upon the completion of the cases concerned. That was what happened. It is not a matter of nationality. With regard to the remarks made by the Chief Executive earlier, I do not believe he has no understanding of that part of history. I wonder if he indeed wanted me to give an account of that part of history before I leave. But, actually, I did talk about this in this Chamber in the past.

Many Members have talked about the Accountability System for Principal Officials ("accountability system"). In fact, if there is democracy, I mean true democracy, in Hong Kong, there will surely be accountability, which is only natural. If the Chief Executive is elected by "one person, one vote" through

genuinely democratic procedures, and that all Members of the Legislative Council are returned by universal suffrage on the basis of "one person, one vote" and through genuinely democratic procedures, we can definitely keep a close watch on the Government. The Government must act cautiously on all fronts. Unlike the present situation, the Government could no longer rely on the pro-government party, or bear no consequence of its fault, nor could it iron out problems over a dinning table or with a chat; and even if all the above attempts fail, now the Government can still seek assistance from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (Liaison Office), and this will definitely solve all the problems. Such being the case, why do they need to worry about it?

Before there is true democracy, excuse me, the accountability system is not at all an accountability system but only a puppet system. During the TUNG Chee-hwa era, I called TUNG Chee-hwa the grant puppet, a marionette. At that time, there were three Secretaries of Department and 11 Directors of Bureau. I recall that, back then, we often seemed to be facing a football team, with 11 players and three substitute players. But now, we are facing a four-tiered puppet system, with the Chief Executive in the first tier, followed by Directors of Bureau, Under Secretaries and Political Assistants, and finally civil servants. However, should civil servants not be held accountable then? Let us look at the incident on the Hong Kong Institute of Education. The one who resigned in the end was not the Secretary concerned. Who should be held accountable? A puppet does not have to be accountable. Therefore, this system is in no way an accountability system. Is this not justifiable for Anson CHAN to be so concerned about this? Civil servants have been an issue of gravest concern to her, be it in the past or now. She fully understands what has happened. Frankly, civil servants at more senior level should now act in accordance with the directions of Under Secretaries and Political Assistants, for they said they would be held responsible for any mistake made. But as to whether or not they will be truly held accountable, I do not know, for this is not tested yet. Therefore, in the absence of true democracy, this system will do no good and worse still, it will undermine the neutrality of the Civil Service.

That is why I opposed the accountability system when it was launched. In my view, before there is democracy, the original system should better be upheld. For, under that system, civil servants will at least consider the views from both sides, take into account the interest of society and act according to their experience gained over the years and the established conventions. They

are better than those people who follow obediently the words of the Chief Executive and the Liaison Office. I am not criticizing individual Secretaries of Department or Directors of Bureau, and I must say that nearly or even all of them are good people. However, the system has prevented them from performing their functions competently. They have no say on the issues they are dealing with, for the power of decision making on important issues is vested in the Liaison Office. This is obvious to all. I told my friends, "When you notice that the Government has done something unbelievably stupid, blame neither the officials, nor the Directors of Bureau and Secretaries of Department, and not even the Chief Executive, for it is indeed the decision of the Liaison Office." We have so many outstanding civil servants. Many of them have taken up the office of Directors of Bureau and Secretaries of Department, so why would they not know that this is impracticable? Why are they still doing so? Why do they have to be so obdurate in defending this arrangement? This is not what they want to do.

So, I forgive them and appreciate what they have done, but what we are now striving for is a system. As Deng Xiaoping said, "A good system can prevent bad people from doing bad things; but without a good system, good people are prevented from doing good things and may even be coerced into doing bad things." Now, the Chief Executive, the Secretaries of Department and Directors of Bureau of Hong Kong are coerced into doing bad things.

Lastly, Deputy President, I would like to tell Members of the Legislative Council that up to this moment, Members from the pro-government party have said nothing. I do not know what they want to say. Perhaps they have no intention to speak, for the Chief Executive and the principal officials have all spoken, and the coming election is a cause of concern to them. I have decided not to stand for elections anymore, so this is no longer my concern when I speak. If they have to contest the election, they have to pay the price for coming forward to support the Government. But, please do not ruin the system of Hong Kong. For one wrong step we take today will cause distress to society and the next generation in future. We must maintain the dignity of the legislature. We have the power. We should exercise such power and privilege when the circumstances so warrant. We are not abusing such power. Frankly, has such power been exercised frequently before?

Therefore, when this can win wide support from the public, when people consider it right to do so, and when retired civil servants criticize in express

terms this practice of the SAR Government, and taken into account their responses — It's politics, stupid. — I urge Members not to support the Chief Executive, who does not even have the courage to take our questions. I hope Members will support this motion. Thank you, Deputy President.

DR JOSEPH LEE (in Cantonese): Deputy President, this incident reminds me of another incident. Recently, my department has to recruit some staff, as the Head of Department, I have to find out the relevant recruitment procedures — the Secretary for Civil Service has just left the Chamber, but it does not matter. Speaking of recruitment, I think she is the Director of Bureau who knows this area best. My colleague then gave me a document stating the requirements for a lecturer. There are four basic entry requirements and 13 duties to be carried out. An applicant satisfying these requirements is worthy of the offer of the post at that pay. As for the post of assistant professor, basically, the applicant has to satisfy seven requirements for the post including possessing a doctorate and teaching experience of a specified number of years, a certain number of scientific researches conducted, and in how many journals his or her treatises have been published. Moreover, the holder of the post is responsible for 14 fundamental duties. An applicant satisfying the above requirements will receive the specified level of salary upon employment. At last, he asked me, "Joe, what post is it?" I told him my requirements and then he placed an advertisement for me, stating clearly all the requirements mentioned above. Above all, the advertisement states that applicants are required to submit all their qualifications clearly with their applications.

This brings to mind another point. Though staff management is not where my expertise lies, I will touch on the topic of nursing management in teaching undergraduate courses. As I am no expert in the field, I will look up information on staff management and study the staff recruitment procedures. The first step is sourcing, which means recruitment. How should recruitment be carried out? Many methods are available. The one mentioned by me earlier is just one of them. Another method is appointment on recommendation, an option the Chief Executive has mentioned earlier. Companies may also resort to "head-hunting". I think this method is practicable, and in my view, there is nothing wrong with it. However, in those cases, a full set of employment requirements for the post is stated clearly and

systematically, including the required qualifications, the salary, as well as the criteria to be met for offering the specified salary and the post to a certain applicant.

Let me try to analyse the recruitment procedures of Under Secretaries and Political Assistants from a personnel management perspective. Is there a procedure of personnel management? We do not understand it at all. I heard the Chief Executive bring up one point earlier, as he said that they were not civil servants and thus the recruitment procedure involved was different. I agree with him on this point — Secretary Denise YUE has just left the Chamber. Actually, I used to be a civil servant when I was young. Now, I am fortunate enough to be a supervisor and responsible for staff recruitment. But then, I notice that all recruitment procedures are similar.

Another point put forth by the Chief Executive is that certain information is individual privacy and does not need to be made public. However, I notice that this is a procedure included in the recruitment of civil servants, be it the recruitment of a Permanent Secretary or a clerk. I have been engaging in the trade union for over two decades. Many a time, I have been drawn into entanglement with the Government and supervisors over these provisions. The relevant provisions have been set out properly and clearly. The authorities concerned are required to follow the provisions and no mistake is allowed. Everything is set out explicitly. For instance, at present, a new entrant to the nurse grade, who is a university graduate, will receive a starting pay at point 15, which equals to a take home pay of around \$20,000, when he or she joins the Government or the Hospital Authority. This information is known to the public. After ten years of service, the pay will be at point 25, with each incremental point amounting to \$1,000.

Civil Servants are paid by public money. All the recruitment processes are open and there is no problem about this. Why can't the information related to these Under Secretaries and Political Assistants be disclosed? I asked myself: Are they not paid by public money? If they are not, where does the money for paying their salaries come from? I really do not know, and the Chief Executive has not answered that — it is good to see the Director of Bureau most familiar with the employment of civil servants coming back. May I ask the Secretary who pays for the Under Secretaries and Political Assistants? Are their salaries paid from a separate pool of money? In other words, no matter who paid for their salaries, they are not paid by public money. Since civil

servants are paid by public money, all the information is made known to the public in a fair, impartial and open manner. But why is it that we do not and cannot know the employment terms, salaries and fringe benefits of these people? Why is this information regarded as privacy? It is really strange.

Let us not talk about civil servants and just look at public organizations. I am a Director of the Hospital Authority (HA). When the HA recruits the Chief Executive Officer which is the highest rank of staff, all the information is provided clearly, including the required qualifications of the posts and the salaries offered. All the information is set out clearly. If anyone requests for other information, we will also make it public, particularly when the request is made by the press, all the information will be made public. Why is this information of theirs not be made public?

I have checked the documents I mentioned earlier, that is, the relevant documents relating to recruitment provided to me by my university. Again, I think there is something strange. For instance, can I tell the university that a number of friends of mine who have been engaged in the nursing work for many years are now teaching in the field and are very experienced, and so, I would recommend them to take up the post? And we, in a group of three or five, will come together to form an interviewing panel. Can we do that? As for the salaries, can I say that as I have known this person for a decade, let us offer him \$20,000; for the other one whom I have known for three years, let us offer him \$25,000, and settle the matter? Besides, since the head of the personnel department is my friend, the proposal is endorsed. I believe if such a case is revealed to the Council of the university, I will be dismissed immediately. Why? It is simple. First, this is an illicit transfer of interests. Second, it is cronyism. If we look at the incident this time around, it is indeed very strange. The university where I am working is only a quasi-government organization, but a system has been put in place to ensure that all issues are explained clearly.

But on an issue related to officials of such importance, the appointment of Under Secretaries and Political Assistants is set out clearly in the Legislative Council Paper No. CB(2)2225/07-08(01), and a lot of information has been made clear. But why was the recruitment process such a mess? Why do we know nothing about it? What is happening? The Chief Executive has come to this Council to address Members and explain the case. The two Secretaries of Department have also spoken. But still, the question I asked earlier remains unanswered. I think if the highest leader of the SAR Government can conduct

recruitment this way, it should be more than reasonable for me to follow such an approach. Tomorrow, when I return to the university, I will tell the President of the university, "Since the big boss is doing it this way, there is no reason why we cannot act in the same way. Can we follow such practice, President?" I do not know what will happen; he may perhaps fire me. But I have no clue why they can do so.

It is indeed simple. When I want to recruit a staff member, and if he satisfies the 14 requirements mentioned earlier, or his qualification proves that he possesses even better qualifications than the 14 requirements, he must be worthy of an offer at that pay. I think the Audit Commission knows this well, for they always talk about value for money. However, with regard to the appointment of Under Secretaries and Political Assistants this time, we do not see that they are recruited in such a way. May I ask whether the public money spent is value-for-money? This is the first point.

Second, assuming that public money has been well-spent, and that these people are really outstanding and competent. But if I tell the academic staff member recruited this: "You will report duty on 1 July. But do not worry, for I will give you six months to learn how to work in a university. You will learn how to open the door, for you have to use your staff card and enter the bar code to open it, which is a real trouble. You may have to try many times and may still fail to open it. So you will spend two weeks learning this first. You also need to use the bar code when you go to the lavatory. You have to go a long way to take you lunch, and you have to take the lift to go up and down a number of floors. So, I will give you six months to familiarize yourself with the environment, during which you do not have to do any teaching or scientific research, nor do you need to talk to me or meet people outside. All you need to do is put on your name tag. Do not worry; you will still be paid the same salary." — I think the principal or the head of the personnel department will likely tell me, "Joe, you had better employ a trainee." But if a trainee definitely will not be offered the same salary.

Though I understand that there will be a honeymoon period for these Political Assistants or Under Secretaries when they first take up the job, I am really curious about what they will do during this period, but they are still paid at such high salaries. Such being the case, I suggest that the Government should instead recruit some Under Secretary Trainees or Political Assistant Trainees.

For in that case, their salaries will be lower, and I think the public will consider that more agreeable. This is one point.

However, I still consider it unfair to the Directors of Bureau. Why? I wonder if the Chief Executive or officials of the Central Authorities have ever told the several Directors of Bureau now sitting in this Chamber when they first assumed office that, "Mr SUEN, do not worry, you will have a couple of months to settle down and find out how to work; it does not matter". "Secretary Denise YUE, you may first settle down in the personnel division. I know that issues on civil servants are thorny problems. No hurry, just take your time to familiarize yourself with the job." I do not know if that was the case. However, during my four years of service in the Legislative Council, and my term will soon be over, I have never seen such situation. The Directors of Bureau are extremely competent, and they can perform their duties once they assume office. Take Secretary Eva CHENG as an example. She is in charge of transport and housing affairs, both areas involved knotty issues. When I look at her now, she looks a bit older than the first time we dined together. Pardon me; I should not have said so. But she really has a hard time, for the job is really demanding. Each and every Director of Bureau has to officially take up the entire work portfolio when they first assumed office, but why are the deputies and assistants of the Directors of Bureau offered a training period?

Again, I asked myself: Is the public money well-spent? I dare not speak on behalf of the pan-democratic camp, but I think this motion is very straightforward, and we hope that the Chief Executive will tell us whether the money is well-spent. Regarding these new recruits, I dare not say they are incapable, why? For they have not yet assumed office. Their "skills" may be excellent, and we may be no match for them. As I am not sure about this, I dare not say so. But the Government should at least tell us that they are value for money. Besides, the entire recruitment process should be fair and impartial, as well as open and transparent, unlike the present arrangement whereby we know nothing about what the Government is doing, while the Government can easily muddle through.

Actually, I am a bit worried. As Mr LEE Cheuk-yan — sorry, it should be Mr Frederick FUNG — said earlier, this time, we wish to pass on a very important message, that is, despite the divergence of opinions among colleagues over these controversial issues like whether the political appointment system is practicable and democratic, the Government should at least let us know clearly

that the appointment or recruitment system is systematic and transparent, so that the public can rest assured about that. This is the most important point. However, I am quite disappointed today, for I in no way see that this is the case.

Finally, I would like to respond to the remarks made by the Chief Executive earlier, which are also mentioned in the discussion paper for the Panel on Constitutional Affairs of the Legislative Council. He said that these politically appointed officials had to face extremely high political risks. I fully understand this point. The three Directors of Bureau who are in the Chamber are also facing high risks, and they often have to deal with various thorny problems. Under Secretaries and Political Assistants also have to face high risks. I absolutely agree with this. It is exactly because they have to take such high risks that the Under Secretaries are offered salaries being 70% to 75% of the salaries of Bureau Directors and Political Assistants are offered salaries being 35% to 55% of those of Directors of Bureau. They are worth it. We think there is no problem about it. However, it is the posts that are worthy of this level of salary. As to why these people are worth those salaries, I cannot tell up to this very moment. We may perhaps put aside other factors and focus only on their qualification to make the assessment. Returning to the case on the recruitment of an academic staff mentioned by me earlier, if a friend of mine whom I have known for a decade wants the job but does not possess a doctorate, I have no reason to employ him as an assistant professor. I cannot employ him merely because it is worthwhile to do so, or the teaching work he will take up is demanding. It is absolutely impossible for me to justify his employment to the university on these grounds. In view of the importance of the accountability system and the obvious need of setting up a team to support the Chief Executive in reinforcing his governance, there is every reason that the recruitment process should be made systematic and transparent, so that the public will know and be assured that public money is well-spent.

I thus support the motion of Mr LEE Wing-tat that the Government should give a clear explanation to the public on the recruitment, remuneration and various terms of employment of Under Secretaries and Political Assistants.

Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, yesterday, we got wind of the news that the Government would present the documents sought by LEE Wing-tat's motion today. Today, we again got wind of the Chief Executive's attendance in this meeting. I thought it would mean a turn for the better. I thought he has come to his senses. There seemed to be some hope and there could be improvement in the situation. I thought as 1 July is just around the corner, the Chief Executive has perhaps awakened. But it turned out to be just the opposite. The Chief Executive said that he would give a comprehensive explanation today. But I think he has just handed in a blank answer sheet. All that he has said is just empty talk. He said, "Whatever information that could be made public have been made public, and the information sought by us is obsolete." His remarks really baffled me. If whatever has to be said has already been said, and whatever has to be made public has already been made public, why would he come here? He said that the mechanism as a whole was in full compliance with the rules and regulations and based on a whole set of standard practices, only that it was different from the recruitment mechanism of civil servants. Please tell me what standard practices were adopted.

Today, he mentioned a term, which I think is rather interesting. He said that there were many "internal checks and balances". Members who have a clear mind should recall that when the Chief Executive and the Government talked about this mechanism for Under Secretaries in the past, they did not use the term "internal check and balance" but "collective responsibility". "Collective responsibility" is just the opposite of "internal check and balance". The term "internal check and balance" refers to the exercise of check and balance by some members of the team over the other members of the team, which means monitoring is carried out even internally. However, when it comes to "collective responsibility", I am sorry to say that check and balance is out of question. In other words, it means backroom deals behind closed doors, while the whole team will then come forward to undertake the responsibility collectively. More importantly, what does "internal check and balance" mean? But he did not explain it. What should be done to be regarded as having "internal check and balance"? What kind of check and balance is it? Who will exercise check and balance on who? Does it mean the Chief Executive exercising check and balance on the Secretaries of Department or *vice versa*? Or will the Directors of Bureau exercise check and balance among themselves? Are there other possibilities? He did not explain it. But he told us in the conclusion that they complied with rules and regulations, and that would mean "internal check and balance". It is really perplexing to hear that. Some people

may have to look up in the dictionary the meaning of "internal check and balance"; they may have to analyze every single word in the 20-minute address given by the Chief Executive today and examine which part is regarded as "internal check and balance". For I have heard nothing about how "internal check and balance" is exercised. Obviously, Chief Executive Donald TSANG has never heard that power corrupts and absolute power corrupts absolutely. Right from the beginning, the entire incident conveys the impression that he has been carried away by powers and he has acted in a hegemonist manner. But then, he came forward to tell us that it was "collective responsibility". When people asked him whether a check and balance mechanism was in place, he said there was "internal check and balance" without explaining what it is all about.

The address made by the Chief Executive today indeed has a lot of fallacies. Today, both the Chief Executive and Secretary Stephen LAM have mentioned a number of times in their speeches that the approach adopted by overseas governments returned by universal suffrage and direct election in appointing their cabinets, including the cabinets appointed at district level, was the same as the approach adopted by the SAR in appointing these 40 members to its governing team. I truly doubt whether this Government has any sense of shame, for they did not even blush when they said such things. How can the system created by the SAR Government be comparable to the systems adopted by places with elections? They went on to say that they could make the appointment for they were "elected". But the fact is that even candidates returned for political appointments have to be questioned by the Parliament, and if the appointment is subsequently negated, the candidates will not be appointed. He must think that all the people of Hong Kong are foolish. Otherwise, how could he tell us that they were returned by elections and could therefore do whatever they like behind closed doors, and they could appoint people they considered as sharing the same vision. Is this the so-called accountability system? It is downright a laughing stock.

Now, I come to the second fallacy. He said right at the beginning that we should stop internal conflicts. He went on for 20 minutes and repeated in the end that we should stop internal conflicts and focus on livelihood issues. What is internal conflict? The legislature is composed of Members elected by the public. According to the Basic Law, Members have the responsibility to exercise check and balance and monitoring on the Government. When we come across an incident that is obviously unfair and has aroused public anger, but the Government has turned a deaf ear to us and even prevented us from holding a

meeting as Members from the pro-government camp even voted against our proposal to hold a meeting, attempting to stop us from discussing the issue, we have no choice but propose this motion to seek the relevant documents under the legislation on powers and privileges. But he said that this was creating internal conflicts.

Moreover, the Chief Executive said that we should discuss livelihood issues. He definitely did not watch the television earlier and that is why he does not know that we had discussions yesterday and today, and one of the topics is on the bill on the Government's revenue. Dr Fernando CHEUNG and other Members have spoken so passionately, painstakingly making every effort to tell the Government that there are loads of livelihood issues awaiting actions from the Government. The Government often tells Members that it lacks money. But on the other hand, it spent money wastefully and said that it has to repay certain people. Members are furious about this. The Chief Executive alleged that we did not discuss livelihood issues. If he is not unaware of what is going on in the Legislative Council, then he must be ignorant of the meaning of people's livelihood.

As for the third major fallacy, I was virtually speechless on hearing what he said. I wonder why he suddenly mentioned the expatriate judges of the Court of Final Appeal. He looked at Martin LEE and said, "Why did you (he did not say "you", but "certain people") consider that one expatriate judge was insufficient at that time and strive for the inclusion of a number of expatriate judges?" As the English text of Article 82 of the Basic Law used the plural form at that time, which stipulates, "..... which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal", but the bill on the Court of Final Appeal subsequently submitted stipulated the inclusion of one expatriate judge. Much controversy was aroused at the time, criticizing that the bill was in violation of the Basic Law. Why is it stipulated in the Basic Law that judges from other jurisdictions should be included? Its aim is to ensure that the common law system in Hong Kong can dovetail with that of the international community, thus safeguarding the original legal system in Hong Kong. This is part of the Basic Law, which is absolutely unrelated to the issue of loyalty and "Hong Kong people ruling Hong Kong" but a vital part of the judicial system of Hong Kong. I wonder why the Chief Executive would talk about this. Sometimes, as I hear the analogies drawn by him, I feel very worried, for he even got some fundamental concepts wrong.

However, I would like to say a few words here, particularly the views of the Civic Party on nationality. Actually, we never mean to tar people with the same brush. I think Hong Kong is a pluralistic society, and we ourselves do call Hong Kong a cosmopolitan city. Many people in Hong Kong have foreign passports, but they still regard Hong Kong as their home. Besides, according to the Basic Law, they are the citizens of Hong Kong, they are one of us. We, the Civic Party, have never said that holders of foreign passports are disloyal to China or that it is a problem; neither have we said that they are not one of us. It is never my wish to create division between those with foreign right of abode or holders of foreign passport and us.

Nevertheless, when it comes to Under Secretaries, it is a different issue. As Directors of Bureau have to subject to certain restrictions and satisfy certain requirements, and they are not allowed to hold foreign passports, Under Secretaries, who can be the acting Directors of Bureau, should also satisfy the same requirement. We have all along maintained this stance. However, we have not mentioned the arrangement for Political Assistants. So, I would like to make this point clear.

There is one fundamental issue that I think should be pointed out today, for this motion aims to seek papers, books, records and documents regarding the salary and fringe benefits of Under Secretaries and Political Assistants. The issue is very important and fundamental. When Dr Joseph LEE spoke earlier, he has indeed stated the crux of the problem in a witty way. The crux of this motion debate is that we are questioning whether any criterion has been laid down for the recruitment of these people. No matter how simple a recruitment process may be, some requirements and objective criteria will be laid down in respect of the qualifications, academic achievement and experience required, so that they can be set out clearly in an advertisement for open recruitment placed in newspapers. Why were such requirements and criteria not laid down for the recruitment of posts remunerated at such high salaries? Why was recruitment not conducted openly but by self-recommendation? How did they know when the recruitment exercise started? If it was by self-recommendation, how did they know whether they were qualified for the job? The Government did not lay down even the objective criteria. Moreover, we do not know under what circumstances an applicant will be invited to an interview. Many applicants were not invited to an interview. As such, who were eligible to attend an interview? What qualification must an applicant possess to be granted an interview? What criteria were adopted to determine who would be invited to an

interview? We are not informed of all these criteria, but these are all important issues. From the angle of recruitment, whether an applicant is invited to an interview is an important criterion, but the Government needs not and considers it unnecessary to tell us so. With regard to remuneration, there is a range for adjustment. But how was the entry pay determined? How was their rank determined? How was the decision made as to the starting point of the pay of individual recruits? What were the criteria? Again, no one knows.

The Government should act in accordance with rules and regulations. Though I have not been a civil servant before, I have read a lot of government papers in handling lawsuits. I know the Government has a lot of minutes and papers, and everything has to be explained and an approval has to be sought in doing everything. These papers must be kept for record, and mere talk does not count. These established procedures of the Government are very important. Therefore, in his motion today, LEE Wing-tat requests the Government to provide us with these papers, so that we can find out from these papers whether the Government has acted in accordance with rules and regulations.

Certainly, there is still a fundamental issue, that is, the distribution of work of civil servants and the relevant code of practice. But so far, no guidelines have been announced. Actually, we hope that by means of the motion today, we may find the answers to these many questions.

There is one more thing which made Members, the Civic Party in particular, feel enraged, for the Government is rubbing salt into the wounds. Whenever Secretary Stephen LAM comes to this Council, he will say that such practices have been approved by the Legislative Council. This indeed manifests the deformity of the Legislative Council. That is to say, the majority of Members of the democratic camp, who have the support of public opinion, will always be the minority in this deformed legislature. For this reason, when it comes to voting, Members returned by election and with the support of the majority of the people will always be defeated by Members from the pro-establishment camp and pro-government camp. It is particularly so as the Government seeks to create this kind of black-box operation and expand the political appointment system, with the objective of forming cliques, advocating affinity differentiation and causing division. As YEUNG Sum said earlier, we may count the number of seats taken up by members of the democratic camp in all appointed and advisory bodies. To people outside this Council, the arrangement for Under Secretaries and Political Assistants is all the same by its

very nature. That explains why the democratic camp has all along maintained that never should the political appointment system be expanded until there is universal suffrage and mandate of the people on the basis of "one person, one vote", for such expansion runs counter to the development of democracy.

On this issue, the Government treats all the people of Hong Kong as fools, thinking that the case will be closed after the appointment of these officials under the accountability system. These officials do not need to meet the public, and in meeting the media, they behaved evasively. After assuming office, they do not have to come to the Legislation Council, nor do they need to explain the many issues within their purview immediately. The recent resignation of Secretary Frederick MA is a case in point. I think it is most ridiculous that Under Secretary Gregory SO, when asked whether he would act up as the Secretary, had outrageously said that he did not know and had "no comment". This is really a laughing stock. He is receiving a salary of some \$200,000, so when the Secretary resigns, it is perfectly logical that he should fill the vacancy. But there is a huge question mark now. This also reflects that the entire recruitment procedure, as well as the entire procedure of the expansion of the political system, is beset with fundamental problems at the core.

Deputy President, let me reiterate that in the absence of universal suffrage, political appointments of this kind will only result in corruption of power. Therefore, I can only urge the people of Hong Kong to come forward to the Victoria Park on 1 July to express their demands for monitoring, universal suffrage and genuine accountability. Thank you, Deputy President.

MR LEUNG KWOK-HUNG (in Cantonese): First of all, I have to thank Secretary Stephen LAM for reminding all the people of Hong Kong that the Legislative Council, with half of its Members returned by small-coterie election, will often arrive at decisions against public opinion, and the Government will subsequently say that the decisions are approved by the Legislative Council. This is an apt description of a rubber stamp. Am I right? We may check the number of votes concerned. As reported in newspapers, when a question is voted against by the majority of Members from the pan-democratic camp, the Government will take out its rubber stamp and briskly put a stamp on it.

In the story "The Prince and the Pauper", the pauper used a chop to crack walnuts. But the Government does not act this way. On the contrary, the

Government tries by hook or by crook, including making use of those so-called Under Secretaries and Political Assistants, to make a rubber stamp. Indeed, the Government's act will only remind the people of Hong Kong that the existing Legislative Council is undesirable and reform must be carried out. The people of Hong Kong will be convinced and they will consider that the Legislative Council can genuinely represent all the people of Hong Kong only when universal suffrage is implemented. Even if they would lose, they would resign to fate.

Let us put aside the question of whether the Chief Executive is elected by "one person, one vote". But if the Legislative Council is elected by "one person, one vote", the Chief Executive will certainly be afraid. That is why the Chinese Communist Government insists that in any case, the Chief Executive must first be elected via bogus universal suffrage, and if the bogus universal suffrage for the selection of the Chief Executive is held in 2017, the Legislative Council may then be returned by bogus universal suffrage. This is the answer. It is tricky manipulation of power. It understands that the source of power is very important, and after all, it still has a slight sense of shame.

Donald TSANG has unfettered access to the Legislative Council. I have mentioned many times that he only regards the Legislative Council as his summer palace. Coming when he is in the mood; leaving when he is not. We originally planned to propose a motion debate on the last day of meeting but in vain. As it was feared that some people would make comments not pleasant to the ears of the Government, in the end, at the meeting of the House Committee, the proposal was voted down again with that rubber stamp. I was thus deprived of my right to move a motion in one stroke. The Chief Executive, in contrast, may come here whenever he likes. Of course, he will say that his appearance in the Legislative Council is to the benefit of the people of Hong Kong, as he came today to talk about the further development of the political appointment system. As I said last time, unless we can successfully invoke the legislation on powers and privileges to carry out investigation, we must smash this Government of which the performance is extremely poor, and I am going to smash it later.

Today, he gave a three-page address, but what questions have actually been answered? Has he answered This system, which he has worked on for three years, is now set in motion and it is time for the selection of officials. However, have internal rules and regulations, or a system, been put in place? If there are, why are they not made public, and what are they all about? How can

we, as Members of the Legislative Council, monitor it? What is the internal check and balance mentioned by him? In respect of rules, regulations and systems, I believe all Directors of Bureau, whether or not they started out as civil servants, know that monitoring is impossible in the absence of rules, regulations and systems. During the Cultural Revolution, there were no rules, regulations or systems. The Chairman's words were final. As a result, the Central Cultural Revolution Group was formed, and what it said was absolute. During meetings of the Group, when KANG Sheng said that a certain person was anti-revolutionary, that person would be arrested. There was no internal check and balance, was there?

So, Donald TSANG is the first person who insincerely said that internal check and balance has been put in place. However, we know nothing about the criteria adopted for internal check and balance. Neither do we know how these people are selected internally. If so, how can there be check and balance? Let me cite an example. If it is said that the Under Secretary should be a pig, but eventually a cow is brought in, what should we do? Should the requirement for a pig be changed to a cow, or should the cow be regarded as a pig? Neither is acceptable. If only a pig is competent for the job, but a cow is brought in to take up the job, I am sorry to say that no matter how cheap the cow is, I will not let it take up the job. It is just that simple. Members may have come across such situation in business or other dealings. For instance, if the Government orders a dozen of pencils or ball pens but it turns out that some chinks are delivered, without rules, regulations and systems, how can there be check and balance and how can the Government reject the chinks delivered?

Donald TSANG is the king of insincerity. Since his comments on the Cultural Revolution, even secondary students no longer have trust in him. They even challenged him with this question, "Chief Executive, have you ever lied before?" The Chief Executive said, "I have never told any lie deliberately since Form Six." But today, he is lying deliberately. Now, I ask him — Is he watching the television now? Donald TSANG, I am asking you: What are the criteria for internal check and balance? There is not even a framework. If there is check and balance and you refuse to disclose it, then you do not come here to give us an explanation. If there is not, then you are lying. Either one of the scenarios applies.

It would be useless even if he enlisted the assistance of Aristotle in this debate. Why did he come here today? He was not exercising internal check and balance; instead, he was exerting external check and balance on the Legislative Council. He intended to prevent Members of the Legislative Council from proposing a motion. Given his position as the leader of Hong Kong, when he comes to address the Legislative Council, it should at least be tantamount to a state message relating to an issue of great significance. Is this an ad hoc or urgent task? Is this the case? No wonder the bodyguard of TUNG Chee-hwa had restrained me to the ground that day. This does not bother me at all. It transpires that the Chief Executive's power is overwhelming, and even the Legislative Council, which should actually exercise check and balance on him, is treated as his concubine only. It shows that Donald TSANG is extremely bad.

There is one more issue. He said he was persistent in pursuing what was good and was ready to accept good advice. But how? Three weeks ago, we asked him for the information. Had the incident not developed to such a devastating stage, and had it not because he could no longer stand up to it, he would not have pushed those Under Secretaries forward to explain the case by themselves. Is there any discipline at all? He said that these people shared a common goal and worked hand in hand with him. But that is not quite the case. They no longer go hand in hand. Disclose it or not, it is all their business. It does not matter, for he condones them. But how does he supervise these subordinates?

Be persistent in pursuing what is good, but what is good? Indeed, what the people of Hong Kong want to know is simple. We are not laying blame on anyone but trying to find out how things should work in future, and whether those systems, rules and regulations mentioned by him be made public. If these cannot be made public, what are the reasons? The same applies to the appointment of members to advisory committees, the Commission on Strategic Development, and so on, by the Government, that is, what principles are adopted in making such appointments. Though such appointments do not involve public money, these people are selected by the Chief Executive to carry out consultation, and they are the secondary rubber stamp. When these people rubber-stamp a certain issue, the issue will then be submitted to the Executive Council for another rubber-stamp. Everything is then settled. These are what we are concerned about.

(THE PRESIDENT resumed the Chair)

We do not blame the Chief Executive, but please present the relevant information. Nevertheless, he has refused to do so.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please face the Chair when you speak.

MR LEUNG KWOK-HUNG (in Cantonese): Yes, President.

He then tried to protect Norman CHAN by saying that there was no problem with him. He said that since Norman CHAN knew so many people, it was ridiculous to regard all the people he knew as belonging to his "stable". I might accept what he said was right, provided that he can explain the case. It is just that simple. For instance, he should have told us the number of applicants applying for those jobs, the number of applicants whom Norman CHAN knows, the recruitment procedures, and so on. But he failed to do so. He even told us not to look for him after the delivery of his address and after he ran away with his tail tucked between his legs. He has left now. President, he has already left. Where can we find him? Should I again waylay him to petition him and be arrested by the police? Secretary Michael SUEN knows this only too well. When I waylaid him to petition him, I was arrested by the police. Should I, a Member of this Council, again waylay the Chief Executive to demand an answer? Is this somehow disgraceful?

I now come to another point. He said that since these Under Secretaries and Political Assistants were not civil servants, they were different. This is downright ridiculous. As the team he appointed has to be accountable to the public, a more stringent standard should be applied to them than that to civil servants. Besides, a monitoring system or an internal mechanism has already been in place to oversee civil servants, which is genuine internal check and balance. But since no system has been put in place so far, how should the incident be handled? There is no way to handle it. If he tells us that those procedures are not applicable, for the promotion was exceptional because the person concerned is a genius, like WANG Bo who was extremely talented in composing verses and poems, and that the Government therefore appointed him

to that post, that could still be acceptable. In that case, he only needs to make known the strengths of the appointee, but again, he has failed to do so.

These appointees may be authors of numerous famous books or have made great achievements, and all this is just fine, but he failed to tell us anything. Members are different, for they have the mandate and are returned by elections. People may say that I am a fool. But those who elect me are also fools. If they elect a fool as their representative, they themselves have to bear the consequence. However, these appointees are not returned by election; they are handpicked by the Chief Executive. Let me tell you how the Chief Executive selected them. Actually, the Chief Executive picked them out from the bits and pieces of various rubber stamps, and he then used them to make another rubber stamp.

Now the conspiracy has been uncovered. What kind of conspiracy is it? It is the conspiracy of Donald TSANG. There was a story about QIN Hui and his wife. One day, the two conspired to kill YUE Fei in front of a window in the eastern wing of their house. Later, QIN Hui died and his wife missed him so much that she went to a wizard to help her to look for QIN Hui who was suffering in hell. Perhaps QIN Hui loved his wife very much and so, he asked the wizard to tell his wife that this was all resulted from what happened in front of the window in the eastern wing. Today, a conspiracy has been uncovered, am I right? It is simple. As I said before — President, it is a pity that you did not have a chance to see these things the other day. There are two pigs here. It reads "welcome" here; it is the system — I am not saying that "welcome" is a pig. I am not saying that those inside are pigs, nor am I saying that those going in are pigs — the entire system is so ridiculous. But the Chief Executive still persisted for three weeks and then he came here to tell us that he had said nothing, and that Members should not make any further queries, for it would otherwise cause internal conflicts. He is deceiving the people of Hong Kong.

If the Chief Executive fails to handle properly the selection of his own officials, how can he request those officials to be accountable to Members? If the officials lack accountability, how can the governance of the Government be accountable? How can I ask those officials for the reasons for not setting a minimum wage? Why has the Old Age Allowance, or "fruit grant", not been increased? Why should health care financing be enhanced? Does it aim to make the poor pay for the expenses? They do not have to be held accountable

for all these issues. This is internal check and balance. Two pigs come out to welcome the new recruits. These two little docile pigs indeed represent our system which disregards all reasonable justifications.

Honourable Members, it will soon be 1 July. Five years ago, there was the 1 July march. In addition to the legislation on Article 23 of the Basic Law, cronyism was another cause leading to the march. Back then, Antony LEUNG was appointed, and there were outsourcing, as well as all kinds of reforms. He employed the cruel tactics adopted in the business sector to weed out civil servants and all the wage earners in Hong Kong. Let us look at TUNG Chee-hwa. This is how he looks. He is holding a sword, that is the legislation on Article 23, in one hand and in the other hand, he is holding the result of cronyism. TUNG Chee-hwa practised cronyism, and this Donald TSANG accused us of creating internal conflicts. Had we not criticized TUNG at that time, I wonder what position TSANG would be holding today; he might probably be sweeping the streets. At that time, we criticized TUNG Chee-hwa for plunging Hong Kong and the people of Hong Kong into disasters, which led to the resignation of TUNG. At that time, why did he not describe it as internal conflict? Criticism against Mr TUNG is not internal conflict, but criticism against him is internal conflict. This is exactly the act of a tyrant! He has betrayed Mr TUNG. He kicked him out and took his place. Today, he fears that history repeats itself. What kind of person is Donald TSANG? I have to remind you all that five years ago, this robe was yellow, and he was ordained as the King when this yellow robe was draped over him. I made this. So, by all means, make him step down. Today, he is at the starting point, as he takes the path that power corrupts, absolute power corrupts absolutely. Today, he is still resisting. What will happen is that absolute resistance leads to absolute corruption.

President, pigs are lovely animals of high intelligence. In fact, we mankind should not make fun of them. I will take the lead to apologize to the pigs, for I should not make fun of them today. But, this is I can hardly describe it. I saw these two pigs in the garden of my goddaughter and I asked her to lend them to me. I am at my wits' end. I can think of no other ways. This thing must be smashed. I have been waiting for this chance and I finally have it today. Colleagues from the Civic Party probably know that I am going to smash this piggery, so they are frightened. This is a pig (Mr LEUNG Kwok-hung smashed the porcelain piglet with something hard). See, that is

how I smash it. President, do not be frightened! I am only smashing this pig, not a person. There is still another pig here. Will these pigs be punished? It all depends on them. We have to bring it with us when we take to the street on 1 July. We have to tell this "piggery" that we want human beings, we want the people and we want democracy!

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, your speaking time is up. Please pick up the broken pieces later.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, President.

MS EMILY LAU (in Cantonese): President, it is getting more and more entertaining.

President, I speak in support of Mr LEE Wing-tat's motion. I have been listening to the debate on this motion for quite some time, and I have the feeling that it has been a one-man show. President, do you know what I mean by one-man show? It means only those on our side have so far spoken. Actually, two Members, Joseph LEE and Frederick FUNG, from the democratic camp are in support of the system. But still, they consider the present arrangement unworthy of support, and they have rebuked it sharply. But where have all the others gone? We have to find them. We should look for these people, not piglets. Where have they gone? This system, which costs some \$50 million, is approved by the Legislative Council. Where have those people gone? President, we have to look for them. Where have they gone? They must speak. Why will this happen? Even the Chief Executive has come to the Legislative Council, and I thought some people will surely speak but surprisingly, no one bothers to respond to him, President.

MR CHIM PUI-CHUNG (in Cantonese): President, she said that a quorum was not present.

MS EMILY LAU (in Cantonese): I did not say that a quorum was not present.

MR CHIM PUI-CHUNG (in Cantonese): Then you say it now.

MS EMILY LAU (in Cantonese): President, will he stop insisting that I have raised the point of absence of a quorum.

PRESIDENT (in Cantonese): Never mind. Mr CHIM, do you want me to check if a quorum is present? Ms Emily LAU, please be seated first.

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

(While the summoning bell was ringing)

MS MARGARET NG (in Cantonese): President, I heard that Members are summoned to the Chamber. But we do not hear clearly whether only Members supporting the Government or all Members are now summoned to the Chamber. Will the President please clarify this?

PRESIDENT (in Cantonese): Ms NG, you do not have to put such a question. Please be seated.

(Ms Margaret NG sat down and picked up a piece of broken porcelain)

PRESIDENT (in Cantonese): Ms NG, you have done Mr LEUNG Kwok-hung a favour by picking up a piece of broken porcelain for him, so let him pick up the other piece himself.

(Mr LEUNG Kwok-hung entered the Chamber)

PRESIDENT (in Cantonese): Mr LEUNG, as we are now summoning Members to the Chamber, please take this opportunity to pick up that broken piece. Ms Margaret NG has just picked up one piece for you.

(Mr LEUNG Kwok-hung picked up the remaining piece)

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

PRESIDENT (in Cantonese): A quorum is now present. Ms Emily LAU, you may go on.

MS EMILY LAU (in Cantonese): Thank you, President. Actually, I did not mean to have the summoning bell rung to summon Members to this Chamber. I was only looking for Members who support the arrangement and wanted to find out where they had gone, but I could not see them. Mr CHIM also expressed his wish to look for these people. I wish to find these people too. We are now having a debate, so it is only natural that we wish to hear the views of both sides — Mr LEE Wing-tat most wishes to debate with others and get sparks flying. Apart from the supporting views expressed by Dr Joseph LEE and Mr Frederick FUNG, we wish to hear from others their arguments supporting the arrangement, but we are disappointed up to this moment.

Frankly, as mentioned by some colleagues earlier, how can the authorities convince the public that it is worthy of support under such circumstances? If it wants to muster support, it has to convince others that it is worthwhile to give it a hand, though it is indeed a separate issue whether people consider it worthwhile or not to lend support. Later, I believe LEE Wing-tat is doomed to fail. This is a fact. How bizarre it is. No one says a word against the motion, but in the end the motion is negated. In view of this, I have made good preparation, for I know not many people will debate this. Indeed, I am not going to debate this, for I will only relay the remarks of certain people.

Whose remarks are they? Some of them your acquaintances, President, and WU Kang-min, a deputy to the Nation People's Congress, is one of them. He described the incident as the most serious mistake made by Donald TSANG since his assumption of the office of the Chief Executive, and he likened it as a

huge political earthquake. He said that Donald TSANG must bear the blame for this huge uproar. He asked that since Donald TSANG had already appointed those people, if they made any mistakes or took any wrong step in future, who is going to be blamed? Mr WU then stated that this political storm has far-reaching consequences. In the short term, it would affect the election of the Legislative Council to be held in September, while in the long run, it would have a bearing on the candidacy of the Chief Executive in 2012.

Another person is Mr John CHAN, who is highly respected by many Administrative Officers. On 2 June, he commented that the nationality and remuneration row reflected that the Government was politically insensitive and the tactics employed were stupid, and he urged the authorities to draw a lesson from the incident. He said that the Government was wrong at the outset in not disclosing the remuneration of individual Under Secretaries and Political Assistants. He depicted the situation as a wrong footing at the first encounter. He said the gravest mistake the Government made was to put everything in a veil of secrecy. As it was stipulated by the Government that directors' remuneration of all listed companies must be made public, by the same token, the remuneration of these Under Secretaries and Political Assistants should also be made public by the Government. He pointed out that since the remuneration concerned was paid out of public money, the public had the right to know and they had high expectations too, while the Government had no reason to keep such details secret. He therefore considered that the Government should disclose the information. Later, the Government did follow that advice and disclosed the information. Mr CHAN added that the Government should learn a lesson from the incident, for one may be forgiven when he made a mistake for the first time, but not for a second time.

There is another well-known person who had made comments. He is Mr Joseph WONG, President, and he is now known as an "elderly in the Victoria Park", while I myself call him "punch of the day". His remarks are really sharp. I cannot read them all out; otherwise, I will use up all my speaking time. What did he say? He said that it was appalling to see the incident being handled this way. President, can you believe Mr Joseph WONG would make such remarks, particularly as all the Directors of Bureau now in this Chamber used to be Administrative Officers? Mr WONG described the practice as really appalling, and he considered it unjustified and groundless. He likened the approach to a "slip of a horse in a race at the starting gates". His best known line is, "It's politics, stupid!"

Another person, with whom we, particularly senior officials in this Chamber, are all familiar, is Regina IP. She said that the expansion of the Accountability System for Principal Officials was impetuous and hasty, and the remuneration offered was too high. She pointed out that the recruitment of such a large number of officials at one time would surely create integration problem, and this is why high salaries and positions were offered to attract applicants. But she said that the public should ask: What criteria were used in recruiting these people? What are their duties? Are they worth the money spent? She predicted that the 17 appointees are doomed to face a lot of nitpicking and challenges when they later take office.

President, these people are not our friends but rivals. However, we do not always oppose what they said. It is evident that we target the issues but not individuals.

Today, the Chief Executive came to this Council to ask us to put an end to the internal conflicts. What does he suggest us to do then? He said that we should work on livelihood issues, but we have been working on these issues every day. In future, we will have to work overtime to discuss issues relating to poultry culling, air pollution and this and that. We will work with him every day. However, the executive should take all the blame for creating internal conflicts this time around. Today, he thought that by appearing here in this Council and with the use of political spin, he could tell the public that the incident had been properly handled. I think Members should take a look at whether the Chief Executive had answered today the lots of questions the public has been pondering. President, it is ludicrous for him to say that what happened was a pity and disappointing, and that the controversy cannot and should not be avoided. Why can it not be avoided? Had there not been such a problem, Members would not have made so much noise.

He then said that Hong Kong must not follow the practice of other countries but should instead set up a dedicated team for the executive, because there is a ruling party in other countries. In these countries, candidates will stand for elections and take up the governing role upon winning the election, and political appointments will then be made at different levels. But this approach is not applicable to Hong Kong, for this is not allowed under the Basic Law. So, we in these political parties should forget about it. That explains why we are only paid some \$50,000 a month, which is only 19% of the salary received by the accountable Bureau Directors. Political Assistants are paid 35% to 55%

and Under Secretaries are paid 65% to 75% of their salary, but we are only paid 19% of it. We have no role to play in the executive, nor will political parties have a role to play in future. Hence, he told us that we can develop and conduct our own business, but we would not have a role to play in future. For this reason, the executive has to set up its own team.

However, if he fails to gain the support of the Legislative Council, how can his team operate? He may argue that his team can still operate now. But I wonder if he has ever thought of being forsaken by his friends and allies. I am eager to know which Members from the pro-government camp will come forward to defend this system. Perhaps some colleagues may describe this as to "eat and take away at the same time", as Ms LI Fung-ying said earlier, but I do not know what actions are referred to. Nevertheless, I believe any action we take should be considered acceptable not only by ourselves but also by others. The public has a question. Principal officials may need some people to support their work, and there are also positions like ministers, under-secretaries of state and political assistants in other countries, but where do these officials come from? They come from their own political parties. Some people may query why members of political parties can suddenly become principal officials. Actually, these members from political parties have to take the challenges in order to get these posts. They have to win in the election to obtain the mandate of the people. Moreover, these political parties have their own manifesto. When a political party assumes power, it becomes the ruling party and its members will be appointed to carry out the relevant duties. Besides, if a political party fails to perform satisfactorily during its rule, it will have to step down in the coming term. However, the present system is neither fish nor fowl; nor is it elected by the people. Even Regina IP has criticized that these people do not even know each other, so how can they be attracted? The only way is to offer a higher pay. Even though they are recruited to the team, they still do not know each other, so how can they be regarded as a team? How can they get the job done?

When it comes to the governing team, I must mention Secretary Frederick MA. I wish him good health. Secretary Frederick MA said that he would leave. When Secretary Frederick MA first took up his job, that is, at the time when he dealt with the penny stock fiasco, we thought that his performance was unsatisfactory. However, he is willing to learn and try. All along, he has

been working hard. We all notice that. Again, it is evident that we are targeting issues but not individuals. We do not think that all government officials are bad guys. We never view things from this perspective. Poor performance deserves our criticism, while outstanding performance merits our recognition. But since Secretary Frederick MA's indication of his departure, the Chief Executive has not said a single word about it. It is mainly Members of the Legislative Council who have been heaping praises on him. This is why some people doubt whether Secretary Frederick MA's departure is truly due to medical grounds. Honestly, I do not know, for many things are operated behind closed doors. Nevertheless, someone who is so willing to What else has Secretary Frederick MA said? He said he would not easily dub others as the "opposition". Secretary Frederick MA said that when governance was smooth, people would live in harmony. Alan in our camp has also said that before, so Secretary Frederick MA is just repeating Alan's line. The Secretary treats everyone with Some Directors of Bureau act this way, but most of them do not. The good Directors of Bureau often leave early. President, who will fill this vacancy? Just wait and see, I think we will soon know it.

Today, the Chief Executive came to this Council, but he did not admit his fault; neither did he provide any new information. He even resorted to sophistry, arguing that the system worked that way. It seems that he has been given a blank cheque on which he can write whatever he likes. However, will the people of Hong Kong allow him to act arbitrarily? If he thinks so, I think he has underestimated the people of Hong Kong. Initially, we wished to discuss this issue again at the meeting of the Panel. On that day, Secretary Stephen LAM was tough and he sat there for three hours. However, when I saw him having coffee outside, he was in bad shape; well, perhaps just a little bit. For when I walked towards him to talk to him, I could barely recognize him. I then left and said nothing. Since a three-hour meeting had been held, I thought the Secretary would be given another three hours. But unexpectedly, Dr LUI Ming-wah, Chairman of the Panel, disallowed the arrangement. We then realized that Members, like him, were barred from meetings.

I suggested that the system be passed onto the Independent Commission Against Corruption (ICAC) for examination, in order to ascertain whether the system could be subject to the scrutiny of the ICAC, but some Members disagreed with the proposal. Fortunately, some other colleagues agreed with

the proposal and the case was referred to the ICAC. Earlier on, Members have commented on the recruitment process, and Dr Joseph LEE has quoted the recruitment of staff in his university as an example. In other words, even in the recruitment of an assistant whose monthly salary is several thousands dollars, the procedures adopted have been approved by the Executive Council and scrutinized by the ICAC. Such being the case why is the recruitment of these people, which costs more than \$55 million per annum, not subject to the scrutiny of the ICAC? For this reason, the public agrees with us that there should be more proper monitoring. For we do not know who these people are and why they are recruited.

With regard to civil servants — I will put an oral question at the meeting on 9 July — they are very upset. How can they adjust themselves to the new arrangement? Secretary Denise YUE should explain it. Why is it that the code of practice has not yet been issued after such a long time? The reason is that consultation with civil servants has to be conducted. It turns out that the whole arrangement has stepped out of line. Consultation surely has to be conducted, but the problem is that those people have already been appointed to the posts before the code of practice is drawn up. Therefore, President, from the point of view of the public, or from the angle of political parties and the legislature, or even from the angle of civil servants, this is entirely improper. Who will consider this a good arrangement? Just Donald TSANG alone. That is why he said that the arrangement was meant to nurture political talents for Hong Kong. But, President, I believe many people will not agree with this. What is it that most of us believe? We believe that this is to nurture talents for Donald TSANG. This would make all the difference. So, he should stop exaggerating and making these arrangements sound lofty, particularly when the team chosen by him is composed of these people. How many of them will really wish to engage in politics in future?

On the other hand, when they can earn a salary of some \$200,000 by engaging in politics, will they be willing to stand for the election of Members of the Legislative Council who are only earning \$50,000 to \$60,000 per month? Therefore, the logic of the entire arrangement is incomprehensible. Besides, some of the appointees are already over 50 and will soon retire and yet, the Government still appoints them as Political Assistants, claiming that this is to nurture them. What is the intention of the Government? President, the Chief Executive's appearance in this Council today is surely welcomed. The Chief Executive and all principal officials are welcome to come to the Legislative Council to answer Members' questions, and the more frequently they come, the

better. But regrettably, despite his coming to this Council, what he said is tantamount to saying nothing at all. What angers us is that he left right after the address, refusing to take any questions from Members. Outside this Chamber, reporters keep seeking our views on such practice. In view of all these issues, do not blame us for provoking disputes. Actually, judging from many of these issues, anyone with a clear mind knows at the outset that this is unacceptable. This is exactly how the reporters put their questions: What is your view on the Chief Executive's appearance in the Legislative Council today? Do you think there is any problem with the Chief Executive?

President, lastly, I have to join my colleagues to urge the public to participate in the 1 July march. I have prepared a leaflet to be distributed on the street. We in the Frontier will "strive for genuine universal suffrage in 2012 and oppose bogus democracy in 2017". If anyone takes to the streets to oppose the accountability system, it is only natural, for it is part of the political system. We earnestly hope that the people of Hong Kong will come forward with their families, both the elderly and the children, on 1 July, be it a sunny or rainy day. I urge the public to come forward to protest against the "black-box operation" and the system which lacks transparency and accountability and which allows certain officials to act arbitrarily at the public's expense. If the public share these views, I hope they will join us and bring along their families, relatives and friends to the Victoria Park, Causeway Bay at three o'clock on 1 July. We have to tell the SAR Government that the public demands an early implementation of universal suffrage. We oppose this bogus accountability system. We want a government elected by genuine universal suffrage. By then, the ruling party, which has the mandate of the people, will appoint their own officials at different levels to govern Hong Kong.

MR TAM YIU-CHUNG (in Cantonese): President Ms Emily LAU, thanks for your concern about me.

After the establishment of the SAR, the public obviously has higher expectations on the principal officials of the SAR. In the past, the principles of collective decision and collective responsibility were adopted by government officials in formulating policies. But it turned out that no one had to bear the responsibility and the consequences concerned. Many people expressed their dissatisfaction with the situation. The SAR Government, with a view to enhancing the effectiveness of its governance, then established the Accountability

System for Principal Officials, introducing accountability in management as well as a new culture of governance to society of Hong Kong.

In 2002, the accountability system was introduced. Since then, there have been constant reviews, improvement and development. Given heavy workload in the political portfolio undertaken by principal officials and the present arrangement of one official overseeing one policy bureau under the accountability system, it is indeed difficult for these officials to handle all aspects of work effectively. For this reason, the Government proposed the expansion of the political appointment system by increasing the number of officials under the accountability system, with a view to strengthening the support for principal officials and enhancing the Government's capability in governance.

Moreover, the timetable for dual universal suffrage has been laid down. To ensure the smooth introduction and implementation of universal suffrage, there must be adequate political talents engaging in politics and governance in the local community. For the above reasons, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supported the Accountability System for Principal Officials.

In 2006, the SAR Government issued a consultation document on the further development of the political appointment system, proposing the creation of the new posts of Under Secretaries and Political Assistants to strengthen the support for principal officials and provide a comprehensive career development path for political talents. The DAB is of the view that with the further expansion of the accountability system, the newly appointed officials under the accountability system should come from different sectors with different background. These officials should be able to go into various strata and communities of society to listen to and understand the views of the public and reflect these views to the Government, so that government policies will live up to the expectations of the public. This will in turn enhance the governing capability of the governing team and thus improving the living standard of the public.

Last month, the Government announced the appointments of 17 Under Secretaries and Political Assistants. However, concerning the announcement of the appointment of these new officials under the accountability system, including the possession of foreign nationality of these officials and their remuneration packages, as well as the arrangement for these officials to meet with the media, it

conveyed an impression that the openness and transparency of the system was inadequate. The arrangement had not only drawn undesirable comments from the media but also caused discontent among some members of the public. In view of this, Mr LAU Kong-wah of the DAB proposed a motion, which was subsequently passed, at the meeting of the Panel on Constitutional Affairs of the Legislative Council on 16 June 2008. The motion stated: "That this Panel considers and expresses grave disappointment that the Government has underestimated the expectation of the public in handling matters relating to the appointment of Under Secretaries and Political Assistants; and this Panel urges the Government to review the deficiencies of the whole system and give an account to the public; moreover, this Panel urges the new appointees to understand fully the high expectations and high standards required of them by the public, give full play to their strengths, live up to the spirit of accountability and be politically committed to faithfully and sincerely serving the people of Hong Kong."

Apart from proposing the motion and expressing views and requests at meetings of the Panel on Constitutional Affairs of the Legislative Councils, we also urged the Government to review the following three aspects. First, is it reasonable that the Under Secretaries and Political Assistants appointed this time around are remunerated at the mid-point of the salary range as their starting salaries? Second, in future the Government should take the initiative to announce the remuneration and nationality of new officials appointed under the accountability system. Third, the Government should examine ways to perfect the appraisal system of officials under the accountability system. We hope that the Government can seriously sum up its experience in this incident to further improve the accountability system.

However, on the issue of invoking the legislation on powers and privileges to require the Government to make public all records and documents related to the recruitment of Under Secretaries and Political Assistants, we, having conducted more in-depth consideration, think that the information concerned may involve privacy. If all the documents are made public by the Government, it will not only include the information related to the 10-odd Under Secretaries and the Political Assistants, but also that of candidates who were interviewed but were not appointed by the Government. Moreover, the disclosure of these information documents may cause distress to some people who are interested in joining the Government and serving the community, and this may also deter some people from applying for posts of officials under the accountability system in future. Therefore, we think we should on the one hand safeguard the right of the public to know while on the other hand protect individuals' privacy. As

Members of the Legislative Council, we should attach importance to both aspects.

When we, on the grounds of safeguarding the public's right to information, request the Government to disclose the documents concerned, should we not at the same time consider whether such disclosure would invade individuals' privacy? Should the Legislative Council not attach equal importance to its responsibility to protect privacy? For this reason, the DAB will not support this motion.

Today, the Chief Executive attended the meeting of this Council to explain the concept and arrangement related to the expansion of the accountability system with a view to dispelling doubts and resolving disputes, but whether the desired result can be achieved remained to be seen. Nevertheless, regarding the Chief Executive's call for more attention on livelihood issues in his address, the DAB welcomes it. In view of the recent hikes in oil prices and food prices, which have fueled inflation, members of the public have to shoulder a heavy burden. The series of measures, which aim to improve people's livelihood, introduced early this year in the Budget have now become insufficient. For this reason, apart from proposing the motion last week demanding a reduction of duties on fuel, the DAB will further collect views from all strata and sectors to examine ways to improve people's livelihood. We will put forth our proposals after we have collated the information. We hope the Chief Executive and the Government will respond proactively then.

Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): President, I always say that the political environment in Hong Kong is outlandish, and this is an undeniable fact. Hong Kong is a Special Administrative Region of China and again, it is absolutely undeniable. Secretary Stephen LAM has all along been devoted to the work on the constitutional system in Hong Kong. His performance in the Legislative Council is recognized by Members. To put it crudely, he is just like a super eel — I am not saying he is a super eel, this is only an analogy, (*laughter*) though it may be impolite somehow — the body of eel is so slithery that one can hardly get hold of it. It proves that the Secretary has actually outperformed the barristers in terms of debating skills. There are four Senior Counsels and two barristers among Members of the Legislative Council. Of

course, not every one of them has put questions to the Secretary. Undeniably, Secretary Stephen LAM has done his level best in his position to explain the Basic Law. Nevertheless, in the light of the recent incident related to Under Secretaries and Political Assistants, I have different views.

We understand that in Hong Kong politics, particularly since the era of the former Chief Executive, TUNG Chee-hwa, every Director of Bureau has to work extremely hard to integrate with the civil servants within their Bureau. Why? For they are fighting the battle on their own. When they enter the civil service framework, though civil servants will surely fulfil their duties and do their best, the gearing-in may not be smooth for everyone and the views expressed may not be respected. In other words, a number of Directors of Bureau have to cope with enormous pressure when they take up office in their Bureau. On the one hand, they have to reply questions in the Legislative Council; on the other hand, they have to explain everything to the media. Sometimes, they may even have to help the existing civil servants in their work. It may not be a pleasant experience to work in a team with such a composition. This explains why they have been acting gingerly. As things go on like this, it is only natural that the Government looks forward to a breakthrough. So, in addition to Directors of Bureau, Under Secretaries are brought in. Though not every one of them may become the successors of Directors of Bureau, with the training provided and their familiarization with the operation of different departments, enthusiastic or competent candidates may take over as Directors of Bureau. This is understandable.

Thirdly, the issue of the so-called Political Assistants. Many members of the public do not understand what a Political Assistant is. How can a person who has never engaged in politics be qualified for the post of Political Assistant? In other words, this is just the name of a post. The name itself is meaningless. This is comparable to the large number of Executive Vice Presidents in many foreign companies. The post of Political Assistant can be described in whatever way. The objective and purpose of creating such posts are to arouse their interest in politics, hoping that they can assist the Directors of Bureau and Under Secretaries in future, so that at the very least, the Directors of Bureau will not be fighting alone, for they will have three "soldiers". Certainly, whether these Political Assistants will perform satisfactorily depends on the development of the situation as well as their own efforts and interest in politics. There is nothing wrong with this concept and line of thought. Why? As I mentioned earlier,

Hong Kong politics is outlandish, for the leader of the Government does not belong to any political party; nor does he have any team members.

However, the problem arises from the so-called Indeed, Secretary Stephen LAM has laid emphasis on Article 101 of the Basic Law. Members definitely know that Article well, but I still want to read out two to three lines of it: " but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux". Though there is not the post of Deputy Secretaries of Department now, we understand that Directors of Bureau are under Deputy Secretaries of Department; however, the provision made no mention of Under Secretaries. Well, I will not dwell on this any longer. Regarding this point, we have to admit that Article 101 of the Basic Law does not state that Directors of Bureau can do so. According to the common law practice in Hong Kong, it is stipulated unequivocally in the laws of Hong Kong that we should comply with what is written in law. Compliance is not required if it is not so stated in law. As for what is not mentioned, it is the so-called residual power or residual legislation, which does not require compliance. As the Secretaries for Department and a number of barristers are here, I am definitely not in a position to brag about this. But I would like to explain the case according to my knowledge, and if I have got it wrong, will they please explain it.

Under the circumstances, the Secretary keeps emphasizing that the arrangement is in line with the Basic Law. However, I always challenge him on the authority of the SAR Government to interpret the Basic Law. It is stipulated unequivocally that the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC). The Secretary is in no position to make an interpretation. If anyone issues a statement stating that the arrangement is in compliance with the Basic Law, I will also challenge his authority to do so. If the statement is issued on behalf of the NPCSC, he is absolutely qualified to do so. Otherwise, the statement is only his personal comments. It is a separate issue whether anyone acknowledges his views. In this connection, I hope that the Secretary, as a representative of the Government, should have a thorough understanding of this. When he says that the incident is not at all complicated and that he will make his own interpretation anyway, he, as a representative of the Government, is actually misleading the public when he gives his own interpretation.

The first point I mentioned earlier is about the power of interpretation. The Secretary is not at all qualified to make an interpretation. As he has no authority to make an interpretation, it is meaningless to go any further, for he simply has no authority to do so. The second point is about residual power. Concerning residual power, Members should bear in mind that in June 2007, Wu Bangguo, Chairman of the NPCSC, mentioned particularly that all powers in Hong Kong were granted by the Central Government, and Hong Kong could do what the Central Government had empowered it to do, so there was no question of residual power. His remarks were not at all aimless, for they represented an instruction. Is the SAR Government part of the Central Authorities? Could the SAR Government not listen to the Central Government? It can in no way say that it has overlooked the issue, and the Chairman of the NPCSC is absolutely correct. As I said previously, the purpose and objective of his remarks are to serve as a reminder to those in the pan-democratic camp, but it does not mean that the SAR Government and those assisting the Government can disregard, or misinterpret or even defy it. This is very important. So, on the issue of residual power, all of us should have a perfectly clear understanding. The Secretary has no power at all to make an interpretation, nor does he understand the situation. As he does not understand it, he is not in a position to make an interpretation.

Thirdly, all Directors of Bureau are authorized by the Central Authorities. Now that Secretary Frederick MA has resigned, his replacement is primarily subject to the authorization of the Central Government. We must understand this. It is true that this is not provided explicitly in the Basic Law. What about the appointment of Under Secretaries? The appointment of Under Secretaries, which is not stipulated in the Basic Law, involves another kind of residual power. Regarding the authority to interpret residual power, are they bold enough not to refer it to the NPCSC for interpretation? If they do not have the guts, they have to follow it. We fully understand that Under Secretaries may have to undertake all the duties of Directors of Bureau upon the latter's departure from the post. Certainly, it is not stated explicitly in the Basic Law, but still, during his acting appointment as the Director of Bureau, he is called the Director of Bureau, a post which should be authorized by the Central Government. What authority does the Chief Executive have to grant such authorization on behalf of the Central Government? Is such practice undermining or taking away authority of the Central Authorities? This issue naturally involves the interpretation of the so-called residual power. If he is to make an interpretation, in what position can he make such an interpretation? Therefore,

it is not just an ordinary issue; in all seriousness, this is a *de facto* coup d'état. Surely, the Central Government may not support this view of mine, but the SAR Government should handle the issue cautiously.

Certainly, officials at one or two ranks above responsible for overseeing the SAR Government as a whole should be held responsible direct for the incident. I strongly believe that absolutely there was intelligence forewarning the problems, only that officials at one or two ranks above had inadvertently neglected it. Concerning the liability of negligence, and on the question of how investigation or examination should be carried out, as well as how the remedial and improvement measures should be implemented, I firmly believe that further studies would definitely be conducted after the Olympic Games, for these are not simple issues. Though "one country, two systems" is a new thing, it does not mean that the representativeness of the Central Authorities can be defied. We understand that the Chairman of the NPCSC is the second highest position in the Central Authorities. So, if his orders or remarks with certain undertones do not have to be observed or executed, who else can issue correct directions to us on behalf of the Central Government? President, I am thirsty.

Therefore, President, this is not just a simple issue about the appointment of Directors of Bureau or other problems in general. It is a matter of common sense in politics. In this connection, the Chief Executive must give an explanation to all the people of Hong Kong, and it must indirectly or directly give an account of the incident to the Central Government.

President, I now turn to the remuneration of Under Secretaries and Political Assistants, on which a number of colleagues have already expressed their views. The Government should understand that the appointment incurs public money, so on what grounds can the Government act in such a hegemonist manner by saying that the information cannot be disclosed? I think there are two reasons why such information cannot be disclosed. The first reason is that the salaries and benefits offered are too high, and the appointees are not value for money. The Government worries that once their salaries are disclosed, it will be accused of overpaying them. The second reason is that the Government worries that it will arouse jealousy among civil servants. But the non-disclosure of such information by the Government has only left the public or Members of the Legislative Council in the dark. The information is actually known to all within the Government, is it not? It is just deceiving itself. Why did it have to act this way? On that day, we discussed how the incident would end. As the

SAR Government has been emphasizing the principle of strong governance and that it is wise and resolute, it definitely will not bow to any pressure. But in the end, the incident has to be dealt with after all. At that time, I joked with Mr Martin LEE that I could say that I had found a document stating the proposed salaries of the relevant officials, and the figures therein were very accurate. But I lost that document on the proposed salaries, which was then picked up by the media, and the information was therefore published. In that case, Mr LEE Wing-tat's proposal would be rendered invalid. The second option was for the Under Secretaries and Political Assistants concerned to announce their salary voluntarily, for it was no secret after all.

President, we do not intend to arouse vehement confrontation in Hong Kong, but the problems have to be solved. The Government should act with sincerity. It does not matter, for as I have said many times, even if the SAR Government is a wise and resolute government, it is impossible that it will make no mistake. What is important is that it will right its wrong and is willing to be accountable to the public. If so, the public will definitely give continued support to the Government.

There is another point which has aroused considerable doubt. We all know that this year is the election year and the coming election will be held on 7 September. Under the present situation, the pan-democratic camp knows that there are not many political issues on which they can bargain with the Government. But because of this incident, the Government has unintentionally provided such a favourable condition for them, Mr LEE Wing-tat in particular, who may at least win several to ten thousand votes for this reason. Of course, this is conspiracy theory. Under such circumstances, the Government should by all means reflect on itself: Why should it create these opportunities for them? The Government has said that it treats people differently depending on their affinity with the Government, and it naturally wants them to lose in the election, but why has it created such opportunities for them, which enable them to take advantage of the situation for election engineering?

For those who are in support of the Government, relatively speaking, or for the so-called pro-government camp, they are indeed fending off the blows passively, and they should reflect on themselves seriously. There is another conspiracy theory. The first of July is just around the corner, and earlier on, many colleagues have urged and invited the public to actively participate in the 1 July march. Are these opportunities not also provided by the SAR

Government? Whether this political conspiracy has ever crossed their mind, I have no comment, for I am strictly neutral in, and even immune to, these incidents.

No matter how, I earnestly hope that the Government will, regardless of how right it is, heed public opinions, for by doing so, it is delivering good governance. The Government should stop resorting to sophistries. If it has made mistakes, it should rectify them. I do not see any problem with this. The most important point is to understand clearly that all powers of the Chief Executive come from the Central Authorities and the support of the public at the same time. Certainly, if he has a high popularity rating, he will be happier in his work. But a low popularity rating can prompt him to do better to achieve good governance.

MS MIRIAM LAU (in Cantonese): Madam President, since the introduction of the Accountability System for Principal Officials ("accountability system") by the SAR Government in 2002, many a time, it has been a big headache for officials under the accountability system to seek suitable support. For the relevant officials do not only have to regularly attend meetings of the Legislative Council and give replies to Members' questions, but also have to deal with the internal and external affairs of the departments under their purview, as well as loads of issues relating to their policy areas. In view of this, in 2007, the Liberal Party supported the Government in the further development of the political appointment system to provide additional resources to officials under the accountability system, with a view to enhancing the effectiveness of its governance and fulfilling its vision of "people-based governance". However, the Government's performance in expanding the political appointment system this time around is indeed undesirable and gives cause for criticism.

For instance, in the past, on the announcement of politically appointed officials, the Government would always arrange them to line up and meet the media. The officials concerned would take questions from the media, and this would allow the public to know more about the new governing team. However, this time, the Government deviated from its usual practice in announcing the appointment of Under Secretaries and Political Assistants, and issued only a press release. This would inevitably give people the impression that the Government was evasive and the appointment lacked transparency.

On the nationality of this new team under the accountability system, the Government acted secretively at the beginning and did not announce their nationality. All along, it had been trying to evade the issue of "dual nationality". It was not until the incident had created an uproar and the public had expressed grave concern that the Government wind up the incident in a hasty manner by stating that Under Secretaries would make public their nationality voluntarily and be willing to give up their foreign nationality. The incident has brought to light the Government's underestimation of public expectation of "political commitment" on the part of politically appointed officials. It has mistakenly given a standard answer based on the rule of law to a political question. Naturally, it got "a fail".

With regard to the focus of today's debate, that is, the remuneration and fringe benefits of Under Secretaries and Political Assistants, the Government repeated its mistake. At the beginning, it refused to make public the details on the grounds of protecting privacy. It should know that the remuneration issue involves the use of public money, and it is justifiable for the public to ask for an explanation. Moreover, the remuneration and benefits of officials appointed previously under the accountability system were handled with complete transparency and openness. It is incomprehensible why the Government would refuse to make public the remuneration and fringe benefits of the newly appointed officials under the accountability system on the excuse of protecting "privacy" at the beginning.

Despite its refusal to disclose the information, the Government had to give in and the information was made public, though not by the Government itself. No matter how, the remuneration of the 17 newly appointed officials under the accountability system was at last made known. Four Under Secretaries are earning \$223,000 a month at the maximum salary point, and the other four Under Secretaries are earning \$208,000 a month at the mid-point of the salary range. As for Political Assistants, one of them is earning \$160,000 a month, which is the maximum point; another one is earning nearly \$150,000 a month, while the others are earning \$134,000 a month, which is the mid-point. The remuneration is provided as a total cash package including various allowances and gratuity benefits. In addition to the cash remuneration, other benefits include annual leave of 22 days per annum, medical and dental benefits and Mandatory Provident Fund contribution by the Government.

The Liberal Party has some opinions about the remuneration and benefits mentioned above. On the determination of remuneration, the Liberal Party agrees that attractive terms should be offered to attract talents, but we consider that the employment terms should vary with flexibility in accordance with the qualification, experience and expertise of individual candidates. At the same time, the Liberal Party thinks that unless great difficulties are encountered in recruiting suitable candidates, a relatively lower remuneration should be offered. Regrettably, in determining the remuneration, the Government has exploited the loophole by pitching the minimum salary point of new recruits at the "mid-point", rendering the "minimum salary point" stated in the information paper for the Finance Committee non-existent. It is really disappointing.

Indeed, the Government has been insensitive in dealing with the remuneration of Under Secretaries and Political Assistants this time around, and its judgment was problematic. In general, people outside the Government, including individual members of the business sector, consider that the remuneration of Under Secretaries and Political Assistants set by the Government is on the high side. For future appointment of politically appointed officials of this kind, the Government must examine the issue cautiously and conduct further review before determining the remuneration of those appointees.

Today, Mr LEE Wing-tat put forth a proposal to order the Director of Chief Executive's Office of the SAR, in pursuant to section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), to attend before the Legislative Council on 2 July to produce any papers, books, records or documents in relation to matters regarding the salary and fringe benefits of Under Secretaries and Political Assistants. The Liberal Party cannot support the proposal. As for the information requested by Mr LEE Wing-tat today, that is, the salary, the subjects of the information, namely, the Under Secretaries and Political Assistants have indeed made public on 10 June via a press release, which set out their specific remuneration and benefits, issued by the Information Services Department of the Government "on behalf of the newly appointed Under Secretaries and Political Assistants". The present situation is that the remuneration and fringe benefits of Under Secretaries and Political Assistants have been made public, and the Under Secretaries and Political Assistants concerned have already been appointed. Now that we know their remuneration and certainly, we have expressed criticisms and opinions against the arrangement, but I believe the Government should learn a lesson from the many

opinions and criticisms expressed in this incident, and it should be extremely cautious in determining remuneration in similar cases in future. With regard to the request for more information, we think this will bring us nowhere, for the process of appointment has in fact been completed.

Indeed, the legislation on powers and privileges is an imperial sword of the Legislative Council, which should not be easily unsheathed until the very last moment. During the eleven years since the reunification, the Legislative Council has discussed, in about 10 debates, whether section 9 of the Legislative Council (Powers and Privileges) Ordinance should be invoked. All along, the Liberal Party has followed the same principle, that is, the power should be invoked when it is warranted for specific purposes. During the 10 debates, the Liberal Party had on three occasions supported the exercise of such power. On those three occasions, the issues involved important incidents of society and the interest of the public at large. Besides, the nature of the incidents was complicated and much suspicion was aroused and it would be impossible to investigate into the situation if the Legislative Council did not exercise such powers and privileges. The three incidents were the problems surrounding the commencement of the operation of the new Hong Kong International Airport at Chek Lap Kok in 1998, the substandard piling problems of public housing units in 2001 and the SARS incident in 2003.

For the reasons mentioned above, the Liberal Party sees no justification that warrants the exercise of such powers and privileges to order the Government to make public the information related to the remuneration and benefits of Under Secretaries and Political Assistants, which has already been made public. The Liberal Party considers that such information should be obtained, but we have already obtained it. Having said that, the Liberal Party still hopes that the Government will learn a hard lesson from this uproar relating to the political appointment row, so that when announcing the next batch of appointees, it will really make rectification and improvement and properly address the various concerns expressed by the public.

Madam President, I so submit.

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

DR FERNANDO CHEUNG (in Cantonese): In view of the performance of the Chief Executive today, as well as the responses of principal officials to the uproar caused by the further development of the appointment system this time around, I think the SAR Government has not yet learnt a lesson.

Today, the Chief Executive came to the Legislative Council hoping that his words would be the final conclusion and the incident could come to an end. He said that the incident was over and the issues were within the scope of the powers of the Chief Executive. Since the incident has come to this stage, he urged Members to stop arguing and return to their roles. I can understand his response. For from his point of view, the Accountability System for Principal Officials ("accountability system") is indeed a system developed by him. As the Chief Executive, he has to govern Hong Kong and through the some 160 000 civil servants of the SAR Government — though he is not a civil servant. But as a political leader, he definitely needs some politically appointed Directors of Bureau to assist him and lead the various government departments. As the accountability system is developed by him, and as he said earlier, officials under the accountability system are all handpicked and approved by him, and the name list would be submitted to the Central Authorities for actual appointment, and following this logic, the system should, for the purposes of reinforcing the accountability system and enabling it to function effectively, be further developed, so that the appointment and selection of candidates, as well as the approval of appointments, should continue to be carried out solely by himself. It thus seems reasonable that appointment by the Central Authorities is deemed unnecessary this time. This line of thoughts seems to be quite logical.

However, today, the public's expectations on the SAR Government have gradually changed. Be it in comparison with the British-Hong Kong era or the TUNG Chee-hwa era, the public now has different expectations. In the appointment process, the public has noticed some irregularities. They find out that a system, which allows one single person to have the final say, is problematic.

First, we notice that appointees to posts of such importance do not necessarily have to make public their nationality, and worse still, they do not have to hold Chinese nationality. Certainly, this may involve many technical issues. I think further clarification in this respect may not be necessary here. In other words, in the legal context, there may not be an unequivocal

requirement on nationality, but there is such requirement on the right of abode. In any case, these are important political appointments, for the appointees will play a leading role. When the public sees that persons occupying these leading posts of great importance are not required to show their loyalty to their country in a most basic way, they come to realize that there is something wrong.

When we look into the arrangement further, we find that these people are offered handsome remuneration. Again, when we juxtapose the salaries with the appointees, we notice that people who do not have any relevant background can be appointed. Even university graduates with only a few years of experience can be appointed and remunerated generously. Actually, this remuneration row should more or less be attributable to the low income level of the community at large. Hence, these posts of political appointment are, by contrast, considered overpaid. If it is not because of this incident, the public perhaps will not know that Directors of Bureau are in fact earning some \$200,000 a month, nor will they know that senior civil servants are earning such high salaries. On the other hand, they may not know that Members of the Legislative Council are so trivial, for they may all along think that all Members of the Legislative Council are earning several hundred thousand dollars, I mean, monthly. In this connection, I think the development of the entire incident has awakened the public. Let us look at the next stage of development. It turned out that these appointees were not so willing to come forward. Though they are earning handsome salaries and have taken up important political appointments, they refuse to meet the public. Up till today, we still see that most of them are still reluctant to face the public openly and candidly. When the issue is discussed today, we see no Under Secretary or Political Assistant. Why? The public therefore senses that there is something wrong.

Honestly, if I were in the Chief Executive's shoes, really, I would not have expected that the consequence of the incident would be so serious. For according to his logic, this is more than logical and rational. I believe, from the perspective of Tung Chee-hwa, the former Chief Executive, it is even more logical, for he, as the Chief Executive Officer of a company, can employ whoever he likes, and he is the one who calls the shots in the company. However, for Donald TSANG, who has been a civil servant for several decades and has risen to the present position as a political leader via this channel, it is impossible that he is ignorant of the need to follow specific rules and regulations in the use of public money. He should know that the expansion of the political appointment system should also follow the established practices and there are

rules and regulations. Otherwise, how can these Political Assistants and Under Secretaries appointed from outside the Civil Service convince their subordinates, who are civil servants, particularly the elite Administrative Officers who have passed stringent screening and worked very hard for years? How can they co-operate with them? These appointees from outside the Civil Service, who neither have relevant background nor corresponding qualification, are brought into the Government all of a sudden, and worse still, the entire process lacks transparency.

May I ask the Directors of Bureau now in this Chamber whether they have participated in the selection or recommendation of these appointees who will be their assistants? According to the address given by the Chief Executive today, the answer seems to be in the negative. The appointment committee mentioned by the Chief Executive is chaired by the Chief Executive himself. Together with the other three members, this committee of four decided the appointment of a dozen of candidates. Even the Directors of Bureau concerned might not be involved in this committee, nor did they know clearly the relevant process. But the Chief Executive dared to say that such a system of political appointment and operations with no transparency were subject to internal check and balance. I really cannot figure out how internal check and balance has been exercised, for all the decisions are made and approved by him. He also said that there was no inequity or favouritism, but obviously there was. How could he say that there was not? People who have affiliation with pro-government political parties were appointed, but members of political parties that are not close to the Government were not appointed.

All these are attributable to a weak accountability system. Concerning this accountability system, the Chief Executive has also mentioned that under the special circumstances in Hong Kong, the Chief Executive is not elected by universal suffrage but a so-called independent mechanism — I do not understand why there would be an independent mechanism. Could it be that the several hundred people who selected the Chief Executive are regarded as an independent mechanism? For this reason, he wishes to expand the system gradually starting from the "point" where he is now, hoping that the expansion will mobilize enough strength for him to govern Hong Kong. However, that "point" is too weak. It is not convincing. Without the mandate of the public, without the baptism of democracy, does he think he can make it like magic? Eventually — I believe the Chief Executive would never have expected such an outcome — an insignificant arrangement, as he may consider so, relating to the appointment of

just a dozen of Political Assistants and Under Secretaries, would face these setbacks. This was only a trivial issue, and he might have told the officers-in-charge of major media groups to be psychologically prepared beforehand, but when everything was ready, the boat just overturned in a drain. The primary reason is that the accountability system is built on a weak basis which fails to win the trust of the public. Once mistakes are made, what follows is in-depth investigation by the media and discussion and monitoring by the Legislative Council. So, such mistakes may be fatal.

Therefore, I believe the Chief Executive is quite upset about the drop of a dozen percentage points in his popularity rating, resulted from such a minor issue. He thus considers it troublesome to hold a dialogue with us or give us an official explanation. He thought that his appearance in this Council would put a full stop to the incident. But I am afraid that this is hardly achievable. I hope that when the Chief Executive comes to this Council next week, he will explain the case more clearly.

The request put forth by Mr LEE Wing-tat is indeed very humble. He is only asking for some basic information. If even such basic information cannot be provided, how can this so-called expanded political appointment system be considered as justified and systematic, and having a set of basic procedures, or at least, ensuring a small degree of accountability in the system? At present, all officials under the accountability system are accountable to the Chief Executive alone, but the Government is paying them by public money. These politically appointed officials are responsible for leading major government departments directly serving all the people of Hong Kong, so the accountability system should make them accountable to the public instead of the Chief Executive alone. Actually, Mr LEE Wing-tat's motion requests that the expansion of the accountability system should include all these provisions and systems. Without systems and regulations, it will only become a private club and promote cronyism. It will only enable the infinite expansion of one's own powers, even to the extent that one gets carried away and becomes senseless.

I thus hope that by means of today's discussion, the Chief Executive will begin to come to his senses. If he has promptly come to his senses, he may still be able to take some steps to remedy the situation in time. We are spending tens of million dollars a year on these Political Assistants and Under Secretaries, and I do not wish to see that they are proven to be a failure and become defunct

even before they start working officially. In that case, this accountability system should better be thrown into the garbage bin.

I would like to bring up one more issue. In view of this incident, KWOK Cheuk-kin, an elderly man from Cheung Chau, sought judicial review at the first instance. I had met this elderly man in Cheung Chau. I learnt that he had filed five lawsuits against the Government in three years' time, and in two of the cases, the Government was forced to reach an out-of-court settlement with him. This elderly man is, I think, an apt depiction of a prevailing phenomenon, that is, the Government is completely ignorant or unaware of the spirit of the people of Hong Kong. The Government should not underestimate the people of Hong Kong and consider them foolish and naive. An unknown elderly man from Cheung Chau is able to see the serious errors in the system and point them out. This is the spirit of the people of Hong Kong today.

Hence, if the Government keeps thinking that it holds ultimate power and disregard the people of Hong Kong, I believe it will not be long before it runs into troubles. Lastly, I urge the public to come forward on 1 July to express their aspiration for democracy. If the entire accountability system hinges on a feeble Chief Executive who is not elected by universal suffrage, it will never succeed.

Thank you, President.

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

MR ALAN LEONG (in Cantonese): President, many arguments have already been expounded as we come to this stage of the debate. I will not repeat the opinions already expressed, including those of my party comrades. However, there are several points which I must get off my chest. Allow me to elaborate these points now.

President, today, all of a sudden, the Chief Executive requested to attend the meeting of this Council. Not only did Mr Ronny TONG have fantasy about his appearance. I also had some expectations too. I thought he came here because for the past several weeks many members of the public had expressed

their discontent about the denial of their right to know, which they, being taxpayers, should enjoy. These 17 politically appointed officials under the accountability system are paid by taxpayers' money. Why is it that the salaries of these Under Secretaries under the accountability system can only be disclosed to the media by themselves voluntarily? Why was there absolutely no transparency in the entire recruitment process, from the so-called "cricket-picking" meetings or interviews for shortlisted candidates to the overall arrangement?

I thought that the Chief Executive, after several weeks of reflection on himself, might sincerely explain everything to the Legislative Council, that he might wholeheartedly clarify all these issues. However, this fantasy of mine vanished the very moment the Chief Executive stood next to the President and gave his address. If this is like putting on cosmetics in a political sense, then the make-up is really not very good. If the Chief Executive thinks that his appearance in the Legislative Council today is like "an emperor giving orders to all the world" — this is perhaps an illusion for he is standing on a higher place — and that his words would be final, I believe there will be no better example to illustrate how power corrupts, and how it corrupts to such extent that one's ability to conduct self-reflection can be eroded.

I sincerely hope that this incident will give the Chief Executive a sharp, timely reminder. Actually, it has only been around a year since his current term started. Will this incident remind him that he must never detach himself from the public, and that during the election, he visited various districts to help the wheelchair-bound residents and chatted with the elderly sitting in parks? Has he completely forgotten the affection that he showed at that time? If he has not, I earnestly hope that this incident will remind him to reflect on himself again. He should return to the public and listen to their views humbly. If he does so, he will do a better job.

The Chief Executive who stood next to the President stated forcefully that there was no affinity differentiation. He said that it was only natural for him to appoint people sharing his vision, for a ruling team could not be formed otherwise. As I saw him make those fallacious remarks in a righteous tone, it sent shivers along my spine.

The Chief Executive mentioned internal conflicts or depletion. It is best to hear this remark from him. If he is still able to reflect on himself, he should ask what caused such internal conflicts. The internal conflicts are the result of his affinity differentiation approach. It is all because he wants only one voice in

the Government, so he tries by all means to ensure that the Government has the final say in both advisory and statutory bodies. President, we all know that the most precious characteristic of Hong Kong is pluralism in society. People who have different background and different interests may all voice their opinions. The interaction of these voices produces the chemistry which enables Hong Kong to remain highly dynamic and pluralistic all the time.

When I first saw the approach the Government adopted in handling the problems related to Under Secretaries and Political Assistants, it broke my heart President, all along, Hong Kong treasures its system the most. A system does not vary from one person to another. If a system is maintained, the employment or departure of individuals will not create too significant an impact. However, concerning the recruitment process of Under Secretaries and Political Assistants this time around, as I said earlier, we know little about how the entire process is carried out, and worse still, we do not know the criteria adopted for determining their salaries.

I recall that when the incident was first made known, a newspaper drew a comparison between the salary of a Deputy Secretary, who frequently attends the meetings of Bills Committees or Panels of the Legislative Council, and that of a Political Assistant aged 28. The Deputy Secretary concerned possesses a doctorate and has been an Administrative Officer for 18 years. We all know that the people of Hong Kong have trust in the system of Administrative Officer because it is subject to clear rules and regulations and is systematic in the establishment. I believe that Deputy Secretary must have continuously undergone appraisals and striven for improvement over the past 18 years before being promoted to the present position, a Deputy Secretary. If she has to accept that her salary is only a few hundred dollars more than a 28-year-old Political Assistant who has yet proven his or her working ability, I think, not only will she be upset, many people of Hong Kong will also consider it baffling.

Besides, the recruitment process lacks clarity. Today, I, for the first time, learnt from the Chief Executive that there were two interviewing panels tasked to interview the candidates. The Chief Secretary for Administration was in charge of the one for Under Secretaries, while Mr Norman CHAN and Secretary Stephen LAM were responsible for the other one for Political Assistants. Only three persons, or four counting the Chief Executive in, were involved. Coupled with the uncertainties about the determination of the salaries

mentioned earlier, is it not like recruiting chauffeurs, chefs or gardeners for a family? President, I believe even when a small company recruits a secretary or a receptionist, the company will place advertisements or hire an employment agency to attract more applicants for the post. In the course of screening, the persons in charge of the recruitment exercise will at least decide whether academic qualification or working experience is more important, or whether to require applicants to attain a certain typing speed per minute, and so on. No matter how, some objective criteria will be laid down.

I believe Mr LEE Wing-tat, by proposing today's motion, wishes to give the Government an opportunity to prove that it has not departed from the conventional values of Hong Kong, that is, we trust the system, not people. However, judging from the responses of the Government — even the Chief Executive has come to this Council today — I do not think that the Government is prepared to do so. President, I think this is the point that the people of Hong Kong should particularly focus on. Once the system in Hong Kong is dismantled, we will degenerate from a place where the rule of law prevails to one where the rule of man prevails.

There is nothing special about the rule of man. To put it simply, the policies or practices of the Government will vary according to the preferences of one or two officials. This is the simplest definition of the rule of man. As I see it, the present incident does show this inclination. I earnestly hope that the Chief Executive will learn a lesson from this incident and go back onto the right track which Hong Kong has long taken. We hold dear to the system in Hong Kong. The corruption of the system is the last thing we wish to see.

President, with my remaining speaking time, I would like to briefly discuss whether it is mentioned in the Basic Law that holders of foreign passports can or cannot take up the office of Under Secretary. This actually does not bear too much relevance, for this is a political issue from the outset. We are now spending \$40 million to \$50 million per annum to train political talents for Hong Kong — I did not say this; the Chief Executive and Secretary Stephen LAM did. But in any case, we will never spend public money on training talents for Canada. If we do not mind whether or not these people have foreign passports, we may as well recruit political talents from all over the world. Why not?

Therefore, on the nationality issue, I have always thought that it has to do with their willingness to make political commitments. Will they convey a message to the people of Hong Kong that since the Government is spending \$100,000 or \$200,000 a month on training them for a couple of years, they will honour their obligation righteously and come forward to be political leaders when Hong Kong needs them one day? If the issue is dealt with and perceived from a legal or constitutional perspective, I am afraid that this will make a world of difference.

President, lastly, as other colleagues have proposed, I think the people of Hong Kong should demonstrate that they are aware of the importance of "one person, one vote" and that they want the Government to be genuinely accountable. On the appointment of Under Secretaries and Political Assistants, they know that the SAR Government has deviated from the conventional and inherent values long cherished in Hong Kong. To the people of Hong Kong, one of the options to express such opinions is to join us at 3 pm on 1 July at the Victoria Park. Together, we will march on the path to democracy.

Thank you, President.

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

MR SIN CHUNG-KAI (in Cantonese): President, the Accountability System for Principal Officials ("accountability system") was introduced by TUNG Chee-hwa. I would say that while TUNG Chee-hwa "put it into first gear", Donald TSANG "slammed it into top gear". Before I come to my speech proper, I would like to quote a line from Secretary Frederick MA: No tinted-spectacles when listening to comments from the democratic camp.

Members from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) said that it was a matter of privacy. I think this explanation is unacceptable. Members from the Liberal Party said earlier that they had supported three motions seeking to exercise the power conferred under the Legislative Council (Powers and Privileges) Ordinance on three incidents, namely, the airport incident, the substandard piling works incident and the SARS incident. I remember that I had participated in the inquiry into the airport

incident. At that time, the then Chief Secretary for Administration, Anson CHAN, who is now a Member of the Legislative Council, would be in the seats of the Secretaries of Department, and with the companion of her colleagues, she came to the Legislative Council to answer Members' questions. During that period, she had provided a lot of documents. I recalled that certain documents containing the so-called sensitive materials were also submitted to the Legislative Council with some of the contents "being blacked out". Were these documents conducive to the investigation? The answer was in the affirmative. Honestly, during the period between 1995, the year I joined the Legislative Council, and 1997, I did not have much contact with Mrs CHAN. In 1997, there was the airport incident. In the incident, we were sceptical of Mrs CHAN. We reckoned that Mrs CHAN, being the most senior officer-in-charge, should be held accountable. However, after going through all the documents, we found that Mrs CHAN had issued warnings at certain crucial moments. This point was conducive to the investigation into the entire incident. In other words, when we were to draw conclusions in the end and decide to whom we should express regret or whom we should condemn, such information would be useful.

That means disclosing the documents to us may perhaps do justice to the Government. That is to say, with the provision of the relevant documents, we may perhaps find out that the Government has already fulfilled its responsibilities, only that we have no knowledge of it. This is my wishful thinking, but I do hope that this is really the case. Therefore, if it is said to be involving privacy, there is still room for striking a reasonable balance. Certainly, when we discover in the course of studying those documents that certain contents which should not be blacked out have been blacked out, colleagues will definitely raise questions about it. With regard to the airport incident, though certain parts of the documents provided by the Government had been blacked out, we still considered that those documents had helped us understand the incident better. In view of this, privacy is not the major reason; nor is it an acceptable reason.

Second, in his address today, Mr Donald TSANG urged us to focus our efforts on improving people's livelihood and combating inflation, and so on. Honestly, when the people of Hong Kong know that the Government is spending \$55 million per annum on the implementation of the accountability system, they really consider that amount colossal. In the earlier debate on tax reduction proposed by the Government, I have already mentioned this and I am not going to repeat it now. This Government, which sets ambitious targets but lacks the competence to achieve them, has spent \$55 million on the implementation of the

accountability system, but it still considers that inadequate. On the contrary, expenditures on poverty alleviation work and assistance for grassroots are being tightened. The public will definitely be trembled with anger. Mr Donald TSANG said that under the executive-led system, the accountability system will be implemented by the various teams headed by him. However, he has overlooked a very important point. Even in the case of the United States where the President is returned by election, the principal officials appointed by the President are subject to one procedure, namely, confirmation. May I ask the principal officials now in this Chamber a question: Have you ever come to this Council for confirmation? No, there is no such procedure to maintain a balance. The President of the United States, though with the people's mandate, still has to undergo confirmation under the established system. But there is no such procedure in Hong Kong. Is this an imbalanced system? Surely, the Chief Executive has also mentioned the British Parliament or the parliamentary government system. However, under those systems, all principal officials of the cabinets are returned by election, and at least, they are Members of the Parliament. Hence, it is inappropriate to draw a comparison between the two, for we are not adopting the same system. In Hong Kong, the executive-led system is adopted. In countries where the executive-led system is adopted, say, in the United States, principal officials have to undergo the procedure of confirmation. Of course, not every country or city requires its principal officials to undergo this procedure. Taiwan, one of our sister cities in the neighbourhood, is an example. The cabinet of the President does not have to undergo the confirmation procedure.

Is this incident of significant importance? Colleagues from the Liberal Party mentioned three incidents, namely, the airport incident, substandard piling works and the SARS outbreak. With regard to the impact on the order and stability of Hong Kong in the long term, those three incidents were only isolate incidents. The airport incident only involved the operation of one airport, while the substandard piling works incident was only related to the building problems of several blocks of buildings, yet I am not downplaying their impact. The SARS incident was relatively more serious, for it had caused the deaths of several hundred people. However, these incidents have not affected the fundamental nature of the system in Hong Kong. On the contrary, this incident on Under Secretaries under the accountability system is a problem with the system which will pose far-reaching impact on the order and stability of Hong Kong in the long term; it is not an isolate incident. In other words, the incidents of the airport, substandard piling works and SARS were separate and isolate

incidents, which warranted investigation into the possibilities of human errors. However, the incident now under discussion has a bearing on the system.

President, I would now come to other problems involved in this incident, namely, the remuneration issue and the candidacy. In fact, I believe the Government should have its own experts on human resources, and to borrow the mainland jargon, they are officers of the Organization Department. Let us draw a comparison between the Government and private organizations. What is the definition of mid-point salary? According to my knowledge, in large organizations, the mid-point salary is usually offered to employees with a certain period of service. Under Secretaries should show very clear performance before they are offered mid-point salaries. This is definite and specific. If it is said that Under Secretaries have clearly shown their performance, they should have come to the Legislative Council to debate with Members on their first day of work. But this is not the case. These Under Secretaries are hidden away for three months to undergo special training, let alone the Political Assistants.

There are certain remarks that I should not make, but for the interest of the public, I cannot but say them. Earlier on, Members have mentioned a Political Assistant earning a monthly salary of \$130,000. In fact, we have repeatedly discussed this. That Political Assistant, who is aged 28 and whose name I have forgotten, is earning \$130,000 a month. I do not know much about him, nor do I know his background. But we may consider the case from the angle of personnel management system. Generally, on the employment of a new staff member, if a pay exceeding 30% of his or her previous salary is offered, regardless of the exact amount of his or her previous salary, the recruiting company will ask whether the 30% increase in salary is necessary — the job seeker, of course, has to consider whether the new company can offer him his expected salary. However, in this incident, the increase in pay exceeds 30%; it is indeed a three-fold increase. His present salary triples that of his previous job. This is a deviation from standard personnel practices. Despite that the Government needs to take into account the entry point and has already offered the minimum salary point, the Government could indeed offer a salary below the minimum salary point. I also wish to mention another case. Two days ago, a woman, who has repeatedly lodged complaints to me, urged me to take follow-up action. She said that she was familiar with a friend of a Member's son and they studied and worked together. She thus learnt that the performance of the Member's son was just average and that he did not have actual working

experience. She queried if it was only because he was the son of a certain Member, and by purely counting on the relationship with the political party, that he was suddenly offered a senior post with handsome salaries. She said that his friend was perhaps earning just half of the salary now offered to the Member's son, and she queried whether this is reasonable.

To the grassroots, some \$100,000 to \$200,000 is a colossal sum of money. They thus consider the offer ridiculous. We, as Members of the Legislative Council, are always open to criticism, and the public thinks that we are earning some \$100,000 a month. But our monthly salary is only \$58,000, even less than \$60,000. Who say that we are earning several hundred thousand dollars? Yes, we are earning several hundred thousand dollars but that is our yearly income, not monthly income. Besides, we will be criticized when we do not attend meetings. Am I right? Well, I have never caused any meeting to abort, and I have nothing to do with any aborted meeting. Honestly, there was a reason for aborted meetings. I know that most of the colleagues have been stretched beyond their limits, taking up multiple duties at the same time. If they are not working at one location, they are working at another place. On the contrary, Under Secretaries and Political Assistants have not been put to tests or challenges before they are offered the job and a pay of several-fold increase over their previous salary.

By contrast, all principal officials in the United States join the Government because of a sense of mission. They are willing to join the Government for a lower salary but not a three-fold increase in salary. On the employment of senior officials, should the sense of mission be one of the considerations of the Government? Why are we willing to accept only \$58,000 and have to work overnight for several days in a row as Members of this Council? Surely, some Members have to support the Government, but we are here to strive for democracy and monitor the Government. All of us have different missions, but we should at least be held in respect. Though we are not fully compensated for the job, we count on our spirit to move on. May I ask the Under Secretaries and the Political Assistants what missions they have? Are they taking the job only because of the three-fold salary increase? Why has the Government not asked that 28-year-old friend whether he is willing to take up the job if only a salary at the entry point is offered? Will he take the job for a salary lower than the entry-point salary? He may still accept it. So, the Government is actually forcing a bitter pill down his throat, and he can say nothing about it. Had he been asked, he might say that he would be willing to take the job for just a 30% increase in salary because he likes the job. Even if he is willing to take the job

and the Government thinks highly of him, does the Government need to offer him a three-fold salary increase? To the grassroots, these salaries are astronomical indeed.

Actually, I have come to two conclusions. First, the grassroots consider the salaries astronomical. Second, members in the personnel management profession consider that the Government has acted against all the rules. Both conclusions indicate that there is something wrong, and that is why the Government is being criticized. Are we in the Democratic Party stirring up troubles for no reason? Are we doing this for the mere purpose of causing troubles? Why are we able to spark off a controversy over this incident? Because we follow the opinions of the public. As we visited the districts, the public has consistently asked us to take all kinds of actions. We have to answer the aspirations of the public and this is why we must do this.

Secretary, if you have time, will you please distribute promotion leaflets on the street to urge the public to support the accountability system. You will know their responses then. You should try to distribute the leaflets along the pedestrian walkways at Tsim Sha Tsui and Mong Kok to promote the accountability system and see what the citizens will tell you. This is a good try. You may ask Norman CHAN to go with you. But I will be singing a different tune along the streets in Mong Kok. Please listen to the views of the public. Indeed, I told you at the meeting of the Panel on Constitutional Affairs that it would never be too late to make remedies. I suggested that the Government can reduce their salaries and lower the pay of a number of appointees to the entry point, in order to ease the tension. I think this may be a solution. With my hand on my heart, I think the Government should do this, and I do intend to change the practice of the Government. Indeed, if what was done is unreasonable, the Government must rectify it. If the Secretary said in today's response that certain appointees will be offered salaries at the entry-point — not necessarily at the entry-point, it may be below the entry-point — they may still be willing to take up those posts. With these remarks, President, I support the motion.

PRESIDENT (in Cantonese): I would like to tell Members at this point that the meeting will be suspended after this debate comes to a close. Does any other Member wish to speak?

DR RAYMOND HO (in Cantonese): Madam President, concerning the uproar caused by the political appointment of the first batch of Under Secretaries and Political Assistants, the SAR Government only has itself to blame. For the reinforcement of the existing accountability system, there is primarily nothing wrong to increase manpower. Unfortunately, the improper handling of the incident has caused an enormous furore.

First, the entire process of selection and recruitment obviously lacks transparency. Whether it is the selection criteria or the terms of employment, it gives the public an impression of ambiguity. Like other politically appointed Secretaries of Department and Directors of Bureau, the Under Secretaries and Political Assistants are also remunerated by public money. The public has the right to know their terms of employment, which should not be regarded as the privacy of the appointees.

From the information announced by the Government on the qualification of the first batch of appointees, it seems that the posts assigned to certain individuals do not commensurate with their academic qualification, working experience and background. As the selection criteria adopted by the Government are totally unknown, it is only natural that the public calls the arrangement into doubts.

Moreover, the handsome salaries offered by the Government to Political Assistants give the professional grades in the Civil Service an impression that the Government is unfair. On the one hand, the Government employs certain Political Assistants with less working experience at the mid-point salary of some \$100,000, but on the other hand, the Government insists that — I hope Secretary Denise YUE can hear this — graduate engineers with five years of working experience be employed at a salary of \$11,000, and it lacks the resolve to rectify the situation promptly. When engineers join the Government, their previous experience will not be counted, let alone being remunerated at mid-point of the pay scale. It is evident that the Government is mean to the professionals and has not accorded due importance to them. It is an insult to professionals and has caused resentment.

The SAR Government's performance in this incident as a whole and the handling approach adopted subsequently are undoubtedly disappointing. However, as the political appointment of Under Secretaries and Political Assistants is a relatively new development and the Government lacks the relevant experience, this may have affected its effectiveness in handling certain issues.

Against this backdrop, I consider it inappropriate for this Council to exercise the power under the Legislative Council (Powers and Privileges) Ordinance. I believe the Government should have drawn a valuable lesson from the incident. However, with regard to certain issues of public concern, the Government should give proper explanation, and it should enhance transparency in particular.

Madam President, I so submit.

MR ANDREW CHENG (in Cantonese): Madam President, when it comes to these topics, usually, I will listen to the various views expressed by colleagues as far as possible before expressing mine.

Earlier on, Ms Emily LAU mentioned a number of times that she had to go on a manhunt. She looked so funny just now when she was looking around for those people. She at last succeeded in bringing enough people back to this Chamber. Though only one Member from the Liberal Party, another one from the DAB and one from The Alliance have spoken, I think they seemed to have failed to address certain core issues put forth by the pan-democratic camp on this subject.

That is why I have been keeping an eye on whether Mr Jasper TSANG or Mr LAU Kong-wah is in this Chamber. I have been waiting for them to raise their hands and request to speak. But I see that both of them are not in the Chamber now. As the President has announced earlier that the meeting will be suspended and continued tomorrow when Members finish their speeches, I wish to raise some issues. If they hear my speech outside or in any room, I hope they will return to this Chamber, as if in response to Ms Emily LAU's manhunt earlier.

Madam President, during the last discussion on a similar topic, I mentioned a friend of mine who is not familiar with politics. This time, he brought up another question — not exactly a question — he made a humorous remark. However, I believe this thought should have crossed the mind of many people. Members probably have noticed that recently, the Civic Party has put up a lot of publicity boards bearing the slogan "Lucky that the Civic Party is there". And I notice that on the publicity board of YEUNG Sum and KAM Nai-wai, the slogan reads, "Call the Democratic Party when there's a problem".

My friend said that a publicity board bearing the slogan "There's nothing better than joining the Government Party" should be hanged outside the Government Secretariat in Central, because not only the pay is good and always punctual, no qualification is required. Whilst you may laugh off such remarks, I believe it should really be a bitter laugh.

Madam President, with regard to the term "Government Party", its implication sounds more and more conspicuous to me. Earlier on, before the appearance of the Chief Executive in this Council, when I moved an amendment to the Road Traffic Legislation (Amendment) Bill 2008, LEE Wing-tat told Fred LI and me quietly, "A source says that the Chief Executive will come to the Legislative Council later". I answered, "Will he?" He went on saying, "The Chief Executive will provide all the information to us." At that time, I thought: Will he really do so? My political judgment differed from that of certain Members who thought that new information would be provided. The political judgment first came to my mind was that he came to the Legislative Council only to show his trademark smile, thinking that by coming to Legislative Council, just as Mr CHIM Pui-chung said earlier, and making a few remarks in a wise and authoritative manner, the incident would be settled.

I hope the Chief Executive and Mr CHIM Pui-chung will both understand that we do not need a wise and authoritative emperor now. What we need now is a pragmatic leader and head of the Government who sincerely cares about the people and governs on the people-based principle. If the Chief Executive thought that with the remarks he made today in the Legislative Council, which, I guess, lasted for 10 to 20 minutes, he could settle the incident, I am really worried about who his political assistant is. Obviously, the person who has provided the political analysis to him and caused him to take this action today should receive "a slap on the palm".

Therefore, from the beginning to the end, the problems relating to Under Secretaries and Political Assistants have plunged the Government deeper and deeper into a black vortex or a black hole. It cannot come out. The thrust of the issue is democracy, the rule of law and systems, as colleagues have had much discussion earlier. The Liberal Party and the DAB kept stating that there were two major reasons. I heard that one of the reasons was privacy. Some colleagues have already responded to this point earlier. They particularly mentioned the past cases of the airport, substandard piling works and SARS —

on the SARS incident, I was a member of the relevant Select Committee. Select Committees had been set up to deal with the three issues. However, what is the request of LEE Wing-tat's motion today? He does not request the establishment of a Select Committee for the time being, and he is only "seeking papers, books, records and documents regarding the salary and fringe benefits of Under Secretaries and Political Assistants". Madam President, he is only "seeking" those documents; in other words, he just requests to have access to certain information. Is it that not even this is allowed?

On privacy, honestly, we all know that there used to be a civil servant directory stating particulars like the age, marital status, the number of children and even the salary of civil servants. This was the previous practice, and it seems that there is no such practice now, but there used to be such a directory. Therefore, this is not a matter of privacy. The focus should be on the interests of the public. If anyone considers the disclosure of such information under such circumstance a matter of privacy, he or she should not join the Government, nor should he or she be a Member of the Legislative Council. As the saying goes, "one should put up with the thirst after eating salted fish". The incident should not be viewed from the perspective of privacy.

They then explained that the second reason was the need for assistance, because the work of the three Secretaries of Department and the eleven Directors of Bureau, which includes responding to questions from the Legislative Council, handling policy papers and promoting government policies, and so on, was very demanding. To put it plainly, who should be blamed for causing all these troubles? I remember that before 1997, there were three Secretaries of Department and 18 Directors of Bureau. Right, it should be three Departments and 18 Bureaux, for I remember most clearly that there used to be 18 panels in this Council. When I became a Member of the Legislative Council in 1995, I noticed that there were 18 panels and asked why there were so many panels. I was told that since there were 18 Directors of Bureaux, a panel was set up for each Bureau. Then, during the time of TUNG Chee-hwa, there were three Secretaries of Department and 11 Directors of Bureau. I am not quite sure about this. Some colleagues start querying me if there were really 18 Bureaux. Never mind, I am sure there were more than 11 Bureaux, and this must be correct. However, as far as I remember, there should be 18 Bureaux.

You reduced the number of Bureaux from 18 to 11 by merging the bureaux of public works and transport. Then, you said that the Directors of Bureau

were busy and requested the creation of the posts of Under Secretaries. You then considered the addition of Under Secretaries inadequate, and requested the creation of the posts of Political Assistants. You even said, "Stop creating 'internal conflicts'. What is the point of seeking further information?"

What is internal conflict or internal depletion? The Chief Secretary for Administration is now in the Chamber and I hope he can reflect this to the Chief Executive after he returns to his office. The Chief Executive kept saying that we were creating internal conflicts or depletion, but according to someone's calculation, the three Secretaries of Department and 11 Directors of Bureau, together with the Under Secretaries and Political Assistants, will waste \$500 million of the people of Hong Kong on the basis of a term of five years. Is this sum of \$500 million not internal depletion? No, it is not internal depletion, but obvious depletion. It is obviously a depletion of resources by spending an extra sum of \$500 million. Many people in Hong Kong query why the appointment of these Directors of Bureau, Under Secretaries and Political Assistants was not required before 1997. The existing Permanent Secretaries, who are earning some \$200,000 a month, were the Directors of Bureau at the time, and normal operation had all along been maintained. Madam President, is this not internal depletion?

More often than not, criticisms from the Chief Executive are echoed by the DAB. This time, they accused us of failing to put in more efforts on livelihood issues and urged us to stop creating political issues and causing chaos in Hong Kong. Is such accusation not a reminiscent of the dismissive label being put on the democratic camp by the Government and the ruling alliance, alleging that the democrats only wreaks havoc and takes no constructive action? Have we not addressed livelihood issues? As pointed out by many colleagues earlier, we have spent more than one day discussing issues relating to the revenue of the Government in the Budget. As for the Road Traffic Ordinance, for which Ms Miriam LAU and I are responsible, while the debate did not last long, as the President kept reminding us not to give repetitive speeches, and we managed to finish the Second Reading and the Third Reading of the Bill in two hours, it is also about livelihood issues, is it not?

I will now come to a term mentioned by the Chief Executive earlier, which I was reminded of by Audrey EU in her speech, that is, internal check and balance. As I listened to the address by the Chief Executive earlier, I was taken

by surprise by that term. I have never heard about the term, "internal check and balance", and it is created out of the blue. Ms Audrey EU reminded us that in the past, the term "collective responsibility" was used, but now it is "internal check and balance". As colleagues mentioned earlier, does the term "internal check and balance" imply that there are divergent views within the Government? Members can be rest assured. They will be able to deal with this internally, and they will not act in a hegemonist manner. Because some people here also hold opinions which are different from theirs. For instance, when Tommy CHEUNG asked Secretary Frederick MA of his opinion yesterday, as usual, Secretary Frederick MA answered smilingly in a jolly tone that he targeted the issues but not individuals. That proves that within the existing Government — that is, the "Government Party" as I referred to — this is why I am so worried.

Members all know that the Chief Executive we are now facing is not elected democratically. A number of contestants, which are the "dark horses", are now waiting for their turn. They include John TSANG who is Donald TSANG's recommendation, LEUNG Chun-ying, a Member of the Executive Council, and Henry TANG, who is now sitting in this Chamber and smiling at me. This is my initial observation. Madam President, in the absence of a system, we can only hazard a guess. Everyone is guessing which "stable" will win. As mentioned by Miss TAM Heung-man, this "stable" culture — no, she said at the beginning that it was "horse racing culture", though Henry TANG is a horse owner — this "stable" culture is starting to affect the Government Party, and it is only a matter of how many branches does this Government Party have. The Democratic Party has the New Territories East Branch and the New Territories West Branch, while the Government has the Henry TANG Branch, the LEUNG Chun-ying Branch and the John TSANG Branch. This would be a big problem. Most unfortunately, these are causing internal depletion in the Government. So, when the Chief Executive urged us to stop the internal depletion, I hope the Government will also minimize the internal depletion within the Government.

But the problem is that we do not have the opportunity to watch the contemporary version of the television drama, Imperial Struggle of Powers ("大內羣英") Our worry is what exactly the genuine check and balance is within the Government. Whenever it comes to personnel issues, we see no system. That is the biggest problem.

I guess that Chief Executive Donald TSANG's miscalculation of the situation should be attributed to the high popularity rating he enjoyed since the

TUNG Chee-hwa era to his assumption of office as the Chief Executive. All along, he has been able to use his pleasant smile to win the acceptance of the public. As such, he probably thought that the problems would be settled only if he would come forward and say something. He has been carried away by victory.

Here, let me give an advice to the Chief Executive. Had Chief Executive Donald TSANG not come to this Council today, the issue might have died out after this debate. But the sudden appearance of the Chief Executive at the Legislative Council together with his address which lasted about a quarter of an hour has pushed the incident to another climax. Really, I suspect that his political assistant is indeed a "double agent" from the democratic camp.

Madam President, at this point of my speech, I must make an appeal to Members from the DAB and the Liberal Party again. Mr LEE Wing-tat has made a good point at the outset of his earlier speech. He said that they should share blame and glory together. When the proposal was examined by the Finance Committee, the DAB and the Liberal Party supported the system. Now that the system is open to severe criticism, where have they gone? Only a couple of Members have come forward to give some perfunctory remarks — not a couple of Members but only one Member from each party — is this the way they interpret "sharing blame and glory together"?

So, Directors of Bureau, Mr LEE Wing-tat mentioned Secretary Dr York CHOW in particular earlier, who, I believe, knows best who are sharing blame and glory together with the Government. On the anti-smoking legislation and the mass cull of live chickens, who had rebuked him ferociously? Tommy CHEUNG. Who defended the Government? Andrew CHENG and Fred LI.

PRESIDENT (in Cantonese): Mr CHENG, you seem to be wandering off a bit from the subject.

MR ANDREW CHENG (in Cantonese): Alright, Madam President, I will return to sharing blame and glory together. *(Laughter)*

Madam President, I hope the Government would understand that on the issue of Under Secretaries and Political Assistants, particularly on their nationality and salaries — I must say some more. The DAB often says, "there can be no home without the country". It then rebukes Mr Martin LEE for liaising with leaders of other countries overseas and calls him a traitor of the Chinese nation. Of course, concerning the fact that their Chairman has a foreign passport, frankly, I have no strong views about this. Because unlike them, we have never said that "there can be no home without the country". Now we realize that the country stands for Canada — the Canadian nationality — we do not perceive things from this perspective.

On the one hand, they apply such objective criteria in defining their political orientation of "there can be no home without the country", and consider that a person who frequent contacts with overseas countries is a traitor. But on the other, on the possession of foreign passports by Under Secretaries, they said that it was not a problem at the beginning when the Government had not yet declared its stance. Then, after the Government has stated its stance, they said that it would be best for the appointees to give up their foreign nationality in order to show respect. Their behaviour speaks volumes about whether or not they have adhered to their political principles, Madam President.

We notice that in the existing political culture, there is just no distinction between right and wrong. In a nutshell, the Government will follow what the "Grandpa" says, while the ruling alliance will toe the line of the Government. If it is a good measure, they will take all the credit. But if it is a bad one, they will all hide away, as they are doing now. Will the Government please look at it clearly? This is internal depletion. With so much internal depletion now, I can only hope that the "Government Party" will not set up too many branches in future. For a colossal amount of public money will be drawn continuously to assist these branches of those political parties and the "Government Party" in launching propaganda campaigns for their "dark horses", which will turn Hong Kong into a society upholding the rule of man.

Thank you, Madam President.

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

MR ALBERT CHENG (in Cantonese): President, debates in the legislature are really meaningful. But regrettably, as I mentioned at the last meeting of the House Committee, during my four years of service as a Member of the Legislative Council, I have made little political achievement.

However, I have learnt one thing and that is, I have to express myself in a very short time. To me, this is very difficult. We have to speak within a specific timeframe, and that is a pity. So, I find it difficult to debate an issue in depth. Nevertheless, I believe that it is always the responsibility of the legislature to have debates, for the legislature is a forum for Members' debates. Today, from 3.30 pm up to now, 6.5 hours have passed, and nearly all Members have spoken. I think after my speech, some Members may refute my arguments. If not, the meeting should probably be close to an end.

I think it is an inherent problem. The crux of the problem is that there is no democracy in Hong Kong now. We do not have universal suffrage under the provisions of the Basic Law. Why has the political appointment this time around kicked up such a fierce row? The answer is simple, just as an old saying recently quoted by many people goes: It's politics, stupid! But I would say: It's politics, moronic! This is not just foolish, but moronic. What is political appointment? How can this be compared with the civil service system? One is an apple and the other an orange.

Some colleagues said earlier that requirements were laid down even for the recruitment of chauffeurs and gardeners. The Chief Executive's Office is now recruiting stewards. When I saw the advertisement, I also wished to apply for the post, but I am unqualified. How good it is to be a steward in the Chief Executive's Office. I can be a "secret agent". As I may overhear a lot of information discussed in the Chief Executive's Office, I can really be a "secret agent". *(Laughter)* However, I do not meet the requirement specified, so I cannot apply for the post. So, it is not true that there are no rules and regulations. There are rules and regulations. The Civil Service Bureau recruits civil servants according to established rules, regulations and systems. But what is political appointment? Why it is called political appointment? Why is it not included in the Civil Service? Members actually know it well, but they just want to argue. It does not matter, arguments can be meaningful. Besides, I like arguing too.

Certainly, it is affinity differentiation. This remark is not pleasing to the ears. But I wonder why the Chief Executive keeps mentioning affinity differentiation, for he is rebuked whenever he says this. The rationale put forth by Members is similar, that is, this Government lacks credibility. Since it is not elected by "one person, one vote", everything it does is wrong. However, if the Government is elected by "one person, one vote", we would consider this practice of favouritism acceptable. In other words, these political appointments would be acceptable, for the Government is elected by one man, one vote. What an irony.

Surely, I support democracy. When there is democracy, and when the Government is given the mandate by the people's votes, the Government will be monitored by the electors in whatever it does. However, we have to give careful consideration to the existing system adopted by the SAR Government in the Legislative Council. There are 30 Members representing the interests of various sectors and another 30 Members representing the interests of 7 million citizens. However, when the interests of these sectors are in conflict with public interests, it will give rise to problems, such as the poultry, food labeling, and smoking problems. President, it is a matter of balance of interests. The SAR has to rise to this challenge. As we join the Legislative Council, we have to accept this system. Certainly, gradual and orderly progress is not our preference. To us, it will be best if the Chief Executive, Members of the Legislative Council and even the Directors of Bureau will all be elected by universal suffrage on the basis of "one person, one vote" tomorrow. It is even better for Members of the Legislative Council to elect the Directors of Bureau. If so, I can run in the Chief Executive election. I would love to be the Chief Executive. I wonder why I am not included in any of the "stables" mentioned earlier. Of course, I will not be included because I am not up to doing it. But the point is that we have to accept the inadequacy of this system.

Today, the Chief Executive came to the Legislative Council. I certainly had great expectations on him. I hope that he would give a thorough explanation on the motion debate today and even stay behind to respond to the questions of the public. I had these expectations and so, I am disappointed. However, we should not penalize him for this reason. Though he failed to explain the case, it is still better than not coming. Members mentioned earlier that the Legislative Council had invoked the legislation on powers and privilege to summon Mr TUNG to this Council on the SARS incident. I was still working at the radio station at that time. Mr TUNG refused to come to the Legislative Council and on the contrary requested Members of the Legislative

Council to go to his office. Today, when this motion is proposed in the Legislative Council, the Chief Executive came to this Council. Originally, he should be standing over there, but since the microphone was out of order (I wonder who had played a trick on him; it may be the "secret agent", as a Member said earlier), he has to stand next to the President's pedestal. But he was then accused of taking a superior position. I think these are unfair remarks to him.

It is better for the Chief Executive to come to this Council than not. We should not attack him because he came here. We should encourage the Chief Executive to come to the Legislative Council more often. It is undesirable that he has not taken any questions today. But never mind, he can come again. However, next time when he comes here, I will no longer be here, for my term will be done by then. Otherwise, I would propose to summon the Chief Executive under the legislation on powers and privileges. In future, I may watch the performance of Members at the public gallery upstairs. We should encourage him to come here. I think his appearance and 20-minute address is constructive. It is better than not coming. How can we scold him for coming to this Council? I really cannot understand it.

This has to do with democratic system and the Government. Since the political accountability system has already been put in place, staff must be recruited to support the political accountability system. Actually, salary is not their concern. Let me tell Members that if open recruitment is carried out for the posts of Political Assistants and Under Secretaries, or even for the seats of Members of the Legislative Council — which means one can become a Member without contesting an election — many people will be willing to take the post even without pay, and some may take the job even if they have to pay out of their own pockets. It is very prestigious to be a Member. Just standing here to give a speech is so prestigious. Many people do want to be a Member of the Legislative Council. Many people asked me why I do not stand for election. I tell them that there is actually so much fun here. But the problem is that first, I have to stand for election, and second, the speaking time is limited, and I cannot work this way.

This is a question of system. When we accept the system, we have to strike a balance under the system. If we accept the political accountability system, we have to accept that the Government has the right to recruit staff. Since this is not a civil service system, the years of service, salaries, and so on,

are out of question. We cannot draw a comparison between our salaries and their salaries. I accept this job willingly. I will take this even though I know for certain that I have to dig into my own pocket. Do they take the job for money?

Concerning the issue on nationality, I wonder why the subject of loyalty is brought up for no reason. If loyalty is required, why are the Secretaries allowed to hold foreign passports? Another point is that it is stipulated in the immigration law of every country that if the spouse of an applicant holds the passport or right of abode of that country, his or her application will be handled with priority. If so, should there be a requirement that their spouses must not hold foreign passports? My wife does not have a foreign passport, and after I renounced my foreign passport, both of us have no foreign passport. So, I can explain this. However, today, should we take such a narrow perspective in dealing with issues in Hong Kong? On the suggestion of recruiting talents elsewhere in the world, my buddy, please read the Basic Law. It is stipulated in the Basic Law that applicants should be permanent residents of Hong Kong who may not be Chinese nationals. Though I am not a lawyer, I know this point. If the recruitment is to be conducted worldwide, how can this requirement be fulfilled? It can only target at permanent residents of Hong Kong.

No place in this world carries out open recruitment for political appointment. Today, in response to the motion debate proposed by Mr LEE Wing-tat, the Chief Executive came to this Council in order to be accountable, and all the officials were also here. This is an improvement already. He has taken the first step, so we should accept it. If we welcome his coming to this Council, we should applaud. At first, I planned to welcome him with applause, but as Mr James TO stood up suddenly, I did not have enough time to do so. *(Laughter)* I have to welcome the Chief Executive with applause, so that he will come to the Legislative Council more often. We hope he will come here more often in order to be accountable, and the best way to do so is to participate in our motion debates. However, when he came here, he was scolded. Members even asked him not to come here any more. If I were him, I would never come again if I was scolded by Members. As Andrew CHENG said, he had better not come, and the effect of his appearance was exactly the opposite of what he intended to be. Right, from now on The Chief Executive's appearance in this Council might have been opposed by many people, and today, what these people said hit home. When the Chief Executive returns to his office, he may be mocked by those people who would say that they had reminded

him that he would be bringing shame on himself if he went to the Legislative Council.

On examining the political accountability system, President, we should think about what kind of Government we want. We are definitely looking forward to a government elected by the public by "one person, one vote". However, under the framework stipulated by the Basic Law, when will there be "one person, one vote"? I surely hope that I can see it during my lifetime. This is obvious. However, should we turn the clock back to the colonial era and adopt the mode of governance back then? At that time, there were no political appointments, and open recruitment was always conducted for all the posts in accordance with established rules and regulations. With due respect, I wish to ask: Are the Directors of Bureau now in this Chamber highly competent? Why am I not the one occupying the seats over there? Why it is not LEE Wing-tat or Andrew CHENG sitting on that side? Why are these people occupying those seats?

Since we have accepted the system Members also said that the officials now employed by the Chief Executive were all "quails", because they had not met the public and were even being hidden. Members may recall that when Frederick MA first took up the post of a Bureau Director, he was not given favourable comments. Who was Frederick MA? He seemed to be a ball-game partner of Antony LEUNG, and he was introduced into the Government by Antony LEUNG. The penny stock fiasco had brought him a deluge of criticisms. The pressure he faced was much more intense than that faced by any of the Under Secretaries and the so-called Political Assistants today. It has been six years now, and Secretary Frederick MA has resigned. I met him earlier and told him that he had won all the worship, and he has been showered with words of praise from Members.

Could we just give these so-called Under Secretaries and Political Assistants a chance? Who can be sure that none of them will turn out to be another Frederick MA in future? Perhaps a number of them will. We have to give them the opportunity. How can we criticize them at this early stage, saying that they are too young and incapable and do not have outstanding academic performance? As for this kind of accountability system, we have a choice of accepting it or not accepting it. But we must accept this system of the legislature and the executive-led approach adopted by the Government. What if I do not accept it? If we will stay in Hong Kong, we must accept it. We may strive for our goals. We may continue to strive for our goals via the 1 July

march, or we may strive for direct elections by "one person, one vote". All of us can continue to strive for our goals. I think it is right to do so. We, including myself, have been dubbed the opposition. Due to the affinity differentiation approach, we are shut out of many committees and political appointments. We definitely have to strive for it.

Therefore, I think the Government has to be magnanimous and it must take note of the grievance so arisen. Why has the incident turned out to be a disaster today? This actually shows that there are grievances in this legislature. Is there unfairness? The Government should be held responsible for this. Mr TSANG, the Chief Executive, has the responsibility to foster a good relationship between the legislature and the executive. Nonetheless, Mr TSANG has taken the first step today by coming to this Council. When he takes this first step, we should welcome him to do so. We have to encourage him to come to this Council again.

However, concerning political accountability, I think that as long as no one has breached the law and no personal interest is involved, whether or not these people come from certain "stables" makes no difference. Everyone has a stable, so do I. My stable is at Room 420, West Wing, Central Government Offices. I did not employ my assistant through open recruitment. I did not know how recruitment should be carried out. Sorry, I did not conduct any open recruitment. Come, arrest me! I do adopt cronyism. After all, I do not want someone whom I do not know overhearing my telephone conversation in my office. Who have I employed? I have employed the former director of my radio programme, LO Ho-wing. He was dismissed by the Commercial Radio and I thus asked him to help me. Another one is "Junior Q". I have hired them because I trust them. I cannot employ a stranger, for I do not know whether this stranger is a "secret agent". Apart from the concern on salaries, they have political work to do. In recruiting my employees, first, I have to know if they support my vision. Can I trust him? This is political appointment, so to speak. I do not know how Members recruit their staff. But I can tell Members that, to put it in their words, I have followed no rules or systems in the recruitment of staff. However, it is fair, for none of them is my relatives and I receive no kickbacks. I do not mind paying them higher salaries out of my own pocket, but I must employ someone who supports me. I have to put around myself people whom I trust.

I do not have enough time to speak, so I do not know how to explain this. I think that under the existing executive-led system and operation of the SAR Government, Hong Kong is actually doing very well, for this group of Members

of the Legislative Council is monitoring the Government. Though there is no democracy in Hong Kong, nor is there a government elected by "one person, one vote", we can still monitor the Government. I have already announced that I will not stand for election. But recently, an article in the *South China Morning Post* said that I was still considering this. Actually, I have decided not to stand for election. As an elector, I may return to my position in the media. When Members are monitoring the Government, I will monitor and support you all. I very much hope that all of you will return to the Legislative Council in the next term, for a majority of you aspires to engaging in politics and you will monitor the operation of the Government. We will continue monitoring the Government and striving for democracy. When Members of the Legislative Council and the Chief Executive will be elected by universal suffrage on the basis of "one person, one vote", I may stand for the Legislative Council election again. For I am most eager to take part in governance, and I really would wish to sit side by side with the Directors of Bureau.

Therefore, I think the discussion today is very meaningful. If we do not accept this system, we may stop being a Member, just as I will be doing. Otherwise, we can only strive for the greatest possible extent of democracy within the system or a cleanest possible Government with the greatest possible accountability to the public. I believe Members are working for this target. Originally, I should support the motion today, but now I oppose it. *(Laughter)* The reason is simple. As the Chief Executive has already taken the first step, I have to encourage him to come again and so, I oppose the motion. However, whether I oppose or support the motion will not affect the result, for the motion definitely will not be passed. I so submit. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, Chief Secretary for Administration, do you wish to speak again?

(The Chief Secretary for Administration shook his head to indicate that he did not wish to speak again)

PRESIDENT (in Cantonese): Secretary for Justice.

SECRETARY FOR JUSTICE (in Cantonese): I do not need to speak.

SECRETARY FOR EDUCATION (in Cantonese): President, during the debate for nearly seven hours, a lot of opinions have been expressed by Members. I will focus on queries about the extent of participation by Directors of Bureau in the process, for a number of Members have queried the arrangement in this respect. They questioned whether Directors of Bureau, apart from the Chief Executive and the several Secretaries of Department, had participated in the process. I hope that my brief remarks today can explain to Honourable Members my participation, as one of the Directors of Bureau under the accountability system, in the recruitment process of Under Secretaries and Political Assistants.

First, I would like to talk about the recommendation of candidates. I can reaffirm Members here that I did recommend some candidates to the Office of the Chief Executive for consideration. Certainly, my recommendation was related to my scope of work, and I would only recommend candidates whom I consider suitable for the post to the Office of the Chief Executive for consideration.

Moreover, I also took part in the screening and selection process. I was one of the members of the interviewing panel. As mentioned earlier, the interviewing panel comprised of a number members and I was one of them. On the interviewing panel, I would interview the candidates, and each interview would not exceed an hour. During the interview, we discussed with the candidates their personal experience and aspirations, as well as their views on topical issues of public concern and international affairs. Actually, the interviews were more or less the same as those held for the recruitment of Administrative Officers, in which I had participated as an Administrative Officer before, with the same interviewing approach and similar issues being discussed. After the interview, members of the interviewing panel would give comments on the candidates. We would then discuss the performance of candidates and put it down on record for consideration of the Appointment Committee.

After the Appointment Committee selected the candidates for the posts of Under Secretaries and Political Assistants, I, in my capacity as the Secretary for

Education, met with the Chief Executive to exchange views on the candidates for the posts of Under Secretary and Political Assistant of the Education Bureau. President, this is my personal experience and my participation in the process that I would like to explain to Members here. Thank you, President.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, for the further development of the political appointment system, the posts of Under Secretaries and Political Assistants are created to assist the Secretaries of Department and Directors of Bureau concerned in undertaking political work in various aspects. Politically appointed officials and civil servants are under two different structures and systems, so it is inappropriate to draw a direct comparison between them. Owing to this difference in structures and systems, and the fact that the addition of Under Secretary and Political Assistant is not required in the Civil Service Bureau (CSB), the Secretary for Civil Service, who is responsible for the implementation of policies on the management of civil servants, did not and need not participate in the selection of Under Secretaries and Political Assistants, as well as the work related to the determination of their specific salaries.

Having said that, I notice that many Members who spoke earlier have touched on the issue of nationality and the right of abode in foreign countries. I would like to take this opportunity to brief Members on the relevant arrangement for civil servants of the SAR. Under Article 99 of the Basic Law, except otherwise provided for in Article 101 of the Basic Law, public servants employed on or after 1 July 1997 must be permanent residents of the SAR. As stipulated in Article 101 of the Basic Law, the Commissioner of Police, the Director of Immigration and the Commissioner of Customs and Excise are posts within the civil service establishment which may only be filled by Chinese citizens among permanent residents of the SAR with no right of abode in any foreign country. In other words, apart from the requirement on the three civil servant posts mentioned above, there is no requirement in the Basic Law that civil servants must not have right of abode in foreign countries. It is also stipulated in Article 101 that the SAR Government, when required, may recruit qualified candidates from outside the SAR to fill professional and technical posts in government departments. In fact, the SAR Government has, on or after 1 July 1997, employed on a need basis a small number of qualified foreign nationals or non-permanent residents of the SAR, to fill professional and

technical posts in government departments. The posts of Government Chief Information Officer and Law Draftsman are some recent examples.

Earlier on, some Members mentioned in their speeches the disclosure of the specific salaries of the Under Secretaries and Political Assistants. I would also like to take this opportunity to brief Members on the arrangement adopted in the Civil Service in dealing with the specific salaries of individual civil servants. Before 1997, it was the Government's policy to publish the pay band of various ranks in the civil service establishment, which included the cash remuneration at entry pay and maximum pay of each rank. As the salaries for a number of most senior ranks were fixed at a certain amount in cash, this single amount would be disclosed. Moreover, before 1997, specific salaries and dates of increment of individual civil servants, except those of junior civil servants, were disclosed annually. From 1997 onwards, with reference to the Personal Data (Privacy) Ordinance and after internal reviews, the Government decided to change its policy by not disclosing the specific salaries and dates of increment of individual civil servants for the purpose of protecting privacy. However, the disclosure of the entry pay and maximum pay of various ranks in cash terms, or the single pay of certain ranks, has continued.

To cope with the further development of the Political Appointment System, the authorities have undertaken to issue a Civil Service Code that sets out the framework within which civil servants are expected to work with politically appointed officials under the expanded Political Appointment System. The CSB is now drafting the Code and will consult the staff side of the Civil Service and the Legislative Council Panel on Public Service later. Before the official issue of the Civil Service Code, a circular issued in 2002 by the CSB on "The Role and Responsibilities of Civil Servants in relation to Principal Officials appointed under the Accountability System" will continue to serve as a guideline and reference for civil servants. Moreover, the Code for Officials under the Political Appointment System, which delineates clearly the roles and responsibilities of politically appointed officials and civil servants, has been issued. The Code also states that politically appointed officials shall at all times actively uphold and promote a permanent, honest, meritocratic, professional and politically neutral Civil Service.

Under the political appointment system, the Civil Service remains the backbone of the Government in its governance. I believe that the Civil Service will uphold their high efficiency and professionalism, and continue to provide quality services to Hong Kong people in close collaboration with all politically appointed officials.

Madam President, I so submit.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Madam President, in today's debate, many Members have again brought up the issue of how the Government has dealt with the possession of the right of abode in foreign countries by Under Secretaries and Political Assistants in making the appointments. Though the Secretary for Justice has stated at the outset of the debate the principles in the Basic Law, I think a further explanation in certain aspects to Members may be necessary here.

In the course of the drafting of the Basic Law during the 1980s, Hong Kong had a very special background, in that we were an open cosmopolitan city with an emigration tide. Against this backdrop, provisions in the Basic Law in this aspect were very lenient:

Firstly, regarding the highest echelon of the SAR Government, only Secretaries of Department, Directors of Bureau and several heads of departments are required to be Chinese citizens with no right of abode in any foreign country;

Secondly, regarding the Legislative Council, a maximum of 20% of its seats may be filled by Members who are not of Chinese nationality or who have the right of abode in foreign countries; and

Thirdly, regarding the Judiciary, only the Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court are required to be Chinese citizens with no right of abode in any foreign country.

As for the people of Hong Kong in general, in 1996, the Central Government, through the Standing Committee of the National People's Congress, promulgated an interpretation of the Chinese Nationality Law applicable to Hong Kong. It was said that permanent residents of Hong Kong who had emigrated overseas might retain their Chinese nationality upon returning to Hong Kong, and that they might apply for the SAR passport and

continue using documents issued by foreign governments as travel documents. In other words, they might retain their foreign passports. This was the arrangement adopted in Hong Kong before the reunification, which had helped maintain Hong Kong's status as a free and open cosmopolitan city.

The recruitment of Under Secretaries and Political Assistant was carried out against this backdrop. As among the 7 million people in Hong Kong, at least several hundred thousands of them come from this background, it is only natural that there are people with a foreign background among the Under Secretaries and Political Assistants recruited by the Government. This is only a reflection of the actual population profile in Hong Kong, and an arrangement to enable Hong Kong to maintain its status as a free and open cosmopolitan city. The arrangements laid down in the Basic Law should not be amended and changed blithely.

Today, a couple of Members queried whether Under Secretaries and Political Assistants, who are covered by this "insurance policy", would be among the first to leave Hong Kong when the situation is bad. However, why do they not query that certain Members of the Legislative Council may also make similar arrangement? But first, I have to make it clear that the SAR Government supports the continuation of the existing arrangement that allows 20% of the seats of the Legislative Council to be filled by Members who have the right of abode in foreign countries, for this will preserve part of the characteristics of Hong Kong.

However, I would like to point out that the discussion on this issue, which has continued over a certain period of time, has repercussions. Last week, I noticed that a person, who is thinking about participating in the election of functional constituency of the Legislative Council, indicated that he might consider renouncing his Canadian passport. This is a sign of a trend, and I do not think it is a good omen. We should all make continuous effort to preserve the characteristics of Hong Kong. In the past few weeks, I noticed that Ms Emily LAU, Mrs Anson CHAN and Mr LEE Cheuk-yan had also put forth the same opinion.

In the motion debate today, Mr Ronny TONG again alleged that when the Basic Law was drafted before 1990, there was no mention of deputy directors of bureau. But this is not true. Actually, the Secretary for Justice and I have on different occasions pointed out that the posts of deputy directors of bureau existed both before and after 1997. During these two periods, there were acting arrangements for these posts. Such arrangements continued after the 1997.

To date, according to the provision of the Basic Law, both the Deputy Commissioner of Police and the Deputy Commissioner of the Independent Commission Against Corruption can take up acting appointments.

Mr Albert HO asked whether the present arrangement contravened the Joint Declaration. It is stated in section 74 of the Joint Declaration that "except as deputy heads of some of the major government departments", which means the deputy heads of certain government departments, like Secretaries of Department and Directors of Bureau, should be of Chinese nationality with no right of abode in any foreign country. However, in the drafting of the Basic Law, full consideration had been given to whether deputy secretaries of department and deputy directors of bureau should be subject to the same arrangement. What was the final decision? Deputy secretaries of department should follow that requirement, but deputy directors of bureau (including the Deputy Directors for Security and for Civil Service originally stated in the Draft Basic Law) would not be subject to that requirement. Therefore, the legislative intent of the Basic Law is very clear.

Madam President, I will then come to the issue on remuneration. As approved by the Finance Committee of the Legislative Council, the pay scale of Under Secretaries comprises of three salary points, while that of Political Assistants comprises of five salary points. We have thus set a relatively high standard in identifying suitable candidates, hoping that the appointees will be fully capable of discharging their duties when they assume office. For this reason, we set the standard at mid-point and used it as a basis for assessing the candidates whom we interviewed.

Ms Margaret NG and other Members asked what criteria we adopted in the assessment. Qualifications, experiences and capabilities of candidates of Under Secretaries were considered. In addition, their abilities in addressing the Legislative Council on behalf of the Government, explaining government policies, answering questions from Members of the Legislative Council, as well as explaining the Government's position on certain government policies to the media on behalf of the Government were also assessed. As for Political Assistants, they were assessed in their abilities to conduct political analyses and liaison, and provide political opinions. This shows that all the colleagues who have been appointed did undergo stringent assessments.

Now, I would like to respond to the comments made by Mrs Anson CHAN today. Though her criticisms against the Chief Executive and the SAR Government were relatively harsh, we are willing to listen to them. Mrs Anson CHAN has attached great importance to the preservation of the system of Administrative Officers or the civil service system in Hong Kong, which she very much cherished. Madam President, I wish to tell Mrs Anson CHAN through you that colleagues in this grade also cherish this system very much. Mrs CHAN and I used to be Administrative Officers, and we did come from the same grade. It was exactly because we very much cherish this system that political appointments under the accountability system were introduced in 2002.

Looking back on the period between 1997 and 2002, there were the airport incident and substandard piling works incident. The system whereby the most senior posts like Secretaries of Department and Directors of Bureau were filled by civil servants was inadequate in meeting the political changes that emerged in Hong Kong society around 1997.

Before 1997, all Members of the legislature were returned by election. From 1997 onwards, the head of the Government is selected by indirect election. The public, as well as society, do have aspirations and expectations on senior government officials. With the introduction of the political appointment system, Secretaries of Department and Directors of Bureau have formed a firewall to protect the civil service system which we all treasure. We remember the experience in the airport incident. Later on, there was the "penny stock" incident. Members watching news report on television last night may recall that Secretary Frederick MA had shouldered all political pressure and responsibility back then and at the same time protected the civil servants.

Mrs Anson CHAN should know very well that in Britain, there are politically appointed ministers as well as professional permanent secretaries. Former British colonies, such as India, Malaysia and Singapore, are other examples. Upon the cessation of the British rule, these countries developed in two directions in parallel. A system of universal suffrage is developed on the one hand, and a ministerial system is developed on the other. However, at the same time, civil servants, civil officials and administrative officers continue to work in the Government, responsible for making policy analysis and proposals. We are now nurturing this system for Hong Kong.

Universal suffrage is what we will promote too. For this reason, the third SAR Government, under the leadership of Donald TSANG, has made more progress than any previous government in Hong Kong. Within half a year, we have successfully striven for a timetable for universal suffrage. Members may consider this timetable for universal suffrage unsatisfactory. But it does not matter, for Hong Kong is a pluralistic society and we accommodate different political opinions. I believe Mrs Anson CHAN, a former Chief Secretary for Administration who used to be the most senior official holding an important and powerful position as that of the Chief Executive, should have the breath of mind to accommodate different political opinions.

Madam President, lastly, I would like to explain to Members with regard to the motion passed by members of the Panel on Constitutional Affairs last Monday. The motion urges the Government to review the recruitment system of Under Secretaries and Political Assistants. In this connection, the Government has five points to make in our response at the present stage:

First, in making further appointments of Under Secretaries and Political Assistants, the Government will seek their consent to make public whether they have the right of abode in any foreign country in the announcement of their appointment.

Second, for Under Secretaries and Political Assistants with the right of abode in foreign countries, we will continue to respect their personal decision of whether or not to renounce their right of abode in foreign countries.

Third, we will make clear to new appointees in making further appointments of Under Secretaries and Political Assistants in future that their remuneration will be made public.

Fourth, if Under Secretaries and Political Assistants appointed in future compare less favourably with the current batch of appointees to the posts of Under Secretaries and Political Assistants in terms of experience and years of service, the Appointment Committee will consider offering them entry salaries below the mid-point of the pay scale.

Fifth, in announcing the appointment of these posts in future, the Government will arrange for them to meet with the media to enable the public to know more about them.

Mr LEE Wing-tat and Members from the democratic camp, I believe I can hardly convince you that a political appointment system should be established at this stage. You have your own convictions while we have our policy. However, a number of points are certain: Hong Kong is heading for universal suffrage; in the next decade from now until 2017, different people will engage in politics at different stages. Today, a three-tiered political appointment framework is established, which will indeed be helpful to the future Chief Executives in forming their political coalitions.

In fact, over the years, Mr LEE Wing-tat and his friends have kept encouraging me and my colleagues to make room for more participation in politics and promote the development of political parties. The political appointment system or the increase in the number of seats in the Legislative Council are concrete channels to allow the young generation to engage in, participate in and discuss politics.

Therefore, finally, I would like to tell Mr LEE Wing-tat that from today onwards, all of us, including your party, should focus on absorbing talents, we should do more policy researches and address social, economic and livelihood issues. Only by doing so can we genuinely promote the further development of democracy and political system in Hong Kong together.

Madam President, these are my remarks. As we have already made public the remuneration of Under Secretaries and Political Assistants and have undertaken to disclose such information in future, I urge Members to oppose Mr LEE Wing-tat's motion. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr LEE Wing-tat to reply.

MR LEE WING-TAT (in Cantonese): President, how much time do I have for my reply?

PRESIDENT (in Cantonese): Fifteen minutes.

MR LEE WING-TAT (in Cantonese): I have 15 minutes? I thought I only have four minutes.

PRESIDENT (in Cantonese): But it is alright if you can cut it short.*(Laughter)*

MR LEE WING-TAT (in Cantonese): President, first of all, I would like to thank colleagues for participating in today's discussion. We have been discussing this for nearly seven hours.

I think the discussion today is basically a healthy one, for different opinions have been expressed. The Government surely knows that the Democratic Party and many colleagues from the pan-democratic camp still disagree with the establishment of an accountability system in the absence of a democratic system. Secretary Stephen LAM did have exchanges with me in the past, but please do not quote me out of context. I did mention that there were many channels for participating in politics and this is true, but I am mainly referring to political parties. This is the major channel in all mature societies where different political parties may rise to power, and there is the process for ruling parties and opposing parties to be returned by election. However, there is no such opportunity in Hong Kong. What the Government, or Chief Executive Donald TSANG has been doing is that they do not carry out the most important work, but only carry out work which I consider less important or work with less significant results.

Actually, during the debate and my conversation with Secretary Stephen LAM, I have pointed out that political party is still the best channel for nurturing political talents. Political parties do not only participate in politics and election, they have also made long-term commitments to Hong Kong. It is quite unlikely that political parties will vanish all of a sudden, unless they suffer a complete defeat in elections, which is not quite possible. Besides, many political parties are developing. I believe, over the years, the government system has done very little to facilitate the development of political parties. I have told the Secretary on a number of occasions that if the Secretary could persuade Donald TSANG to alter his policy of affinity differentiation and provide a level playing field for the participation of different political parties, political talents would evolve in

succession. Among the various statutory bodies, advisory committees and organizations, the Government is the organization with the largest amount of political resources. It has the most political resources and the greatest share of public media time. It can, at the same time, offer the greatest impetus for the development of political parties. What the public sees now is that the Government is indeed adopting an affinity differentiation policy. Certain political parties are given great encouragement while others are vigorously suppressed and even attacked by the Government.

President, I would like to respond to another point. This week, many commentaries in newspapers and even some colleagues queried that since the salaries of those Under Secretaries and Political Assistants have already been made public, why do we still need to debate it? First, as many colleagues said, the information disclosed is incomplete and includes only the amounts. Many colleagues suggested that I should ask the Government to explain the method and objective criteria adopted in determining their salaries, and provide the relevant papers, books, records and documents, which are of great importance to the public in understanding the process involved in the incident.

Therefore, the queries from Ms Miriam LAU or other people are neither here nor there. In fact, what matters is not the amount. More importantly, let us think about this: Had there not been so much pressure from the public, and had there not been a debate on invoking the legislation of powers and privileges, I do not think that the Government would have released the information, which the public requested right from the beginning, little by little within the past few weeks. Had the information concerned and the remarks made by Secretary Stephen LAM been disclosed and made public six weeks ago, I would have no condition and justification to propose this motion debate relating to the legislation on powers and privileges.

Members should all know, as many colleagues have said, that it is not easy to make this proposal. When the Democratic Party put forward this proposal, some people asked whether we considered it necessary from an objective perspective. Our judgment was that as the practice adopted by the Government six weeks ago was completely against public opinion, this gave us the basis to propose this debate. Without such a proposal and the pressure from public opinions, Secretary Stephen LAM would not have proactively — well, he did not act proactively but under the pressure of the public — put forth, together with

Donald TSANG, the series of improvement measures last Monday. Had they done this six weeks ago, we would not have held this debate.

Thirdly, had Donald TSANG announced the salaries and nationality of the Under Secretaries and Political Assistants six weeks ago, and at the same time adopted an honest, sincere and highly transparent approach in disclosing all the information, I would have no justification to propose this motion and the Chief Executive would not have attended this debate. Therefore, this motion speaks volume that public opinions do count.

The legislation on powers and privileges should not be invoked blithely, and we should not lightly resort to pressing the Government to provide information by mandatory means. However, sometimes, despite doing their level best and making every effort to obtain information that the public should know, representatives of the public may still fail to do so. President, we indeed have no alternatives. We have been very restrained this time around. I hope Members understand that I only mean to seek the information concerned. We have not proposed to order officials to come to this Council pursuant to the legislation on powers and privileges, nor have we requested the Legislative Council to form an investigation committee under the legislation. We understand that power must be exercised appropriately, and we have had detailed internal discussion of the issue.

President, regarding this incident, Secretary Stephen LAM seemed to have put forth some well-intentioned opinions to the Democratic Party earlier on. If the Government has reflected on itself constantly, it will not have to learn such a lesson from this incident. Honestly, it is impossible that the Democratic Party or the democratic camp can cause the Government to make so many mistakes. I am not a secret agent of the Government. I have not participated in its meetings, nor will I teach it what to do. I think this may be attributed to the exceedingly high popularity rating of over 70% enjoyed by the Government, Chief Executive Donald TSANG in particular since he has been elected. At the beginning of this financial year, the "candies" given out by the Budget delighted the public and the popularity rating of Financial Secretary John TSANG has reached a high level of 60% to 70%. Sometimes, a high popularity rating over a short period of time may cause confusion. I think Donald TSANG and the Government were arrogant, extremely arrogant, this time around. The people of Hong Kong are easy to pacify, though I do not want to put it this way, and their requests are indeed minimal. They are not asking for a revolution, nor are

they asking the Government to step down. They only ask for a fair Government which acts fairly. What is fairness? According to the core values of Hong Kong in general, it means the Government should act with high transparency, be accountable, spend public money prudently, and follow rules and regulations. However, in this incident, the practice adopted by the Government was in violation of all these core values, and worse still, the Government was unaware of it. In the first two weeks, the Government arrogantly insisted that there was no need to meet the media and respond to these issues. It only directed the Directors of Bureau to give some brief remarks and let the appointees disclose the information when necessary.

Hence, I think this incident can illustrate one point, that is, the Government must reflect on itself. In fact, I do not want to argue with the Government in this debate any more, for it is after all running Hong Kong. I hope that the Government will take this lesson to heart. I hope it will understand that an extremely arrogant Government which does not listen to public opinions will be taught a lesson by the people. The public, of course, will not resort to violence, but they will use public opinion to teach the Government a lesson, causing its popularity rating to drop from some 70% to some 50%, and thus forcing the Government to make remedies expeditiously.

Albert CHENG asked earlier whether it was good for the Chief Executive to come to this Council. I agree that he should come here, but he could do better. I agree with James TO that it will be best if all Directors of Bureau and Secretaries of Department are willing to come face to face with the public and take questions from Members of the Legislative Council. I fully agree with this. Regarding the Chief Executive's attendance today, despite the short notice given by him, I agree that the Chief Executive should come today. But there is one thing which I think he could have done better, that is, he should take questions from Members. Since he has made such a resolute attempt to come, he should have expected that colleagues would ask him questions. Why did he, making all these efforts to come to this Council, leave immediately after giving his address? Since he has decided to do it, would it not perfect this move if he can give a more comprehensive explanation in a more responsible manner? I think I need not teach him what to do. If his performance is unsatisfactory, the public will notice it.

President, this time around, the public has indeed been very tolerant of the Government. I say this in response to the remarks of Chief Executive Donald

TSANG that we should be more understanding towards this new tier of political figures. At the same time, I hope that the Directors of Bureau, the Secretaries of Department and the Chief Executive can be more understanding towards the public. Actually, the request of the people of Hong Kong is minimal. They only want to have three meals a day, a good dwelling place, job security, retirement protection as well as an increase in "fruit grant" from \$700 to \$1,000. Certainly, the most important of all is democracy, thanks to Emily for reminding me.

Occasionally, when I met people on the street, they would talk about this incident. I would give them a pat on the shoulder to drain their anger by telling them that I would request the Government to listen to the views of the public and make improvement in this debate. In fact, the people of Hong Kong are quite obedient, but I do not wish to see the Government keeps challenging their bottomline and putting the tolerance of the public to tests. This time, results of the Government's test show that the public will not tolerate. In the past, over the legislation on Article 23, the Government had also challenged their bottomline, and they too took actions to express that they would not tolerate that.

President, in the absence of a democratic system, we often have to rely on certain indirect means to force the Government to be accountable to the public. What we can do is to implore the public to join us and continue with the fight in a peaceful and reasonable manner. Finally, I urge the public to come forward to join the 1 July march. Members from the democratic camp are incapable of bringing about an overhaul of the system without public support, for our power is still too weak. Every person, together with his or her families, must make an effort to establish a sound democratic system for themselves and the next generation.

Thank you, President.

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

(Members raised their hands)

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

(Members raised their hands)

Mr 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, after which the division will begin.

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

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

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr Joseph LEE, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU and Mr KWONG Chi-kin voted against the motion.

Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr

Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Ronny TONG and Mrs Anson CHAN voted for the motion.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying, Mr CHEUNG Hok-ming and Mr Albert CHENG voted against the motion.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, seven were in favour of the motion, 20 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 15 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the Council until 9:00 am tomorrow.

Suspended accordingly at three minutes to Eleven o'clock.

Annex II

REVENUE BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Cheuk-yanClauseAmendment Proposed

New

{ NOT PROCEEDED
WITH }

By adding in Part 2—

“2A. Charge of profits tax

Section 14(2) of the Inland Revenue Ordinance (Cap. 112) is amended, in the English text, by repealing “rate” and substituting “rates”.”.

New

{ NOT PROCEEDED
WITH }

By adding—

“2B. Qualifying debt instruments

Section 14A is amended by adding—

“(1A) In subsection (1), the reference to the rate specified in Schedule 8, in relation to the year of assessment commencing on 1 April 2008 and to subsequent years of assessment, is a reference to 16½%.”.”.

New

{ NOT PROCEEDED
WITH }

By adding—

“2C. Qualifying reinsurance business

Section 14B is amended by adding—

“(1A) In subsection (1), the reference to the rate specified in Schedule 8, in relation to the year of assessment commencing on 1 April 2008 and to subsequent years of assessment, is a reference to 16½%.”.”.

3(1)

{ NOT PROCEEDED
WITH }

By deleting “of the Inland Revenue Ordinance (Cap. 112)”.

New

[NOT PROCEEDED
WITH]

By adding—

“4A. Treatment of losses: concessionary trading receipts

Section 19CA is amended by adding—

“(4A) In subsection (4), the reference to the rate specified in Schedule 8, in relation to the year of assessment commencing on 1 April 2008 and to subsequent years of assessment, is a reference to 16½%.”.

New

[NOT PROCEEDED
WITH]

By adding—

“5A. Amount of provisional profits tax

Section 63H(1A) is amended, in the English text, by repealing “rate” and substituting “rates”.

10

[NEGATIVED]

(a) By adding before subclause (1)—

“(1A) Schedule 8 is amended, in the English text, by repealing “RATE” and substituting “RATES”.

(b) By deleting subclause (2) and substituting—

“(2) Schedule 8 is amended by adding at the end—

“For the year of assessment 2008/09 and for each year after that year—

(a) upon the first \$10,000,000 16½%

(b) upon the remainder 17½%”.

Annex III

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
3(3)	<p>By deleting the proposed definition of "approved pre-screening device" and substituting—</p> <p>"approved pre-screening device" (認可預檢設備) means a device —</p> <p>(a) of a type approved by the Commissioner of Police under section 39F; and</p> <p>(b) for indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit;".</p>
9(1)	<p>In the proposed section 39B(1A)(b), by deleting "person has any alcohol in his body" and substituting "proportion of alcohol in the person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit".</p>

11(b) In the proposed section 39F(1)(c), by deleting "the purpose of indicating whether a person has any alcohol in his body" and substituting "indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit".

20 By adding immediately before subclause (1) -

"(1A) The heading of section 72A is amended by adding "**or magistrate**" after "**court**".

(1B) Section 72A(1) is amended by adding "or magistrate" after "court".

(1C) Section 72A(1) is amended, in the English text, by repealing "it" and substituting "the court or magistrate".

20(1) (a) In the proposed section 72A(1A), by adding "or magistrate" after "court" where it twice appears.

(b) In the proposed section 72A(1A), in the English text, by deleting "it" and substituting "the court or magistrate".

20 By adding immediately after subclause (1) -

"(1AA) Section 72A(2) is amended by adding "or magistrate" after "court".

- (1AB) Section 72A(2) is amended by
repealing "it" and substituting "the court or
magistrate".
- 20(2) In the proposed section 72A(3B) (a), by adding "or
magistrate" after "court".
- 20(9) (a) In the proposed section 72A(9A), by adding "or
magistrate" after "court" wherever it appears.
(b) In the proposed section 72A(9C), by adding "or
magistrate" after "court" wherever it appears.
- 20 By deleting subclause (10) and substituting -
"(10) Section 72A(11) is amended by
repealing the definition of "court".
- 25(2) (a) In the proposed regulation 8(1A) (b) (ii), by
deleting "regulation 11(1B) (a) or (1C) (a)" and
substituting "regulation 11(1AA) (a) or
(1AB) (a)".
(b) In the proposed regulation 8(1A) (b) (iii), by
deleting "regulation 11(1B) (b) or (c),
(1C) (b)" and substituting "regulation
11(1AA) (b) or (c), (1AB) (b)".
- 28(1) By deleting everything after "repealed" and
substituting a full stop.
- 28(2) (a) By renumbering the proposed regulation 11(1B)

as regulation 11(1AA).

(b) By renumbering the proposed regulation 11(1C) as regulation 11(1AB).

(c) In the proposed regulation 11(1AB) (d) (ii) (B) and (C), by deleting "(1B)" and substituting "(1AA)".

28(3) In the Chinese text, by deleting "申請人如" and substituting "申請關於".

28 By adding -

"(3A) Regulation 11(2A) is amended by repealing "The" and substituting "Subject to regulations 6, 7, 8 and 9, the".".

28 By deleting subclause (6).

29(2) (a) In the proposed regulation 12(5) (b) (ii), by deleting "regulation 11(1B) (a) or (1C) (a)" and substituting "regulation 11(1AA) (a) or (1AB) (a)".

(b) In the proposed regulation 12(5) (b) (iii), by deleting "regulation 11(1B) (b) or (c), (1C) (b)" and substituting "regulation 11(1AA) (b) or (c), (1AB) (b)".

34 In the proposed regulation 12I(1) (a) (iii), in the Chinese text, by deleting "扣" and substituting "記".

- 37(2) (a) In the proposed regulation 12L(1)(a)(ii), in the Chinese text, by deleting “扣” and substituting “記”.
- (b) In the proposed regulation 12L(1A)(b), by deleting “regulation 11(1C)(d)” and substituting “regulation 11(1AB)(d)”.
- (c) In the proposed regulation 12L(1B)(b), by deleting “regulation 11(1)” and substituting “regulation 11(1B)”.
- (d) In the proposed regulation 12L(1C)(b), by deleting “regulation 11(1)” and substituting “regulation 11(1B)”.
- (e) In the proposed regulation 12L(1D)(b)(ii), by adding “or (2A)” after “regulation 11(2)”.
- 50 (a) By renumbering the clause as clause 50(1).
- (b) By adding -
- “(2) The Twelfth Schedule is amended, in the Chinese text, in item 1, by repealing “扣” and substituting “記”.”.
- 59 (a) In the proposed section 8AA(1), in the Chinese text, by deleting “扣” and substituting “記”.
- (b) In the proposed section 8AA(2)(a)(i) and (ii), in the Chinese text, by deleting “扣” and substituting “記”.
- 60 By adding -

“(2A) Section 8A(1) is amended, in the Chinese text, by repealing “扣” where it twice appears and substituting “記”.”.

- 60(3)
- (a) In the proposed section 8A(2), in the Chinese text, by deleting “扣” and substituting “記”.
 - (b) In the proposed section 8A(3)(a)(i) and (b)(i), in the Chinese text, by deleting “扣” and substituting “記”.
 - (c) In the proposed section 8A(4), in the Chinese text, by deleting “扣” wherever it appears and substituting “記”.

New

By adding immediately after clause 62 -

“62A. “記” substituted for “扣”

The following provisions are amended, in the Chinese text, by repealing “扣” wherever it appears and substituting “記” -

- (a) the definition of “分”、“分數” in section 2(1);
- (b) section 3(1)(a), (b), (c), (d), (e), (ea) and (eb) and (3);
- (c) section 4(1);
- (d) section 4A(2);
- (e) section 5(1), (2), (3) and (4);
- (f) section 6(1) and (2)(a) and (b);
- (g) section 6A(1), (2)(a)(i) and (ii) and (b) and (4)(b);

- (h) section 7(1) and (3);
- (i) section 8(1) and (2);
- (j) section 9(1)(d) and (f).

62B. “扣減” substituted for “補回”

(1) The following provisions are amended, in the Chinese text, by repealing “補回” wherever it appears and substituting “扣減” -

- (a) section 3(1)(eb);
- (b) section 6A(1), (2), (3) and (4);
- (c) section 7(3);
- (d) section 8(4A);
- (e) section 9(1)(f).

(2) The heading of section 6A is amended, in the Chinese text, by repealing “補回” and substituting “扣減”.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

COMMITTEE STAGEAmendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
7(1) [NEGATIVED]	(a) In the proposed section 39(2A)(a), by deleting "3 months" and substituting "6 months".
	(b) In the proposed section 39(2B)(a), by deleting "3 months" and substituting "6 months".
	(c) In the proposed section 39(2C)(a), by deleting "3 months" and substituting "6 months".
8(1) [NEGATIVED]	(a) In the proposed section 39A(2A)(a), by deleting "3 months" and substituting "6 months".
	(b) In the proposed section 39A(2B)(a), by deleting "3 months" and substituting "6 months".
	(c) In the proposed section 39A(2C)(a), by deleting "3 months" and substituting "6 months".
9(2) [NEGATIVED]	(a) In the proposed section 39B(7A)(a), by deleting "3 months" and substituting "6 months".
	(b) In the proposed section 39B(7B)(a), by deleting "3 months" and substituting "6 months".
	(c) In the proposed section 39B(7C)(a), by deleting "3 months" and substituting "6 months".

10(1)

~~NEGATIVED~~

- (a) In the proposed section 39C(16A)(a), by deleting "3 months" and substituting "6 months".
- (b) In the proposed section 39C(16B)(a), by deleting "3 months" and substituting "6 months".
- (c) In the proposed section 39C(16C)(a), by deleting "3 months" and substituting "6 months".