

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 3 July 2003

The Council continued to meet at Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

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

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

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING, 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 HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

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

THE HONOURABLE WONG YUNG-KAN

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

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

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

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

DR THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S., J.P.

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

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

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

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBERS ABSENT:

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

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

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR HOUSING, PLANNING AND LANDS

DR THE HONOURABLE YEOH ENG-KIONG, J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

BILL**Second Reading of Bill****Resumption of Second Reading Debate on Bill**

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Legislative Council (Amendment) Bill 2003.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2003**Resumption of debate on Second Reading which was moved on 26 February 2003**

MR FREDERICK FUNG (in Cantonese): Good morning, Madam President and Honourable colleagues. In this discussion on the Legislative Council (Amendment) Bill 2003, I wish to discuss several topics. When amendments are moved later on, I shall not repeat my points, nor shall I speak any further.

I wish to share my views on three topics with the President and Honourable colleagues. The first topic is about functional constituency (FC) elections. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I have been against this type of elections ever since they were first introduced. I think the President and colleagues are all aware that FC elections have actually evolved from the systems of appointed membership during the British colonial era in the past. There were two systems of appointment at that time, one being the appointment of social personalities respected by the people and the Government. This has evolved into the functional constituency elections of today. The other system was the appointment of community figures respected by the people. This then evolved into district elections or the indirect elections of district boards. And, the indirect elections of district boards have evolved into the direct elections of geographical constituencies today.

When we look at FC elections from this perspective, I think several aspects are worth discussing. The first aspect is the size of electorates, and the second is the nature of electorates. As far as the size of electorates is

concerned, FC elections and the systems of appointed membership may yield apparently similar results and both may see the election of professionals such as barristers, medical practitioners and accountants, but both of them actually have their respective merits and demerits. And, they are also very similar in terms of advantages and disadvantages. Under the appointment system, power was derived from the then British colonial administration, and in the case of FC elections now, power is derived from the professionals constituting the various functional sectors. The advantage of appointment was that professionals could offer advice to the government, and the disadvantage was that since power was derived from the government, whenever a decision had to be made on any critical situation, motion or issues of principle, the appointees would naturally offer their advice or cast their votes in accordance with the government's stance or inclination. If they did not do so, they would not be reappointed.

Under the current situation, very obviously, Members returned by FC elections will understandably attach very great importance to the nature of their respective functional sectors. This means that one belonging to a certain functional sector will naturally speak for the functional sector and fight for its interests. This makes FC elections different from the appointment system. The advantage is that these Members are not appointed by any political authority but are elected by the constituents of functional sectors. This may be an advantage over the appointment system. However, the result may be worse than that of the appointment system, because these Members will really have to speak for their respective functional sectors and fight for their interests. In contrast, under the appointment system in the past, despite their professional background, the appointees did not necessarily have to speak for their respective functional sectors. As far as I am aware, this is the difference between appointed Members and Members returned by FC elections.

The second aspect is the nature of the electorates. As I pointed out just now, appointed Members are totally uniform in position. This may be good, because they can constitute some kind of a force as a whole. But the disadvantage is that their position is far too uniform, in the sense that in order to achieve a uniform objective, they, as representatives, must adopt the same values or position. This nature of the electorates is actually marked by a very strong uniformity intended to effect changes in respect of people's interests. One of the reasons why many people oppose universal suffrage is that the

masses are extremely uniform in their position. They uniformly ask for welfare benefits, "free lunches", and so on. Actually, the situation with FC elections is very similar. Members returned by FC elections similarly have to do the same for their respective functional sectors. Therefore, on this issue, I do not think that FC elections should continue to exist in this civil and open society today.

As for geographical elections, in the past, people at the district level were appointed by the British colonial government; the advantage was perhaps that the appointees could offer district-level advice to the government and could also speak their minds without being influenced by any consideration of district-level interests. But the disadvantage was that while the appointees could voice their views to the power core, they would still have to rally round it whenever their own interest conflicted with those in power. Unless the appointees did not want to be reappointed, they would have to do so.

The case is the same with geographical elections. Once power is derived from the residents or electors in the various districts, more importance will be attached to the residents or electors there. But quantitative changes may lead to qualitative changes. This means that given a large geographical constituency, the elects or those who wish to stand in elections will find it impossible to put sole emphasis on the interests of one single social sector or look at things from one single perspective. Under the existing system of proportional representation, for example, there are 1 million electors in my constituency, Kowloon West. There are many grass-roots and middle-class people, and there are also rich people living in places like Kowloon Tong, Yau Yat Tsuen and Prince Edward Road. To ensure election success, candidates or political parties must not focus on one single class or speak for one single kind of interest. If they wish to achieve the aim of getting elected with a large number of votes, they must consider how to make the majority of the 1 million electors vote for them. This means that instead of focusing on one single type of interests, they must shift their focus to the majority interests. This is the difference between geographical elections and the appointment of community leaders which I mentioned just now.

Another aspect to FC elections which merits discussions is the question of vote values. What I mean is that in this increasingly civilized and democratic society of ours, the vote values of all people should be the same and equal. By

this, it is meant that Members, all having been returned by people's votes, should carry the same weight. However, under the system of FC elections now, some electors have just one vote each, but others may have more than one vote, or even slightly more than two votes. I shall explain what is meant by slightly more than two votes.

If I am a professional, I will have two votes. I can vote for a candidate in the direct election of a geographical constituency, and at the same time, I can also cast another vote in my functional sector and elect my representative. The so-called "slightly more than two votes" is connected with corporate votes in FC elections. The law provides that a person shall not vote on behalf of two companies, and so, if a person is appointed by a company to vote on its behalf, he shall not vote on behalf of any other companies. We notice that if the board of directors of a company or the majority shareholder on the board says that the company shall vote for a certain candidate, then the representative of the company must theoretically vote for that particular candidate. Although secret ballot is used and no one will know how the representative eventually votes, this should be the case theoretically; if not, the company's wish cannot be reflected. The case now is that a company or a person may own many different companies in various functional sectors, especially those connected with organizations and companies. The company or the person may then appoint one of the directors or staff members to vote for certain candidates. This is precisely what I mean by slightly more than two votes. This reflects unequal vote values in the actual operation of the electoral system. This is also a reflection of inequality.

We should of course examine whether it is possible to abolish FC elections and introduce full-scale universal suffrage in the current context of Hong Kong. My observation is that if FC elections are abolished, the only alternative will be the introduction of full direct elections in geographical constituencies. In this connection, the whole of Hong Kong may be designated as one single constituency. We may also retain the existing arrangement of having five constituencies, or we may work out another number of constituencies.

Madam President, the Government should have noticed that 500 000 Hong Kong took part in the march on 1 July. I am sure that many of these 500 000 people are electors. They have shown how civilized and rational the

people of Hong Kong are. They love Hong Kong, and at the same time, they are capable of making sensible judgement. This explains why in a march of 500 000 people, there was not any riot or disturbance. The only incidents were the fainting of some participants. People were willing to remain standing for three whole hours under the scorching sun, and in black clothes, with the only purpose of telling the Government that they opposed the enactment of legislation to implement Article 23 of the Basic Law. The march has shown that the people of Hong Kong are highly rational, and that the electors of Hong Kong, are not like how many people have described them — caring only about free lunches, their own interests and benefits, without paying any attention to any other problems faced by Hong Kong.

I think the march on 1 July should have told the Government very clearly that the kind of judgement I have mentioned is in fact wrong. Now is in fact the best time for the Government to consider whether it is still necessary for society as a whole to protect the unique interests of the functional sectors in the present manner. A large constituency already covers all walks of life, so is it really true, as claimed by those opponents of direct elections, that such elections will only reflect political and populist interests? My conclusion that this will not be the case. That is why I hope that the Government can conduct a review on this issue, abolish FC elections and implement universal suffrage on a full scale.

Madam President, I also wish to talk about the \$10 subsidy per vote as mentioned in the amendment. The ADPL and I have actually advocated this proposal for a long time. As I have just pointed out, I was not a member of the relevant Bills Committee. But as early as 1994, I already raised this proposal to the Government, and I also mentioned it to Justice WOO Kwok-hing of the Electoral Affairs Commission. Our proposal is based on the experience of Taiwan. We have been to Taiwan several times to observe the elections there, and we have learnt a few lessons. First, they use polling stations also as counting stations, and votes are counted aloud to ensure that people monitoring and watching the process will all know who get the votes. Fairness and transparency are thus ensured. Second, votes are counted *in situ*, thus making it possible for people to know the election results in the shortest possible period of time. Third, once a candidate gets a specified number of votes, he will be awarded 30 Taiwan dollars, or HK\$10, for each vote.

Our proposal has met the opposition of many people who dismiss the idea as nothing but a free lunch. Whenever government subsidies are involved, people will always talk about free lunches. But the proposal actually does not involve any free lunch. As we all know, in a free capitalistic society, elections are honestly a game for the rich. It is simply impossible for one who does not have any money to run in an election. Running in a Legislative Council election will usually cost as much as hundreds of thousand dollars. This is already a very modest sum, because most will spend more than \$1 million. From this perspective, one may say that ordinary people are not necessarily able to take part. If there can be a subsidy of \$10 per vote, then those who are not rich but who still wish to run in an election will be able to take part. And, for a political party wishing to take part, if it sees that many of its members are qualified to serve as Legislative Council Members, the subsidy will enable it to offer more candidates for electors to choose from. The option eventually selected by the Government is the cutting of one free mailing service. This option may well keep government expenditure unchanged, but I still think that it is a very clever practice, certainly not any free lunch for election candidates. Quite the contrary, I really think that the subsidy can encourage a greater number of people aspiring to a political career to come forth as options for electors.

Finally, I still wish to say a few words on something else, that is, the Single Pooling System. The Government has rejected this for technical reasons, but I still do not think that there will be any major technical difficulty. It will only be necessary to do one more round of counting. That is to say the total number of votes received by an organization is first counted, and then all the votes received by the organization will be counted on their own to find out the respective votes received by all the candidates on the list. This means that there will be just one more round of counting for one organization, two more for two organizations and three more for three organizations. This is in fact technically possible, and the merit lies in pre-empting the Gary CHENG case in the Island South constituency. That way, electors will be able to select the candidates they prefer. Electors are not only able to select the political parties or organizations they prefer, but are also able to select the candidates they like. Therefore, the Single Pooling System merits adoption. Although the Government is unwilling to mention this system now, I still hope that it can consider it next time, so that people can select the candidates they really like, regardless of their political party affiliation.

I so submit.

MS MIRIAM LAU (in Cantonese): Madam President, in view of the increase in the number of directly elected seats in the Legislative Council from 24 to 30, the Government has made a series of proposals on the electoral arrangements next year. The Liberal Party is of the view that these proposals will help encourage more people to participate in the election and foster the development of party politics in Hong Kong.

First, the Government has decided to retain the delineation of the five existing geographical constituencies, and it will only adjust the upper and lower limits for the number of seats in each constituency. We think this is reasonable; on the one hand, it will obviate the need to expend resources on re-delineating the constituencies, and on the other, electors will not need to adjust themselves to a different set of electoral arrangements.

The Government also proposes to cut one round of free mailing service and to provide instead a subsidy of \$10 per vote for qualified candidates. This is really a good policy because while the Government can save postage costs, political parties can also get more resources to subsidize their huge election expenses. In a word, this arrangement can kill two birds with one stone. The Liberal Party hopes that this new arrangement can act as a powerful incentive to encourage more political parties and individuals to stand in elections, thereby fostering Hong Kong's political development.

The Government has in addition updated the information about FC electors. To a certain extent, the elector qualifications for some functional sectors have been relaxed to enable more people to elect their representatives. This merits support.

I notice that from yesterday to this morning, many Members have been talking about FC elections. Strangely, however, there seemed to have been very little discussion on this topic in the Bills Committee. We can well appreciate some Members' aspiration to universal suffrage, but we also do not think that their attacks on functional sector representatives are fair enough. We cannot accept some Members' claims that the interests of functional sectors conflict with those of the public. These Members also criticize functional sectors of focusing only on their own interests.

In the many years of operation of the Legislative Council, one can hardly find any cases which can illustrate that the interests of functional sectors and

those of the public are mutually exclusive. Nor can I notice or recall any cases where the interests of the public are superseded by those of functional sectors. Quite the contrary, it is only because of the presence of functional sector representatives that the voices of various functional sectors and industries can be brought effectively into the legislature, thus ensuring balanced discussions in the Legislative Council. And, precisely because of the resultant balance of interests, the interests of the public are protected. Actually, Hong Kong owes its various achievements to its ability to balance the interests of different quarters. Therefore, we cannot and should not negate the value of functional sectors.

In conclusion, the Liberal Party is of the view that the Bill is able to take account of Hong Kong's political development and introduce the required amendments without altering the fundamental arrangements. With these remarks, I support the Bill on behalf of the Liberal Party.

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

MS CYD HO (in Cantonese): Madam President, many people took to the streets on 1 July, and following this, yesterday, virtually the whole society looked for the Chief Executive, hoping to get some comments from him. Where has the Chief Executive gone? Apart from a written response issued on 1 July, the only things that the mass media have managed to get are the brief remarks by those Secretaries who were "caught" in the corridor and "cornered" by the press. This is indeed absurd because had the Chief Executive been elected by the people, he must resign voluntarily if he chooses to go into hiding, and if he chooses to stay in office, he will have to come out and face the people. But what is so awkward now is that while he wants to go into hiding, he also wants to stay in office; this is caused by the fact that he is not elected by the people. As a result, even when there is such a strong demand in society, he has just issued a written statement, thinking that he can thus muddle through. I hope that the Chief Executive's Office can respond openly to society and the people as soon as possible.

When the Secretary for Security was selling the Article 23 legislation, she often cited the examples of foreign countries. Her favourite remark was that national security laws are found in those democratic countries admired most by the pro-democracy camp. But she never talked about the background.

In those countries with national security laws, such as the United States, whose national security laws are so "excessive", the governments are returned by an election of some kind. The last paragraph of the statement issued by the United States a few days ago is really ironic. The original English text reads "with equal industry". This means that the United States hopes that Hong Kong can work equally hard to develop a democratic political system. The reason for this is that despite its "excessive" patriotic legislation, or Patriotic Act, the United States has one advantage over Hong Kong — its government is an elected one. This can serve as a very powerful check.

If we must introduce a piece of national security legislation, besides making its provisions harsh to government powers but lenient and protective to the people, we should also put in place a formal mechanism or channel to provide a check. Apart from judicial independence, freedom of the press and a strong civil society, we also need, most importantly, a democratic political system. Since Hong Kong lacks this element, and also because the proposed provisions are harsh to the people but lenient to the Government, the latter will be able to do whatever it likes after the passage of the Bill.

Admittedly, the Chief Executive stated in the statement released on 1 July that the Government would continue to develop democracy in a gradual and orderly manner in accordance with the Basic Law. But the people will not be satisfied with such a simple reply. The Basic Law provides that there will be a review in 2007, and there is hence a possibility of introducing universal suffrage to the Chief Executive Election afterwards, but in this legislature, we have seen how the Secretary concerned suddenly explains that the year may well be 2012, and that there must also be consultation beforehand. Faced with all these different interpretations made by government officials, interpretations which even Mr XIAO Weiyun finds unsatisfactory, how can we have any confidence in the Chief Executive's reiteration in the evening of 1 July that we will continue to develop democracy in a gradual and orderly manner in accordance with the Basic Law?

The Bill today no doubt conforms with the method for forming the Legislative Council as stated in the Basic Law. That is to say that in 2004, six seats returned by the Election Committee will be deleted and turned into directly elected seats, with the remaining 30 seats continuing to be returned by FC elections. Madam President, you of course know very well that we are against this. That is why I will vote against the Second and Third Readings of

the Bill. I hope that my vote can deliver a clear and strong message, that we hope to see a Legislative Council returned wholly by direct elections as soon as possible. I hope that in 2004, I can debate and compete with the President in election forums; not only this, I also hope that other Members returned by FC elections will also take part in election debates. That way, we can all discuss future plans for Hong Kong and share our views together, like the blossoming of a hundred flowers.

However, the relevant Policy Bureau has been working very slowly. I can remember that during the policy debate, we had to point to the booklet written by Secretary Stephen LAM and make him admit that something must be done within 18 months, before we could force him to promise that he would starting working in 2003. But the Bureau does not have too much manpower, and the Central Policy Unit has done much more in comparison, because since the financial turmoil, the Central Policy Unit has been conducting studies on the socio-economic conditions and political systems of our neighbouring places and countries. Therefore, I have all along suggested the Constitutional Affairs Bureau to deploy some of its resources to the Central Policy Unit. That way, the Bureau will not have to deploy another group of people to do the work; it can simply work on the basis of the Central Policy Unit's findings and proceed more systematically.

Secretary Stephen LAM's response to the people's demand is that the Government will endeavour to make a good job of its work, ease the unemployment problem and revitalize the economy. But I wish to bring home to the Secretary that while economic sluggishness and the high unemployment rate will no doubt adversely affect the people, what they see are only the symptoms. The fundamental causes are ineffective governance and the Government's inability to unite the majority. As a matter of fact, an election can provide the best opportunity to unite the people, because in the process, all candidates will have to make known their political platforms. The success of a candidate in an election will mean that his political platform is accepted by the people.

In terms of composition, 30 seats in the Legislative Council are returned by FC elections. I do hold some Members returned by FC elections in high esteem. They are in fact hardworking, have done a lot, and are loyal and dedicated to their constituents. However, very sorry, I do not agree with Ms Miriam LAU that the interests of functional sectors have never been put before those of the public. Members returned by FC elections may represent

just a handful of constituents, and I have the impression that the Government thinks that it is easier to deal with them. So, both sides may enter into some kind of deals, politically or in respect of policy formulation. When we discussed the Budget this year, we often called Ms Miriam LAU a "wealthy lady", because the fuel duty exemption she advocated involved the largest sum of money. So, she was called a "wealthy lady" of \$1.1 billion. But other policy areas related to the people's livelihood will be adversely affected in terms of resource allocation, and the treatment they receive will be far less favourable than that of Ms LAU's functional sector. I of course cannot and do not want to look at this policy in a simplistic manner. But I must say that political deals are really one of the reasons. I hope that Ms Miriam LAU can one day become a directly elected Member, and besides attending to the transportation sector, she can also make more efforts in child protection or other areas, because we notice that she has done quite a good job in youth and child policies. Why has she not spent more time on these policies? Because she does not represent these sectors and owes them no loyalty.

Madam President, on the development of political parties, the Government will provide a subsidy of \$10 per vote in the coming election as a means of assisting political parties in their development. But I wish to stress that political parties cannot possibly rely on this \$10 subsidy for their development; the most important thing should be a fair distribution of power. The development of local political parties has been far from appealing. One reason is of course their short history of development. The only examples of political parties we have seen so far are the Communist Party and the Kuomintang. In these cases, once a party line is set down, there would be very little room for the individual, because the party line is so narrow in scope and will serve to exclude all other lines. This is very much unlike some highly developed political parties. For example, inside the two political parties of the United States, there are all sorts of lines ranging from the extreme leftist to the extreme rightist, and those who go to the extreme may even advocate policies which are not so different from those upheld by the opponent party.

People often ridicule the five of us in the Frontier and also Mr Michael MAK, saying that our voting decisions on one single issue may differ, ranging from positive to negative. This is precisely the point I wish to raise. Since each of us enjoys enormous room, the Frontier is marked by comparatively few disputes. The co-existence of unity and differences is the image of the Frontier. There are many divergent views, and all of us can concentrate on our respective policy areas. This can enable us to achieve a

division of labour. I hope that members of the public can notice this feature of ours. I also hope that if members of the public have any views on the development of political parties, they can tell the political parties, or they can even form political parties of their own. But what should be the most important after all? The answer is the distribution of power. People may establish a political party and manage to get seats in the legislature, but they may find that the legislature is just a mere "talk show" of the Hong Kong people, that its influence on actual policy formulation is very limited, and that the executive can dominate everything and do whatever it likes. All these are in fact the main factors discouraging the development of political parties.

In addition, I also wish to discuss the example of one foreign country — Germany. During World War II, this country was governed by a political regime that was far too powerful. As a result, the whole world suffered, and so did the people of this country. Therefore, under the German constitution after World War II, the ruling party must provide massive subsidies to other political parties or think-tanks. The constitution provides that all organizations shall be given subsidies regardless of their views, lines and standpoints. It is hoped that different organizations can be given enough resources for hiring people to organize their activities and promote their respective political convictions. Frankly speaking, a ruling party which does so is acting against its own interests, because it is in effect giving money to others, so that they can conduct policy researches that will enable them to argue with it, to disprove its policies, or even to win in the next election. But for the democratization of a country, this is precisely the most desirable course of development.

I hope that in addition to providing a subsidy of \$10 per vote, the Government can also note that we should not aim to please political parties only. The reason is that the ultimate aim of offering them subsidies should be the development of democracy. The overriding concern should be to make more people aware of their civic obligations and participate more in the formulation of public policies.

Madam President, I now wish to turn to the introduction of a withdrawal mechanism. During the debate, Members have referred to the case of 2000 as a means of illustrating that the absence of a withdrawal mechanism may force people to elect a candidate who may well resign afterwards, thus wasting their votes on the candidate concerned. Admittedly, under the Single Pooling

System, there will be a more direct relationship between electors and candidates, and situations similar to that in 2000 can be avoided, because people may very much want to elect the second and third candidates, but if something happens to the first candidate, they can do nothing and must waste their votes. However, I wish to point out that it is actually the choice of the people ultimately. If they know that they must waste their votes before they can elect the second candidate, they will still think that this is worthwhile. Naturally, we can seek to improve the mechanism. But before the system is altered, if we abolish the no-withdrawal mechanism to enable a candidate having run into trouble to withdraw, so that the second and third candidates can be elected, then bribery and corrupt practices may result, because people can simply put different candidates on different lists and then lobby for them, creating a situation of three strong candidates in the end. Two of these three candidates may then withdraw, leaving behind just one candidate. Then, it is almost certain that the remaining candidate will be elected. This is a most undesirable situation. I think Mr Andrew WONG will definitely give a much more detailed explanation later on.

Madam President, I reiterate that I will vote against the Second and Third Readings of the Bill.

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

MR MICHAEL MAK (in Cantonese): Madam President, I am not a member of the Bills Committee, so I did not intend to speak initially. But having listened to some Members' views on the performance of Members returned by FC and the role they can play in the forthcoming FC elections of the Legislative Council, I wish to share my feelings with Honourable colleagues.

As a FC Member, I am fully aware of how people look at the 30 FC Members of this Council. I think most FC Members are pro-government in their voting decisions, and this is a total display of the selfish interests involved in what are referred to as coterie elections. These Members do not care about livelihood issues, nor will they make any "risky" move to talk to their constituents about any cardinal principles of right and wrong. The march on 1 July is an example. I think Mr LEE Cheuk-yan must have underestimated the number of participants. There should be more than 500 000 participants,

because many people have told me, and I personally know very clearly, that many participants actually left the procession when it was still in progress. And, there were also many "concerned onlookers" who fully supported the march. But how many FC Members have openly reflected the voices of their constituents? I am sure that many such Members simply do not dare reflect the views of their constituents perhaps because their political position requires them to strike a balance of interests. But this is precisely the misconception of FC Members. Although FC Members do enjoy the privilege of being returned by small-circle elections under the political system, I think that they should still put major and significant social issues before their personal or sectoral interests. This means that if they do not seek to reflect the collective views of the people, which by the same token necessarily cover those of their own constituents, they will fail completely to fulfil the desired functions and role of FC Members. Some directly-elected Members are thus even of the view that FC Members have failed to discharge their desired functions this time around. I am really very sad and disappointed.

I think five of our FC Members are quite representative, but the remaining 25 should really ask themselves as to why their constituents have urged them to conduct constituency-wide polling on their voting positions regarding the enactment of laws to implement Article 23 of the Basic Law (Article 23). It is really a shame that they have been asked by their constituents to state their positions. These Members have all along thought that they can protect the interests of their constituents, but it has now turned out that they are wrong, so they should really give more thoughts to this. In addition, it is hoped that in as many ways as possible, not just their voting on Article 23 legislation, but their behaviour elsewhere as well, they can demonstrate to all of us — by "all of us", I mean "all of us" in this legislature, in this Chamber — that they are reflecting the people's opinions instead of harbouring the Government or colluding with it.

As for the Legislative Council elections, when I put forward my political platform for my current term of office, I was not yet a Member, but I already thought that both the Chief Executive and the Legislative Council should be returned by universal suffrage. My advocacy was not a "risky" move. But why did I put forward such a political platform? Because I wanted to reflect the aspiration of my 30 000 or so constituents. I did call upon many people to take to the streets on 1 July to voice their views. These people are my constituents, and I am not worried that such an advocacy may shake their

support for me. So, I hope that the rest of the 20 or so FC Members can think more carefully about this matter. Basically, these Members stand a chance of re-election, but following the enactment of Article 23 legislation, I am not quite sure about this. I hope that the constituents can see clearly what these Members have been doing, and these Members must show society and their constituents that they do have a conscience.

I hope that there can be universal suffrage for the Legislative Council as soon as possible, so that truly representative Members can be elected to serve the entire society. Some FC Members are worried that they may not be elected without some kind of small-circle elections. But I think the most important point is: He who is competent will surely be the one. If they can voice the views of their functional sectors in society, if they can truly reflect people's opinions, why should their constituents not elect them? That being the case, why do these Members not try to fully reflect the views of their constituents and let society elect them to be the representatives of their functional constituencies? Besides, if there are direct elections in their functional constituencies, these Members may be requested to ignore any political platforms completely and just use their own votes to reflect the voices of their constituents. Therefore, what is so bad about universal suffrage? Fair and healthy competition is always good to society. Why has a constitutional crisis or the danger of social turbulence emerged? The reason is that the Government, the Chief Executive, the Legislative Council and the District Councils are not returned by universal suffrage. Therefore, I hope that the majority of FC Members will not become happy too soon, because they will eventually get their "reward" and the day will certainly come. I hope that they can think about their own deeds and refrain from clinging to the wrong position of protecting the interests of their inner circles. That is all about my personal feelings.

I hope that directly-elected Members will not go so far as to say that all FC Members have failed to discharge their social functions. Something more must be said; one should say "the majority of" FC Members. To be fair, a small number of FC Members, such as Miss Margaret NG, Mr CHEUNG Man-kwong (I will not omit anyone, but Secretary Stephen LAM often will), Mr SIN Chung-kai, Dr LAW Chi-kwong and me (Mr Michael MAK), are fully capable of reflecting the conditions and aspirations of society. As for other FC Members, I can also name them, and

one example is my colleague, Dr LO Wing-lok, who has failed to reflect the views of his constituents on the website of the Hong Kong Public Doctors' Association. That is why I hope that Dr LO Wing-lok can make his position clear here. I reckon that if Dr LO Wing-lok does not impartially reflect the position of his constituents on the issue of Article 23 legislation and make a justified voting decision, he will face great danger in the 2004 election. And, I will also urge Dr LO's rivals to compete with him, because I know many doctors who are in total opposition to the enactment of Article 23 legislation. These doctors may have chosen to remain silent so far, but they do support my position. I do not know whether Dr LO can hear this.

I hope that my voice can strike a balance between directly-elected Members and FC Members and also serve as a bridge for those FC Members with a conscience. Besides, I totally support the idea of providing a \$10 subsidy per vote. However, since our political development has not attained the objective of universal suffrage and because there is not yet a sound direction, I will still vote against the Second and Third Readings of the Bill.

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

MS EMILY LAU (in Cantonese): Madam President, I am speaking on behalf of the Frontier to oppose the Legislative Council (Amendment) Bill 2003 (the Bill).

Madam President, ever since the Frontier was established, we have been hoping to fight for a government returned by a democratic election with universal suffrage. As such, though we understand that the Basic Law has some specific provisions for this, we do not approve of them because they deprive the people of the right to choose their government through universal and equal elections. Therefore, we shall all vote against the Bill at its Second and Third Readings.

Madam President, we in the Frontier hope that this aspiration of many Hong Kong people can be implemented as soon as possible. This aspiration was expressed very clearly in the march on 1 July, and what was even more clearly expressed was that, the people longed to see TUNG Chee-hwa step down immediately. No matter what the Hong Kong Special Administrative

Region (SAR) Government does, there is no way it can dodge such messages. Therefore, everyone is very surprised, and also very angry, because the SAR Government has not positively or actively responded to such aspirations of the people. Therefore, when the Chief Secretary for Administration arrived just now, Madam President, I have passed him a note, requesting the Administration to consider, and I hope with your approval, Madam President, making a statement in the meeting today to respond to the major event that has happened recently. Of course, some people may think that I am much too naive, because the TUNG Chee-hwa regime is totally indifferent to public opinions. He will never come out to make any comments. However, such a situation would intensify the anger of the public and entrench the division in society.

Regarding the Bill under discussion today, we in the Frontier oppose it, and our stand is very explicit. Just now Ms Miriam LAU said that, in the Bills Committee, there had not been too much discussion on FC. Frankly speaking, there is not much we can say about them. Madam President, this reflected that the Frontier had not employed any delaying tactics. If we had really been using the delaying tactics, we should have proposed to discuss each and every provision. However, what else could we say? Even if it has extended the voting rights in respect of the FC to nearly everyone, just as what "Fat Patten" did, we still would not support such an approach.

However, I believe the President must have noted that, before this Bill was introduced, we had mentioned and discussed, even raised with Secretary Stephen LAM whether we could consider, under the constraints of the Basic Law, expanding the FC so as to give the people more choices, thereby avoiding picking the candidates from such small circles. It is because a representative could be chosen by 100 or 200 people, and this is grossly unacceptable. Furthermore, representatives of the Independent Commission Against Corruption had openly said in this Chamber that if the size of an electorate was so small in a certain constituency, it may give rise to corruption. However, to the TUNG Chee-hwa regime, and to Secretary Stephen LAM, these are not problems at all.

What makes us feel all the more frustrated is that hundreds of thousands of people have taken to the streets — I also agree with Mr Michael MAK who said that Mr LEE Cheuk-yan must have made a mistake in his estimation. Many people told me that there must be at least 700 000 to 800 000 participants

in the march. But what has Secretary Stephen LAM said? He says, "We shall not make any changes. All we are doing is to work according to our original plan — we shall first conduct some internal studies on the issue, and we shall not conduct consultations until the end of next year or the year after next. Then the local legislation will be made in 2006." I think, as Secretary Stephen LAM has acted indifferently to public opinions (maybe he thought that he had to give some responses to the thinking of the people), he should step down.

Madam President, I am fully convinced that the FC have already completed their historical mission. Just now, Ms Miriam LAU asked that on no occasion the interests of the FCs had taken precedence before public interest. In fact, she does not need to take the issue too far. Why is Ms Miriam LAU so famous? Ms Miriam LAU is a very hardworking Member. She is even more hardworking than some directly-elected Members. So I have always encouraged her, both openly and privately, to run in direct elections, just like your good self, Madam President. But you are being forced into doing that because the six seats will be gone. But I believe you will take that course of action even if you are not compelled by the circumstances. I encouraged her to run in the Legislative Council Election. I think she stands a good chance to win, and will become a very outstanding Member. However, a lot of people always put the blame on her, regardless of whether the issue in question is right or wrong. It was because during the colonial era, there was a proposal to convert all diesel vehicles into gasoline ones; they opposed the proposal, and it involved many problems. I recalled that once Governor Chris PATTEN came to this Chamber for the Governor's Question Time. Ms LAU raised a question bravely to speak for the interest of her sector. What did the Governor then say? Members may check the Hansard. Chris PATTEN said, "Have you ever heard of something called public interest?" Unfortunately, I did not have the chance to ask another question at that time. If I could raise another question, I would have asked, "How on earth could you Britons have the shamelessness to say something like that?" Why? It is because the system of FCs was invented by the British in 1985. Just like what Mr Frederick FUNG or other Members have said just now, this system is an evolution of the appointment system. The British knew well in advance who would be elected, then they tailor-made the seat for him. At that time, they had also tailor-made seats for Mr Martin LEE and Mr SZETO Wah. Everything had been tailor-made. They would let you take some minority seats, and then people who stand for the establishment and business interests would take all the remaining seats. Therefore, I shall never agree with what Ms Miriam LAU and other Members who said that there is a need to balance

the interests of different sectors of society.

Madam President, do you think that we directly-elected Members do not have the need to balance the interests? In fact, we are in greater need to do that. We have more than a million constituents, from the poorest to the richest, from the eldest to the youngest, from the most leftist to the most rightist, all kinds of people. Do I not also have the need to balance the interests? If I cannot strike a right balance, I shall be scolded by people. But in each election, the people will judge whether I have been able to strike a proper balance. However, with the existence of FCs, people who can vote just account for something like a hundred thousand or so people. But the representatives of these one hundred thousand people have occupied 36 seats in this Council. How can this be explained? You cannot possibly explain this by whatever logic you may wish to employ. Therefore, I will definitely oppose functional constituencies, and I will oppose this Bill.

However, Madam President, we have to be realistic. We have also heard that. It is because the election in 2004 cannot be amended now, but the review for 2007 is very important. The Basic Law has also stipulated the mechanism. It shall require the approval of two thirds of all the Legislative Council Members, as well as, of course, that of the Chief Executive. Let us hope that the Chief Executive by then is no longer TUNG Chee-hwa, as there are so many people requesting for his stepping-down. However, we have to think about that too (especially after the march on 1 July) as there are so many conscientious people in society. Although such conscientious people cannot possibly overrule the electoral system in 2004, yet as Mr Michael MAK said, many of these conscientious people come from the FCs. Although these people have so well taken care of by the Government who lets them enjoy the privileges — political privileges, many of them may have already felt impatient about this system. So what should they do? Madam President, these people may run in the elections. They would possibly run in the FC elections. Mr MAK has mentioned five names just now. In future, there may be more than 10 names, or even more. By then, they may make use of the system of the Government to fight against the Government. I believe the people of Hong Kong absolutely know how to play such games.

There are many things we should do. However, we in the Frontier would like to urge the people to come forth to do more, to fight for elections of "one person, one vote". Madam President, we strongly hope that all other

Members can work together to bring our roles into full play in this Council. We know that the Legislative Council now enjoys a rather low esteem. But sometimes our esteem could surge — it happened when all the Legislative Councillors were united together and when the seven or eight political parties got together for a common cause. What did this reflect? This reflected that the Legislative Council in fact possesses very enormous power: the power to enact laws and the power to approve funding. These powers are very substantial. The problem is: Very often we cannot exercise such powers to answer the aspirations of the people. This is because we have been struggling against each other, dividing ourselves. Whenever certain issues arise, be it the fight against air pollution, or the post-September 11 economic situation, or the SARS outbreak, if we do it together, we can be a very enormous force. I am very glad that the Liberal Party is very willing to co-operate with us. And if the seven or eight political parties are willing to co-operate, other Members would co-operate as well. Therefore, even if we have yet to win the fight for the full-scale implementation of direct elections, I still hope that the community as a whole can see that there is ample co-operation among Members of the Legislative Council. Although we have our ideals, our insisted principles, we in the Frontier also understand that a great majority of the people will be glad to see greater co-operation among the various parties in the Legislative Council.

Last week, it seems to be the 26th of this month, the Liberal Party declared that they would amend its own constitution. This is because at the time when the Liberal Party was established ten years ago, it had been, for unknown reasons, very progressive in advocating that it was necessary to implement full-scale universal suffrage for the elections of the Legislative Council and the Chief Executive in 2007. However, I believe that they must have found that the circumstances have become very unfavourable now. So they have to take a regressive stand now, saying that they no longer insist on the implementation of universal suffrage in 2007. Instead, they would listen to the views of the people.

Needless to say, regarding this course of action by the Liberal Party, I am quite disappointed. However, from another perspective, I can also understand that the Liberal Party stands for people in the business sector. Now people in the business sector are suffering from a lack of confidence. They see that there are free lunches, and they also feel that they do not have faith in the pro-democracy camp. I believe this is a problem that the pro-democracy camp has to address. I have had some dialogues with people in

the business sector recently. I hope that everyone can come together for discussions. Democracy is not so terrible indeed. Many highly civilized, well-developed and economically prosperous countries also embrace democracy. I hope people in the business sector can adopt an open mind and sit down for discussions with the pro-democracy camp and the Liberal Party. I understand that, if people in the business sector keep on opposing the expansion of direct elections, our progress will be hampered. I even hope that some members of the business sector can tell the Administration that they support further expanding democratic elections. In fact, some businessmen have already made such remarks. However, the voices are not strong enough in force. We hope they can continue to come forth and speak their minds in such a way.

Madam President, the action of the Liberal Party reflects a miserable side of society. It is a regressive step. Ten years ago, they anticipated that democratic elections could be implemented by 2007. However, in 2003, they discovered that the situation has become even worse. This makes us feel that we really have to work even harder. However, there is a structural problem with the system itself. As such, it makes some people feel complacent. Some people can hide behind 100-odd votes and they do not have to face the people. Even TUNG Chee-hwa can hide behind some tycoons and the Beijing authorities, and he does not have to face the people. Under such circumstances, how can we promote democratic reforms?

Madam President, most of us, the ordinary people do not want to break any laws. However, when the circumstances have evolved to a certain extent, and when the Administration oppresses the people too much and even takes some violent actions against the people, then the Administration shall have to bear some very serious consequences. Everyone can see that the peaceful expression of opinions by the people has met with the indifferent response from the Secretary ("We shall not care about what you say. We shall work according to our original plan."). However, at least he has come out to say something. Madam President, what about the others? They save their breath, not saying a single word. As a government, how can it act like that in the face of hundreds of thousands of people — 600 000, 700 000 or 800 000 people? I agree with Dr David LI, that most of those who held the opposition view had not taken part in the march. If we really do a serious counting, the opinion polls alone could illustrate that there must be over 1 million people who hold the opposition view for many different reasons. At a time of serious

public discontent, the Administration could still have the nerve to declare openly that it would continue enacting legislation to implement Article 23 of the Basic Law, and "for any further progress in democratic development, I have no part in it". What kind of rubbish government is it? Therefore, I hope that the pro-democracy camp can unite the strength of more Members together. Although some Members were returned by small-circle elections, yet now, even in the small circle, some problems have emerged too. Madam President, this is because even the middle-class people or professionals who are leading a cozy life now think that the present situation is not right.

Therefore, I would like to urge all the voters and those who have two votes to exercise their influence as voters. Go and tell their so-called representatives that (we need to tell the TUNG Chee-hwa regime), we Hong Kong people want to say that, just as the slogans used in the march, "We have had enough, step down."

With these remarks, I oppose the Bill.

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

MR LEE CHEUK-YAN (in Cantonese): Madam President, on 1 July, it was very clear that

MR JAMES TO (in Cantonese): Madam President, a quorum is not present now.

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

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

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, you may continue with your speech.

MR LEE CHEUK-YAN (in Cantonese): Madam President, on 1 July, the people of Hong Kong turned a new page in history. What kind of history was it? It meant that the people had had enough and they were not going to tolerate it anymore, that they had to take to the streets to tell the Government that the people were dissatisfied with this government. They were telling the Government that the people opposed the enactment of laws on Article 23 of the Basic Law, demanding that the Government should return the political power to the people. These messages were very clear. The people had made their voices known, turning a new page in history. But our Government has also turned another new page in history, namely, a page of history of shamelessness. In the face of more than 500 000 people having taken part in a march, this Government could still engage itself in some empty talk, saying that it appreciates the aspirations of the people. May I ask what the Government has appreciated? If it really appreciates the aspirations of the people, it has to take some actions. Inaction means that the Government does not appreciate the aspirations of the people. The Government has not made any material response at all.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, I must remind you that we are debating the Legislative Council (Amendment) Bill 2003. Please speak on the subject of the Bill. I am sure you must have a way of making your speech pertinent to the question.

MR LEE CHEUK-YAN (in Cantonese): Madam President, in fact, you have been too impatient. I am speaking entirely to the question. This is because "returning the political power to the people" also covers the Legislative Council. I start from "the grievances of the people", and then I shall direct my speech from "the grievances of the people" to the Legislative Council. I hope the President will allow me to finish off my point.

My point is: The Government does not understand the anger of the people, nor has it positively, actively and specifically responded to the demands of the people. When we say that the Government has been shameless, the royalist Members in the Legislative Council are equally shameless. Have they made any response? What have the royalist Members in the Legislative Council actually said? They said the people had been misled. They went even so far as to smear the people, insulting the intelligence of the people. I wish to tell all the royalist Members: The people of Hong Kong are not as silly

as they have thought. They have a clear perception of everything, just like what a common saying goes, "The eyes of the people are perceptive." Will the royalist Members think carefully about this. How dare they say that the people have been misled into taking to the streets? Madam President, neither us, the pro-democracy Members here, nor the many non-government organizations, have the abilities to mislead the people. It was actually the people who had witnessed everything, who took to the streets of their own accord. The people are really great, not any organizations at all. The organizations only provided a platform. Only the people are great. I am very disappointed with many political parties in the Legislative Council because after having seen more than 500 000 people taking to the streets, they still say that they have 19 sure votes in support of the National Security (Legislative Provisions) Bill. The royalist Members in the Legislative Council have not listened to the aspirations of the people at all. However, we have already anticipated that they will act in this way, and the people are very clever — they have never had any expectations of them.....

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, I am most unwilling to interrupt your speech indeed. However, I am obliged. You really have to speak to the question in respect of the Bill.

MR LEE CHEUK-YAN (in Cantonese): Yes, Madam President.

PRESIDENT (in Cantonese): Mr LEE, you have already made a lengthy introduction. Will you please proceed to the question.

MR LEE CHEUK-YAN (in Cantonese): Madam President, all that I have spoken is by no means the introduction. I was explaining why all the seats in the Legislative Council should be returned by direct elections and why I oppose the Legislative Council (Amendment) Bill 2003. The reasons are very simple. After 500 000 people have taken to the streets, the Legislative Council can still turn out like this. Many of the royalist Members are still acting like this. Madam President, may I ask why? The question today is in fact a discussion on the system with only 30 directly elected seats. At the moment, we have 24 directly elected seats. What kind of changes will occur if such seats increase

to 30? The answer is: everything will remain unchanged. Even though 500 000 people have taken to the streets, more than half of the Members can still choose not to respond to the opinions of the people in a positive manner. How will it be different from the present situation? If it is "lousy" now, it will be equally "lousy" in the future when we have 30 directly elected seats. The situation will not change. Together with the effect of the system of separate voting, the resultant situation will even be more "lousy". With the separate voting system, the views of the functional constituencies could be vetoed completely. Therefore, it is very clear that this Bill absolutely cannot answer the public calls for returning the political power to the people, and it absolutely cannot change the present situation in the Legislative Council, in which the many royalist Members returned by small-circle elections will continue to vote in favour of the Government, continue to reduce themselves to be the rubber-stamps of the Government. Even after this Bill is passed, the situation will not change at all. Everything will remain unchanged.

Therefore, Madam President, eventually I will oppose this Bill. I feel that the public aspiration in calling for return of the political power to the people had already been categorically expressed, that is, the people demand that all the seats in the Legislative Council and the Chief Executive should be returned by universal suffrage. In fact, how has this aspiration come about? Who should we thank? First of all, as I have always said, I have to thank TUNG Chee-hwa, who makes us feel that it is necessary to elect the Chief Executive by universal suffrage. Today, I have to thank all the royalist Members. I have to thank Mr CHAN Kam-lam, Mr LEUNG Fu-wah, Mr James TIEN, Mr IP Kwok-him, Mr Jasper TSANG. I am most grateful to them. Madam President, this is because they have made the people realize that only a directly elected Legislative Council can answer their aspirations in a truly positive way. Therefore, I am really grateful to them. I would like to thank them for enabling the people to see that, if the Legislative Council is not elected by universal suffrage, even if it has 30 directly elected seats, just as proposed in the Bill tabled before us, it is still inadequate. Therefore, on behalf of the Hong Kong Confederation of Trade Unions, I oppose this Bill because the voices of the people have clearly demanded for election of the Legislative Council by universal suffrage.

Lastly, I would like to thank many Honourable Members of this Council, including those royalist Members, including everyone in this Chamber, for having enlightened the people, making them realize that, without universal

suffrage, the whole political system, the economic prospects and the overall development of Hong Kong will not have any future.

Thank you, Madam President.

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

DR YEUNG SUM (in Cantonese): Madam President, regarding this Legislative Council (Amendment) Bill 2003 (the Bill), the main problem is that no election with universal suffrage is involved in returning

MR LEE CHEUK-YAN (in Cantonese): Madam President, a quorum is not present.

PRESIDENT (in Cantonese): Dr YEUNG Sum, please sit down first. Will the Clerk please ring the bell to summon Members back to the Chamber?

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

PRESIDENT (in Cantonese): Dr YEUNG Sum, you may continue with your speech.

DR YEUNG SUM (in Cantonese): Madam President, regarding the Bill that is tabled before us for passage, I think its greatest problem lies in the fact that it does not provide the people with the chance to elect all the 60 seats of the Legislative Council by universal suffrage.

Many journalists say that, so does the Government, Hong Kong will continue to be ruled by laws, and that the Hong Kong people can continue to enjoy human rights and freedoms according to the relevant laws. However, Madam President, I wish to point out that loopholes can still exist even if Hong Kong is ruled by laws. Just as I have said in answering questions raised by the press, the Legislative Council may enact some draconian laws. After such

draconian laws have been enacted, even though the Court can act independently, it cannot ignore such laws when it passes its rulings. How can we prevent the draconian laws from being enacted? The only solution is to have a Legislative Council returned by direct elections with universal suffrage, so that all the seats in the Legislative Council are elected by the people. With direct elections, the multi-party system will emerge eventually. After the multi-party system has come into operation, the aspirations of the people will be answered. If the aspirations of the people are not answered, the party will have to step down in the next election. Therefore, I wish to point out very clearly here that, and I hope the people can understand that, the ruling of Hong Kong by laws alone is inadequate. It has to be complemented by a directly elected Legislative Council because a Legislative Council elected by universal suffrage has to be accountable to the people, for only in that way it dares not pass any draconian laws arbitrarily.

What will be put before us is the draconian law to be enacted on Article 23 of the Basic Law. This is the worst of all the draconian laws since the reunification. It will deal a severe blow to our freedom of the press, our freedom of association and our religious freedom. However, the naked fact before us is that: We shall not be able to stop this draconian law from being passed. The reason for the Legislative Council not being able to stop this draconian law from being passed is not all the seats are elected by universal suffrage.

Therefore, regarding this Bill, the Democratic Party cannot support it in principle. We shall vote against it as a matter of principle at its Second Reading.

Besides, I hope that the people can actively participate in the discussions ensuring from the political review to be held shortly. We also hope that the Government can release a Green Paper on the political review as soon as possible, listing out all the pros and cons of the different options to enable the people to make their own choices. I hope that the Government can release the Green Paper by the end of the year, so that it can return the political power to the people early. If the Legislative Council and the Chief Executive could eventually be elected by universal suffrage of "one person, one vote", I believe the draconian law enacted on Article 23 of the Basic Law could never be passed in the Legislative Council.

Thank you, Madam President.

MR MARTIN LEE (in Cantonese): Madam President, many people do not know why I chose to be a politician — Madam President, I will get to the point very soon. My initial goal was to preserve the spirit of the rule of law in Hong Kong, and protect the freedoms of Hong Kong people. But, before long, I realized that my goal was unattainable. The matter was not as simple as I had imagined. What if the laws are evil in the sense that they undermine human rights, even if judges are impartial. We will end up having no protection at all as judges must enforce those draconian laws. So what can be done to prevent laws from turning draconian and ensure that they can protect human rights? It all depends on the Legislative Council. What can be done to ensure Members of this Council pass good laws instead of draconian ones? The answer is to put the votes into the hands of the people and let them decide who can represent them in this Council. Members from the functional constituencies have recently begun to realize this one after another. They have started to consult their electors, possibly for fear of losing their seats. Actually, this should be done a long time ago. Though no remedy was made until recently, they must do it anyway. Now they have finally come to realize that it is the electors who are going to decide whether they can remain in this Council. Of course, it is most desirable for all the people of Hong Kong to decide how all Members in this Council will be returned, for this can allow them to control how their representatives are going to vote and what laws are going to be enacted.

Madam President, when I was still the Chairman of the Democratic Party before and after 1997, there were plenty of opportunities for me to discuss with Mr James TIEN, Chairman of the Liberal Party, and Mr Jasper TSANG, Chairman of the Democratic Alliance for Betterment of Hong Kong (DAB) on television or radio programmes about democracy. There was a small divergence in the views held by us. I considered it necessary to amend the Basic Law to expedite the direct election of the Chief Executive and all Members of this Council in the next term. Yet Mr TIEN and Mr TSANG considered this impossible. Both of them insisted that the Basic Law must be adhered to so that the Chief Executive and all Members of the Legislative Council would be directly elected in 2007 and 2008 respectively. They have said this again and again. My faith grew each time they repeated this, and I thought to myself that a U-turn was unlikely! Then they said it again, and I was once again convinced that they would probably not make a U-turn. The more they said, the more I felt assured. However, it transpired the case may not be as expected. Perhaps people are right in saying that seven days are already very long in politics, not to mention seven months. Though the DAB keeps on back-peddalling, there is no mention of formally amending its

constitution. The Liberal Party is at least honest for having admitted that it is going to amend its constitution. Mr Allen LEE, former Chairman of the Liberal Party, complained at a dinner with me recently, "What on earth is going on that even the constitution can be amended?"

We can hardly blame Mr James TIEN. He has not cheated anyone. His name is "田北俊"¹. As the saying goes, a boat sailing against the currents must forge ahead or it will fall behind. He is indeed "not forging ahead (不進)". Mr Allen LEE was heartbroken indeed because he considered democracy a must for Hong Kong, and it is impossible to protect the freedoms and powers of the people without democracy. Mr Allen LEE is now a widely respected person. But why has he earned respect from others only after leaving the Liberal Party and ceasing to be its Chairman? Why is it impossible for Members from the Liberal Party and the DAB to protect human rights like other Members do? Will they suffer if they stand up for human rights? Have they ever thought of their children? Even their children need human rights.

At this point, I feel heartbroken again. I once talked to a Member from the DAB, "What on earth is going on that even the proposal of legislating to implement Article 23 of the Basic Law can be supported? It is intended to undermine our human rights." He said, "Right, Martin. But it will only undermine your human rights, not mine." He must have forgotten what Martin NIEMOELLER said during the World War II. NIEMOELLER, a German priest, was arrested and jailed. When he was released, people thought he would definitely curse the Nazi party; but he did not. Instead, he blamed himself. He said the first thing the Nazi party had done on coming into power was to arrest the communists. However, he did not say a word for the Communist Party, because he was not a communist. Then, the Nazis arrested the Jews. Again he did not say anything for them because he was not Jewish. The Nazis moved on to arrest unionists. Again he did not say anything for them because he was not a unionist. Then, the Nazis started to arrest Catholics. He did not say anything for the Catholics because he was himself a Christian. Finally, he was arrested by the Nazis. But nobody was left then to speak for him. As such, brothers and sisters of the DAB and the Liberal Party — more and more of them are leaving because they do not like listening to all this — what happens to the other people today may happen to you

¹ "田北俊" in Cantonese sounds almost the same as "不進"

tomorrow. The globe is revolving in this way. If you do not help others, no one will be able to help you. It is just a simple fact. Can you go on doing this after seeing so many people take to the streets? How long can you cheat the people? Can you insist that the people have been misled?

Madam President, as I am no longer Chairman of the Democratic Party, I joined the march with the other ordinary citizens. I walked at the back, rather than in the front of the procession. Some people came up to me and said, "Martin, you must continue bad-mouthing Hong Kong and misleading us." Actually, they were hinting the opposite. They kept on shaking hands with me, so hard that even my hands ached. However, I wanted them so much to give me a hard handshake because that was the only way to show their sincerity. I could only put up with the pains in silence.

Madam President, after this demonstration of such a massive scale, we can see that Hong Kong people are no longer the same as they used to be. People used to describe the Democratic Party as living off its past glory. Many people took to the streets during the 4 June rally for the sake of their country and rallying support for students in Beijing in the hope that they could overthrow official profiteers and strive for more democracy. Yet the 1 July march was staged for the sake of our children, our human rights and our future.

Madam President, I was so delighted that day, because I saw that every demonstrator was wearing a smile. I could also see hope on their faces. They are the most valuable assets to us. They took to the streets because they have faith in Hong Kong, and they hope Hong Kong can have a better future.

Mr TUNG should really have gone there to take a look and feel for himself who really love our country and Hong Kong. However, he has now treated those people as his enemies. How disheartening it is! I hope the Government can carry out a constitutional review immediately. Actually, Mr Michael SUEN said in this Chamber in around April 2000 that a review would be conducted immediately after the Legislative Council elections in September 2000 for extensive discussion and studies. The discussion was not going to be as simple as how many seats would be elected. But what is the Government doing now? It will conduct the review on its own. Why is it not going to carry out the review with the participation of the people? Is it not worthwhile for the Government to hold discussions with the 500 000 people?

Why has the Government chosen to carry out the review behind closed doors? Why can the Government not face the public?

Madam President, the Government has now proposed to give us \$10 for each vote. This is no doubt good news to all political parties. At least, it can be said in a certain aspect that the existence value of political parties is thus affirmed. Even independent candidates can take this as a kind of "subsidy". This is certainly worth supporting, though this should have been done a long time ago. However, Madam President, what we want is a whole package. If democrats are asked whether we want \$10 per vote or returning all seats by direct elections without being given a penny, I believe the answer is very simple. We would rather give up all money and even go begging in the streets in return for democracy. We do not care for this offer. The Government must not think it has done something terrific by implementing the proposal of \$10 per vote. Instead of proclaiming that it has done a lot by offering us \$10 per vote, the Government should face squarely to the aspiration of the public to let them enjoy full democracy. Actually, it is not easy to be the Secretary for Constitutional Affairs. The Secretary might be asked by the Chief Executive to "practise Tai Chi" by adopting a delaying tactic in dealing with everything or doing nothing at all. Perhaps the Chief Executive himself is a Tai Chi master for he reportedly plays it very well. Insofar as democracy is concerned, the Secretary might be instructed by the Chief Executive to "practise Tai Chi" and not make any progress forward. If this is really the case, the Secretary has done a great job. Perhaps it has taken the Secretary a long period of time to beg before the Chief Executive eventually agreed to the proposal of \$10 per vote. However, he must face his own conscience; he must not let his own children and the people of Hong Kong down.

Madam President, the Democratic Party did discuss the matter. However, it was finally decided that we could not support the Second Reading. To the Democratic Party, it is absolutely unacceptable for the people of Hong Kong to be denied of democracy. Other compromises, such as those in terms of money, is useless. For the sake of our electors, we cannot agree to such compromises. We have no objection to the proposal of \$10 per vote, since this is beneficial to all candidates. However, we must look at the entire proposal. We cannot subscribe to it if it is not democratic. Thank you, Madam President.

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

MR ANDREW WONG (in Cantonese): Madam President, thank you for allowing me to speak for a second time in accordance with Rule 38(2) of the Rules of Procedure.

PRESIDENT (in Cantonese): Mr Andrew WONG, let me first explain to Members why I have granted you permission to speak for a second time. It is because the first time you spoke, you were speaking in your capacity as Chairman of the Bills Committee and at that time you did not put forward your own views, that is why I have granted you permission to speak on your own views now.

MR ANDREW WONG (in Cantonese): Madam President, I would like to make an introduction before I come to my speech proper and this may in your view be a digression. However, I think that it is very important. In fact, when many Members spoke on this Bill, at times they had also digressed.

First of all, I should like to clarify that I am a member of the Breakfast Meeting, but definitely I am not a member of the Breakfast Group, and recently I have stopped going to these breakfasts. Yesterday, 22 Members of this Council jointly signed an open letter to Mr TUNG. When the press conference was held, it was said that there were 22 Members from the pro-democracy camp and I would like to make it clear here that I am not a member of the pro-democracy camp. I am an independent Member of this Council. I would look at each issue independently and lend my support to every issue that I think is right. I do not follow the footsteps of any faction. This point must be made clear, for if not, people may query why my speech is different from those made by Members of the pro-democracy camp.

I am in complete agreement with the views expressed by many Members of the so-called pro-democracy camp and Members from different political parties on the issue of functional constituencies (FCs). But I hope Members from the FCs can listen to what I am going to say. I am not making an attack on them, saying that they have vested interests, and so on. I only wish to make a plain analysis, like the one made by Mr Frederick FUNG earlier, though I must admit that there are some minor flaws in his argument as he might not be very clear on certain points. However, these things should be ironed out when we sit down and talk. We must make ourselves clear what is

meant by elections by universal and equal suffrage as stated in the International Covenant on Civil and Political Rights. Elections may be direct, but the most important thing about them is that they should be universal and equal. As such, the FC elections are never universal and equal. It can therefore be said that they are not really democratic elections. This point must first be recognized. Some Members may not recognize this point, but I am not talking about the function of such a kind of election. It certainly serves some function, but this form of election will certainly not meet the criteria of being universal and equal. If our political system is to move ahead, we must go in this direction.

It is sad to note that in this Legislative Council (Amendment) Bill 2003, what the Government has done is merely to retain the existing composition of FCs and make some amendments in certain details, such as the adding of more members or changing the name of some constituencies, and so on. As such, the extent of this amendment is very narrow and there is no substantial change to any functional constituency. Had a major change been proposed, I would certainly propose an amendment of my own. This is because over the years I have been making my views on this subject known.

In the debate on this year's policy address, I reiterated that it was in 1994 that I first raised the idea in the former Legislative Council to group the 30 seats returned by FCs into five constituencies, each comprising six seats. Only people from the constituencies concerned could become candidates, and they were to be returned by all the people of Hong Kong, thus making the elections universal and equal. There would only be some restrictions on the eligibility of candidates and that was all. This arrangement was so proposed because we wanted people from all walks of life to be returned to the Legislative Council. I did not have a chance to propose this because Members from the pro-democracy camp and other parties were not interested in this proposal. I have an impression that their views on this are "all or nothing". That is to say, they want a total change, that is, all the seats of the Legislative Council and the Chief Executive should be returned by direct elections. They think that this method of election should be achieved all in one go, otherwise, there should not be any change at all. Why can a gradual change not be made? Why is it that no one makes a proposal to the Government, or at least exerts some pressure on it, to take such a step before a full implementation of direct elections? A Legislative Council returned in this way will comply with the requirements under Article 25 of the International Covenant on Civil and Political Rights. It is sad to find that no one has ever considered this.

So Members have not considered this. Although we did discuss such matters in the Bills Committee, the Government did not agree to this proposal, nor did it agree to propose an amendment to this effect. As Members cannot propose an amendment to it, otherwise, it would be a meaningful thing if an objection is raised under these circumstances. In the Bills Committee, no Member has ever raised this question. I think I should not make this amendment, for the content of such an amendment would go beyond the scope of the Bill, so I have not made such a proposal.

Therefore, on this premise, I think the improvements and minor changes made in this Bill should at least be agreed in principle by Members, though they may not attain the ideal they have in mind. Unless Members do not agree to the major principles related to these at all, such as in the case of Mr Martin LEE who, when talking about major principles, said that he could not accept this assembly in principle. However, if he cannot accept in principle the method by which seats of this Council are returned, then he should not be sitting here in this Chamber after all.

I respect the votes cast by Members and whatever position they may hold, for in fact, we are moving in the same direction. So I would like to make an appeal here that Members should vote in favour of the Bill. If they do not wish to vote in favour of the Bill, and as they have had the chance to say why they cannot agree to the Bill, they should strive to improve on it, but not necessarily voting against it.

The above is my personal view. May I call upon Members of the pro-democracy camp to change their mind and support this Bill. Thank you, Madam President.

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

(No Member indicated a wish to speak)

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the fact that we could resume the Second Reading debate on the Legislative Council (Amendment) Bill 2003 yesterday was attributable to the support and co-operation of Members and the Bills Committee. In fact, the

Government introduced the Bill into the Legislative Council on 26 February this year, but for various reasons, the Bills Committee was not formed until early May. Thanks to the concerted efforts of the members of the Bills Committee, we managed to complete the scrutiny of the Bill in six short weeks.

That the Second Reading debate on the Bill can be resumed as scheduled before the Council rises, I am particularly grateful to Mr Andrew WONG, Chairman of the Bills Committee, members of the Bills Committee and the staff of the Legislative Council Secretariat. I would also like to thank Mr Andrew WONG, Chairman of the Bills Committee, who gave us further advice on matters outside the Bill.

Madam President, first of all, I would take Members briefly through several major issues of the Bill.

Firstly, as regards the delineation of geographical constituencies (GCs), in accordance with the provisions of the Basic Law, it is prescribed in the Bill that 30 Members shall be returned by GCs. Furthermore, under the provisions of the Bill, Hong Kong is divided into five GCs, with four to eight seats in each GC. This proposal reserves enough room for the Electoral Affairs Commission (EAC) to consider whether the boundaries of the five existing GCs could be retained without changes.

Secondly, in order to promote the development of political parties and political groups and encourage independent candidates to run in elections, we implement a financial assistance scheme for candidates to subsidize part of their election expenses, and at the same time reduce the free mailing service for candidates from two rounds to one.

Thirdly, the Bill makes a small amendment to the definition of the electorate of various functional constituencies (FCs). Though the number and composition of FCs basically remain unchanged in 2004, we will make some slight adjustments to the electorates, so as to reflect the latest situation of the relevant constituencies.

Fourthly, the Bill repeals all provisions in the Legislative Council Ordinance on the Election Committee (EC) or any references to it. This is in line with the provisions of the Basic Law, under which the EC shall not return any Members to the third term of the Legislative Council.

Madam President, the Bills Committee held six meetings in total and in the course of the Bills Committee's meetings, members of the public were invited to express their opinions. I am very pleased that the Bill has been scrutinized by Members and we have also collected and collated different views. Later on, I will propose some amendments.

Let me now sum up and respond to several major issues discussed by the Bills Committee.

The first issue is on the financial assistance scheme. At one of the Bills Committee meetings, some members of the public expressed the view that given the huge fiscal deficit confronting the Government, it should not utilize public funds to subsidize the election expenses of candidates. However, the Government's proposal to provide financial assistance to candidates of Legislative Council elections is in fact an answer to the aspirations and suggestions made by various political parties, political groups and independent Members over the years. The purpose of this scheme is to provide favourable conditions to encourage more public-spirited candidates to stand for Legislative Council elections and participate in the work of the Legislative Council, thereby facilitating the development of the local political system. In the long run, this can also facilitate the development of political parties and political groups.

In fact, I would like to explain to Members that, as in the example of Mr Martin LEE's earlier argument, I did not put forward the proposal on this financial assistance scheme for the purpose of discussing the issue of monetary assistance with Members and future candidates. The most important point is that we hope everyone can work with one mind in promoting the development of political parties in Hong Kong and that of the political system. This is because I think the developments of the Hong Kong political system and political parties are complementary to each other and inseparable.

This proposal was discussed at the Legislative Council Panel on Constitutional Affairs in December last year and January this year, and it was basically endorsed by the Panel, and today, this proposal has also been basically agreed by the majority of Members on the Bills Committee.

As regards the utilization of resources, the Government has respectively explained at the Panel and Bills Committee meetings that the implementation of

the financial assistance scheme will not incur a lot of extra resources. The reason is we would reduce the free mailing service for candidates from two rounds to one and resources thus saved can be deployed to other areas. Moreover, the Government attaches a great deal of importance to the development of the political system and that of political parties and hope more independent candidates can run in elections. We think this is a step worth taking.

Meanwhile, Madam President, we have also heard some voices saying that we should not propose to reduce one round of free mailing service. Our proposal on reducing one round of free mailing service is actually made in response to views expressed by Members in the past. They thought that not only were two rounds of mailing service not in line with the environmental protection principles, but it also lacked flexibility and might not fit in with the election strategies of candidates. Therefore, the Government has decided to reduce one round of free mailing service so that resources thus released can be used more flexibly.

I must also clarify that though the Government has cancelled one round of free mailing service, candidates can, depending on their individual needs, send a second round of mail to electors at their own expenses. According to the regulation, the relevant mailing expenses can be counted towards their election expenses and the relevant expenses can be included in full under the financial assistance scheme.

Finally, I would also like to talk about the mailing service. When the Registration and Electoral Office sends polling cards to electors, it will attach a copy of the candidates' briefs and platforms. In this regard, I believe this will be of some help to candidates.

A Member proposed to allow candidates to continue to enjoy two rounds of free mailing service. After careful consideration, we still think that reducing two rounds of mailing service to one is a more appropriate way of deploying resources.

Madam President, I would now turn to talk about the delineation of FC electorates. The Bills Committee has discussed at length the provisions on the delineation of FCs, in particular the arrangements for the delineation of the Information Technology FC electorate. Having heard the views of Members, we have proposed several amendments.

Firstly, as regards the Information Technology FC, we have proposed to the Bills Committee to add four organizations to the Information Technology FC. These four organizations are namely, the Hong Kong & Mainland Software Cooperation Association, Information Systems Audit and Control Association (HK Chapter), Professional Information Security Association and Internet Professionals Association.

Our original proposal was to grant the status of FC elector to the Council Members or Executive Committee Members of these four organizations and to members of such associations who have engaged in the IT business for five years. Our original proposal was made after taking into consideration such factors as the nature of these four organizations, their establishment date, the number and qualifications of their members and activities that they had organized for the Hong Kong community. However, a Member pointed out at a Bills Committee meeting that according to the existing arrangements, no Council Member or Executive Committee Member of any organization have voting rights in the Information Technology FC. Members requested that we should reconsider our proposal in this area. Furthermore, some Members think that it is rather stringent to require the members of such organizations to have five years' experience in the business. Therefore, after taking Members' views into careful consideration, we have proposed a further amendment. On the one hand, we will delete the original requirement on only allowing Council Members or Executive Member as electors, and on the other, we will relax our original requirement of five years' experience in the IT sector to four years. We believe the inclusion of these four organizations into the FC under the revised proposal can reflect the latest development in the Information Technology FC. At the same time, it will not lead to any significant changes in the delineation of the FC electorate, the size of the electorate or its nature. This is in line with our policy objective towards this FC. As regards alterations made to this amendment, I am particularly grateful for the input of Bills Committee members as well as the suggestions and advice given by Dr Raymond HO.

Secondly, I would like to talk about the Tourism FC. The travel industry members of the former Hong Kong Tourist Association (HKTA) were originally eligible for registration as voters in the Tourism FC, but with the HKTA being renamed as the Hong Kong Tourism Board (HKTB) by virtue of the Hong Kong Tourist Association (Amendment) Ordinance 2001 and the abolition of the membership system, the provisions of the Legislative Council Ordinance empowering members of the HKTA to vote in the FC were also repealed consequentially.

Back then, the Government amended the Ordinance to change the name of the HKTA to the HKTB because it had been given to understand that members of the HKTA could retain their elector status in the FC on the merit of other qualifications. However, some Members pointed out to us that this was not necessarily the case in reality. The circumstances of individual former HKTA travel industry members may not allow them to retain their elector status on the merits of other qualifications. In this connection, we have proposed an amendment to reinstate the Tourism FC elector status of all organizations that were travel industry members of the former HKTA prior to the commencement of the Hong Kong Tourist Association (Amendment) Ordinance 2001.

Thirdly, according to the grouping of functional sectors, the electors of some FCs are corporate or individual members of "umbrella organizations", which have voting rights at the general meetings of such organizations.

Section 3(2A) of the existing Legislative Council Ordinance provides that if amendments to the constitutions of such associations are related to certain matters, for example, the objects of the organization, the criteria and conditions of membership of the organization or the eligibility of members of the organization to vote at its general meeting, then the approval of the Secretary for Constitutional Affairs will be required before such amendments can be implemented.

However, the purpose of this provision is to ensure that any changes made to the constitution would not alter the electorate or the nature of the relevant FC without the approval of the Government. Therefore, in response to comments made by Miss Margaret NG at the Bills Committee, we have proposed an amendment to put beyond doubt that the power of the Secretary for Constitutional Affairs in approving amendments to the constitutions of associations is exercisable only for the purpose of defining the composition of FC and not for any other purposes.

Apart from the three amendments mentioned, we have also proposed several amendments to incorporate certain representative bodies into the Agriculture and Fisheries FC, Transport FC and Wholesale and Retail FC. Members did not raise any objections to the above adjustments at the Bills Committee meetings.

All in all, according to the proposals in the Bill, we will increase the number of eligible electors in the FC electorates to about 299 300.

Furthermore, Madam President, we have also proposed some technical amendments to other provisions of the Bill, so as to perfect the Bill.

Madam President, I would now like to say something in response to the comments and opinions made by some Members last night and this morning in respect of certain aspects.

Mr LEUNG Yiu-chung and other Members asked why candidates could not withdraw from the election after the close of nominations. In fact, this issue was also discussed at length in the course of the Bills Committee's deliberations. Mr SZETO Wah spoke on the subject at the Panel on Constitutional Affairs. He said that there should not be any arrangement for withdrawal in order to prevent people from manipulating the election results or taking advantage of the leeway to affect the election results. After serious consideration, we consider that the existing regulation should be retained. If candidates are allowed to withdraw from the election after the close of nominations, the relevant arrangements could be subject to abuse or manipulation, or even lead to corruption. As the creditability of the electoral system is very important, we do not wish to see it being undermined in any way.

Furthermore, this proposal means that there will be no certainty as to who are standing in the election right up to the polling day. This could cause confusions to electors and impede the full launch of efforts to take forward electoral arrangements. According to my understanding, the Bills Committee is basically in support of retaining the original arrangement after considering the explanation of the Government.

A Member proposed to adopt a method, in which there will be automatic succession of the "next-in-line" candidate on the list. However, under the proposed method, if a vacancy created by a candidate's failure to assume office, death, resignation or loss of the Legislative Council Member status subsequent to his election, then it could be filled up by the "next-in-line" candidate who is on the same list of the successful candidate. But this method could not be applied to a list that does not have a "next-in-line" candidate, a list that has only one independent candidate or a FC that does not adopt a "list voting system". Therefore, after careful consideration, we decided to retain the existing "list voting system".

Mr Frederick FUNG and several other Members have also asked in this debate and on other occasions why a Single Pooling System cannot be adopted to allow electors to indicate their support for individual candidates.

We have considered the fact that Hong Kong has a history of only 10-odd years in terms of election and after going through the two recent Legislative Council elections, we believe the electors of Hong Kong have gradually become accustomed to the existing "list voting system" and also come to regard a voting list as one unit. Conversely, if we adopt any kind of open "list voting system", then this will bring about fundamental changes to our established concept and electors may also find the new system rather difficult to grasp. As elections in Hong Kong have only a short history, repeated changes to the voting system may not be most convenient and appropriate to the electors.

As regards elections in Hong Kong, if the two voting systems, namely, the "Proportional Representative System" and "List Voting System" were to be compared, we need to gain further experience and further knowledge about the two systems. So, it is more appropriate to maintain the existing "List Voting System" at this stage.

Madam President, during the debate last night and today, we heard Mr CHEUNG Man-kwong and several other Members refer to the issues of universal suffrage and political development. In fact, as compared to the case before the reunification of Hong Kong, Hong Kong people will now participate more actively in more aspects of public affairs in Hong Kong. Let me revert to the subject of Legislative Council election covered by today's Bill. All the existing seats of the Legislative Council are returned through elections, and though the method and form by which the FC and directly elected seats are returned vary, they are representative in each of their own ways. Members returned through direct elections represent the views of people in the community, while those returned through the FCs represent the voices of different sectors and the views of different strata in the community. In fact, apart from reflecting the views of the business and professional sectors, the representatives of the FCs, for example, those of District Councils and the labour sector, can represent the interest of different sectors and grass-roots members of the public.

Over the years, quite a large number of Members returned through the FCs have demonstrated real dedication in working for Hong Kong and they can also reflect public interests at large. Among these Members, I have mentioned Mrs Selina CHOW and Mr Howard YOUNG before and recently, they have done a lot for the tourism sector before and after the outbreak of SARS. I have also seen Dr LO Wing-lok and Mr Michael MAK voicing a lot of opinions

and reflecting a lot of views on behalf of the medical and health care sectors and they are also concerned about the health of the public. In fact, in the course of dealing with this Bill, we have exchanged views with Mr SIN Chung-kai and other Members at great lengths on matters concerning the IT sector. It seems that Members of the Democratic Party are not totally indifferent to the composition of the FCs and I believe they also have some positive views.

Since Hong Kong started to have elections for the Legislative Council 18 years ago, the quality of Members has constantly improved and through different forms of election, Members can come into more contact with the public and follow closely the aspirations of the community to fully reflect the views of the community on different areas. Madam President, today is one of the rare occasions that I agree entirely with Ms Emily LAU on one point. I very much agree with Ms LAU that Legislative Council Members actually have very enormous powers. This is because according to the design of the Basic Law, the executive and the legislature will exercise checks and balances on each other. Any bill and budget proposed by the Government can be implemented only with the support of over half of the Legislative Council Members. This system of checks and balances and mutual monitoring is similar to that under overseas parliamentary systems. Therefore, I believe Ms Emily LAU will at least no longer say Legislative Council Members do not have sufficient powers in future.

Since the reunification, we have progressively and continuously increased the element of direct election in Legislative Council elections. This is a progress for the Legislative Council. The Basic Law provides that we have to promote the political development of Hong Kong in a gradual and orderly manner and taking account of the actual situation of Hong Kong, with the ultimate aim being universal suffrage. I believe Members must be very clear about my position. I will conduct internal studies, public consultations and deal with the work of local legislation in the next four years on a progressive basis. This is actually not a question of whether "we change" the timetable "or not", and not a question of work procedures. We are working strictly in accordance with the Basic Law, our constitution. All principal officials and Members, including Ms LAU, and myself took an oath to uphold the Basic Law when we assumed office. Since everyone is doing their job and carrying out their public duties in accordance with the Basic Law, we are completely free to continue our discussions on matters concerning the development of the political system inside and outside this Council.

The Basic Law prescribes that we have to achieve the ultimate goal of universal suffrage and there is only one ultimate destination, but the views on the timing, pace and course for achieving this ultimate goal vary from person to person. Therefore, every time when I talk about political review and political development, I keep reminding Members that we should work together and continue to work hard to achieve the target of "seeking common ground while retaining the differences, and reaching a consensus". In order to achieve this target, various political parties in the Legislative Council must be willing to listen to the views of all sectors in a practical manner and mutually accommodating attitude before we can have the opportunity to open up new spheres for the future political development in Hong Kong. The Basic Law has conferred on the Legislative Council a very important historical mission and that is, any changes to the electoral system can be submitted for the consideration of the Government only with the endorsement of a two-third majority of all Members of the Legislative Council. Therefore, I am actually very willing to continue to work for a consensus with different Members and political parties of this Council on the political development of Hong Kong after 2007 and work hand in hand to open up more new spheres for the future of Hong Kong; for new spheres are extremely important to the future development of Hong Kong.

Madam President, several Members asked whether the Legislative Council would be enacting a piece of draconian law if it has to deal with Article 23 of the Basic Law (Article 23). The agenda of Article 23 is not one of today's agenda item. However, I would like to reiterate one point, and that is, since the reunification of Hong Kong, the freedoms and rights of Hong Kong people could be fully protected under the Basic Law and the "one country, two systems" principle. Before 1997, many Members of this Council were concerned whether the rights and freedoms of Hong Kong people could be protected. The past six years have sufficiently proved that the institutions of Hong Kong, the Basic Law and Laws of Hong Kong could fulfil the mission of protecting human rights and freedoms. Apart from fully respecting the international covenant on human rights in accordance with the provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance, our judicial system and Court of Final Appeal can also attract the most prestigious and most principled local and overseas judicial officers to protect the human rights and freedoms cherished by Hong Kong people.

Day in and day out, the officials of the Government of the Hong Kong Special Administrative Region are very concerned that our legislative proposals

must be consistent with the provisions of the Basic Law, implemented and enforced in accordance with the Hong Kong Bills of Right. Madam President, I therefore have full confidence that with the co-operation of my colleagues in the Government and Members of this Council, the human rights and freedoms cherished by Hong Kong people and protected under the "one country, two systems" will be upheld.

Madam President, after the passage of the Bill, we will embark on other preparatory work on the 2004 Legislative Council Election and we will also ensure that as in the past, the election will be conducted in a fair, open and impartial manner.

Madam President, I implore Members to support the Second Reading of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Legislative Council (Amendment) Bill 2003 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

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

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

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

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr Eric LI, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Ms Cyd HO, Mr Albert HO, 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-sek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted against the motion.

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

The PRESIDENT announced that there were 50 Members present, 30 were in favour of the motion and 19 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Legislative Council (Amendment) Bill 2003.

Council went into Committee.

Committee Stage

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

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2003

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Legislative Council (Amendment) Bill 2003.

CLERK (in Cantonese): Clauses 1, 4 to 10, 15, 17 to 37, 40 to 43, 46, 49 to 52, 54, 55 and 56.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 11 to 14, 16, 38, 39, 44, 45, 47, 48, 53 and 57.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to clauses 2, 3, 11 to 14, 16, 39, 44, 45, 47, 48, 53 and 57 and the deletion of clause 38. These amendments can roughly be categorized into five groups.

The first group is the amendment relating to clause 2 of the Bill. The amendment seeks to clarify that the power of the Secretary for Constitutional Affairs to approve of the amendments to the revised Articles of Association as specified in subsection (2A) under section 3 of the Legislative Council Ordinance can be exercised only for the definition of the composition of functional constituencies (FCs) but not for other purposes.

The second group of amendments is related to the adjustment to the delimitation of the FC voters. The objective of the amendments to clauses 11 and 57 of the Bill is to reinstate the elector status of members of the tourist industry of the former Hong Kong Tourist Association. The amendments to clauses 13, 44, 45 and 47 are related to the adjustments to the electorates of the FCs for the import and export, agriculture and fisheries, shipping and transport as well as wholesale and retail sectors, and the revision of the names of the relevant organizations.

The third group of amendments is related to the amendment to clause 12 of the Bill. The amendment seeks to improve the expression of section 20V(2)(b) of the Ordinance. According to section 20V(1)(e) of the Ordinance, art groups that receive subsidies from designated organizations within the relevant period are eligible for registration as electors of the FC for the sports, performing arts, culture and publication sectors. As explained under section 20V(2)(b) of the Ordinance, the relevant period means the period from 1 April 1994 to the date on which the group applied for registration as elector. Clause 12 of the Bill originally proposes changing the threshold of the relevant period to 1 April 1998 with the objective of maintaining the qualifying number of years for the Legislative Council Election 2004 at six years. We now propose making an amendment to clause 12 to explicitly specify in the provision that from the Legislative Council Election 2004 onwards, any art group that has received the relevant subsidies within six years before the date of application for registration as elector is eligible for registration as elector. This change can obviate the need to specify a certain date as the threshold date for determination of the eligibility of elector registration and the need to amend the legislation from time to time. Furthermore, the amendment also protects the electors registered under the existing provisions so that their status as electors will not be affected.

The fourth group is the amendments relating to clauses 14, 16 and 48. The major objective of these amendments is to incorporate the four bodies relating to the information technology sector into the information technology FC. As I said at the resumed Second Reading debate, the relevant amendments reflect the views expressed by Members on the criteria for the delimitation of FC electors.

Madam Chairman, the last group, which is the fifth group, is related to the amendments to clauses 2, 3, 38, 39 and 53. All these amendments are

technical. The major objective is: first, to explicitly specify that the Government does not need to give any subsidies when the reported election donations are equal to the reported election expenses; second, we have also illustrated that the Electoral Affairs Commission can formulate regulations on the implementation details of the financial assistance scheme including specifying that the lawful administrator of the deceased's property or other people specified in the regulations, and it can take relevant actions against the deceased candidate's claim for subsidies; and third, we specifically specify that the time limit for filing an assistance claim can be extended in accordance with sections 37 and 40 of the Corrupt and Illegal Practices Ordinance.

Madam Chairman, on the whole, the above amendments have generally been endorsed by members of the Bills Committee. I implore Members to support them.

Proposed amendments

Clause 2 (see Annex IV)

Clause 3 (see Annex IV)

Clause 11 (see Annex IV)

Clause 12 (see Annex IV)

Clause 13 (see Annex IV)

Clause 14 (see Annex IV)

Clause 16 (see Annex IV)

Clause 38 (see Annex IV)

Clause 39 (see Annex IV)

Clause 44 (see Annex IV)

Clause 45 (see Annex IV)

Clause 47 (see Annex IV)

Clause 48 (see Annex IV)

Clause 53 (see Annex IV)

Clause 57 (see Annex IV)

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

DR RAYMOND HO (in Cantonese): Madam Chairman, the Secretary mentioned the inclusion of seven bodies, or seven trade organizations or associations, in the Information Technology FC. During the scrutiny of the Bill, I expressed the view that some newly joined bodies were actually newly set up, with some being established only late last year. In the course of deliberations, we were told by the Government that, despite their short history, corporate members must meet the "five-year requirement" before they can be eligible for the right to vote. I objected to that because a company could acquire two votes if it was represented in the Council or Executive Committee and, at that time, certain individual members were given one additional vote. This is why I strongly opposed this proposal at that time. The Government later changed its mind and agreed that in no circumstances would two votes be given. Nevertheless, I remained not convinced even if the elector eligibility is given by a company to enable its member to be eligible for one vote on the ground that the company is represented in the Council or Executive Committee.

In my opinion, the eligibility to vote can only be given by a company to its member. This is because FCs should be divided into three categories: first, on an individual basis, that is, only individuals can vote in professional constituencies such as the engineering constituency; second, only companies or bodies will have the right to vote; and third, the IT functional constituency. This last constituency is very special in the sense that it falls between both categories — being composed of companies and individuals. This arrangement was acceptable to me. I absolutely supported such an arrangement by the Government six or seven years ago because I considered it better for the coverage to be broadened as much as possible. This is also a unique feature of

the Information Technology FC. However, the inclusion of seven more bodies will mean a 5.62% increase in the number of electors. This substantial increase, the second highest in this adjustment exercise, is quite significant. In my opinion, companies having a history of less than five years should not be eligible for the right to vote, even if they are represented on the Executive Committee or Council.

In order to broaden representativeness, I think the relevant period can be lowered from five to four years. I agree this can help enhance the representativeness of a FC. As such, I proposed an amendment to the effect that a company with insufficient experience will not be automatically given the right to vote just because it is represented in the Council or Association, or it is an experienced member. Otherwise, I will not give my consent. Nevertheless, I agree that the period be reduced from five to four years to enable more companies to become eligible electors of this FC. This can help strike a balance between the two and I consider this approach a better option. I was very pleased to note that the Secretary later agreed with me. I thus indicated that I would withdraw my amendment if the Government's amendment was completely identical with mine. Madam Chairman, as the Secretary is going to move this amendment later, I have decided to withdraw mine.

For the above reason, I very much appreciate this approach taken by the Government, though the authorities have acted very stubbornly in the course of deliberations and completely ignored our views, though we have full justifications. This is not merely my personal view; many Honourable colleagues hold the same view too. The FCs were greatly divided on this — some considered it a good idea but some thought otherwise. Under such circumstances, a consistent arrangement should be adopted as far as possible in order to enhance the acceptability of the FCs. I very much appreciate the fact that the Secretary eventually accepted the arrangement.

Thank you, Madam Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Constitutional Affairs to speak again.

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

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

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to clause 38, which deals with deletion, has been passed, clause 38 is deleted from the Bill.

CLERK (in Cantonese): Clauses 2, 3, 11 to 14, 16, 39, 44, 45, 47, 48, 53 and 57 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I move the amendment to section 7 of the Schedule to reflect the amendments to the Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 gazetted on 16 May this year. The amendment has generally been endorsed by the Bills Committee. I implore Members to support it.

Proposed amendment

Schedule (see Annex IV)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2003

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the

Legislative Council (Amendment) Bill 2003

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Legislative Council (Amendment) Bill 2003 be read the Third time and do pass.

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHEUNG Man-kwong rose to claim a division.

PRESIDENT (in Cantonese): Mr CHEUNG Man-kwong has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote. Are all your buttons in good order?

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

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Dr Eric LI, Mr NG Leung-sing, Miss Margaret NG, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Ms Audrey EU voted for the motion.

Ms Cyd HO, Mr Albert HO, 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, Dr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted against the motion.

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

THE PRESIDENT announced that there were 49 Members present, 31 were in favour of the motion and 17 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): Legislative Council (Amendment) Bill 2003.

MOTIONS

PRESIDENT (in Cantonese): Motions. Proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Hong Kong Court of Final Appeal Ordinance.

PROPOSED RESOLUTION UNDER ARTICLE 73(7) OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE HONG KONG COURT OF FINAL APPEAL ORDINANCE

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move that this Council endorses the appointment of The Right Honourable The Lord WOOLF of Barnes, The Right Honourable The Lord SCOTT of Foscote and The Right Honourable Sir Ivor RICHARDSON to the Court of Final Appeal as non-permanent judges.

I should first thank the Honourable Margaret NG, Chairman of the Legislative Council Panel on Administration of Justice and Legal Services, and Panel members for formulating a set of modified procedure for this Council to endorse the appointment of judges under Article 73(7) of the Basic Law. According to such procedures as agreed by the House Committee, the Administration informed the House Committee on 2 May this year that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on these three appointments.

On 27 May, representatives from the Administration and the Secretary to the JORC attended a meeting of the Subcommittee formed by the House Committee of this Council to examine these appointments. They answered Members' questions and furnished additional information.

Article 92 of the Basic Law stipulates that judges of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions. Under section 12(4) of the Hong Kong Court of Final Appeal Ordinance, a person shall be eligible to be appointed as a non-permanent judge from another common law jurisdiction if he is (a) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction; (b) a person who is ordinarily resident outside Hong Kong; and (c) a person who has never been a Judge of the High Court, a District Court or a permanent magistrate in Hong Kong.

The total number of persons holding the office as non-permanent judges at any one time is capped at 30 under section 10 of the Hong Kong Court of Final Appeal Ordinance. At present, there are 20 non-permanent judges comprising 12 from Hong Kong and eight from other common law jurisdictions. The Court of Final Appeal has been functioning well. Apart from a few appeals, the Chief Justice has so far usually drawn the "fifth judge", that is, the judge other than the Chief Justice and the three Permanent Judges, from the list of non-permanent judges from other common law jurisdictions for every appeal. That being so, and having regard to the operational needs of the Court, the Chief Justice considers that it will be conducive to the smooth functioning of the Court for these three appointments to be made.

In accordance with Article 88 of the Basic Law, the JORC has recommended to the Chief Executive the appointment of The Right Honourable

The Lord WOOLF of Barnes, The Right Honourable The Lord SCOTT of Foscote and The Right Honourable Sir Ivor RICHARDSON as non-permanent judges from other common law jurisdictions to the Court of Final Appeal.

The Right Honourable the Lord WOOLF of Barnes is the Lord Chief Justice of England and Wales since 2000. He was called to the Bar at the Inner Temple in 1954 and practised until 1979, when he became a Judge of the Queen's Bench Division of the High Court of Justice. Between 1992 and 1996, he was a Lord of Appeal in Ordinary; and between 1996 to 2000, he was Master of the Rolls. His 24-year judicial experience has covered all areas of the law and in particular, public and administrative law and criminal law.

The Right Honourable The Lord SCOTT of Foscote is a Lord of Appeal in Ordinary, serving as a member of the United Kingdom's highest appellate court since 2000. He was called to the Bar at the Inner Temple in 1959 and became a Judge of the High Court of Justice of the Chancery Division in 1983. From 1991 to 1994, he was a Lord Justice of Appeal. Between 1995 and 2000, he was Vice-Chancellor of the Supreme Court and head of Civil Justice. His judicial experience has covered all legal fields including, in particular, trusts, company law, property and tax.

The Right Honourable Sir Ivor RICHARDSON is the immediate past President of the Court of Appeal of New Zealand. He served as a judge for 25 years since 1977. He was appointed to the Privy Council in 1978 and sat in appeals to the Judicial Committee of the Privy Council. His judicial experience has covered all areas of law.

The three judges have eminent international standing and reputation, and their appointment will be a great asset to the Court of Final Appeal of Hong Kong in upholding the rule of law and the independence of the Judiciary.

The Chief Executive is happy to accept these recommendations of the JORC, and subject to the endorsement of the Legislative Council, will make the appointments.

Once Members graciously endorse these appointments, we propose that the appointments take effect within July 2003, on completion of the remaining constitutional procedures. I formally invite Members to endorse the appointments.

The Chief Secretary for Administration moved the following motion:

"That the appointment of -

- (a) the Right Honourable The Lord Woolf of Barnes;
- (b) the Right Honourable The Lord Scott of Foscote; and
- (c) the Right Honourable Sir Ivor Richardson,

as judges of the Hong Kong Court of Final Appeal from other common law jurisdictions pursuant to section 9 of the Hong Kong Court of Final Appeal Ordinance be endorsed."

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

MR MARTIN LEE: Madam President, in my capacity as the Chairman of the Subcommittee on proposed senior judicial appointments, I wish to report briefly on the deliberations of the Subcommittee.

On 2 May this year, the Director of Administration advised Members that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission on the appointment of three non-permanent judges from other common law jurisdictions to the Court of Final Appeal. Subject to the endorsement of this Council under Article 73(7) of the Basic Law, the Chief Executive will make the appointments. The recommended appointees are:

- (a) The Right Honourable The Lord WOOLF of Barnes, the Lord Chief Justice of England and Wales;
- (b) The Right Honourable The Lord SCOTT of Foscote, a Lord of Appeal in Ordinary from England; and
- (c) The Right Honourable Sir Ivor RICHARDSON, the immediate past President of the Court of Appeal of New Zealand.

The Subcommittee considered the curriculum vitae of each of the three recommended appointees, and agreed that they have extensive legal and judicial experience and eminent standing.

At the request of the Subcommittee, the Administration provided for Members' reference a selection of judgements of the three recommended appointees, and some major publications by Lord WOOLF.

Madam President, members of the Subcommittee have no reservation whatsoever in supporting the proposed appointments and would urge Honourable Members to support these appointments.

MISS MARGARET NG: Madam President, I support the motion of the Chief Secretary for Administration.

The judges recommended for appointment as non-permanent judges of the Court of Final Appeal are very distinguished judges in their own jurisdictions. Lord WOOLF is, in addition, well-known to every practitioner of administrative law and judicial review for the leading learned texts which he has published in this area. Many of his judgements have been groundbreaking. His wisdom in the law will be most pertinent to the development of the law in the Hong Kong Special Administrative Region.

The famous, and I may say, somewhat controversial reform of civil procedure he initiated in England a few years earlier, is the starting point of our own exercise which the Chief Justice of the Court of Final Appeal has embarked upon and is still in progress.

Over the years, Lord WOOLF has paid many visits to Hong Kong. His interest and goodwill are evident. Hong Kong is fortunate indeed to be able to add his name, and the names of Lord SCOTT and Sir Ivor RICHARDSON, to the list of non-permanent judges of its Court of Final Appeal. It is right and fitting that this Council endorses the appointments, and I am pleased to support the motion.

Madam President, this is not the first time jurists of the highest distinction from other common law jurisdictions are appointed to Hong Kong's

Court of Final Appeal, thereby consolidating the prestige of this court and ensuring the world's confidence in the continuity of the rule of law in Hong Kong. It rancours with the legal community, the Hong Kong community and the world at large, that a judgement issuing from so respected a court as this should be in effect overturned when the Chief Executive chooses to seek a reinterpretation of the Basic Law from the Standing Committee in a case where the executive authorities have lost in the court's judgement. The interpretation of 1999 in the right of abode cases has seriously undermined the rule of law in Hong Kong. I urge the Government to undertake never to do so again in the future. Otherwise, no appointment to the Court of Final Appeal, however distinguished, will save the authority of the Court of Final Appeal or confidence in the maintenance of the rule of law in Hong Kong.

Thank you, Madam President.

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

MS EMILY LAU (in Cantonese): Madam President, I speak in support of the motion moved by the Chief Secretary for Administration.

Madam President, this is the third time the Legislative Council exercises the power conferred upon us by Article 73(7) of the Basic Law, that is, to endorse the appointment of judges to the Court of Final Appeal or that of the Chief Judge of the High Court as recommended by the Chief Executive. The first time was in June 2000, and the second in December 2000. Madam President, you may recall that we were very "noisy" then, particularly on the first occasion because we were only given very little information and the whole process was conducted not in accordance with the procedures. Madam President, afterwards, you might have noted that under the leadership of Miss Margaret NG, the Panel on Administration of Justice and Legal Services drew up a set of procedures for new appointments in future and the authorities agreed to act accordingly. Therefore, it has gone so much smoother this time. I hope we will all follow the procedures from now on because the two previous experiences, with the first one in particular, were very bitter.

Madam President, the power which Article 73(7) confers upon us is real and solid. This is because, just as Secretary Stephen LAM said earlier, this

Legislative Council and the executive authorities are monitoring as well as checking and balancing one another. Of course, if the list recommended is not controversial, just as is the case today, not many Members will remain in their seats, and later, we will raise our hands and endorse it. However, if unfortunately, some highly controversial lists are recommended, then I believe the Legislative Council or its relevant Subcommittee will bring their function into play. Therefore, this procedure is not perfunctory.

Madam President, I also agree with what the Chief Secretary for Administration and two Members have said earlier. They said these three overseas judges nominated have eminent international standing and reputation, and their appointment will be of great contribution to the Court of Final Appeal of Hong Kong (CFA) in upholding the rule of law and the independence of the Judiciary. Madam President, at this precarious time when we soon have to enact laws on Article 23 of the Basic Law, the authorities have once and again reminded us not to be afraid; even if some harsh laws are enacted, the CFA will handle the situation. As we all know, in a region where the rule of law holds, particularly where there is an independent judicial system, the Court is the final safeguard for upholding human rights.

Madam President, you may recall that in 1997, a controversy erupted as a result of inviting judges from overseas common law jurisdictions to join the CFA. Article 82 of the Basic Law states that the CFA may as required invite judges from other common law jurisdictions to sit on the CFA. Madam President, in the English version, you can see that when it mentions "judge", the word is in its plural form with an "s". At that time, the argument dragged on for quite some time over the "s". Madam President, why did we have to argue for so long? It was not that we did not trust the local judges, but since the Hong Kong Special Administrative Region also has to follow the tradition of the British common law, we hoped that we could continue to tie in with the common law jurisdictions and thus also hoped that there would be more overseas judges sitting on the CFA. Nevertheless, we lost in the argument and the result was there could only be one non-permanent overseas judge sitting on the CFA on each occasion. Sometimes, some non-permanent judges were also not from overseas.

Although this argument has closed, I believe everyone will say that since it has been limited to only one non-permanent judge — I also agree with what the Chief Secretary for Administration said, the CFA is now operating smoothly — the general public can trust the Court only to a certain extent. If

we look at the opinion polls, we can see that the findings are mostly that insofar as the three arms of government are concerned, Madam President, you and I know that we are now last on the list. We have to attribute this to the "royalists" and to the fact that we are always divided. We are really last on the list, and I am not joking. First on the list is the Judiciary — in fact, Madam President, I was wrong, that was not the case, the last on the list is the executive authorities. The TUNG Chee-hwa clique comes last, we are the second last, but the Judiciary comes first. We argued then because of an "s". Consequently, nothing could be done, and we could only have one judge. However, I think we have to tell the public and the authorities on this occasion today that we are very much concerned that we must have someone of the best quality and who are impartial to sit on our Court. Only then will our people feel confident and know that if there are any arguments, fair judgements will be made.

Therefore, Madam President, I am pleased to join the other colleagues in supporting the addition of Lord WOOLF, Lord SCOTT and Sir Ivor RICHARDSON to the list of non-permanent judges of the CFA. With these remarks, I support the motion moved by the Chief Secretary for Administration.

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

(No Member indicated a wish to speak)

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

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I am grateful for the views expressed by Members just now, and I am particularly grateful for the support for my motion. The conduct of this whole exercise follows the modified procedures recommended by the Panel on Administration of Justice and Legal Services of this Council, taking into account the experience in the last two senior judicial appointment exercises. And I agree entirely with Ms Emily LAU that this has been a very smooth exercise as far as the appointment of these three eminent judges are concerned.

The Administration appreciates the importance Members attached to the question of how the Legislative Council could best discharge its constitutional duties under Article 23 of the Basic Law and we will continue to co-operate fully. And indeed, in this exercise, we have provided all the information relating to the current appointment and we have facilitated Members in considering the proposed appointment fully.

I also agree that the Court of Final Appeal as the highest appellate court in Hong Kong plays a very important role in upholding the rule of law here. And I am sure the appointment of The Right Honourable The Lord WOOLF of Barnes, The Right Honourable The Lord SCOTT of Foscote and The Right Honourable Sir Ivor RICHARDSON will reinforce the rule of law and judicial independence in Hong Kong.

With these remarks, I am grateful for Members' endorsement.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

PROPOSED RESOLUTION UNDER ARTICLE 73(7) OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move that this Council endorses the appointment of Mr Justice Geoffrey MA Tao-li as the Chief Judge of the High Court.

On 2 May, the Administration informed the House Committee that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on this appointment.

Representatives from the Administration and the Secretary to the JORC attended the meeting of the House Committee Subcommittee held on 27 May and responded to Members' questions on this appointment. They also provided further information on this appointment to the Subcommittee following that meeting.

The Chief Judge of the High Court is the court leader of the High Court. He is also the President of the Court of Appeal. The current Chief Judge of the High Court, Mr Justice Arthur LEONG, will retire on 14 July. The post will then fall vacant.

Articles 90 and 92 of the Basic Law, read together with section 9 of the High Court Ordinance, spell out the required qualification of the Chief Judge of the High Court.

The JORC is fully satisfied that Mr Justice MA has met these qualifications. It has recommended to the Chief Executive that he appoints Mr Justice MA as the Chief Judge of the High Court.

Mr Justice MA, currently a Justice of Appeal of the Court of Appeal, has been serving in the Judiciary since December 2001. He is highly respected not only by the Judiciary but also by the legal profession for his integrity, competence in law and judicial temperament. Mr Justice MA has confirmed to the Chief Justice that he is willing and able to take up the post of the Chief Judge of the High Court, and to comply with the eligibility requirements including the requirement of Chinese Nationality with no right of abode in any foreign country.

The Chief Executive is therefore happy to accept the recommendation of the JORC, and subject to the endorsement of this Council, will make the appointment. So I invite Members to endorse this appointment.

The Chief Secretary for Administration moved the following motion:

"That the appointment of the Honourable Mr Justice Geoffrey MA Tao-li as the Chief Judge of the High Court be endorsed."

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

MR MARTIN LEE: Madam President, again in my capacity as the Chairman of the Subcommittee on proposed senior judicial appointments, I wish to report briefly on the deliberations of the Subcommittee.

On 2 May this year, the Administration advised Members that the Chief Executive had accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of Mr Justice Geoffrey MA as the Chief Judge of the High Court, to replace Mr Justice Arthur LEONG whose term will expire on 13 July this year. Subject to the endorsement of this Council under Article 73(7) of the Basic Law, the Chief Executive will make the appointment.

The Subcommittee noted that the JORC had considered a list of 103 persons comprising serving judges, practising barristers, practising solicitors and public officials with legal experience, and came up with a shortlist of six candidates. As three of those candidates indicated that they were not willing to be considered for appointments, that left only three candidates on the shortlist. The Chief Executive was informed of the considerations leading to the recommendation of the JORC on the appointment of Mr Justice MA as the Chief Judge of the High Court.

In view of the fact that Madam Justice YUEN, the spouse of Mr Justice MA, is also a Justice of Appeal, the Subcommittee discussed the listing and administrative arrangements to be adopted by the Judiciary in order to maintain the principle of judicial independence and avoid any possible conflict of interest.

The Judiciary advised the Subcommittee that the existing arrangement that Mr Justice MA and Madam Justice YUEN would never sit together in the same division in the Court of Appeal, will remain unchanged.

The Judiciary also advised that the responsibilities of the Chief Judge of the High Court include the handling of personnel matters relating to High Court Judges and complaints on their conduct. If the recommended appointment of Mr Justice MA takes effect, any such matters concerning Madam Justice YUEN will be handled by the Chief Justice himself.

At the request of the Subcommittee, the Administration provided for Members' reference some reported cases in which Mr Justice MA had acted as counsel before he became a High Court Judge and some of his judgements.

Members of the Subcommittee unanimously support the appointment of Mr Justice MA as the Chief Judge of the High Court and would urge Honourable Members to do the same. Thank you.

MISS MARGARET NG: Madam President, I support the motion of the Chief Secretary for Administration.

There is little to say about the appointment of Mr Justice Geoffrey MA to the office of Chief Judge of the High Court, for it is plain and wholly non-controversial. I can find no hint of reservation about this appointment in the legal profession, among whom Mr Justice MA has spent a great many years of his professional life as counsel and then as judge. This must be reason enough for this Council's ready endorsement. Madam President, it is thought by some of us that it is almost harder to find a suitable candidate for the office of the Chief Judge of the High Court than for a judge of the Court of Final Appeal, because in addition to strength in law and judicial temperament, the right person has to be bilingual, and willing to take on a great deal of tedious administration. It therefore requires good humour. Where such qualities meet, consensus in the appointment is inevitable.

Thank you, Madam President.

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

MS EMILY LAU (in Cantonese): Madam President, I speak in support of the motion moved by the Chief Secretary for Administration. I agree with what the Chief Secretary for Administration and the other Members just said, that Mr Justice Geoffrey MA is highly respected by the Judiciary and the legal profession for his integrity, competence in law and judicial temperament. If people outside the legal profession know Mr Justice MA, they will similarly respect him. Therefore, Madam President, I support the motion moved by the Chief Secretary for Administration.

I also support the issue raised by Mr Martin LEE on the handling of conflict of interest. Frankly speaking, it is because our Financial Secretary's incompetence in handling conflict of interest that the images of himself and that the Administration have both been tarnished. I believe an even greater scandal will emerge if judges are involved in a conflict of interest. Therefore, though certain arrangements had already been made, we in the Subcommittee considered it necessary to seek answers from the Administration. As Mr Martin LEE said earlier, when Mr Justice MA was appointed as Justice of Appeal in November last year, because his wife, Madam Justice YUEN was also a Justice of Appeal, Chief Justice LI of the Court of Final Appeal made arrangements they should not sit together in the same court. I think this Council will give its support to this motion later. If Mr Justice MA becomes the Chief Judge of the High Court, he will be responsible for handling personnel matters relating to High Court Judges and complaints against their conduct. However, any matters of this nature concerning Madam Justice YUEN will be dealt with by Chief Justice LI.

I think this is a very good arrangement which leaves everything in the open for the public. At the meeting of the Subcommittee, I asked the Judiciary Administrator why this arrangement to avoid conflict of interest was in place. Otherwise, Madam President, how can I present all the relevant information now? The paper on this issue was supplemented afterwards. This arrangement tells us that some people think something should be done and even have done it. But they still think it is necessary to explain to the public the rationale behind it. We can see that while the Judiciary endeavours to prevent conflicts of interest, the executive authorities have treated this lightly even when something like that has happened. This is the reason why between the two authorities, one has such a good reputation and the other has such a bad one. I do appreciate the Judiciary for putting everything in the open. Therefore, our judges are respected by the public with good cause.

Madam President, lastly, I would like to reiterate that at present, the Judiciary is subject to increasingly great pressure. During the discussion on the Article 23 of the Basic Law, some overseas legal professionals came here and the local legal profession said that if the Administration forced through the enactment of the legislation and a lot of provisions were made, the Judiciary would be responsible for handling them. As far as I could gather, some judges had some strong views about this. When some judges heard cases against people who were arrested and prosecuted for participating in illegal assemblies which were in fact conducted in a peaceful manner, they queried whether such political issues should be handled by judges. What did Ms Elsie LEUNG, the Secretary for Justice, say then? She said why not. According to the law, anyone who commits an offence will be arrested and then brought to trial. However, if this continues to be the practice and pressure continues to be exerted on our Courts, I really hope that Mr Justice MA and his colleagues will meet the expectations of the public as Premier WEN Jiabao said. This is extremely important since the Court is the last bastion that upholds freedoms and human rights for the people of Hong Kong.

Today, we support the appointment of Mr Justice MA. We hope that judges sitting in all Hong Kong courts will understand that they cannot speak out on some issues. Sometimes, they will make some comments in their judgements, but they cannot touch on some issues. I have learnt that some judges were in support of the march but they could not participate in it. We also hope that our legislature and executive authorities will cease to act unreasonably and to tell people that it does not matter because if disputes arise in future, they will be settled by the Court. I think this is an irrational and unreasonable way to handle matters. I hope Mr Justice MA and his colleagues will meet the expectations of the people of Hong Kong and uphold the rule of law, human rights and freedoms for us.

With these remarks, I support the motion.

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

(No Member indicated a wish to speak)

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

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

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Criminal Procedure Ordinance to approve the Legal Aid in Criminal Cases (Amendment) Rules 2003.

PROPOSED RESOLUTION UNDER THE CRIMINAL PROCEDURE ORDINANCE

CHIEF SECRETARY FOR ADMINISTRATION: Madam President, I move the resolution standing in my name on the Agenda.

Rule 21(1) of the Legal Aid in Criminal Cases Rules, made under section 9A of the Criminal Procedure Ordinance, sets out a scale of maximum fees payable to lawyers in private practice and engaged to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department. The Department of Justice uses the same scale of fees to engage counsel in private practice to appear for the Special Administrative Region in criminal cases.

Fees payable to duty lawyers providing legal assistance under the Duty Lawyer Scheme follow the same scale.

As agreed by the Finance Committee in October 1992, the Administration reviews these fees once every two years, taking into account, among other factors, changes in consumer prices. The 2002 review concluded that we should adjust the fees downward by 4.3% in accordance with the decline in the Consumer Price Index (C) during the reference period April 2000 to March 2002. On 13 June, the Finance Committee of this Council approved the recommended downward adjustment, which should come into effect on amendment of the Legal Aid in Criminal Cases Rules. I now move that this Council resolves to make the Legal Aid in Criminal Cases (Amendment) Rules 2003 under section 9A of the Criminal Procedure Ordinance and bring the new fees into operation.

The Chief Secretary for Administration moved the following motion:

"That the Legal Aid in Criminal Cases (Amendment) Rules 2003, made by the Criminal Procedure Rules Committee on 12 June 2003, be approved."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Copyright (Suspension of Amendments) Ordinance 2001.

PROPOSED RESOLUTION UNDER THE COPYRIGHT (SUSPENSION OF AMENDMENTS) ORDINANCE 2001

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY: Madam President, I move that the motion set out on the Agenda be passed. The motion approves the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2003 made by the Secretary for Commerce, Industry and Technology.

In April 2001, the coming into effect of criminal liabilities for possessing pirated articles in the course of business aroused wide public concerns about possible adverse impact on the dissemination of information in enterprises and teaching in schools. The Copyright (Suspension of Amendments) Ordinance 2001 (the Suspension Ordinance) was then passed in June 2001 to suspend the new criminal provisions except as they applied to computer programs, movies, television dramas and musical recordings.

The relevant provisions under the Suspension Ordinance originally expired on 31 July 2002. Under section 3 of the Suspension Ordinance, the Secretary for Commerce, Industry and Technology may by notice published in the Gazette before the expiry date amend that date. Such a notice is subject to the approval of the Legislative Council. The Government proposed and the Legislative Council approved in July last year the extension of the effective period of the Suspension Ordinance for one year until 31 July this year. This is to facilitate the preparation of legislative proposals by the Government on the long term solution for the suspension arrangements.

After extensive consultation, we introduced the Copyright (Amendment) Bill 2003 to the Legislative Council in February this year. The Bill proposes, among other things, to continue with the current arrangements under the Suspension Ordinance. It is now being scrutinized by the Bills Committee.

To ensure that the Legislative Council has sufficient time to scrutinize this Bill, the Government proposes to extend further the effective period of the Suspension Ordinance for one more year until 31 July 2004 and the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2003 is made for this purpose.

Thank you, Madam President.

The Secretary for Commerce, Industry and Technology moved the following motion:

"That the Copyright (Suspension of Amendments) Ordinance 2001 (Amendment) Notice 2003, made by the Secretary for Commerce, Industry and Technology on 11 June 2003, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Commerce, Industry and Technology be passed.

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

(No Member indicated a wish to speak)

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.

PRESIDENT (in Cantonese): Proposed resolution under the Buildings Ordinance.

PROPOSED RESOLUTION UNDER THE BUILDINGS ORDINANCE

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I move the motion standing in my name.

The motion seeks to amend the description of Scheduled Area No. 3 in the Fifth Schedule to the Buildings Ordinance to include the railway protection areas as shown on the plans dated 6 June 2003, which were signed by the Secretary for Housing, Planning and Lands and deposited in the Land Registry.

The railway protection areas are those within 30 m from the edges of the railway structures. By virtue of sections 14(1), 41(3) and 41(3A)(f) of the Ordinance, ground investigation and underground drainage works carried out in the railway protection areas in Scheduled Area No. 3 require the Building Authority's prior approval of plans and consent for their commencement. This is to ensure the safety of the railway structures and hence the normal operation of the railway system.

At present, Scheduled Area No. 3 only includes the railway protection areas along the Mass Transit Railway lines. Since the West Rail (Phase 1) of the Kowloon-Canton Railway Corporation (KCRC) is scheduled to come into operation in September 2003, we therefore propose to include the railway protection areas along this railway line into Scheduled Area No. 3. We have already prepared a new set of plans to show correctly the railway protection areas along the West Rail (Phase 1).

I invite Members to support this motion in order to ensure that the West Rail (Phase 1) structures of the KCRC are protected.

Madam President, I beg to move.

The Secretary for Housing, Planning and Lands moved the following motion:

"That the Fifth Schedule to the Buildings Ordinance be amended -

- (a) by renumbering area number 3 as area number 3(1);

(b) by adding after area number 3(1) -

"(2) The railway protection areas along the railway lines of the Kowloon-Canton Railway Corporation, being the areas delineated and shown edged black on the plans numbered KCR/WR/RP/100 Rev. 1, KCR/WR/RP/101 Rev. 1, KCR/WR/RP/102 Rev. 1, KCR/WR/RP/103 Rev. 1, KCR/WR/RP/104 Rev. 1, KCR/WR/RP/105 Rev. 1, KCR/WR/RP/106 Rev. 1, KCR/WR/RP/107 Rev. 1, KCR/WR/RP/108 Rev. 1, KCR/WR/RP/109 Rev. 1, KCR/WR/RP/110 Rev. 1, KCR/WR/RP/111 Rev. 1, KCR/WR/RP/112 Rev. 1, KCR/WR/RP/113 Rev. 1, KCR/WR/RP/114 Rev. 1, KCR/WR/RP/115 Rev. 1, KCR/WR/RP/116 Rev. 1, KCR/WR/RP/117 Rev. 1, KCR/WR/RP/118 Rev. 1, KCR/WR/RP/119 Rev. 1, KCR/WR/RP/120 Rev. 1, KCR/WR/RP/121 Rev. 2, KCR/WR/RP/122 Rev. 1, KCR/WR/RP/123 Rev. 1, KCR/WR/RP/124 Rev. 1, KCR/WR/RP/125 Rev. 1, KCR/WR/RP/126 Rev. 1, KCR/WR/RP/127 Rev. 1, KCR/WR/RP/128 Rev. 1, KCR/WR/RP/129 Rev. 1, KCR/WR/RP/130 Rev. 1, KCR/WR/RP/131 Rev. 1, KCR/WR/RP/132 Rev. 1, KCR/WR/RP/133 Rev. 1, KCR/WR/RP/134 Rev. 1, KCR/WR/RP/135 Rev. 1, KCR/WR/RP/136 Rev. 1, KCR/WR/RP/137 Rev. 1, KCR/WR/RP/138 Rev. 1, KCR/WR/RP/139 Rev. 1, KCR/WR/RP/140 Rev. 1, KCR/WR/RP/141 Rev. 1, KCR/WR/RP/142 Rev. 1, KCR/WR/RP/143 Rev. 1, KCR/WR/RP/144 Rev. 1 and KCR/WR/RP/145 Rev. 1, dated 6 June 2003, signed by the Secretary for Housing, Planning and Lands and deposited in the Land Registry." "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Housing, Planning and Lands be passed.

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

(No Member indicated a wish to speak)

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

PRESIDENT (in Cantonese): Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2003; the Poisons List (Amendment) (No. 2) Regulation 2003; the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2003; and the Poisons List (Amendment) (No. 3) Regulation 2003.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I move that the motion, as printed on the Agenda, be passed to approve the four Amendment Regulations.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and inspection system set up in accordance with the Pharmacy and Poisons Ordinance. The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put on different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and

in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, a registered dentist or a registered veterinary surgeon.

The four Amendment Regulations now before Members seek to amend the Poisons List in the Poisons List Regulations and the Schedules to the Pharmacy and Poisons Regulations for the purpose of imposing control on 10 new medicines and tightening the control on 19 existing medicines.

Arising from the applications for registration of 10 pharmaceutical products, the Pharmacy and Poisons Board proposes to add 10 substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations through the making of the Poisons List (Amendment) (No. 2) Regulation 2003 and the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2003. Pharmaceutical products containing any of these substances must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions. We propose that these Amendment Regulations take immediate effect upon gazettal on 4 July 2003 to allow early control and sale of medicines containing these substances.

In addition, the Pharmacy and Poisons Board proposes to tighten the control on 19 existing medicines through the making of the Poisons List (Amendment) (No. 3) Regulation 2003 and the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2003. At present, pharmaceutical products containing any of these 19 substances, now classified as non-poisons, are sold in all kinds of medicines outlets. By adding these 19 substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations, pharmaceutical products containing any of them must be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions. To allow time for the manufacturers and importers to recall pharmaceutical products containing these substances from medicines outlets other than pharmacies, we propose that these amendments take effect on 4 August 2003.

The four Amendment Regulations in the motion are made by the Pharmacy and Poisons Board, which is a statutory authority established under section 3 of the Pharmacy and Poisons Ordinance to regulate the registration

and control of pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicines concerned.

Madam President, I beg to move.

The Secretary for Health, Welfare and Food moved the following motion:

"That -

- (a) the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2003;
- (b) the Poisons List (Amendment) (No. 2) Regulation 2003;
- (c) the Pharmacy and Poisons (Amendment) (No. 3) Regulation 2003;
and
- (d) the Poisons List (Amendment) (No. 3) Regulation 2003,

made by the Pharmacy and Poisons Board on 11 June 2003, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Health, Welfare and Food be passed.

MR MICHAEL MAK (in Cantonese): Madam President, one of the amendments under today's resolution is to add a medicine called Tadalafil. A pharmacy professional has told me that this medicine is used for the treatment of impotency and it is also called Cialis. However, in the meantime, its use is not allowed in the United States. And the United States authorities are awaiting the submission of more clinical findings on its safety from the pharmaceutical companies before consideration is given for its approval.

The same pharmacy professional also pointed out that patients taking sublingual tablets, that is, medicine with potassium nitrate, should not take Cialis at the same time. If they do so, their blood pressure will be adversely affected and their lives will be at risk in serious cases.

As the medicine has such a side effect, I suggest that a warning in clear wordings be added to the specifications of the medicine to remind patients taking sublingual tablets to exercise caution in using this medicine. In addition, a pharmaceutical guide and emergency manual should be prepared for the medical profession.

Madam President, I sincerely urge the Administration to seriously consider the views expressed by the pharmacy professional and in my speech just delivered. I support this resolution subject to the condition set out by me. Thank you, Madam President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Health, Welfare and Food, do you wish to reply?

SECRETARY FOR HEALTH, WEALTH AND FOOD (in Cantonese): Madam President, I will convey the suggestion of Mr Michael MAK to the Pharmacy and Poisons Board which will determine if it is necessary to add a warning to this medicine when it applies for registration in future, so that doctors will be made aware of the side effects of this medicine.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Mutual Legal Assistance in Criminal Matters Ordinance to approve the Mutual Legal Assistance in Criminal Matters (Ireland) Order.

PROPOSED RESOLUTION UNDER THE MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the resolution to make the Mutual Legal Assistance in Criminal Matters (Ireland) Order be passed by this Council.

The Hong Kong Special Administrative Region is fully committed to international co-operation in combating serious crimes. In this connection, we have embarked on a programme to establish a network of bilateral agreements with other jurisdictions on mutual legal assistance in criminal matters. These agreements ensure reciprocity between the contracting parties and enhance international co-operation in the fight against transnational crime. We have so far signed 14 agreements with other jurisdictions on mutual legal assistance in criminal matters. These include Australia, France, New Zealand, the United Kingdom, the United States, Italy, Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Kingdom of the Netherlands and Ukraine.

The Mutual Legal Assistance in Criminal Matters Ordinance provides the necessary statutory framework for implementing the mutual legal assistance arrangements and enables provision of assistance 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 section 4(2) of the Ordinance, the Chief Executive in Council has made the Mutual Legal Assistance in Criminal Matters Order to implement the bilateral arrangement for mutual legal assistance in criminal matters with Ireland. The Order is introduced to this Council for approval today.

The Order specifies the scope and procedures in relation to the provision of assistance. It also provides for safeguards of the rights of persons involved in criminal proceedings. The Order is substantially in conformity with the provisions in the Ordinance. However, as mutual legal assistance practices vary from jurisdiction to jurisdiction, it is necessary to modify some of the provisions of the Ordinance to reflect the practice of the particular negotiating partner. These are necessary to enable Hong Kong to comply with its obligations in the particular agreement. The modifications have been summarized in the Schedule to the Order.

A subcommittee was set up to scrutinize the Order in March 2003. The Subcommittee met twice. At the meetings, the Subcommittee examined specific articles under the Order. I would like to thank the Chairman, the Honourable James TO, and other members of the Subcommittee for their careful examination of the Order.

To strengthen our co-operation with other jurisdictions in criminal justice and international law enforcement, it is very important that the Order is made to enable the relevant bilateral agreement to be brought into force.

I now invite Members to approve the making of the Mutual Legal Assistance in Criminal Matters (Ireland) Order.

Thank you, Madam President.

The Secretary for Security moved the following motion:

"That the Mutual Legal Assistance in Criminal Matters (Ireland) Order, made by the Chief Executive in Council on 10 December 2002, be approved."

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

MR JAMES TO: Madam President, in my capacity as Chairman of the Subcommittee on the Mutual Legal Assistance in Criminal Matters (Ireland) Order and the Mutual Legal Assistance in Criminal Matters (Netherlands)

Order, I wish to report on the major deliberations of the Subcommittee in relation to the Ireland Order.

The Subcommittee has compared the provisions of the Order with those in the model agreement on mutual legal assistance in criminal matters.

The Subcommittee has noted that a subjective element is introduced for Article 6(1)(b) and (d) to enable the Requested Party to refuse assistance if it is considered that a request for assistance relates to an offence of a political character, or there are substantial grounds for believing that the request for assistance will result in a person being prejudiced. Members consider this acceptable as it aims to give better protection to those affected by requests and is consistent with section 5(1) of the Mutual Legal Assistance in Criminal Matters Ordinance.

Regarding members' concern about maintaining confidentiality of the evidence and information provided by Ireland during open court proceedings, the Administration has advised that it will attempt to comply with this confidentiality obligation by resisting any application to the Court for release of information provided by Ireland. While the grounds to be relied on in resisting such an application will depend on the facts of each case, one obvious ground that the Government could rely on is that the information is privileged because disclosure would be injurious to public interest.

The Honourable Margaret NG and some other members have expressed concern about the requirement under Article 9(5) for the Requested Party to take evidence from a person, even if he could not be required to give evidence under the law of the Requesting Party. Members have asked about the rationale for this provision and the procedures for taking of evidence.

The Administration has explained that the purpose of such a requirement is mainly to prevent the possibility of a claim pursuant to the law of the Requesting Party being deployed as a delaying tactic to obstruct the provision of assistance. The Administration has advised that the common types of privileges accorded to witnesses under the law of other jurisdictions are already covered under the law of Hong Kong, such as legal privilege, spouse privilege and privilege against self-incrimination.

On the procedure of taking of evidence, the Administration has advised that the evidence will be taken before a Magistrate, in camera, if deemed necessary by the Magistrate. If a witness asserts a claim of immunity, incapacity or privilege under the law of the Requesting Party, the witness will be asked to state the details of the claim and the grounds on which the claim is made. The Magistrate will then proceed to take the evidence to which the claim relates, and such evidence will be taken in a document which is separate from the rest of the evidence of the witness. The Administration has explained that while the other evidence and the claim will be forwarded to the Requesting Party, the document containing evidence to which the claim relates will be retained by the Department of Justice pending the Requesting Party's determination of the claim.

Madam President, with these remarks, the Subcommittee supports the proposed resolution.

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

(No Member indicated a wish to speak)

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

(The Secretary for Security indicated that she did not wish to reply)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Fire Services (Fire Hazard Abatement) Regulation.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that the motion standing in my name, as printed on the Agenda, be passed. The motion seeks to make a few amendments to the Fire Services (Fire Hazard Abatement) Regulation (the Regulation).

The Regulation is made under section 25 of the Fire Services Ordinance. The purpose of the Regulation is to provide for the details of a regulatory framework for fire hazard abatement with a view to enhancing law enforcement and dealing effectively with new forms of fire hazards for the protection of public safety.

In 2001, we presented to the Legislative Council both the Fire Services (Amendment) Bill 2001 and the draft Regulation for the scrutiny of the Bills Committee. The Bill was passed in March this year and we tabled the Regulation in the Legislative Council on 14 May, with amendments resulting from deliberations of the Bills Committee. The Subcommittee on the Regulation has held two meetings and thoroughly examined the Regulation to further improve the provisions. I would like to take this opportunity to thank members of the Bills Committee and the Subcommittee on the Regulation for their hard work. In particular, I wish to express my gratitude to the Honourable IP Kwok-him, Chairman of both the Bills Committee and the Subcommittee, for his dedicated efforts and contributions.

After thorough discussions, we have secured the support of the Subcommittee for the Regulation, with consensus reached on a number of technical amendments to ensure that the drafting is legally in order. Details are as follows:

- (a) Section 10 of the Regulation provides that a magistrate may make a fire hazard order. Section 10(2) is an improved version of section 9(4) of the existing Fire Services Ordinance, with all references to

likely recurrences of fire hazards in the latter removed and appropriate reference to continuance of fire hazards added. To ensure that other relevant provisions are consistent with section 10(2), I move to make minor amendments to sections 10(3)(b), (3)(c) and (4) as well as Form 2 in Schedule 1 by adding appropriate references to continuance of fire hazards and removing all references to likely recurrences of fire hazards.

- (b) Section 22(1) of the Regulation confers upon an authorized officer the power to stop, board and search a motor vehicle, and enter and search a container if he has reasonable grounds for suspecting that an offence against section 17 or 18 has been or is about to be committed. As the various powers to be exercised by the authorized officer under subsections (2) and (3) are incidental to the execution of the powers provided under subsection (1), I move to make some minor amendments to subsections (2) and (3) to elucidate this linkage.

With the passage of the above amendments, the legislative exercise of improving the regulatory framework for fire services and fire hazard abatement has been substantially completed. We have also drawn up relevant guidance notes in consultation with the transport trade for their reference. We will arrange comprehensive publicity on the new legislative requirements in due course and aim to implement the whole package of new legislation on 1 January 2004 by Gazette notice.

With these remarks, I urge Members to support the motion. Thank you.

The Secretary for Security moved the following motion:

"That the Fire Services (Fire Hazard Abatement) Regulation, published in the Gazette as Legal Notice No. 113 of 2003 and laid on the table of the Legislative Council on 14 May 2003, be amended -

- (a) in section 10 -
 - (i) in subsection (3)(b), by adding "or continuance" after "recurrence";

- (ii) in subsection (3)(c), by adding "or continue" after "recur";
 - (iii) in subsection (4), by adding "or continuance" after "recurrence";
- (b) in section 22 -
- (i) in subsection (2), by adding "in exercising his power under subsection (1)" after "An authorized officer";
 - (ii) in subsection (3), by repealing "this section" and substituting "subsection (1)";
- (c) in Schedule 1, in Form 2 -
- (i) by repealing ", notwithstanding that the said fire hazard may be temporarily abated under this order, the fire hazard is likely to recur" and substituting "the said fire hazard is continuing";
 - (ii) by adding "/continuance" after "recurrence";
 - (iii) by repealing "it is likely that the same fire hazard will recur" and substituting "the same fire hazard has recurred".

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

MR IP KWOK-HIM (in Cantonese): Madam President, I speak in my capacity as Chairman of the Subcommittee on Fire Services (Fire Hazard Abatement) Regulation (the Subcommittee).

The Subcommittee has held two meetings with the Administration to examine the provisions of the Fire Services (Fire Hazard Abatement) Regulation (the Regulation).

The Regulation mainly provides for the regulation of new types of fire hazards and the making of a court order concerning the fire hazards, which include:

- (a) the regulation of the conveyance on land of a container that contains a part of a motor vehicle which has fuel in its fuel tank or is otherwise stained with fuel;
- (b) the regulation of the stowage of a part of a motor vehicle in a container that is conveyed on land; and
- (c) the prohibition of illegal vehicle refuelling stations.

As the Bills Committee on Fire Services (Amendment) Bill 2001 had discussed the policy principles in the Regulation, the Subcommittee generally agreed to the related policies.

The Subcommittee has sought clarification on the following issues:

- (a) the enforcement of section 5 of the Regulation concerning the removal of articles to abate fire hazards;
- (b) the possible liabilities on the part of drivers of freight containers under sections 17 and 18 of the Regulation, as drivers have no authority to inspect the content of the containers;
- (c) the liability of a co-tenant who shares the use of the premises but has no involvement in the illegal vehicle refuelling activities under section 20 of the Regulation; and
- (d) whether follow-up actions would be taken by the Fire Services Department to ensure the premises would not be used again as an illegal vehicle refuelling station if a magistrate has suspended a closure order.

The Administration explained these issues at the meetings and the details are carried in the report of the Subcommittee presented to the House Committee.

The Subcommittee also notes that the level of fines for offences relating to fire hazard abatement notice, fire hazard order, and obstruction and locking of means of escape have been increased by four-fold to ensure the fine levels can achieve sufficient deterrence.

The Subcommittee supports the Regulation and the Administration to propose a few technical amendments to improve the drafting of sections 10, 22 and Form 2 of Schedule 1.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

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

(The Secretary for Security indicated that she did not wish to reply)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Security 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' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: the movers of the motions will each have up to 15 minutes for their speeches including their replies, and another five minutes to speak on the amendments; the movers of amendments will each have up to 10 minutes to speak; other Members will each have up to seven minutes for their speeches. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

Will the Clerk please summon the Secretary for Commerce, Industry and Technology for his attendance at the motion debate.

PRESIDENT (in Cantonese): First motion: Fashion centre of Asia Pacific.

Mrs Sophie LEUNG, would you like to wait for a while or would you like to start now?

MRS SOPHIE LEUNG (in Cantonese): Madam President, I think we do not have a quorum now.

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

(While the summon bell was ringing)

PRESIDENT (in Cantonese): Members, while we are waiting for a quorum to be formed, I would like you to note that if the Secretary fails to show up in attendance, even a quorum is formed, the meeting will be suspended until the return of the Secretary. Only then will the meeting resume.

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

PRESIDENT (in Cantonese): A quorum is now formed but the Secretary for Commerce, Industry and Technology is still not in the Chamber. Since due respect should be paid to the Member's motion and there should be a public officer in attendance, I now suspend the meeting until the return of the Secretary. The meeting will then resume.

12.29 pm

Meeting suspended.

12.43 pm

Council then resumed.

FASHION CENTRE OF ASIA PACIFIC

MRS SOPHIE LEUNG (in Cantonese): Madam President, after the meeting yesterday, Members may have a blurred sense of time when we come to the postponed debate on this motion today. However, I would still like to move the motion as set out on the Agenda.

Madam President, I think we are all glad to see the signing of the Mainland/Hong Kong Closer Economic Partnership Arrangement or CEPA for short, in providing a breakthrough for Hong Kong businesses in access to the mainland market with vast opportunities. At the same time, we believe equal attention should be paid to our own competitiveness and the development of the industry would have to rely on support from the Government in the provision of sound matching facilities. With this motion, we hope to present the most pressing problems faced by the industry to show that we must do something to save ourselves, rather than sit back and dream that some economic miracle will come about, lest we may lose the only edge that we may still have eventually. Madam President, we have heard many calls both in this Chamber and in the community for economic revival and so I hope that there will not just be five Members in this Chamber later on.

Hong Kong is a small economy and if we are to keep our economy growing, we must have the ability to earn money from the outside world and generate income for our economy. The textile and clothing industry which I represent brings on average an annual income of \$81 billion in foreign exchange for Hong Kong during the five-year period from the Asian financial turmoil in 1997 to date. An average of more than 60 000 workers were employed annually during the same period. The number of workers represents only direct employment in Hong Kong, discounting those who are indirectly employed. Our products are shipped to places around the world and our industry also provides an impetus of growth to other industries such as banking, insurance, shipping, as well as logistics which is very much in the limelight these days. All this may sound exaggerating, but if we do not have industries, and as cargoes need the service of the logistics industry, then how can the logistics industry survive in Hong Kong? This is something which we should give serious thoughts to. As the number two garment exporter of the world, we believe our industry will become a catalyst of growth to the logistics industry. If our industry does not remain in Hong Kong, then all these talks about the logistics industry will be meaningless.

Despite the many contributions made by the textile and clothing industry to Hong Kong, manufacturers in the industry have been forced to relocate northwards over the past decade or so due to various reasons. However, I would prefer to describe this trend as proliferation. The report "Made in PRD" released by the Federation of Hong Kong Industries really speaks out the experience of the industry. As indicated by 64% of the companies, the most important reason for relocation to the Mainland is labour costs. When coupled with other operation costs in Hong Kong which are higher than that of the neighbouring regions, this has seriously undermined the competitiveness of their products. Therefore, the only option left for the industry is to relocate to other places of lower costs. This leads to a loss of employment opportunities for Hong Kong people and the industry itself is beset with problems like drain of technology and short supply of technical personnel.

Nowadays, there are opinions urging for Hong Kong manufacturers to return to Hong Kong and set up their factories here. Some people even places the focus of economic growth back on manufacturing industries again. Feelings swell in me when I hear that. It is because so doing is like abandoning a child when we do not feel we need it, but when we find that it is vital to our survival, then we would hold onto it like a lifebuoy. For more than a decade, members of the industry have been expressing their concern and

urging the Government to promote and revive the manufacturing activities so as to reduce the relocation or proliferation into the Mainland and to prevent problems like hollowing out of the manufacturing sector.

Unfortunately, the Government has all along upheld the policy of positive non-intervention, without addressing the problem proactively. With fierce competition in the international market, the imminent abolition of the quota system for textile and clothing products in 2005 and the zero tariff for clothing imports into the Mainland starting from next year, the textile and clothing industry is indeed at the crossroads in terms of its development direction given the urgency of the situation. If the manufacturers decide to come back, can the Government act decisively and make the suitable and necessary matching measures and deployments to provide them with an excellent business environment?

As a start, on behalf of the industry, I urge the Government to set up a fashion and design centre as soon as possible.

As we all know, the quota system will be abolished in 2005 and Hong Kong will no longer be able to count on low costs as an advantage. Even if Hong Kong products can enjoy zero tariff on entry into the Mainland next year, that may not be able to offset the production cost disparity between the two places. Therefore, the industry must head for higher value-added manufacturing activities. One way is to inject more design elements into clothing products and change from original equipment manufacture (OEM) to original design manufacture (ODM). This would enhance the competitiveness of the clothing products made in Hong Kong and ensure a market share of Hong Kong products in the overseas market. In the long run, this would prepare Hong Kong products for brand name development.

Before that, however, we have to ask ourselves a question. Do we have adequate and sound matching facilities? The answer is unfortunately no. The industry badly needs a fashion and design centre to offer a diversified and one-stop information exchange and transaction platform for manufacturers, designers, design scholars, suppliers and overseas buyers. Ever since the first suggestion made in the 1998 policy address to turn Hong Kong into a world-class fashion and design centre, the industry has submitted many proposals to the Administration. People from the industry and I have jointly suggested that a fashion and design centre be set up in Cheung Sha Wan as it has the advantage of being close to Sham Shui Po and can achieve a synergy

effect with members of the industry, retail businessmen, overseas buyers, exhibition organizers who concentrate in the area, thus making contributions to originality and fashion. All these will help Hong Kong become the fashion centre of Asia Pacific as set out in this year's policy agenda. I hope the Government can give serious thoughts to our suggestion which I believe are practicable. I am confident about it because Financial Secretary Henry TANG is also a member of the textile and clothing industry. He should be different from his predecessors who declined to have anything to do with the textile and clothing industry by resorting to this high-sounding principle of positive non-intervention.

Next, I wish to urge the Government is to set up a "border industrial zone".

After the quota system is abolished, the textile and clothing industry will enjoy unlimited growth potentials. The reason is simple, for by that time products made in Hong Kong would not be subject to export quotas and on the other hand, the tremendous growth in exports from the Mainland in recent years is likely to be curbed by anti-dumping and anti-surge clauses. So before 2013 comes, all kinds of trade restrictions will still be imposed and importing countries may also reinstate all kinds of restrictions. Many manufacturers, including those from the management of state-owned factories (now turned into private limited companies) on the Mainland, have told me that they are considering to set up a second production line in Hong Kong or other places not subject to such restrictions. With this arrangement, orders which cannot be accepted by China due to an excess of Chinese exports can be produced in Hong Kong and exported from there. In addition, as reported in a survey undertaken by the Federation of Hong Kong Industries, the benefits brought about by CEPA have prompted one in four manufacturers without manufacturing facilities in Hong Kong to consider setting up factories in Hong Kong.

(THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair)

Therefore, there is a need for us to retain our manufacturing facilities in Hong Kong. I propose to set up a border industrial zone to provide matching facilities to conventional manufacturing industries to enable them to engage in value-added activities and to provide an adequate supply of technical personnel

to attract manufacturers intent on returning and overseas investors to set up factories there. The zone can serve to attract other high value-added industries and even technology industries to set up factories there. The industry may create more employment opportunities for Hong Kong owing to these new developments in the border industrial zone. Jobs at the middle management and those which are popular with the young people may also be created, such as those in marketing, sales, international trade, brand name development and business administration. These can provide career opportunities for the young people who wish to develop their interests and potentials, and they can be trained up as experts who can help Hong Kong become the fashion centre of Asia Pacific.

This idea of a border industrial zone was first raised by the industry more than a decade ago and it was actively promoted by the Liberal Party under the late Mr Stephen CHEONG and discussed in this Council on many occasions. Now Macao has made a faster move than us in reaching an agreement with the Zhuhai Municipal Government at the end of last year to set up a cross-boundary industrial zone. This is made in preparation of the run-up to 2005. In contrast, our Government and the entire community have not sensed the urgency of the matter and it is baffling to see that no action has been taken.

Finally, I would like to stress again that the textile and clothing industry is facing extremely fierce competition and challenges in the international market. These include preferential trade agreements entered on the part of countries in Europe and America with individual countries and trade barriers erected under all sorts of pretexts, including environmental protection. I wish both the community and the Government would understand that if Hong Kong is to become the fashion centre of Asia Pacific, sound matching facilities must be available in the first place. I also hope that when Honourable colleagues make their speeches later, they will refrain from making the point of offering high wages as an attraction. It remains, of course, that we would all want to be good employers and mix well with the employees. But we should never forget that we have to compete in the global market. Our emphasis is on providing jobs to our young people. I also hope that an excellent business environment can be provided to the industry and that it can be helped to become more competitive, so that this industry can be enabled to offer more job opportunities to the people of Hong Kong and generate foreign exchange earnings.

With these remarks, Madam Deputy, I beg to move.

Mrs Sophie LEUNG moved the following motion: (Translation)

"That this Council urges the Government to affirm the contributions of the textile and clothing industry to Hong Kong's overall economy, and to make early preparations in anticipation of the impending abolition of the textile quota system in 2005 and the forthcoming implementation of the "Mainland/Hong Kong Closer Economic Partnership Arrangement" which may bring about new business opportunities or have impact in various respects; at the same time, the Government should also actively explore and formulate strategies, including setting up expeditiously a "border industrial zone" and a "fashion and design centre" to help Hong Kong develop into the "Fashion centre of Asia Pacific", enhance the overall competitiveness of the industry and promote its growth, as well as to provide more employment opportunities, in particular those popular with young people, in Hong Kong."

DEPUTY PRESIDENT (in Cantonese): I now propose the motion to you and that is: That the motion moved by Mrs Sophie LEUNG be passed.

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

MR CHAN KAM-LAM (in Cantonese): Madam Deputy, the textile and clothing industry used to be a major manufacturing industry of Hong Kong and it has contributed to the employment and overall economic development of the territory. In recent years, with the northward relocation of manufacturing industries, the importance of the industry in the economy of Hong Kong has declined markedly. The revival of the textile and clothing industry of Hong Kong has become an issue of concern not just to the industry, but to the community as well. In my opinion, the conclusion of CEPA not long ago and the abolition of the quota system for textile products worldwide in 2005 will offer new opportunities to the development of the textile and clothing industry in Hong Kong. The Government should therefore look seriously into the corresponding measures and seize these new opportunities.

As stipulated in the World Trade Organization (WTO) Dohar Trade Round, all existing textile quotas will be abolished worldwide starting from

2005. However, as pledged by China on its accession to the WTO, members of the WTO may still adopt protective measures on Chinese textile products to restrict the import of Chinese textile products and clothings for a period of one year and the parties concerned may subsequently agree on a longer period. The relevant terms will expire on 31 December 2008 and this will lead to some uncertainties for Chinese textile exports in 2005 and the three years thereafter. Some Hong Kong manufacturers with textile and garment operations in the Mainland say that they will consider relocating part of their production lines back to Hong Kong in order to avoid the impact of the uncertainties. The move is expected to allay fears of the uncertainties and facilitate exports. The relocation of part of the production lines from the Mainland to Hong Kong will also help establish brand names for products made in Hong Kong. Such changes will present new opportunities that may revive the local textile and clothing industry. But as the production costs in Hong Kong are far higher than those on the Mainland, many manufacturers are hesitant and they have to think carefully on issues like whether or not local production can help boost the brand name and image of their products and whether or not the advantage gained in export would offset the increases in production costs.

It is against this background that there have been renewed discussions on the importation of labour. We hope that some kind of consensus can be reached between the industry, the community and the Government so that production can be carried out in Hong Kong.

On the other hand, as the brand names of products made in Hong Kong can still enjoy greater appeal on the Mainland, after the signing of CEPA and especially after the zero tariff is put into force, some Hong Kong manufacturers who have factories on the Mainland may like to make use of this arrangement to manufacture textile products in Hong Kong and sell them on the Mainland. Having said that and by the same token, when these manufacturers consider whether or not to set up more production lines in Hong Kong, they will think about the advantages of local production versus the increase in production costs. I think that after careful considerations, some of these manufacturers will relocate part of their operations to Hong Kong.

It can therefore be seen that these two new developments are presenting an important turning point to the textile and clothing industry in respect of its renewed development in Hong Kong. As to whether or not this new opportunity can be seized, the key will of course lie in the decision of

manufacturers, but it is also vital that the Government can provide the necessary policy support to help manufacturers intent on setting up factories in Hong Kong solve the practical problems they face.

The Democratic Alliance for Betterment of Hong Kong (DAB) agrees that studies should be made with a view to upgrading Hong Kong textile and clothing products so that they can become up market and high value-added products. This will help Hong Kong develop into a fashion centre of Asia Pacific, improve the investment environment here and attract more manufacturers to come here for investment. However, we have to point out that as most of the garment manufacturing operations have relocated northwards, much of the technology has been upgraded and so there is a marked shortage of supply in expertise and technology with respect to producing textile products in the medium and upper ends of the market. The Government must take active steps to train up the kind of talents on demand and assist in launching overseas publicity efforts to promote our textile products.

The DAB has proposed earlier that the Government should abolish the Border Closed Area along the boundary near Shenzhen and set up a border industrial zone. This will turn the place into a production base for the manufacturing industry of Hong Kong. We have always thought that the Border Closed Area is a remnant of the colonial past and a buffer between Hong Kong and the Mainland. It is therefore not consistent with the political reality after the reunification and will not serve the needs of economic development. The continual existence of the Border Closed Area is a big waste of land resources. If an industrial zone is set up in the boundary area and used to develop high value-added textile and clothing industry, it will contribute to better use of land along the boundary and make the boundary areas prosperous. Due to the signing of CEPA and the implementation of zero tariff, products made in the border industrial zone can enter the mainland market as Hong Kong products. This will not only make Hong Kong brand names better known, but also enable the industry to benefit from the easy transport access to the Mainland. The development of the textile industry along the boundary will help increase job opportunities for Hong Kong people and the transformation of Hong Kong into a fashion centre of Asia Pacific. In the long run, this can also promote trade and economic co-operation between Hong Kong and Shenzhen.

So we urge the Government to look into the feasibility of setting up a border industrial zone and attach prime importance to the retail and manufacturing industries. At the beginning of this year, Macao set up its

border industrial zone. We think that the Hong Kong Government should send officials to Macao and learn from their experience and engage in discussions with the Macao officials to examine the operation of the zone. We hope that the Government can take proactive steps in this direction.

Thank you, Madam Deputy.

MR HUI CHEUNG-CHING (in Cantonese): Madam Deputy, the textile and clothing industry is the largest industry in Hong Kong and it is also one of the sectors that have seen the greatest decline in working population over the past two decades or so. Last year, the industry still managed to bring in some \$80 billion of foreign exchange for Hong Kong. The amount of income from re-exports earned by the factories owned by Hong Kong manufacturers on the Mainland is colossal. That the industry can thrive so well is due to the knowledge of Hong Kong manufacturers in all the fundamentals of the industry and that they can make use of the Mainland with low costs as their production base and reap the complementary advantages of "a shop in front and a factory at the back". With globalization of the world economy, there will be fierce competition in the light industries, including the fashion and garment industry, and if the Government does not launch prompt support measures, it is feared that the industry will only decline and the years of efforts made to build the solid foundation will simply be wasted.

In the next couple of years, there will be two monumental changes which will be crucial to our development into a fashion centre. The first is China's gradual reduction of the tariff on garment imports and the relaxation of restricts on the retail trade in compliance with the stipulations of the WTO following its accession. Hong Kong businessmen can therefore hope to expand their share in the mainland market.

Secondly, the quota system will be abolished in 2005. Some large factories which used to make profits from speculation on the quotas over the years more than the garment business itself may quit the industry when the quota system is abolished. On the other hand, some people who may want to start their business in the industry may find it hard to compete with the mainland producers when there will be no more quotas for Hong Kong after 2005 and given the high costs of production here. If the local garment manufacturing industry is to stay competitive, it will have to undergo further

transformation. However, once the quota system is abolished, everybody will have to start from scratch and those small and medium enterprises which used to have no quotas can compete on a more level playing field from then on.

So for the textile and clothing industry, the next couple of years would present both challenges and opportunities. Of course, everything will have to depend on how the industry can continue with its aggressive efforts, make use of its expertise and solid foundation and seize every opportunity that is available and make flexible moves. The Government should also do its best to explore new horizons for the industry, riding on this trend. As times have changed, it would be close to an impossibility if Hong Kong wants to become a garment manufacturing centre again. But given the free flow of information, the abundant supply of marketing personnel, the extensive network in international trade, plus the free, diversified and international lifestyle which is conducive to creation, Hong Kong has the potentials of becoming a centre of fashion design, purchase and sales. As a matter of fact, if one browses the website of the Hong Kong Trade Development Council (TDC) on the news of the Hong Kong fashion industry, one can see more and more local designers making their marks in the international fashion scene.

In view of this, the Government should value and make good use of the existing resources and potentials of the Hong Kong textile and clothing industry and take the following actions. First, it should look into how The Hong Kong Polytechnic University and the technical institutes can be given more resources to facilitate their development into more specialized institutions like the Central St. Martins College of Art and Design in London and the FIDM and F.I.T. of the United States. This will enable these institutions to enjoy professional recognition from abroad and even merge into a university specializing in textile and clothing, hence attracting more people to join the industry.

Second, encouragement should be given to academic institutions and the private sector to hire overseas designers from Europe, the United States, Japan, and so on to come over to work here so that Hong Kong fashion can acquire a more international flair.

Third, groups should be organized to visit overseas countries and the Mainland to study their garment factories and markets and learn from their experience.

Fourth, as to the biannual fashion fairs held in Hong Kong, apart from using the Hong Kong Convention and Exhibition Centre as the main venue, arrangements should also be made to have some subsidiary venues such as in Cheung Sha Wan and Kwun Tong which are the wholesale centres. This will enable overseas buyers to expand their sourcing network.

Fifth, to enhance the quality of local fashion design, the Government should assign some of those vacant buildings in the industrial estates which also possess good transport links to the fashion design departments of local universities as permanent exhibition halls and mini workshops. This will give students a place to present their talents.

Sixth, apart from the large-scale biannual fashion fairs organized by the TDC, some other fashion exhibitions of a smaller scale should be held on an irregular basis. This will help promote our position in the international fashion scene.

Madam Deputy, fashion is a very specialized and evolving trade of innovation. From the most ancient of times to the present, people are always racking their brains on how to dress well. As a matter of fact, more than half of the promotion efforts made by the TDC each year is related to the clothing industry. What the Government should do now is to change the concept among the people that the garment manufacturing industry is a sunset industry. If we look around, we can see that wages in Italy are much higher than those in Hong Kong, but because of its outstanding creativity, plus government assistance over the years in developing the international sales network, garments from Italy are well-received worldwide. The Hong Kong Government should upgrade the quality of the industry, make extensive publicity, thereby elevating the status of the industry and draw more young people into the garment and other related industries. This will serve a complementary and enhancing effect and young people will take pride in joining the industry. Only in this way can the industry expect a promising future and Hong Kong hope to become the fashion centre of Asia Pacific.

Madam Deputy, I so submit.

MR SIN CHUNG-KAI (in Cantonese): Madam Deputy, Mrs Sophie LEUNG's prophecy has realized. There are exactly five Members now.

Madam Deputy, pardon me for not keeping abreast of the times. I would like to quote from the policy address of 1998. The Chief Executive said, "With this in mind, earlier this year I invited Prof TIEN Chang-lin" — Prof TIEN has passed away — "to chair the Commission on Innovation and Technology. In its first report to me, the Commission recommends that, to realize our vision for Hong Kong to become an innovation and technology centre for South China and the region, we need to position ourselves to be: a leading city in the world for the development and application of information technology, especially in electronic commerce and software engineering; a world class design and fashion centre;" and then there are a few other "centres", but I would not mention them today.

(THE PRESIDENT resumed the Chair)

It does not matter if I do not mention them. I only hope that these centres will not be considered nonexistent if Mr TUNG does not mention them anymore. I do not know if it is because the policy address of 1998 is too naive or that I am too superficial, but the fact is developments in these areas over the past five years have been disappointing.

MRS SELINA CHOW (in Cantonese): Madam President, I think the number of Members present does not form a quorum.

PRESIDENT (in Cantonese): Mr SIN, would you please sit down first. Will the Clerk please ring the bell to summon Members to return to the Chamber to attend the meeting. Now it is lunch time and many Members have left for lunch.

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

PRESIDENT (in Cantonese): Mr SIN Chung-kai, please continue with your speech.

MR SIN CHUNG-KAI (in Cantonese): Madam President, I do not know where I stopped. (*Laughter*)

Madam President, the manufacturing industries in Hong Kong now account for less than 6.3% of the Gross Domestic Product (GDP) and that is the figure released last month. Over the past few months, the drop in other manufacturing industries has been relatively significant, but the decline in the textile industry in the first half of this year is smaller than other industries in comparison. I do not know if this is because those in the textile and fashion industries manage to see the opportunities presented by 2005 and so at the present moment they are still interested in preserving these industries in Hong Kong.

In order to cope with the full liberalization in 2005 and the implementation of CEPA, we support the idea of setting up a border industrial zone, that is, the proposal by Mrs Sophie LEUNG. The Democratic Party used to worry that some manufacturers will make use of the border industrial zone to move their Hong Kong factories there and import foreign workers, thus reducing the job opportunities of local workers. However, as the present economic conditions in Hong Kong are so bad and that there are so many grass-roots workers out of work, we think that, subject to some terms and regulations, consideration can be given to allowing Hong Kong manufacturers, especially those who relocate their mainland factories to Hong Kong, to carry on with their production along the banks of the Shenzhen River and the boundary areas. But this must be subject to restrictions, for example, to require manufacturers to hire a certain number of local workers at a prescribed proportion, against the number of workers who go from Shenzhen to work in the factories in the border industrial zone.

The Democratic Party will lend its support to the Government to actively consider and explore this idea of a border industrial zone in the hope that a multi-win scenario can appear. With this, the grass-roots workers in Hong Kong can have more job opportunities and the textile industry can continue to have a production base to work towards the materialization of the concept of a fashion centre. But more importantly, we can make good use of our conditions to preserve our industries.

The second concept is that of a fashion centre of Asia Pacific as proposed by Mrs Sophie LEUNG. In the past, many people including Mrs Sophie LEUNG proposed to convert the old industrial buildings in Cheung Sha Wan into a fashion centre. However, I think that it is already too late to

put this idea into practice as almost all of the old industrial buildings in Cheung Sha Wan have been demolished. Even if not all of these industrial buildings have been torn down, not many are left. Having said this, however, I do agree that there is still some infrastructure there. The area has become a so-called *de facto* fashion centre and if the Secretary would care to go there on a Sunday, he would see many people there engaging in wholesale business on things like buttons, zippers, piece-goods, and so on, which are in abundant supply there. If only some matching facilities are added, then I think that the idea can be considered and supported. Another simple solution is to talk with Secretary Michael SUEN to see if restrictions on the office buildings there can be lifted to make use of the available space to promote the establishment of a fashion centre there.

As I am not too familiar with the fashion business, so I would like to use the computer sector as an example. Many years ago, the Golden Shopping Centre in Sham Shui Po already developed into a centre for sale of computers. Some businessmen thought that the mall was saturated and so they wanted to develop an extension to it in a shopping mall nearby. But that extension did not turn out to be much of a success. So after all, this will have to depend on consumer demand. Insofar as the concept is concerned, I am in support of Mrs Sophie LEUNG's idea to develop a fashion centre there.

However, the fashion centre we are talking about is not supposed to be a place for shopping. That is why matching facilities are more important. Honestly, the fashion design business is also related to my own trade, for there are many IT techniques and lots of animation involved in fashion design. Therefore, in terms of infrastructure, some efforts must be made in concert with the fashion industry. To cite an example, in 1999, the Government of South Korea spent about US\$50 million to transform the country from a purely processing base into a base for brand name garments. In these few years, we have seen South Korea making monumental changes, so much that in the past people would just look up to Japanese fashion, but now they are looking for Korean products.

Our Government has wasted almost five full years of time, for five years have passed since the policy address of 1998 which mentioned this idea was released. I hope that the new Secretary can really put the two ideas which I have mentioned, that is, the development of a border industrial zone and a fashion centre of Asia Pacific, into practice.

I so submit.

MRS SELINA CHOW (in Cantonese): Madam President, there are talks recently that the SAR Government wishes to turn Hong Kong into a fashion centre. This is something I like very much to see. For many years I have been very interested in fashion design. Though I am a layman, I have quite close links with fashion design sector. Hong Kong is a well-developed and successful centre for the textile and clothing industry and it is only right that Hong Kong should become a fashion centre of Asia Pacific. So I support wholeheartedly the motion moved by Mrs Sophie LEUNG today. Having said all these, dreams are but dreams after all and the focus of our discussion should be the realization of this dream.

The first thing we need to make clear is that a centre for textile and clothing does not mean the same as a centre for fashion. To achieve the latter, there must be a local creative industry that can continuously enhance and update our expertise. I have discussed with some experienced designers on this topic in order to gauge their views. They told me, to materialize the ideal to turn Hong Kong into a fashion centre, the first thing to do is to implant the spirit of fashion design in our soil. Only when this is done that it can grow here and then develop beyond our boundaries. Let us stop and think. Other fashion centres such as Tokyo, Paris, Milan, London and New York have all sorts of vibrant activities in relation to fashion. Designers there have lots of opportunities to display their works and their concepts. The people there give recognition to their creative endeavours and take pride in them. In Les Halles, Paris, the entire district is filled with fashion outlets, and huge crowds of locals and tourists are attracted to there. The crowds also make the service industries there thrive. In Hong Kong, we have a market for selling fashion garments, from prestigious brands to low-end items in the hawker precincts. But do we have a spot where all the works of our designers can be displayed? No, we do not have such a place. So how can we ever call Hong Kong a fashion centre?

Therefore, we ask that the Government should provide a place to be turned into a regular rendezvous for a hundred or so designers, where they can set up their own outlets. Added to this should be some exhibition venues for designers to display their works on a regular basis. That will make the place popular. There is a view that the more artistic a person is, the less management and business abilities he has. Just look at those world-renowned designers, they will have one or more brilliant management and marketing persons as partners. The centre proposed above should provide management and institutional support and this will give designers a head start in their career. Some people suggest that the best place for such a centre can be found in the

redevelopment area in Central. The Government should give serious thoughts to that idea.

Some masters of fashion design have praised the work done by the Hong Kong Government under the existing system to promote the growth of the design industry in Hong Kong. This applies especially to the fashion festival and fashion week held biannually by the Trade Development Council (TDC). The TDC also makes great efforts in promotion both on the Mainland and overseas and its achievements are remarkable. However, such promotion and exhibition activities are only held rarely, two to three times a year. These activities cannot hope to train up talents in fashion design and take root here as the display time and chances are limited. One gets an impression that things are not put to their best use as so many resources are used to support these activities but the designers can only display their creations in such a short duration.

Another key factor to consider is the way we train up talents in fashion design. Due to the small home market, local designers employed by manufacturers will set their eyes on the export market and their products will draw reference from the latest designs overseas. They will try to do so through different media, such as visuals, illustrations and magazines. As far as I know, famous design schools overseas like St. Martins of London mentioned by Mr HUI Cheung-ching earlier offer courses in culture and the arts. Their museums hold exhibitions of fashion through the ages. All these will enrich the creative environment of design students, as well as their understanding of life and people. These will add to the profundity and growth of fashion culture and they are conducive to the training of creative designers.

Madam President, there are views that the limited market here in Hong Kong has hampered the development of designers and reduced the incentive for the design trade to expand. However, things have greatly changed and everyone is setting their eyes on the huge mainland market as an outlet for the Hong Kong fashion industry. We have heard about CEPA and that will bring business opportunities. At this time when the mainland market has flung wide its doors, with the economic take-off of the Mainland and the recognition given by the mainland people to Hong Kong fashion designs, plus the demand for brand names and packaging, all these will present an excellent impetus to enable the industry to engage in value-added pursuits. We have also heard the Government say that we can no longer compete with others by offering the lowest prices, we ought to make ourselves more competitive by adding value to

our products. In view of this, the Government must launch favourable policies that can help the industry, especially its designers, establish our position as a fashion centre.

Thank you, Madam President.

MR KENNETH TING (in Cantonese): Madam President, as a Legislative Council Member representing the industrial functional constituency, I very much support the motion moved by Mrs Sophie LEUNG today, in particular, the part of the motion urging the Government to make early preparations in anticipation of the imminent implementation of CEPA and the setting up of a border industrial zone expeditiously. We are of the view that these proposals are beneficial to the textile and clothing industry as well as other manufacturing industries in Hong Kong, thus giving a positive impetus to our economic recovery.

With the formal signing of CEPA, the industrial sector as well as other sectors in Hong Kong are all thrilled. But there are also some views that the Government must have a series of matching policies in place before manufacturers can relocate their production facilities to the territory. The reason is that since labour and land costs are high here, if the benefits reaped from the zero tariff arrangement cannot offset the increase in costs to be incurred by manufacturers when they set up their factories in Hong Kong, then they will not find the idea of relocation back to Hong Kong attractive. Therefore, the industrial sector has always been calling for the setting up of a border industrial zone in the hope that manufacturers can be provided with comprehensive assistance in setting up factories and solving their manpower problems. Thus, manufacturers can be attracted to return to the territory and take root here.

In recent years, surveys have been done by business associations, The Hong Kong Polytechnic University and the Association of International Accountants, and so on, and they all point out that if a border industrial zone is set up in Hong Kong, given the lowered costs of production, many Hong Kong manufacturers would relocate their factories back to the territory. These manufacturers may come from most of the industries which have relocated northwards, such as the watch and clock, electronics, shoemaking, toys and plastic industries. According to rough estimates, if 1 000 manufacturers decide to return, that would mean no less than 100 000 jobs for the local people.

The implementation of zero tariff under CEPA would mean a newly opened platform for the business and industrial sectors in Hong Kong to explore new opportunities of development and so more new industries can be introduced into the territory. The setting up of a border industrial zone will attract more of these emerging industries to set up factories in Hong Kong, hence creating more favourable conditions.

It remains of course that there are some implementation details in connection with the border industrial zone that need to be dealt with, such as the definition of products "made in Hong Kong", the types of industries to be included in the zone, siting, match of local manpower with that from the Mainland, prevention of abuse, and so on. All these issues would have to be considered by the Government from the perspective of the overall interest of Hong Kong and with all the parties concerned.

As for the issue of the importation of labour, taking into account the views from all quarters, it seems that the "one to three" idea, that is, for every local worker hired, three mainland workers can be imported, would seem to be acceptable to all parties concerned. In mid-February, the employers, the employees and the Hong Kong Government indeed reached an initial consensus on the "one to three" idea where the three parties agreed to launch a trial scheme to import 3 000 to 5 000 mainland workers. This was to be carried out on the premise that the employment opportunities of local workers would not be affected. Unfortunately, the scheme was forced to be suspended due to the Severe Acute Respiratory Syndrome outbreak. I hope the Government will not be hesitant in this matter anymore, and it should adopt a flexible labour policy so that a three-win scenario can be reached to revive our economy.

Mrs Sophie LEUNG mentioned in her speech earlier that Macao had seized the opportunity to set up a cross-boundary industrial zone with the Zhuhai Municipal Government at the end of last year in a bid to prepare for the future developments. Then what is the Hong Kong Government waiting for?

With these remarks, Madam President, I support the motion moved by Mrs Sophie LEUNG and urge the Government to set up a border industrial zone as expeditious as possible.

MR ALBERT CHAN (in Cantonese): Madam President, I know little about fashion. However, I believe, if every Member can dress like Ms Audrey EU, this Council will naturally become Hong Kong's fashion exhibition centre, thus obviating the conduct of so many debates. A new centre can come into being simply through facts and deeds.

Madam President, I have the experience of helping some friends of mine in the clothing industry in dealing with a number of problems a couple of years ago. I was later appointed as the consultant of a coalition formed by them. Today I would like to represent these clothing groups in reflecting their views.

For years, Hong Kong's clothing industry has been facing enormous difficulties. This was particular so last year and the year before. Owing to the pressure from the United States Government in dealing with issues relating to the inspection of certificate of origin of goods, many garment factories experienced tremendous hardship. Due to the requirement of enforcing certain policies and legislation, government departments might sometimes act too seriously, or even too stringently. As a result, many manufacturers encountered great obstacles in exporting their goods. Despite the completion of the production procedures, they missed the shipment deadlines because of delays in securing support documents and, as a result, they were even unable to recover their production costs.

Of course, the Government has always put the blame on manufacturers by saying, for instance, they should have submitted their applications earlier. However, insofar as the manufacturing industry is concerned, time is money. Very often, deadlines are extremely tight. In order to compete in the market, manufacturers would accept orders even though they know the deadline is short. Very often, however, not everything will run as smoothly as expected in the process of production. As a result, the shipment of goods might often be subject to a very tight deadline. However, the Labour Department and the Trade and Industry Department may not always be able to appreciate the plight of manufacturers and exercise flexibility in dealing with problems arising in the course of enforcement. As a result, the clothing industry is confronted with hurdles one after another. I hope to take today's opportunity to urge the Secretary to, in the course of considering and planning the development of Hong Kong's clothing and textile industry, take into account the hardship confronting the clothing industry, particularly the great number of obstacles posed by government departments.

For instance, manufacturers are very often at a loss as to what to do when government departments make arrangement for factory inspections, for such inspections must be carried out on the arrival of government officials. Even if a factory requests to reschedule the inspection for the person in charge might not be present in the factory, the request will not be entertained. In the course of inspection, government officials might even treat the factory management like a thief. According to some manufacturers, government officials might even go so far as to open a rice-cooker placed inside a toilet for inspection. The person in charge of the factory, albeit being a legitimate businessman in the production industry, was made to suffer in silence, just for the sake of meeting certain requirements imposed by executive departments. Legitimate businessmen also found their dignity badly hurt by government officials who treated them like a thief in such a harsh and contemptible manner. Being taxpayers, they have to pay tax too. That they make investment in Hong Kong demonstrates that they do have their own ideals. However, they find it so very hard to bear the attitude of the government officials.

Of course, not all government officials behave like this. Nor do all executive departments act like this. Given the considerable number of complaints of this kind, it warrants a reflection on the part of the Government. I have on past occasions reflected this problem to quite a number of government officials and held meetings with them to discuss this. They did undertake to carry out a review. I hope to draw the attention of the Secretary as this issue is brought before us for discussion today.

Madam President, I am a layman in terms of fashion. Yet prosperous metropolises like Paris, London, Florence, and so on, will cross my mind when we talk about the ambition of developing into a fashion centre. It seems like Hong Kong is sinking at the moment, not knowing when the bottom will be hit. We can rarely see a poverty-stricken metropolis being able to turn itself into a fashion centre. Fashion is very often a symbol of prosperity and modernity. Although there is a tendency of polarization between the poor and the rich in Hong Kong, the community in general is moving towards impoverishment. I can rarely see a poverty-stricken metropolis being able to turn itself into a fashion centre. If Hong Kong is to seize the opportunity of developing into an advanced fashion centre, it must stop itself from becoming increasingly poor and restore prosperity gradually. Only in doing so can a foundation be laid. Otherwise, the ideal of developing Hong Kong into a fashion centre will only become empty talk. I believe there is not much room for development in this

respect as long as Hong Kong continues to be governed by TUNG Chee-hwa. The Secretary may say that I am trying to seize the opportunity to exaggerate the matter in order to "overthrow TUNG". In my opinion, an integrated foundation must be laid before Hong Kong can seize this opportunity of development.

Madam President, I would like to point out that many people, particularly investors, will use the need to develop a wide range of centres as an excuse to import foreign labour. They will employ various means to reduce their investment costs, including remuneration for employees, and approach the Government for free provision of land, in order to seek as much benefit as possible. In my opinion, irrespective of the centres to be developed and the policies to be promoted, we must first of all carefully examine those proposals that seek to make personal gains at the expense of the interests of other groups in the community. If Mrs Sophie LEUNG's proposal is to be implemented in concrete terms, I hope an all-win solution can be adopted so that designers, manufacturers, investors and, most importantly, local workers, can all benefit. Any plans that will eventually widen the disparity between the rich and the poor or worsen the unemployment problem confronting local workers are, in my belief, definitely not intended by Mr Kenneth TING and Mrs Sophie LEUNG. As such, besides building a consensus, we must guard against those people who are prepared to sacrifice the interests of the general public, particularly those of workers, in the interest of individuals or a small group of people by passing off fish eyes as pearls or fishing in troubled waters.

Thank you, Madam President.

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I am very grateful to Mrs Sophie LEUNG for moving this significant motion, which facilitates further communication between the Government and Members on the direction of development of our textile and clothing industry and how Hong Kong can be developed into the fashion centre of Asia Pacific. I also thank Honourable Members for the valuable opinions they have provided just now.

Today, there are five main points in the motion moved by Mrs Sophie LEUNG, and I shall respond to them *seriatim*.

First, of course, it is about affirming the contributions of the textile and clothing industry to the economy of Hong Kong. Second, we shall address the issue of the way forward after the abolition of the textile quota system in 2005. Third, it is about how we can make the fullest use of our advantages after the signing of the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA). Fourth, it is about our strategic developments, including the border industrial zone, fashion and design centre, fashion centre of Asia Pacific, and so on. And fifth, it is about the promotion of economic growth and employment opportunities.

Madam President, I believe all the Honourable Members present and friends know that I have been working in the textile and clothing industry for many years. I believe I should make an appropriate candidate for the job of affirming the contributions of the textile and clothing industry to the economy of Hong Kong, thereby expressing optimism on the prospects of the industry. I may have to make a declaration of interest here as my family is still engaging in the textile business, and I am one of the fourth-generation operators of the industry. Let me quote some figures to illustrate the significance of textile and clothing industry to Hong Kong.

The textile and clothing industry has been a major driving force in the economic take-off of Hong Kong. Although the structure of Hong Kong economy has undergone some evident changes in recent years, the textile and clothing industry has managed to maintain its status as the largest manufacturing industry of Hong Kong. Therefore, I do not subscribe to the views just expressed by several Members that the textile industry is on the decline or is a sunset industry. Last year, that is 2002, the total export value of the industry amounted to \$72.7 billion, accounting for 56% of the total export value of Hong Kong. If re-exports are factored into this, the total export value of the industry would amount to \$271.8 billion, representing 21% of the Gross Domestic Product of Hong Kong.

Nowadays, about 49 000 persons are employed to work in manufacturing jobs and related posts of the textile and clothing industry, accounting for 26% of the workforce of the manufacturing industries. Besides, the employment size of the textile and clothing export trade is about 111 000, representing 22%

of the workforce of the local export trades. From these figures, we can see that the textile and clothing industry and its related trading activities have a significant bearing on the local economy, and its significance cannot be underestimated.

Later in the day, I shall attend a seminar on the Pearl River Delta (PRD) hosted by the Federation of Hong Kong Industries. They have conducted a survey which shows that Hong Kong manufacturers have employed about 10 million workers in the PRD, involving more than 53 000 enterprises. I believe many of such enterprises are operating textile businesses. Therefore, I absolutely do not agree with the views held by some Members, that the textile and clothing industry is on the decline or is a sunset industry. On the contrary, I believe it is even more prosperous than its prime in the past.

(THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair)

During the past 10 to 20 years, the local textile and clothing industry has faced changes in its manufacturing modes, together with the continuous expansion of its markets, the production processes have become globalized. Meanwhile, operators of the industry have also made continuous efforts to improve their production processes and develop original designs and original brand names, just as what Mrs Sophie LEUNG mentioned earlier about the production of ODM and OBM. Many enterprises have been striving hard to upgrade their value-added capabilities so as to enhance their competitiveness continuously in the increasingly competitive international market. I believe the opening up and the liberalization of the international market will continue to bring new impetuses and new opportunities to the business development of the enterprises.

Presently, there are two noteworthy developments: One is CEPA, and the other is the impending abolition of the textile and clothing import quota restrictions by members of the World Trade Organization (WTO) in 2005. The former will surely enhance the competitiveness of Hong Kong products in the Mainland, whereas the latter will have some very far-reaching impact on Hong Kong products in their development of the international market.

First of all, I would like to discuss CEPA. According to the just announced CEPA, the textile and clothing industry will enjoy many preferential treatments and business opportunities. With effect from 1 January of next year, among the 270-plus items of trading products that will enjoy zero tariff, about 90 items fall into the category of textile and clothing products, which approximately account for 88% of the total export value of local textile and clothing products to the Mainland in 2001, and the coverage is very extensive. Presently, the Mainland levies a tariff of 5% to 21% on these textile products. Such tariffs would be reduced to zero by 1 January next year. For the full year of last year, that is 2002, the total value of this type of products exported from Hong Kong to the Mainland was about \$18.8 billion. As for products other than the above-mentioned 270-plus items, they will also enjoy the zero-tariff treatment no later than 2006 as per the mechanism stipulated in CEPA. Besides, the benefits provided by CEPA will enhance the cost advantages of Hong Kong textile products, therefore it will enable Hong Kong products to upgrade their brand names and enhance the competitiveness of textile products with higher value-added content in their marketing effort in the Mainland. On the other hand, the local textile and clothing industry may make use of the benefits under CEPA to develop distribution, wholesale and retail businesses in the Mainland. Under CEPA, with effect from 1 January next year, the Mainland authorities shall allow Hong Kong enterprises to establish sole proprietorship enterprises to conduct distribution businesses. Besides, CEPA also makes downward adjustments to the requirements on the average annual sales volume, trading volume and registered capital. This will enable operators of the textile manufacturing industry of Hong Kong to establish their own marketing networks, develop the market and boost the sales volume, and further promote the brand names of Hong Kong products. If Hong Kong businessmen can grasp the present business opportunities, develop new product designs and original brand names, they will greatly enhance the competitiveness of fashion products of Hong Kong.

According to the Agreement on Textiles and Clothing of the WTO, textile and clothing import quotas of all its members shall be completely abolished on 1 January 2005. This means that our exports to the textile and clothing markets such as the United States, European Union and Canada will not be subject to any quota restrictions more than a year from now. The total export value involved amounts to about \$43 billion. The trend of trade liberalization shall benefit Hong Kong businessmen in expanding their markets and increasing the room for their trading activities. However, at the same time, with the complete removal of textile quota restrictions, textile and

clothing products of Hong Kong origin shall face open competition from those manufactured in territories with lower costs. The competition in the textile and clothing market will become increasingly keen. Moreover, we must also closely monitor the situation after 2004 to see whether some significant textile and clothing markets may introduce some forms of import restrictions, thereby affecting the textile and clothing industry directly or indirectly. Such possibilities cannot be ruled out now.

Mrs Sophie LEUNG has mentioned many development strategies. I believe that the two significant developments mentioned by me just now imply that the textile and clothing market will see further expansion, and there will be greater room of business development for the industry. The Hong Kong textile and clothing industry will have very good development prospects in future marketing environments if it can work on the present foundation to combine with its efforts in designing and manufacturing high value-added fashion and brand name promotion.

In view of the circumstances, I established the Steering Committee on the Development of Fashion Industry (the Committee) last December. The Committee comprises operators in the textile, clothing, marketing, design and promotion businesses, as well as representatives from the Hong Kong Trade Development Council, Hong Kong Productivity Council and various training institutions. The various working groups under the Committee have already held a number of meetings to discuss thoroughly and in great depth ways of stepping up manpower training, promoting brand names and images of Hong Kong fashion, intensifying the development capability of the industry and strengthening the infrastructural support.

After the Committee has completed its work, its conclusion and recommendations will be published. What I can disclose now is that the Committee shall propose some strategies to promote the commercial and industrial development of fashion, textile and clothing products, so as to make the industry more prosperous. As for the fashion and design centre which has been enthusiastically advocated by Mrs Sophie LEUNG, it is also being considered by the Committee currently.

Members have earlier mentioned and expressed concern on the issue of talents training. Presently, The Hong Kong Polytechnic University, Vocational Training Council and the Clothing Industry Training Authority are

training up hundreds of talented people to work in the various fields of fashion design and marketing. The Committee will also further examine how it can strengthen the training of students in terms of their professional expertise, widen the outlook of local students and promote better exchange between the Administration and the business sector. In the speech delivered by the President's Deputy just now, she also mentioned that it is by no mean easy to groom a good designer. As such talents should be exposed to many different cultures since their younger days, and they should have good knowledge in many different aspects such as museums and other aspects, the successful training of such talents cannot be accomplished overnight. I believe people in different sectors should all make some efforts in this regard.

I hope the strategies to be formulated by the Committee will assist Hong Kong and the industry in grasping the opportunities ahead. The fashions of Hong Kong have always been renowned for their high quality and taste, and certain individual designers have managed to build up a good esteem both in the Mainland and the international market. According to a survey conducted earlier by the Hong Kong Trade Development Council, in such major cities as Beijing, Shanghai and Guangzhou, Hong Kong fashions are the first choice of consumers in markets of medium-end products. In the upmarket, the works of Hong Kong designers are also beginning to gain popularity. The status of Hong Kong as the trend-setter city in Asia Pacific can also be illustrated by the fact that many globally famous brand names have chosen to open their flagship stores in Hong Kong and use Hong Kong as the place for launching new products to test market responses.

All these objective conditions, together with the growing consumption market for clothing in the Mainland as well as the implementation of CEPA, will reaffirm the status of Hong Kong as the prime fashion centre in China. It has created a precious opportunity, and at the same time, it is also helpful in elevating the status of the fashion industry of Hong Kong in Asia Pacific.

The Government of the Hong Kong Special Administrative Region (SAR) will surely do its best in coping with the development of the fashion industry. Several Members also mentioned earlier that we should do better in our matching measures. Meanwhile, however, the industry should not be complacent. As the Mainland is a very large market with diversified demands and tastes of consumers, operators of the industry must keep tabs on the pulse of the market and formulate suitable strategies of development. Furthermore,

in the face of competition from other European, American and South East Asian brand names as well as that from their counterparts in the Mainland, people in the industry should unite together to consolidate the image and status of Hong Kong fashion and to upgrade the overall competitiveness of Hong Kong fashion.

It implies, in this process, we must strengthen our talents training and attract more young people to join this industry which is full of creativity, vigour and opportunities. The success of the fashion industry will not only bring about direct income for the industry and society, it will also inject a new development impetus into the manufacturing industries and help create more job opportunities.

Lastly, I would like to discuss the proposal on the border industrial zone mentioned in the motion. Each and every Member who has spoken in the debate did touch on the subject of border industrial zone, and they all supported the development of such a zone. If I remember it correctly, when I was still in the business sector, I was among the first ones to put forward the proposal of setting up a border industrial zone. At that time, Mr CHAN Kam-lam suggested that we should go to Macao to learn from their experience. But I know how Macao runs the zone without actually going there. There are two entrances in the border industrial zone of Macao: one is the front entrance and the other is the rear entrance. The rear entrance is connected with the Mainland, whereas the front entrance is connected with Macao. As such, Macao residents may enter the border industrial zone to work via the Macao entrance, whereas mainlanders enter the zone to work via the mainland entrance. The proposal implies one major principle, namely, import of workers must be allowed to make it possible. And the land on which the border industrial zone is established must belong to Hong Kong in order to meet the place of origin requirement, that is, the products are made in Hong Kong and complies with the rule that the place of origin is Hong Kong. However, another important principle is mainland workers have to be allowed to come and work in the border industrial zone. I just heard about a "one to three" proposal, which is the option the various parties are more inclined to accept. Secretary Stephen IP and I have held several discussions on the issue with the labour sector. It seems that this is not a proposal that can easily win the acceptance of the labour sector. The SAR Government has repeatedly stated that, on the sensitive, controversial and potentially divisive policy of importation of workers, we must first secure the agreement of the various sectors before it can be implemented. We shall continue negotiating with the

various sectors and if there is a chance to bring about some breakthroughs, Secretary Stephen IP will naturally give a full account of the situation to the various sectors by then.

Mr Albert CHAN said earlier that he is now the consultant to a certain coalition. Some members of that coalition complained to him that some law enforcement officers had been too stringent, too harsh and unfriendly in their enforcement operations. I would like to raise two points. Firstly, Hong Kong is a place ruled by law, and when there are laws, then enforcement actions have to be taken, and enforcement does not allow any flexibility. In other words, it is natural that we should take enforcement actions according to the law. If someone has violated the law, we would surely take appropriate actions or prosecute him according to the law. If no one has acted against the law, of course we would not take any action. Therefore, if members of that coalition really have a lot of complaints, Mr Albert CHAN is welcome to come to me with those members of that coalition, and I shall meet them in person and hear their views.

Regarding the proposal in respect of the border industrial zone, as it involves problems on such aspects as industry, labour, planning and security, I shall conduct further studies on the issue seriously with my colleagues in the SAR Government. I would like to take this opportunity to raise one point. The competitiveness of Hong Kong does not lie in engaging ourselves in price wars with the Mainland. I believe if we try to defeat our mainland competitors by offering lower prices, we will have no chance of winning. Our edge lies in our ability of developing creative products or products of unique design. As we stroll along the streets in the Central District, Tsim Sha Tsui and Mong Kok, and take a look at the dressing taste of Hong Kong people, we would discover that it is very much different from that of people in Shanghai, Guangzhou and Dalian. From this, we can see that Hong Kong is a long way ahead in terms of creativity, taste, and so on.

I once used horse-racing as an analogy. In the whole of China (by this I mean all the regions of mainland China together with Hong Kong and Macao), I believe that, in terms of trendy products and taste, we are leading by one to two horse lengths. The horse right behind us, with a margin of one to two horse lengths, thinks that it stands a chance of catching up with us if its rider should give it an additional whip. Therefore, at this juncture, we should try even harder and aim at leading by 10 horse lengths. This is because the horse running in the second position would give up the idea of catching up with and

defeating the horse 10 horse lengths ahead of it. Instead, it would take a look at the horses behind it to fathom the margin by which it is leading so as to ensure that its second position is not threatened. It will not think of challenging the horse in front of it now. If we do not try harder to lead by 10 horse lengths, we may fall down from the horseback and cannot even hope to retain a second position. Therefore, we cannot just rely on the Government. Our success relies on the self-strengthening efforts of the industry, together with good matching measures of the Government.

Looking at the various perspectives, on such issues as the signing of CEPA, and how to bring the merits of CEPA into the fullest play, we shall face a lot of new challenges in 2005 in the liberalization of textile products. However, there will also be many new opportunities, in addition to our existing advantages. So we must make use of such opportunities and advantages adequately and fully, so as to make Hong Kong the fashion centre of the world, not just that of Asia Pacific.

Madam Deputy, I so submit and may I extend my gratitude to those Members who have spoken. Thank you.

DEPUTY PRESIDENT (in Cantonese): Mrs Sophie LEUNG, you may now reply and you have four minutes 13 seconds. This debate will come to a close after Mrs Sophie LEUNG has replied.

MRS SOPHIE LEUNG (in Cantonese): Madam Deputy, I will make use of the time now to bring up some rather interesting questions for Members to ponder over.

Firstly, we often talk about clothing, food, accommodation and transportation. Since the clothing industry comes before everything else, it will not decline. Although this industry in Hong Kong takes up second place in the world, we have always belittled it. On this issue, it is necessary for us to do some serious thinking.

Secondly, Premier WEN, who visited Hong Kong last week, pointed out that our economy is facing mainly structural problems. It is also necessary for us to think about this problem, since in the past, perhaps we attached too much

importance to trades that we often describe as serving only to earn money from one another instead of earning money from outside, such as speculation on properties. Without new money coming in, who will have the money to invest in properties? This is also a structural problem in our economy that we have to think about. Only industries that can earn money from outside are worth preserving.

Thirdly, we have heard strong calls from the public who hope that the economy will be able to take off. However, just now there were only three Members in the Chamber. If even Members of the Legislative Council do not care what sort of message we are conveying to the public, it is necessary that we give some thoughts to this.

Fourthly, I wish to point out that for the time being, Hong Kong is not in a position, nor has it found the way forward, to develop other industries, such as the much-floated high technology port and Chinese medicine port. We can see that in the SARS episode, it was not possible for Chinese medicine to play any role. It can be seen that this is a question of our mindset, that is, we have to change our way of thinking before we can do other things or anything that we want to do. Even more amazingly, the so-called local community economy is nothing more than organizing some market fairs. On the other hand, we claim that Hong Kong is a world city. I really do not know what sort of schizoid act we are engaged in.

Fifthly, I wish to point out a very strange and interesting number game: if we calculate on the basis of the total value of goods exported by the clothing industry in mainland China to the United States, the price of a product known as M² (I do not know its Chinese name) in China on reaching the United States is \$4. This is the figure in 1998 and it may be different now. The price of a similar product from Hong Kong is \$5.6, that from Britain is \$8, that from Italy is \$14 and that from France is \$20. That is to say, we are still in the process of taking off and there are still many opportunities of development. However, we do not care much about this area. In contrast, the fashion industry in Paris cares a lot about developments in this area. In the past five years, they have made many enquiries with us of the direction of development of the clothing industry in Hong Kong. They think that we have an overwhelming superiority in respect of casual wear, however, although we have a goose that can lay golden eggs, we do not treasure it. Instead, now and then we would pluck one of its teeth, clip its wings or pluck its feathers. Such is the mentality of our society.

One more point is that the United States and members of the North American Free Trade Agreement have found it rather inappropriate to use their backyards as manufacturing bases. These countries, from the angle of consumers, also attach great importance to the ability of our country as an exporter to continue to provide highly competitive products.

In addition, in the past we had tens of thousands of workers in the manufacturing industry. However, since 1996, due to the lowered requirements on origin prescribed by some major importing countries, the manufacturing industry in Hong Kong now retains only some 20% to 30% of its original production capability, but we still managed to maintain the same output. This can be attributed to changes in circumstances.

I also wish to point out that we should now ask this question: Will young people still be willing to sit at sewing machines to sew up garments for eight hours a day? This is also something we have to consider. Similarly, can this industry of ours provide opportunities to young people with creative abilities? Recently, I asked some members of the film industry from where they had recruited their workers such as production assistants and floor management workers. They said that they were all young people from the manufacturing industries because when they trained these young people, they found that these young people were more flexible and resourceful in their approach and they can achieve more when working on co-ordination.

Madam Deputy, I hope Members will all support my motion today.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Sophie LEUNG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

DEPUTY PRESIDENT (in Cantonese): Second motion: Mandatory inspection and maintenance of buildings.

MANDATORY INSPECTION AND MAINTENANCE OF BUILDINGS

MR LAU PING-CHEUNG (in Cantonese): Madam Deputy, I move that the motion, as printed on the Agenda, be passed. Before I deliver my speech, I would like to make a declaration of interest. I am an Authorized Person and my professional specialty is quantity surveying. If this motion is passed and the Government formulates a relevant policy to require owners of buildings to carry out regular inspection and maintenance, in terms of public policy, there will be greater assurance of building safety and hygiene, and all members of the public in Hong Kong will benefit from this. Insofar as business opportunities are concerned, professionals who have the opportunity to take part in building repairs and maintenance projects include engineers, architects, building surveyors, Authorized Persons and authorized contractors responsible for carrying out the projects.

As far as I am concerned personally, the professional services provided by the surveying firm in which I work are limited only to quantity surveying and the firm does not undertake building surveying or repairs and maintenance projects.

Many old buildings in Hong Kong are saddled with such problems as unauthorized building structures and disrepair, which accelerate the ageing of these buildings and endanger the safety of the tenants and the public. These problems are particularly serious for poorly-managed and poorly-maintained buildings over 20 years of age. With the spread of atypical pneumonia, the public have become more concerned about such problem as the illegal conversion of drainage pipes since this can lead to serious environmental hygiene problems.

At present, the Buildings Ordinance empowers the Building Authority to order the owners concerned to carry out works on buildings on grounds of dilapidation or other risks posed by these buildings. However, due to the constraints on public resources, and it is the responsibility of owners to carry out maintenance on private properties, it is necessary for the Government to establish a mechanism to mandate the inspection and maintenance of old buildings to ensure public hygiene and safety, without wasting public resources.

Buildings in a state of dilapidation and disrepair will pose problems not only in terms of structure, hygiene, fire safety, and so on, but also hazards like objects falling from height that will injure innocent passers-by at any time. Unauthorized building structures commonly found on the external walls, rooftops or podiums of buildings, apart from affecting building structure, also affect fire safety and pose obstacles to fire fighting and daily maintenance. Illegal signboards may also damage building structure and the general urban outlook. Due to disuse and disrepair, they may even fall down and injure the innocent. In the typhoon season, this type of problems often deteriorates. In the past three years, the spalling of concrete from the external structures of buildings caused deaths and injuries every year: in 2001, there were a total of 15 accidents, leading to one death and 17 injuries; in 2002, there were 16 accidents in total, leading to two deaths and 17 injuries; in the first five months of this year, there were 15 accidents, leading to 16 injuries.

The problems relating to drains are also very serious. Common problems include connecting sewage or soil pipes to stormwater pipes and connecting sewage manholes to stormwater manholes. The removal of seal traps affects the health of tenants and the leakage of buried drains will affect slope safety. Such actions, apart from leading to serious environmental hygiene and safety problems, may also help the spread of virus and bacteria. Sewage discharged into the sea may even pollute neighbouring waters. Since the atypical pneumonia outbreak in the community and the incident in Amoy Gardens, the public have become more concerned about the illegal conversions made to drainage pipes.

According to the information on the website of the Buildings Department (BD), there have been significant increases in the numbers of reports on unauthorized building works, the statutory orders issued, the summons issued for failure to comply with statutory orders and cases of conviction in the past five years. For example, in 1998 there were about 12 000 reports on

unauthorized building works but in 2002, the number of cases increased to nearly 22 000. As regards the number of convictions for failing to comply with the repair orders issued by the BD, it also increased from 121 cases in 1998 to nearly 400 cases last year. Therefore, the Government should take immediate and resolute actions to stem this deteriorating trend.

According to sections 26 and 26A of the existing Buildings Ordinance, where in the opinion of the Building Authority any building has become dilapidated, lacks fire escapes or has other defects, the Building Authority may by order in writing require the owner of the building to carry out demolition works or specify any works in order to comply with the requirements of the law. According to section 28 of the Ordinance, where in the opinion of the Building Authority the drains or sewers of any building are inadequate or in a defective or insanitary condition, he may by order in writing require the owner to undertake the specified drainage improvement works.

According to existing legislation, the Government is empowered to require owners of buildings to rectify unauthorized building works and drainage facilities, however, due to the allocation of public resources, it is often impossible to eliminate all unauthorized building works within a short period of time. Coupled with the incessant emergence of new cases, the situation is worsening.

The Building Management Ordinance amended in 2000 requires Owners' Corporations (OCs) to take out a third-party policy of insurance for the common parts of buildings and to manage their buildings and carry out timely maintenance according to the newly compiled Code of Practice on Building Management and Maintenance (the Code). If an OC fails to fulfil the duties specified in the Code or cause the building to remain in a dangerous state, the Secretary for Home Affairs can order the OC to appoint a designated building managing agent to manage the building. The Secretary for Home Affairs has also published in the Gazette a list of the relevant building managing agents. The agents listed are mostly well-known management companies which employ a certain number of professional personnel.

Private properties involve private property rights and owners have the responsibility to carry out regular maintenance and remove unauthorized building structures to ensure that no risks or environmental hygiene problems are posed to members of the public. If we look at existing legislation, private

cars over seven years of age have to be inspected once a year, fire-safety facilities in buildings have to be inspected annually, electrical installations over 100 amperes have to be inspected every five years, elevators and escalators also have to be inspected annually and every half a year respectively. Properties, which are even more valuable and which can easily pose dangers to the public, should certainly be subject to regular inspection.

In addition, the BD has put in place the Building Safety Loan Scheme to offer assistance to people with financial difficulties who have joined the voluntary Building Safety Inspection Scheme to maintain their buildings. Old people and other people on meagre incomes can even obtain interest-free loans.

At present, for unauthorized building works or dilapidated buildings, if owners fail to comply with statutory orders and a risk is posed by the buildings in question, the BD can undertake demolition or maintenance works and recover the cost afterwards. For costs that cannot be recovered, a charge will be registered against the title in the Land Registry. If an owner has no plans to sell the property, the charge cannot serve the purpose of recovering the cost involved. In the long term, this is not fair in the use of public resources.

For many years, the environmental hygiene problems, fire hazards and the visual impact on the urban outlook arising from poorly-maintained and dilapidated old buildings in some districts have aroused public concern. For this reason, the Urban Renewal Authority (URA) was established. I wish to make a declaration of interest. I am a non-executive director of the URA. However, the process of redevelopment has been fraught with setbacks and the result is barely satisfactory. Recently, because of the downward adjustment of the property market, the economic benefits of urban renewal programmes of the URA have been called into question and capital injection by the Government and assistance in rehousing by the Housing Authority were required. Not only were large amounts of public funds required to subsidize a small number of owners who refuse to shoulder their own responsibility of repairs and maintenance, this is also being unfair because a wrong signal will be sent and owners are indirectly encouraged, by dint of the handsome compensations offered by the URA in acquisition, not to carry out repairs and maintenance and let their buildings fall into disrepair in order to wait for acquisition of their buildings by the URA. Therefore, it is necessary for the Government to review the present acquisition and compensation system as soon as possible.

As I have mentioned, properties are privately owned and there is no reason to commit public resources infinitely to assist individual irresponsible owners in solving the problems of poor maintenance or unauthorized building structures. The effective management and maintenance of properties should be the responsibility of owners. In case of claims by a third party for injuries caused by the defects of a property or an increase in the value of a property because of proper management, the Government and the public should not share the liability or the benefits. Therefore, there is no reason for the Government to continue using public resources to carry out building inspections and maintenance free of charge for owners who have breached the law. This will also indirectly encourage illegal actions, and it is unfair to law-abiding taxpayers who regularly repair and maintain and properly manage their properties.

Since regular inspections of private cars, electrical installations in buildings, fire-safety facilities, elevators and escalators are enforced, why should the structure of buildings and other facilities having an effect on fire safety and environmental hygiene be an exception and why is regular inspection not required? The recent efforts to contain the spread of atypical pneumonia and the plan to clean up the city, headed by the Chief Secretary for Administration, Mr Donald TSANG, has to depend on the joint efforts of all members of the public in Hong Kong to remove illegally converted and modified drainage pipes and the effective management of environmental hygiene. Therefore, it is necessary for the Government to establish a grading system for building quality and mandate the inspection of substandard buildings, as well as prescribing penalties, as in the case of prosecuting people who spit anywhere, so as to achieve a deterrent effect.

I understand that some property owners in financial difficulty may not be able to hire building professionals or professional management companies to undertake the inspection, maintenance and daily management of buildings. Owners can, apart from considering applying for loans from the Building Safety Improvement Loan Scheme, also consider the suggestion put forward by Secretary Michael SUEN earlier on to liaise with owners of the same block or in the same district and commission a building consultant and management company together to provide one-stop maintenance and management services so as to save resources.

The Government should reduce its present role in monitoring unauthorized building works and in building maintenance and management by making use of the market mechanism in pursuance of the direction of small

government and minimize the use of public resources. However, the Government may continue to play a supporting and co-ordinating role and provide the following services. This can motivate owners to inspect, maintain and manage their buildings voluntarily and avoid accusations of excessive supervision of private operations. Firstly, to make legislation on the mandatory inspection of old buildings and require owners of buildings to hire building professionals and maintenance contractors to carry out regular inspection and maintenance; secondly, to compile for the reference of building owners a register of building professionals and maintenance contractors by making reference to the existing list of Authorized Persons of the BD, as well as the list of small-scale project contractors to be compiled soon; thirdly, to establish criteria for grading old buildings according to their year of completion, whether professional management companies are hired, the qualification and number of professional personnel employed by these companies, the amount of funds accumulated for building maintenance and other criteria on maintenance and management before implementing the scheme to inspect buildings by stages; fourthly, to put in place a mechanism of exemption from inspection which will take into account the year in which large-scale maintenance works has been carried out, the qualification and number of building professional personnel employed by the management company, and so on, so that the overall management of a building meets a certain standard, it can be exempted from mandatory inspection for a period of time; fifthly, to provide other services such as referral, enquiry and mediation; and sixthly, to continue to provide loans for building maintenance and help people in need to hire building professionals and contractors to undertake the demolition of unauthorized building structures and building maintenance.

Madam Deputy, to mandate the inspection of buildings is an administrative requirement that deals only with the symptoms of the problem. The way to tackle the problem at root is to make use of market forces. At present, most of the property developers have provided property management services for their developments through subsidiary companies. Some developers have even established more than two companies so that they will compete with each other, in order to raise the quality of service. Members of the public, when buying properties, also take into consideration the management of buildings. It can be seen that the Government need only put in place a building management grading system to award "quality marks" to buildings that attain a certain standard and exempt them from inspection for a certain period of time, say three years. In this way, the market value of well-managed old buildings, no matter if they are in housing estates or just

single-block buildings, will be higher than others in the same category. The public will gradually opt for this type of well-maintained buildings with "quality marks" and they will also be willing to pay the cost of maintenance.

If the Government does not want to directly manage this grading system, non-government organizations, the universities and professional groups are all willing to offer assistance. I wish to point out in particular that the Professional Green Building Council which is formed by a number of institutes related to the construction industry, apart from advocating environmentally-friendly designs for buildings, also encourages raising the quality of already completed buildings through good management and regular repairs and maintenance. As I have already pointed out, if a professional management company is engaged for a building, professionals are employed to survey it on a regular basis and necessary repairs and maintenance are carried out, the condition of the building will of course in general be superior to those that lack maintenance. Even if large-scale repairs and maintenance are called for, the cost of the project will often be lower due to the complete records that are kept on maintenance. As far as I know, the Professional Green Building Council plans to formulate a set of objective standards to evaluate buildings that take part in grading on a voluntary basis and issue certificates to those that meet the requirements. If the Government is not willing to establish a grading system on building management, then it should consider recognizing the certificates issued by the Professional Green Building Council and allow buildings that have obtained the certificates to be exempted from mandatory inspection. In this way, market forces can come into play, thus encouraging owners of buildings to carry out repairs and maintenance conscientiously.

In order to encourage owners to demolish unauthorized building structures and carry out timely maintenance, the Government can also consider offering a deduction on the personal income tax for the maintenance cost paid by owners, just like the deduction for home loan interest.

Owners of buildings will stand to benefit from regular inspection and timely maintenance. These include: firstly, reducing the liability arising from unauthorized building structures, disrepair and from the effects of these on building structure and in the long run, reduce the insurance premium; secondly, regular maintenance, which is small-scale in nature, can in fact reduce the substantial amount of money needed to carry out large-scale repairs and maintenance; thirdly, living conditions will be improved and the threats posed to personal and public safety as a result of fire and environmental hygiene

problems are reduced; and fourthly, the condition of the buildings will be improved, thus lengthening their service life and increasing their value.

The mandatory inspection of buildings and maintenance of old buildings will create employment opportunities for the building sector. Properly maintained buildings can also improve the environmental hygiene, safety, aesthetic appeal and urban outlook of Hong Kong, thus revealing its charm as a world city to the fullest extent.

With these remarks, I beg to move.

Mr LAU Ping-cheung moved the following motion: (Translation)

"That this Council urges the Government to expeditiously consult the public on the mandatory inspection of buildings, and introduce legislation thereafter to require owners of dilapidated buildings and buildings not complying with the standards prescribed under the Buildings Ordinance to engage competent persons to regularly inspect their buildings as well as carry out the necessary repairs, so as to ensure that the condition of such buildings meets building safety and environmental hygiene requirements and will not pose threats to the public."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr LAU Ping-cheung be passed.

DEPUTY PRESIDENT (in Cantonese): Mr Frederick FUNG, Mr James TO and Mr IP Kwok-him will move amendments to this motion respectively. Their amendments have been printed on the Agenda. The motion and the three amendments will now be debated together in a joint debate.

I now call upon Mr Frederick FUNG to speak first, to be followed by Mr James TO and Mr IP Kwok-him; but no amendments are to be moved at this stage.

MR FREDERICK FUNG (in Cantonese): Madam Deputy, there are 50 000 old buildings aged between 20 to 40 years in Hong Kong and most of them lack

regular inspection and maintenance, and there are around 1 million unauthorized building structures such as metal cages or canopies. According to industry evaluation, old buildings in Hong Kong can last approximately 60 years in general because of their varied building quality and design and our subtropical high temperature climate that is wet and rainy. Evidently, the ageing problem of buildings will become more and more serious, thus the authorities have the intention to relaunch the measure of mandatory building inspection, but the focus of discussion is the responsibility of inspection.

Mr LAU Ping-cheung has proposed in his original motion that owners should "engage competent persons to regularly inspect their buildings as well as carry out the necessary repairs". In this connection, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I worry if these owners have sufficient financial and management abilities to take up such work on a long-term basis, especially regular inspection of buildings according to the law. It is because most buildings with structural problems are buildings that are relatively old, and most of their owners belong to the lower and middle classes making meagre incomes. Moreover, given the prevailing economic slump, it can be anticipated that small owners must respond strongly to the arrangement, hence, the direction of mandatory inspection is not desirable at this stage.

Besides, the authorities are definitely responsible for the safety of building structure. In fact, the service pledge of the Buildings Department (BD) explicitly indicates that its mission is to "set and enforce safety, health and environmental standards for private buildings" and it will provide services to the owners of existing and newly built private buildings through enforcement of the Buildings Ordinance. At present, the BD also has an inspection mechanism pinpointing building structure, unauthorized building works and building maintenance which does not require payments by small owners. The ADPL and I think that so long as the mechanism is reviewed, improved and enhanced, this established mechanism can theoretically meet the existing needs for building inspection.

As far as I understand it, the BD will dispatch staff to carry out on-site surveys or visual inspections of large structures with obvious potential hazards only upon receipt of reports by the public on unauthorized building structures. Section 26A of the Buildings Ordinance specifies that if the Building Authority considers after inspection that a certain building needs immediate remedial works, the authorities are empowered to issue a maintenance list in respect of

the building and order the owners to carry out repairs or clearance works. If the owners refuse compliance, the BD will appoint a contractor to carry out such works on their behalf and then recover the relevant expenses from the owners. The ADPL and I are of the view that, compared to the enactment of another law to make it mandatory for the owners to appoint competent persons to inspect buildings on a regular basis, the government-led building inspection mechanism at present is still desirable for it can at least grasp the opportunity of the prevalent concern for building quality to improve the living and sanitary environment of the public in the long run.

In this direction, the ADPL and I think that the Government should more actively optimize the existing system for safety inspection of buildings. On the one hand, it should increase manpower to pace up inspection, and on the other, it should extend the scope of inspection to cover all buildings in Hong Kong. Of course, the BD can draw up a timetable for implementation and pinpoint older and structurally dilapidated buildings first and then gradually extend to other younger buildings.

The ADPL and I must emphasize that though we adopt an open attitude towards the proposed mandatory building inspection, since it involves policy changes as a matter of principle, and legislation and implementation will take years, we think that it will be faster and more effective to adopt the existing system of safety inspection of buildings at this stage in the interest of improving the living and sanitary environment of the public as soon as possible. Moreover, if the Government implements mandatory building inspection all of a sudden, there will be 50 000 additional old buildings in need of inspection in the market at once. Since the existing matching arrangements are not soundly in place and the public lack information on the market rates, the ADPL and I believe that the market may not be able to absorb such demands immediately and it will thus cause confusion. We also worry that some people may capitalize on the opportunity to increase building inspection charges and small owners will incur losses as a result. Furthermore, they may not necessarily be able to engage adequate professionals. On the other hand, the authorities should expeditiously carry out public consultation on mandatory building inspection in the interim. We agree to consultation but pre-emptive assumptions should not be made in respect of the manner of consultation. If it is found after consultation that the public intent is supportive of this general principle, the Government should then carry out a second-stage consultation on

the details and listen to the specific suggestions of the public about mandatory building inspection. I emphasize that continuous improvements should be made to the existing mechanism, for we do not believe that all matters can be sorted out after legislation is made. If so, everything will be too easy to tackle.

Another main point in the ADPL's amendment is to urge the Government to review and improve the Building Safety Loan Scheme. Although owners may apply for loans with the Administration to carry out repairs and maintenance works, the Scheme has not been received satisfactorily. Less than 20% of the \$700 million loan fund established two years ago has been utilized as of March this year. The reason is that, although it is specified under the Scheme that owners should borrow loans for repairs and maintenance from the BD in their personal capacity, individual owners in general must first secure the recommendation and co-ordination of the OCs and submit inspection reports and maintenance lists prepared in advance before they can be granted loans. In other words, the existing 12 000 private multi-storey and single block buildings without OCs in the territory can basically not be granted loans. Even if the owners have the intention to carry out building maintenance works, they will be at a loss because most of these buildings are old with fragmented ownership and many of the owners are in their twilight years. OCs which have successfully applied for loans will often encounter problems of intentional default on payments by some owners and this will affect the progress of maintenance works. It is time-consuming to file petitions with the Small Claims Tribunal and legal proceedings will adversely affect the relations between neighbours.

In view of this, the ADPL and I suggest that the BD should strengthen its leading role in terms of building inspection and maintenance such as revising the relevant legislation to permit buildings to borrow loans from the Government for repairs and maintenance in the name of OCs, and register a charge against the title of the property of owners who refuse to pay for the maintenance, requiring them to make repayment before selling their flats. The authorities can also consider providing capped tax deduction to owners who should meet building maintenance expenses as an incentive to encourage them to carry out repairs and maintenance. The Home Affairs Department should also continue to assist buildings in setting up OCs to co-ordinate building inspection and maintenance. For buildings with fragmented ownership and difficulty in setting up OCs, the authorities can consider exercising the power

granted under the existing Buildings Ordinance to carry out necessary maintenance works on buildings in emergency situation and immediate danger by adopting the mode of "actions first, charges later" and then try its best to recover the costs from individual owners. I remember during a discussion on cleansing problems in this Council, I made a proposal that the Government could appoint agents. Of course, we may need to amend the legislation. The Government can appoint agents and engage management companies through such agents. It will be more convenient for cleansing and maintenance works to be carried out in buildings with management companies. A management company can manage not only the cleaning work of a building but also the cleaning work of the whole street. We may need to amend the legislation for this purpose and I hope the Government can consider this together with the cleansing problem.

In regard to the original motion and the two amendments, since the proposed mandatory building inspection is highly controversial as previously stated, and implementing the relevant proposal requires time and matching measures, I still think that we should not rashly discuss the specific details of implementation before there is an outcome from the consultation. I only agree to a consultation, thus, I cannot support the original motion and the amendments and I will only abstain from voting. I wish to understand through consultation people's views and whether the relevant trades have prepared well and whether the Government has sufficient staff to assist owners, especially owners of old buildings, in setting up OCs or entrust agents to carry out management work well. For the above reasons, I seek to propose an amendment to the original motion.

MR JAMES TO (in Cantonese): Madam Deputy, first of all, I have to say I am speaking on behalf of the Democratic Party. About the remarks just made by Mr LAU Ping-cheung, we consider most of the contents agreeable, but perhaps we should still discuss them.

At least, our views on mandatory building inspection are basically different from those just made by Mr Frederick FUNG. In our view, at present, especially after the epidemic, and in the light of the condition of buildings, we are somewhat inclined towards mandatory building inspection and we think that a consultation should be conducted by the Government. The problem now only lies in how we should tackle the details.

The Government introduced a proposal in 1999 and initially, as proposed by the Government, they would even not carry out preliminary inspection. But later it was found that the proposed mandatory building inspection was not supported by the majority public and the Government also found that some buildings were in a continual state of dilapidation. Thus, the Government contracted out and carried out other work within one year for purposes of preliminary inspection. Certainly, we all know that the Team Clean lead by Chief Secretary for Administration Donald TSANG has recently put forward some suggestions and measures to improve environmental hygiene, and he has said that it seems the Government should be more active in this respect.

In this regard, our views are as follows. Under the present circumstances, what is the significance of carrying out the first free inspection for dilapidated buildings? The inspection is not bare eye inspection as the Government has mentioned but more detailed inspection. Putting it more frankly, though we certainly agree that the owners are basically responsible for building maintenance, the existing dilapidated buildings have become a general social problem and we think that the Government has to make this initial investment, but I do not wish to draw an analogy to the action of the Government as "offering a chicken or soya sauce". Actually, this part of the work by the Government in respect of building inspection is actually absolutely out of proportion to the repairs and maintenance required by problematic buildings. In other words, these owners really have to pay a lot.

In the past, the Government would advise owners after it had been found upon bare eye inspection that certain buildings had problems. It would issue an order on discovering after detailed inspection that there were numerous problems. If the Government really carries out detailed inspections of buildings on a large scale, it will find that it has to issue orders against many buildings. In fact, within these few years, the Government has already made extra efforts but it actually does not have to pay so much for the first inspection (that is, a detailed inspection of a dilapidated building) promoted by us. Nevertheless, if the Government is willing to take the first step, it can subsequently take actions itself or contract it out. It should issue orders when necessary and, if it is not necessary, it will at least make the owners concerned think that they are informed or their buildings are more or less safe.

After the Government has carried out the first detailed inspections on buildings, we all know that, even if mandatory building inspection will be

subsequently implemented, a consultation or even legislation is required. In any case, it will take a few years. Therefore, during this period, assuming that we count from zero after completing the inspections, we still have about four to five years to ensure that the public are safe. If the buildings are inspected again after a certain period of time, say five years, the mandatory building inspection scheme may have already been implemented, and the situation may be so.

Moreover, since the first inspection has been made on buildings, the owners of those dilapidated buildings that require large-scale repairs and maintenance will understand that even though they have to spend a lot on the relevant works, they have at least repaired their buildings properly and they can subsequently carry out regular maintenance. Or, property management agencies may suggest to the OCs that since the last large-scale maintenance works was very costly, they may consider making regular instalment payments for inspection and maintenance of buildings from time to time, and even the so-called minor works. This is after all more desirable than spending a lot all of a sudden. Thus, it will be easier to lobby people with more convincing justifications.

If the Government can carry out the first detailed inspection, it can allow more OCs that wish to carry out such works to get more benefits. Why? It is because the present economic situation is not too promising and the OCs need a lot of courage to lobby the owners and they also need political courage, for the owners will not elect such people to be members of the OCs next time on learning that they have to spend a lot because they will think that it really hurts to spend so much. It will also involve a lot of complicated problems about interests. If some owners do not understand the case, they will think that there must be such elements as "corruption", "embezzlement" and "excessive collection of money" whenever suggestions involving spending are made. Of course, there are really such cases. Yet, if the buildings have been inspected by the Government — although the Government has not much credibility in other aspects, for instance, in respect of Article 23 of the Basic Law, but in regard to building inspection, the public will still trust the Government if the buildings have been inspected by it and they will have faith the items of maintenance required by the Government. Why do we promote the first free building inspection? Some people query if we are giving away free lunches. Actually, the first free building inspection can play a very important mobilizing role and will create the culture of building inspection and make OCs and all owners more alert.

Furthermore, I have mentioned in my amendment that "the Government should offer assistance to owners who have difficulties". Of course, a Member has just said that difficulties include financial difficulties but I will not dwell on the monetary aspect anymore and I will talk about various other difficulties including the inspection by professionals. The professionals should identify the essential repairs and maintenance, for only regular inspections will be made thereafter. In my opinion, the owners may think: Will these people trick us or mislead us? Are they making unfounded justifications? They do have such worries. Certainly, Mr LAU Ping-cheung will refute this statement by me and say, "We are professionals, and so are you. There is no way that professionals be employed to mislead them?" Yet, we must remember that these owners wonder after all whether the Government will give them advice or even make more efforts in respect of the monitoring of professionals.

Let me cite another example. We all know that the inspection of electrical installations of buildings is carried out at certain intervals (it seems to be every seven years). We will find some electrical maintenance and inspection contractors to carry out the inspections and we may ask the engineers of the Electrical and Mechanical Services Department to give advice on the lists of contractors. These engineers will say that a certain contractor is more or less all right and they will not particularly exaggerate or force owners to do something. Even so, owners can still put their minds at ease. Members may say that there are not a large number of engineers who can undertake such inspections, but I have found upon enquiry that they can manage the present situation. We must bear in mind that that there are more or less the same number of buildings that require electrical installation and building inspections, thus, inspections are made within a certain period of time such as seven years on a certain number of buildings in certain conditions, and they are actually handled at certain intervals. Therefore, they should be handled properly. On basis of this, I have made a judgement and that is, we should give the owners confidence and we can actually consider doing so.

Of course, there are some other problems including the problem just mentioned by Mr Frederick FUNG. There are around 12 000 buildings without OCs, how can we ask the owners to pay after mandatory building inspections? What should be done at that time? Actually, owners and OCs need assistance in many respects and they encounter many difficulties in the legal aspect. In my view, we should not take such assistance lightly because their desire to carry out maintenance is very often adversely affected that way. Certainly, money is the most important problem but if the owners and OCs are willing to pay, they will be willing to pay for repairs and maintenance works

that make them feel at ease, are up to standard and necessary. If some people can monitor the situation and avoid embezzlement of funds or unnecessary maintenance works, owners are actually willing and interested in maintaining their buildings. Why? It is because Mr LAU Ping-cheung has reminded us that properly maintained buildings have higher values and incur lower insurance premiums. We should not take insurance premiums casually because the situation of claims is very serious at the moment. If there is anything wrong with the buildings, the insurance loading will continuously increase and the owners will find it very troublesome. Thus, these owners should be aware that the state of repair of buildings is very influential. After the recent outbreak of the SARS epidemic, if the sewage pipes of buildings are leaking and broken, there are actually very serious threats to the lives of the owners. They will understand that.

Therefore, if the Government can play a leading role and carry out free detailed building inspections to let the owners understand the standards and the advantages of properly maintaining their buildings and offer other assistance to them, I think that after a certain period of time, this mandatory building inspection scheme can certainly be implemented and the problems can be solved. Of course, ultimately, if the condition of some buildings sees no improvement after maintenance and the problem cannot be resolved, I hope the Government will expedite urban renewal.

MR IP KWOK-HIM (in Cantonese): Madam Deputy, as the saying goes, "Annual check-up puts your mind at ease", and it applies to all adults regardless of gender. Since an adult needs a routine check-up each year to provide against possible trouble, why do buildings not have such a need? The recent SARS crisis has made us realize more clearly that the unsatisfactory conditions of a building will directly affect residents' health. Five years ago, the DAB already requested the Government to implement mandatory building inspection and proposed the relevant motion in the Provisional Legislative Council. Unfortunately, it has been all words but no actions so far. The outbreak of SARS has precisely offered a good opportunity for the implementation of a mandatory building inspection scheme and we hope the Government will not miss this good opportunity.

I believe my colleagues present will not dispute the importance of mandatory building inspection, but even if the scheme can achieve the ultimate objectives of ensuring building safety while minimizing the disturbance to the

residents, it has been a subject of endless disputes between the Government and political parties. The DAB has all along adopted a clear position in respect of mandatory building inspection. We think the Government should first carry out preliminary inspection and require the residents to engage Authorized Persons at their own expenses when problems are identified in the buildings to carry out further detailed inspections. Recently, the Government has because of SARS inspected buildings in the territory of certain types of design by bare eye inspection in a short span of time. It sufficiently proves that the Government is capable of handling such work with the existing resources.

Why must the DAB insist that the Government must first carry out preliminary inspections in each interval on buildings of 20 or more years of age? We base our insistence on two reasons. First, we estimate that there will not be too many buildings that must be repaired and if we require at the preliminary inspection stage that all owners must inspect their buildings, we will undoubtedly be disturbing the public. The DAB thinks that the Government should play the role of a family doctor and refer the patient to a specialist only when there are problems. We think that most buildings are in normal condition and we believe that so doing may minimize the effects on the owners.

Secondly, enhancing administrative efficiency. According to government information, there are around 42 000 private buildings in the territory situated in the cosmopolitan areas (that is, Hong Kong Island, Kowloon, Tsuen Wan and Kwai Chung and Tsing Yi), and there are 9 300 buildings aged 30 or above. In the next 10 years, the number of such buildings will increase by 50%. According to government information, there are around 8 000 private buildings in Hong Kong without OCs or not managed by management companies, and most of them are tenement buildings.

According to the general government practice, if a building does not have an OC, maintenance orders will be issued respectively to every small owner. Nevertheless, the receipt of such an order by a small owner does not mean that he will take actions because maintenance works involving the common areas of the building requires the consent of all small owners before implementation. I wish to give a vivid example. There is an old building in the Western District against which maintenance orders have been issued again and again by the Government. When I inspected the place, I found that the handrails of the stairs kept shaking just at one push because the building did not have an OC and

had been in disrepair for many years. Finally, since the fresh water pipes had broken and there was no water supply, the residents could only seek help. I intervened and helped them to set up an OC, and the problem was solved and the building was given repairs and maintenance.

At present, older single-block buildings are badly in need of repairs and maintenance but the owners living in such buildings are usually worse off. Though the Government has launched the Integrated Loan Scheme for the Improvement of Building Safety, the response has been unsatisfactory. For two years since the launch of the Scheme, only \$160 million out of the fund totalling \$700 million has been lent. Thus it evidently shows that it is not easy to change the mentality of these genuine users.

If we really wish to implement the mandatory building inspection scheme, the DAB thinks that the Government must start working in three aspects. First of all, the Government should pinpoint owners of buildings which badly need inspection and launch vigorous publicity on the importance of building inspection among them so that they can realize that building safety can protect themselves and other people. Two days ago, a 6 m enormous signboard fell onto the pedestrian path at Hon Hau Road in Tsim Sha Tsui; luckily, it did not hit anybody on the street and cause any tragedies.

Yet, blessings are not a must and building inspection is certainly the safest solution and repairs and maintenance should be carried out when necessary. The DAB hopes that the Government can work out a list of priorities and first inspect some older buildings and buildings in long-term disrepair to prevent the recurrence of the above incident.

Secondly, it should launch strong publicity on the Integrated Loan Scheme for the Improvement of Building Safety. Under the present Scheme, borrowers in financial difficulties can enjoy interest-free loans but senior citizens are very particular about the utilization of money even if the amount involved is negligible. At present, the BD allows senior citizens aged over 60 years to infinitely postpone payment if they are insolvent after the receipt of the last instalment of the loan, and they can make repayment when the flat has been sold. We hope the Government can pacify the senior citizens and explain to them that, if they do not have the means, the Government has a mechanism to register a charge against the title of their properties so that they can make lump sum repayments after the sale of their properties. I believe doing so will put

senior owners' minds at ease and they will naturally be more willing to accept maintenance works if they are free from immediate financial pressure.

Thirdly, offering a building maintenance allowance. The DAB thinks that the Government should regard the expenditure on building maintenance as a tax deduction item to encourage the owners of more than 40 000 private buildings in Hong Kong to maintain their buildings.

Madam Deputy, the DAB supports the Government in expeditiously implementing a mandatory building inspection scheme, but the DAB insists that the Government should first carry out preliminary inspection on buildings of 20 or more years of age by means of bare eye inspection before requiring the owners to take follow-up actions. For this reason, the DAB will not support the original motion of Mr LAU Ping-cheung and the amendment of Mr Frederick FUNG.

As to Mr James TO's amendment, we have not listened carefully to his remarks in this regard just now. Nevertheless, we think that he has only mentioned the first inspection, not the free preliminary inspection to be carried out by the Government during each building inspection cycle as proposed by us. The amendment has not pointed out explicitly that the relevant building inspection scheme pinpoints buildings aged 20 years or more. We think that it is different from the original intent of the DAB and we will not support it.

I so submit. Thank you, Madam Deputy.

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

DR TANG SIU-TONG (in Cantonese): Madam Deputy, in the past three years, there were respectively 20 and 15 cases of injuries and casualties each year and eight cases of injuries as of June 2002 because of the falling of building structures from height, and 32, 18 and nine people were injured respectively and two of them were killed. However, the large-scale outbreak of SARS at Block E of Amoy Gardens because of soil pipe problems has taken 22 precious lives. Evidently, the safety of buildings is no longer restricted to structure, unauthorized building structures and fire escapes, for the potential environmental hygiene hazards cannot be overlooked. For this reason, I support the concern for the condition of local buildings as proposed in the motion.

Madam Deputy, mandatory building inspection was proposed by the Administration in 1997 and it was then proposed that all buildings in the territory aged over 20 years must be inspected by competent persons and maintained in accordance with the outcome of the inspections. At that time, this Council had a debate over the relevant proposal and the position of the Hong Kong Progressive Alliance (HKPA) was that: If the Government implemented mandatory building inspection, it ought to provide the relevant buildings with preliminary inspection. But the Government subsequently failed to introduce a bill into the Legislative Council as planned. It put forward instead the Comprehensive Strategy for Building Safety and Timely Maintenance in 2001 and the Maintenance Co-ordination Pilot Scheme and implemented other measures in place of the mandatory building inspection scheme.

Actually, to ensure the flats where we live comply with the building safety and environmental hygiene requirements, regular building inspection and repairs and maintenance are really indispensable. Nevertheless, the problem is co-ordination in terms of government policies. How are the owners going to organize OCs to make preparations for the repairs and maintenance works? How can competent persons and contractors be engaged at reasonable costs for satisfactory quality? How can the culture of timely maintenance be established? Experience tells us that if the co-ordination of the above elements is lacking and we rely only on legislation to implement mandatory building inspection, we may get half the results with double the efforts.

Firstly, from the angle of government policies and structure, there are at least two ordinances, namely the Buildings Ordinance and the Building Management Ordinance related to building management, maintenance and repairs. There are also at least eight major Policy Bureaux and departments that have to do with all this, namely, the Home Affairs Bureau, the Housing, Planning and Lands Bureau, the Buildings Department, the Home Affairs Department, the Food and Environmental Hygiene Department, the Fire Services Department, the Electrical and Mechanical Services Department and the Water Supplies Department. The year before last, the Government launched the Maintenance Co-ordination Pilot Scheme to co-ordinate the work of various departments in respect of building maintenance. The report tabled in April 2002 showed that the maintenance progress of 150 target buildings had obviously improved and the works on 85% of the buildings had been launched within a year. Nevertheless, similarly, the time spent by BD staff has increased by 30%. Undeniably, the effectiveness of the Pilot Scheme and the resources utilized are proportionate. If mandatory inspection is implemented

for buildings aged above 20 years in future, compared to 200 target buildings each year at present, the BD and other departments have to effect co-ordination for nearly 20 000 buildings. Even if only a small number of them require detailed inspection and repairs and maintenance, the various departments will have to face enormous challenges in terms of manpower. For this reason, the Policy Bureaux should be prepared to make matching reorganization at any time and carry out co-ordination, formulate policies, amend legislation and fight for resources at the senior level.

In respect of organizing OCs and making preparations for repairs and maintenance works, according to my experience, the support by the Home Affairs Department and other departments leaves a lot of room for improvement. For most owners of old buildings, it is definitely very difficult to organize OCs and I have already spoken a lot about that before. However, in reality, even though buildings can manage to form OCs, compared to organizing OCs, the raising of funds, drafting of tenders and selection of contractors as well as the supervision of works are more heavy headaches for small owners. In this connection, the authorities really need to examine the issue with the sector and introduce to old building owners modern property management services that are reasonably priced and have quality and assist owners in setting up OCs through engaging professional property management companies to manage and co-ordinate repairs and maintenance works. In actual operation, the owners may not necessarily engage such services on a permanent basis and they can engage such services on project basis, and when necessary, consideration can even be given to incorporating the expenses on engaging management agencies into the Building Safety Loan Scheme in order to give owners more assistance in respect of the promotion of repairs and maintenance works.

Madam Deputy, lastly, I hope the authorities will make double efforts in the promotion and establishment of a culture of proper maintenance and management. In the past, as property and land prices kept rising instead of falling, the owners would switch flats if their flats were in poor conditions, thus, old buildings were demolished and redeveloped before they were 30 years old, and the owners did not need to worry about maintenance. Even though they knew that the buildings might need large-scale repairs and maintenance, they seldom had the intention of establishing maintenance funds. These historic problems have undoubtedly become obstructions to the promotion of

building maintenance. Therefore, it is very important to promote and establish a popular culture of maintenance and management, and given that it is not easy to change the culture and conventions, actions should be taken at full speed.

Madam Deputy, I so submit.

MR ALBERT CHAN (in Cantonese): Madam Deputy, I strongly oppose any proposals relating to mandatory building inspection because there is basically sufficient legislation at present authorizing the BD to issue repairs or clearance orders and deal with the problems related to old buildings. For years, the BD has issued many repairs orders and the environment and building structure of old buildings as well as the problems relating to the spalling of concrete were ameliorated.

If mandatory building inspection is implemented, the biggest problem will lie with public housing. Once there are problems with public housing blocks, should we prosecute Secretary Michael SUEN, Chairman of the Housing Authority, for failure to properly maintain public housing? If problems emerge in many government buildings, should we prosecute the Chief Executive, Mr TUNG Chee-hwa? If mandatory building inspection measures are really implemented in the future but all government buildings are not included, will there be a problem of special status which is unfair to other owners?

Talking about mandatory building inspection, many government officials do not even understand building maintenance, and mandatory building inspection makes many small owners, especially the owners of some old buildings, owners of buildings without OCs and older residents with a lower level of educational attainment feel worried and disturbed.

For many years, I have assisted many owners of old buildings in handling the problems in relation to repairs and maintenance orders. Sometimes, a simple document from the Government would cause great fears in the elderly. They basically do not know how they can handle the orders upon receipt. Mr LAU Ping-cheung has left the Chamber. I have handled quite a number of cases related to professionals taking advantage of the orders to reap exorbitant profits. Let me cite a simple example to illustrate that.

Many years ago, the Government issued a repairs and maintenance order against a six-storey old building in Tsuen Wan. A day or two after the issue of the order, the relevant surveyor and engineering companies sent representatives to the flats in this old building, asking the owners to pay the first instalment. They told the residents that the BD had issued a repairs and maintenance order for repairs to be carried out to the building. They had to collect charges in two to three instalments, but the owners should make the first instalment payment and appoint them to carry out building maintenance works. Before the calling of general meetings for residents and owners, the so-called professionals had taken the initiative to approach the owners for payments. Some residents were misled into thinking that the Government had appointed those professionals to carry out maintenance works for them and therefore made the payments. After receiving such complaints, I immediately made appointments to meet those professionals and presented the papers. Initially, they pretended to be very authoritative and said that they had been appointed by the owners. I asked them which owners had appointed them to carry out building maintenance works, and told them that I would immediately file complaints with their respective professional bodies if they did not withdraw the so-called appointment. They then withdrew all legal and relevant papers. Eventually, I assisted those owners in setting up an OC and dealt with the repairs and maintenance issues.

There were numerous examples of unscrupulous professionals making use of these loopholes to mislead small owners or using intimidating language to bully them. Therefore, if there is not a sound management agent, company or OC to deal with the repairs and maintenance issues and if we merely make it mandatory by means of legislation for owners to inspect buildings, I believe there will be a continual emergence of problems and cases of small owners being bullied and exploited, and of professionals taking advantage of these loopholes to seek personal gains.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

Actually, the Government has actually discussed the problem with us for many times over the years. I made the same argument and played the same tune on each occasion, that is, if the Government had any intention to implement mandatory building inspection by means of legislation, two prerequisites must first be met. Firstly, it must offer comprehensive assistance to the owners of old buildings in setting up OCs; and secondly, it must provide

these OCs with professional assistance including legal and engineering assistance, while engineering assistance included tender and work supervision procedures. Although we started discussing the problem before 1997, that is, we have discussed it for eight to 10 years now, very unfortunately, even though the Government has basically said a lot, it has given owners negligible assistance in reality. I believe there are hundreds and even thousands of old buildings that still do not have OCs, and even if they have OCs, they exist in form only and are semi-dissolved. In that case, I cannot support any proposal forcing owners to inspect buildings by means of legislation. A failure on the part of owners to perform these duties in the future will constitute a criminal offence and the harsh laws will only help professionals make profits and ruthlessly bully and exploit small owners.

Mr Deputy — it was Madam Deputy a while ago and Mr Deputy now, the person who chaired the meeting kept changing and I do not wish to get the gender of the presiding Member wrong — I have a strong feeling about Mr LAU Ping-cheung's motion. Mr LAU Ping-cheung is well-known for fighting for the interests of his sector. I think that this motion shows concern for building safety in name but reaps profits for his professional sector in essence. We must strongly reprimand and object to this kind of motion, therefore, I call upon Members that if they have sympathy for the elderly living in old buildings and other small owners, they should not allow small owners and the elderly to be bullied by some professionals reaping personal gains on certain pretexts. Therefore, I call upon Members to oppose Mr LAU Ping-cheung's motion.

MR HOWARD YOUNG (IN Cantonese): Mr Deputy, according to the statistics of the BD, as at last year, 50 000 buildings in Hong Kong were aged between 20 and 40 years, and 9 000 of these buildings were in need of repairs. This is not to mention the fact that some other buildings were completed in the last 20 years and are also plagued with various management and maintenance problems.

Most of the fire safety facilities of these buildings are dilapidated and some of these buildings are not even equipped with any effective smoke doors as required by the Buildings Ordinance. And, the maintenance of these buildings are also very poor, to the extent that there are dangers all around. The light wells of these buildings are very narrow, and because people often

dump rubbish there and the sewage pipes on the walls are in long-term disrepair, these light wells will easily become the hotbeds of viruses, resulting in serious hygiene problems, one example being the mass infection of SARS in Amoy Gardens earlier on. We think that even one single unfortunate incident of this kind is too many. Therefore, the Government must not ignore the issue of mandatory building inspection and repairs.

However, the Liberal Party also maintains that building management and repairs should be the responsibility of owners themselves. The Government should only set down some regulations in principle instead of taking up the responsibility that should otherwise be shouldered by owners.

The issue of mandatory building inspection has actually been brought up repeatedly for discussions in this Chamber over the past six years. One of the major arguments has been the question of who should pay the inspection fees. I wish to point out that in the case of Amoy Gardens, the repairs of the sewage pipes of one single building already costs well over \$1 million. So, if the Government is to foot the inspection and repairs bills of all old buildings in Hong Kong, it will have to shoulder a terribly huge financial burden which is simply not affordable to us. How can the Government, which has run into such a huge fiscal deficit, afford this? This is not to speak of the fact that it is simply unreasonable to spend taxpayers' money on financing the inspection of private properties. This is as unreasonable as asking the Government to pay for the maintenance of private vehicles.

When it comes to the specifics, should we adopt an across-the-board approach and require all buildings of a specified age to undergo regular inspection and repairs? Or, should we also consider the quality of building management, that is, should we require only those buildings which fail to meet specified management standards to undergo mandatory inspection? The Liberal Party thinks that all these questions can be studied and discussed. The merit of taking management quality into account is that the number of buildings affected can be reduced, and the focus can be placed on those buildings badly in need of repairs, thus helping the private owners concerned to resolve their building management problems as quickly as possible. In case any private owner faces any financial difficulties, the Building Safety Loan Scheme should be able to offer assistance because its application has been widened to cover practically all types of building improvement works. Besides, the Scheme

does not require any means test, and the interest rate is as low as Prime minus 2%. So, the only problem that remains is the owner's willingness or otherwise to shoulder his responsibility.

Many private housing estates have in fact employed management companies and set up their maintenance funds for the purpose of carrying out regular building maintenance and repairs. Contributions to these funds are made by owners in their monthly management fees, so they will not feel the very painful pinch of having to fish out one big lump sum for maintenance and repairs. The problem is that in the case of many single residential buildings or old buildings, there are no OCs and no management companies. As a result, the management of these buildings is very poor, leading to many problems. That is why we agree that while implementing mandatory building inspection, the Government should also require property owners to improve the management and maintenance and repairs of their buildings. I also hope that the Government can come up with a feasible scheme of mandatory building inspection as soon as possible and launch a public consultation exercise again.

Finally, since the respective amendments of Mr James TO and Mr IP Kwok-him both require the Government to shoulder the responsibility which should be borne by property owners, they are against the Liberal Party's long-held stand that property owners should bear their own responsibility. Therefore, we do have reservations about these amendments. As for Mr Frederick FUNG's amendment, its emphasis is on reviewing and enhancing the existing practices. But since he also supports the idea that owners must employ competent persons to carry out building repairs, we hope that he can at the same time tell people that it is equally important for all of us to pay attention to routine management and maintenance and repairs. With proper management and maintenance, people will not have to worry about mandatory inspection, and they will all have a comfortable home.

Mr Deputy, I so submit.

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

DR RAYMOND HO: Mr Deputy, building safety problems have been our major concern for a long period of time. Although the Buildings Department

in August 1997 had issued a public consultation paper on a proposal for a mandatory Building Safety Inspection Scheme, no solid progress in enhancing building safety has been made so far. Dilapidated and ageing buildings are potentially dangerous and news about objects falling from external walls of buildings are reported from time to time. Because of the very high population density, our streets are often crowded with people during day time and some streets are also very crowded even in the evenings. To ensure the safety of citizens, mandatory inspection of buildings is necessary and I think that a second public consultation must be carried out as soon as possible.

Many old buildings in Hong Kong are potentially dangerous and those buildings over 30 years should be inspected on a mandatory basis. That is what I suggested during the two discussions at our relevant panels in the last few years. Although at that time the Government recommended 20 years as a cut-off point, I do believe that 30 years are more appropriate as a start because this can actually reduce the impact of mandatory building inspection on the public. Instead of having to deal with 24 000 blocks, we would have only 12 000 blocks to start with.

It is obvious that, to ensure building safety, old buildings should be inspected. However, to achieve thorough building safety, we should do more than that. For example, buildings over certain years of age should be maintained on a regular basis and unauthorized building works should all be removed. At the moment, we have something like 800 000 of these unauthorized building works on the external walls of our buildings. These must be dealt with as soon as possible. To achieve these objectives, the Government's support to building owners and owners' corporations are important. For instance, the Government should provide them with appropriate guidelines and financial assistance. On the other hand, as citizens are not experts in building structure and hence may not understand the importance of timely maintenance of buildings in relation to their safety, the Government should make them aware of it through education.

Building inspection and maintenance involve professional expertise. In order to ensure that resources and efforts are not wasted, professionals with relevant expertise are needed to implement or monitor inspection and maintenance projects. As Registered Professional Structural Engineers are experts in building structure, I strongly believe that their participation in this kind of projects is important and definitely necessary.

The above measures are recommended to achieve building safety. However, to ensure thorough building safety, not only do we have to note the safety of the exterior of a building but also its interior. For example, electricity facilities are a common source of accidents in Hong Kong. In fact, news about accidents related to electricity problems are also reported from time to time. While I appreciate the efforts of the Electrical and Mechanical Services Department on promoting electricity safety via the Electricity (Wiring) Regulations of the Electricity Ordinance, I hope that it will continue its efforts and work with other government departments to achieve thorough building safety, passing onto the other departments the experience they have acquired so far.

Hong Kong is a small city with high population and building density. If buildings are not well maintained, not only will accidents such as falling objects occur, but there will also be an effect on the environment. This would result in something which we would consider undesirable in our living environment.

Mr Deputy, I so submit. Thank you.

MR NG LEUNG-SING (in Cantonese): Mr Deputy, residential buildings in long-term disrepair or unauthorized building works will not only give rise to structural safety problems, but also pose dangers to residents and pedestrians. The outbreak of SARS this time around has taught the people of Hong Kong a more severe lesson, that substandard or damaged sewage facilities of buildings will aggravate environmental hygiene problems, and even adversely affect the physical well-being of the entire community. At present, there are more than 20 000 buildings that are over 20 years of age in Hong Kong, and many of them suffer from structural safety and environmental hygiene problems that need to be addressed urgently. The Government should indeed make use of the public's enhanced awareness of building safety and sanitation in the aftermath of the epidemic by expediting the formulation of feasible proposals on regular building inspection and repairs.

In its interim report, the Clean Team, led by the Chief Secretary for Administration, proposed measures in respect of the mandatory maintenance and repairs of buildings by owners, classification of the sanitary and hygienic condition of buildings, and so on. Actually, like car owners who are obliged to regularly inspect their cars, owners of buildings should assume the entire responsibility of regularly inspecting the structural safety and environmental

hygiene standards of their buildings and carry out necessary repairs. The discharge of this responsibility is also an assurance of the personal safety of owners as well as tenants. In my opinion, this major principle should be affirmed and enforced by way of legislation so that buildings all over the territory will be subject to mandatory regular inspection. Those identified to be problematic will then be required to carry out mandatory repairs. Without mandatory repairs, mandatory inspection will not be able to achieve the policy objective of improving building safety and environmental hygiene.

In concrete implementation, some technical problems and practical problems confronting owners with financial hardship must be addressed as a matter of course. A more detailed feasibility study can be conducted to examine ways to implement the proposals in concrete terms. In my personal opinion, the age of a building is not necessarily directly related to its safety and hygiene condition. In particular, it has no direct link with environmental hygiene problems. What I mean is, all buildings should be subject to mandatory inspection. As it is more likely for older buildings, such as those over 20 years of age, to have problems, the Government should, after the full implementation of the mandatory inspection and repairs scheme, take the initiative to carry out free initial building inspections and require owners of problematic buildings to carry out repairs so that the problems can be resolved expeditiously and in a more focused manner. Of course, the Government should provide owners with financial difficulties with proper assistance, including making full use of the Building Safety Loan Scheme which is already in place.

Mr Deputy, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, in the light of the outbreak of SARS in the community at Amoy Gardens, the Government conducted a study and found that the outbreak was mainly attributable to drainage pipes in long-term disrepair which had given the virus an opportunity to breed and transmit. As a result, in the aftermath of the SARS outbreak, there has been a growing demand in the community for strengthened building inspection and repairs. Some people have even demanded the Government to carry out mandatory building inspection and expressed the view that the Lands Department should enforce the land grant provisions in existing legislation and recover flats and lots not properly maintained, or in breach of the Buildings

Ordinance. However, we feel that such a high-handed or mandatory approach is not the best solution to the problems. I hope the Government can clearly identify and pinpoint the crux of the problems before introducing improvements.

We agree that certain buildings in Hong Kong, regardless of their age, will become unmanageable if they are in long-term disrepair. The Amoy Gardens incident is just one example that represents the tip of the iceberg. There are indeed many more problems. It was recently reported that some flats in private buildings had been converted without authorization into a number of suites for lease. The sewers of these suites were often connected in such a confused manner that they might run through stairs, corridors, and so on. In the event of damage, the condition will become so deplorable that we can even find faeces everywhere on the ground. While such a sight might not be a big deal, things will get even worse if the faeces become a carrier, as a new round of disasters might strike the community again. As such, the problems confronting us have become so pressing that they must be resolved expeditiously.

Besides causing disease transmission problems, buildings plagued by such problems as lacking inspection and falling into disrepair will also threaten the community like a time bomb. If we pay attention to news reports, we will find that there are frequent reports of pedestrians being injured by objects fallen from unauthorized building structures or not properly maintained buildings as well as casualties caused by such accidents. These problems do not occur only today. They happened many times before. How can they be resolved?

Actually, this is not just a personal safety problem. This problem is actually associated with the culture of the entire community, which is very important. It is impossible for the problem to be resolved if we do not look at it from the culture of the community. Insofar as community culture is concerned, I can recall that a Member raised objection to the Urban Renewal Authority Bill during the relevant discussion on the ground that the Government's plan to demolish a number of buildings with Hong Kong characteristics would destroy Hong Kong's historic records. Insofar as this issue is concerned, we must consider this carefully: On the one hand, historical heritage must be preserved, and on the other, the problem of not properly maintained buildings which are truly not suitable for dwelling must be addressed for they must not be allowed to exist any longer. A two-pronged approach should be taken to tackle such problems. On the first hand, community redevelopment should be speeded up. Otherwise, some buildings

will become so dilapidated that they will no longer be suitable for dwelling and, in that case, even repairs cannot resolve the problem. On the other hand, frequent building inspection and repairs must be stepped up. Lest, as I pointed out earlier, crises are inevitable.

Of course, we do understand it is not easy to carry out comprehensive building inspection and repairs. This is the biggest problem. At present, there are 12 000 old buildings of 20 to 40 of age in Hong Kong. It is no easy task for inspection and repairs to be carried out within a short period of time. For this reason, some people have proposed to relaunch the mandatory building inspection scheme which has been put on hold. As proposed in today's original motion, it is suggested that owners be punished for non-compliance. However, we hope the Government can understand that this is not the best solution because so doing cannot pacify grievances prevalent in society. Given the intense grievances in the community, punishing owners for non-compliance will only intensify discontents among members of the community. Members should be aware of the existence of the negative equity assets problem. It is indeed the wish of owners to carry out repairs. But can they afford to do so? They would also like to improve the living condition of their own flats, but are they capable of doing so? This is precisely the crux of the problem. To bulldoze through the proposal will only aggravate the burden on negative equity assets owners and lead to even stronger opposition. This is not helpful at all.

A very likely reason for some buildings falling into long-term disrepair is that they have not formed their own OCs to carry out building inspection and repairs works. According to statistics, at least 8 000 buildings still do not have residents' organizations or OCs. The conditions of these buildings are deteriorating because many flat owners only care for their own interest or adopt a none-of-my-business attitude. For this reason, one of the most important tasks that need to be done at the moment is to step up efforts to help owners to form residents' organizations to enable them to make concerted efforts to do something. Although the Government insists that efforts have been made in setting up resources centres to help residents to conduct such work, the number of these centres is still limited. Owing to the role they play, these centres, which merely give advice for reference, are unable to provide the residents with practical assistance in organizing themselves. In my opinion, the Government must, if it is truly sincere about helping residents to resolve this problem, inject resources to assist residents in forming their own residents' organizations.

Besides helping residents to form their own organizations, there is another problem in connection with the establishment of the Building Safety Loan Scheme. Although a total sum amounting to \$700 million is available under the Scheme, only \$140 million or so has been spent and 4 000 or so applications have been approved so far. This greatly falls short of the anticipation. Why? Perhaps there are too many hurdles in the course of applying for loans. For instance, applications can be submitted only by organizations, instead of individual owners. I hope this can be improved. This is because, as pointed out by me earlier, many buildings are still not eligible to apply to the Scheme because they have not formed their own residents' organizations and, as a result, no repairs can be carried out. This restriction must be changed or no one can make use of the loan to resolve their repairs problems, even though loans are available.

Mr Deputy, I so submit.

MR ALBERT HO (in Cantonese): Mr Deputy, it was reported the other day that some pedestrians were hurt by debris fallen from certain old buildings in long-term disrepair. Recently, the Amoy Gardens incident has also aroused Members' concern over the possible risks of disease transmission because of not properly maintained pipes and drains. Everyone is concerned about the necessity of implementing a mandatory building inspection scheme. We are of the opinion that this is worth considering, and we support it in principle too. Nevertheless, even if we support this general strategy for public hygiene and public safety reasons, we must understand that this policy, should it be implemented, is going to aggravate the financial burden of several million people. Furthermore, full consultation is essential to ensure the effective and orderly implementation of this scheme. A large number of stakeholders must be consulted before the relevant legislation can be enacted. We consider this consultative process extremely important for only through consultation can we find out the problems confronting the public and the specific hardship or problems encountered by various OCs, owners' committees and management companies. It is only after doing that can effective measures be formulated to tackle the problems and wide support secured for the policy to facilitate its effective implementation.

I believe the Government is aware that, under the present financial situation, it will mean extra hardship for certain people (not everyone of course) if members of the public are required to contribute extra money for building

repairs and maintenance. While some people living in old districts may be relying on rent income from the old buildings they own at a meagre rate, some may have only one self-occupied flat and live entirely off their meagre savings. They might face enormous difficulties if they were required to contribute to repairs works. As such, we feel that it is essential for the Government to consider offering a certain measure of assistance. Mr James TO raised the point earlier that we in the Democratic Party believe the Government can consider carrying out initial inspection services for certain buildings. As for the inspection priority, the Government may consider the following two factors: first, the age of the buildings; and second, the maintenance condition of the buildings. For instance, luxury apartments or buildings on the Peak will invariably be kept in a very good condition. Moreover, residents living there can well afford regular inspections and repairs. It is simply not necessary for the Government to offer them any support. However, the Government should consider assisting those who have difficulties by at least providing the initial inspection services.

It might be found after inspection that there is a need for repairs to be carried out immediately or expeditiously. Yet we must understand that many OCs or management companies often encounter difficulty even in collecting management fees. As far as I know, some owners have not paid management fees for a year or two. Their management companies have already been racking their brains in search of ways to collect management fees in respect of flats left vacant. It might be beyond the affordability of the owners if they are now asked to pay an additional levy or contribute a lump sum of money for maintenance. Mr Deputy, I am not referring to all buildings. But at least some buildings or premises do have such problems. As such, it is extremely important to examine ways to ensure the further implementation of the building maintenance loan scheme. I hope the Government can convince the public to accept the Building Safety Loan Scheme and let them know that they are only required to repay the loan after their flats are sold. It is very important that, given its very low rate at the moment, the interest will not impose a heavy burden on owners. I believe the public will find a mandatory building inspection scheme, even if implemented, reasonable and feasible after these problems are resolved. They will also be willing to co-operate and give their support wholeheartedly.

Besides the necessity of passing new legislation on building maintenance, consultation is now being carried out with respect to the Building Management

Ordinance (BMO) in a bid to further perfect the building management framework in better co-ordination with government policies. For instance, are certain OCs or management companies empowered to apply for the loan? According to the Deeds of Mutual Covenant, they are not empowered to do so under certain circumstances. As such, some people worry that the provisions of the existing legislation are unclear. The possession of such power is also in doubt. I hope the BMO can be amended to clarify this point.

Moreover, the existing BMO has not provided a statutory basis for tendering procedures. Instead, they are governed by a set of guidelines issued by the authorities concerned. Some OCs very often prefer not to tender their works, regardless of their scale, simply because there is no requirement on tendering in the BMO. As a result, there were suspicions, doubts, and even disputes among owners. Insofar as this point is concerned, I hope the Government can expeditiously enact legislation to impose a requirement on tendering when the cost of a maintenance project reaches a certain sum. As for those buildings with no OCs or managers, the Government should contemplate ways to help relevant owners to set up OCs or commission temporary managers to help owners undertake their repairs and maintenance programmes.

I so submit.

DR YEUNG SUM (in Cantonese): Mr Deputy, Mr James TO and Mr Albert HO have, on behalf of the Democratic Party, expressed our views on Mr Ambrose LAU's motion. I only wish to add a few points here. In Hong Kong, many of the owners of the buildings in old districts are quite old. It is not easy to mobilize them. In order to implement the mandatory building inspection scheme, the authorities must assist small owners in forming OCs through such means as setting up outreach social work teams or assisting in the formation of OCs through various voluntary agencies. Besides all this, ample time must be given. The Government must not turn a blind eye to the needs of small owners just because it has offered the so-called "Building Safety Loan Scheme", low-interest loans, and so on. This is because even though loans are obtainable, the borrowers must repay the loans at the end of the day. They might be simply incapable of repaying the loans for a lack of means, or they might be simply unable to form OCs. As such, the Government must explore ways to help them form OCs.

On the other hand, we hope assistance can be offered to owners with difficulties. Actually, after the SARS epidemic, there was general concern among members of the community for fear that their homes will one day be declared dangerous because of long-term disrepair. Given the prevailing difficult financial situation, some people are already facing heavy pressure in their daily lives. Despite in good knowledge that their buildings are unsafe, many tenants and owners can simply not afford repairs and maintenance. Furthermore, many new arrivals choose to live in old buildings in disrepair because of low rents. There are also elderly owners who live off Comprehensive Social Security Assistance or their own savings. How can these people be expected to pay tens of thousands of dollars for building inspection and repairs and maintenance?

In implementing the mandatory building inspection scheme, the Government must therefore take their plights into consideration and offer assistance to them. Besides providing the loan scheme, the Government may encourage certain professional bodies and local organizations to provide the elderly and people in need with such services as drainage system replacement, legal advice and advisory services free of charge.

Lastly, I would like to suggest the Government to take long-term initiatives to change the living habits of the people through education. It is the hope of the Democratic Party that, in actively promoting the Team Clean initiatives, the Government can appreciate the hardships of the public. Building inspection is a long-term commitment. The Government may consider encouraging owners to set up OCs through education. The Democratic Party is of the view that, in the long run, owners are responsible for the safety and hygiene of their buildings. However, it is necessary for the Government to assume a "leading" role to help small owners understand their responsibilities. At the same time, a certain measure of assistance must be offered in the course of implementing the mandatory building inspection scheme. If this can be done, I believe the Government can get twice the result with half the effort. Thank you, Mr Deputy.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr LAU Ping-cheung, you may now speak on the three amendments. You have up to five minutes to speak.

MR LAU PING-CHEUNG (in Cantonese): Mr Deputy, today, I speak mainly in the hope that the Government will attach importance to the repairs and maintenance of buildings. After the SARS epidemic, the whole community now realizes that poor maintenance of buildings will not only jeopardize the safety of buildings. Its impact on environmental hygiene may also affect owners and tenants. What is more, it will create hygiene hazards to other people in Hong Kong and even threaten the lives of other people.

The amendment proposed by Mr Frederick FUNG focuses on a repairs checklist. He hopes that the Government can conduct preliminary inspections and then compile a repairs checklist. From his account of this proposal, I think Mr Frederick FUNG was suggesting that the Government should carry out detailed inspections of buildings, because only after inspection is carried out that a repairs checklist can be provided. If such being the case, it means asking the Government to pay for the costs, but this will go against the stipulation that the title owner has the responsibility to repair their buildings, in violation of the "user pays" principle. The title owner has the responsibility to conduct timely inspections and repairs and maintenance of their buildings. It is unreasonable to require the Government to provide a repairs checklist.

As for Mr James TO's amendment, it basically incorporates the view of Mr Frederick FUNG by urging the Government to carry out free initial inspections of buildings in Hong Kong. As we can see, while the Building Safety Loan Fund has been introduced for a couple of years, the amount of loans granted accounts for a mere 20% of the Fund. This is proof of people's general inclination to indolence. So long as the building is not too dilapidated and so long as it has not come to a state where repair works are absolutely necessary or a government repairs order has been served, the owners, in general, will not take the initiative to carry out repair works. Take Amoy Gardens as an example. We all know that the maintenance and management of Amoy Gardens is actually quite good. But the disrepair of sewage pipes in combination with other factors brought about the misfortune at Amoy Gardens. Mr James TO requested the Government to conduct free initial inspections of buildings. But given the resources of the Government now, it is downright impossible for the Government to shoulder the costs involved; and second, even

if the costs are affordable to the Government, it would still be unfair because the money of the Government is mainly the money of taxpayers. Why should taxpayers' money be expended to carry out free building inspections for a small number of irresponsible owners? It is absolutely unfair to taxpayers if public funds are spent this way.

Having said that, however, I very much agree with Mr James TO's remarks. In fact, he also agreed in principle to conduct studies in respect of a mandatory building inspection system and introduce it as expeditiously as possible for public consultation. In the course of consultation, many details and many different parties or organizations, including owners, tenants, professional bodies, building management companies, and so on, will be involved and they may put forward different opinions. Moreover, the merit of consultation is that a consensus can be reached. Once the Government decided to make legislation on this, I believe the enforcement of legislation would be easier if a consensus has already been reached.

As regards the wording of Mr IP Kwok-him's amendment, it basically urges the Government to conduct free preliminary surveys for owners. He gives me the impression that he does not oppose mandatory inspection of buildings. I think he supports the principle of mandatory inspection but hopes that the Government will pay for the cost first and then require owners to conduct inspections by themselves at a later stage.

So, bearing in mind the principle of fairness and the principle that owners should be responsible for their property, I cannot agree with the amendments proposed by Mr IP Kwok-him and Mr James TO which request the Government to provide free inspections of buildings.

(THE PRESIDENT resumed the Chair)

As for the speech made by Mr Frederick FUNG, he actually did not mention mandatory inspection of buildings. He only suggested that efforts be made to optimize the existing system.

So, Madam President, let us just leave it to the vote to be taken later. Thank you, Madam President.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, first of all, I thank Members for their valuable views on how to ensure proper maintenance of private buildings, including the issue of mandatory inspection of buildings.

Mr LAU Ping-cheung's original motion and the amendments proposed by Mr James TO, Mr Frederick FUNG and Mr IP Kwok-him all revolve around the same theme, that is, we must ensure timely maintenance and repairs of buildings to protect the health and safety of residents and the public. This objective is fully consistent with our policy direction.

As pointed out by many Members earlier, the Government conducted public consultation on the proposed Mandatory Building Safety Inspection Scheme in the latter half of 1997. Under the proposal at that time, owners of buildings aged 20 years or more were required to hire professionals to carry out regular inspections of their buildings. Insofar as residential buildings are concerned, it was proposed that mandatory inspection should be conducted once every seven years. Based on the findings of inspections conducted by professionals, the Buildings Department (BD) would require owners to carry out repair works to ensure the safety of their buildings.

In the course of consultation, members of the community generally agreed with the objectives of the Mandatory Building Safety Inspection Scheme. This proposal was also the subject of a motion debate in the Provisional Legislative Council in November 1997. Views presented at the time covered many technical details of the Scheme, including whether financial assistance should be provided to elderly owners with financial difficulties, whether a loan fund should be set up to assist owners to carry out repairs to their buildings, and so on. Moreover, a number of Members of the Provisional Legislative Council considered that the Government should shoulder the responsibility as well as the costs of building inspections. The amendments proposed by Mr James TO and Mr IP Kwok-him also express a similar idea.

Due to the lack of a consensus in the community at that time, coupled with other external factors, such as a downturn of the economy, the proposed building inspection scheme was not implemented. I will respond to the proposal of mandatory building inspection later on, but I would like to establish one important principle here. That is, owners of private buildings have the

responsibility to properly manage and maintain their own properties. We certainly appreciate that this is a burden to owners. But owners of private buildings must affirm their commitments to the expenses related to their properties. If we all agree with this principle, then any regular inspections conducted to ascertain the conditions of a building will, as a matter of course, be the responsibility of owners. If the Government is made responsible for it instead, no doubt it will mean obliging taxpayers to subsidize individual owners of buildings. This will not only involve massive manpower deployment, but also create an enormous financial burden and even dampen owners' motivation to repair and maintain their buildings. This is contrary to our objective and is, therefore, grossly unacceptable.

Regarding initiatives to facilitate proper maintenance and management of private buildings, we have never slackened in our efforts. In addition to law enforcement operations focusing on building safety and unauthorized building works, the BD launched the pilot Co-ordinated Maintenance of Buildings Scheme in 2000 to enhance owners' knowledge of building maintenance and encourage owners to assume the relevant responsibilities. Under this Scheme, the BD, in association with five other departments concerned, has surveyed target buildings that are not properly maintained and advised owners on the necessary repair works. Besides, the BD has launched a series of large-scale clearance operations, in which hundreds of unauthorized structures on the external walls of buildings, particularly those on the external walls of buildings of 20 to 40 years of age, have been removed in one initiative to ensure public safety. Over the last 18 months, the BD has removed a total of 67 000 unauthorized building structures.

Given that some owners may have financial difficulties in carrying out repairs to their buildings, the Building Safety Loan Scheme was set up by the BD in July 2001 to provide loans to help owners carry out improvement works to their buildings. As mentioned by a number of Members earlier, loans exceeding \$130 million have been approved under this Scheme since its introduction. The scope of eligibility for loans under the existing Scheme is broad, including works to improve building structure and conditions, works relating to the external walls of buildings, fire safety, sanitation facilities and slopes and retaining walls, surveying projects and professional services, and also works to remove unauthorized building structures.

Moreover, the Home Affairs Department (HAD) has made continued efforts to promote management and maintenance of private buildings. Apart from assisting owners of buildings to form owners' corporations (OCs), the HAD has organized a diversity of publicity and promotional activities. This is in line with the requests made to us by some Members earlier. Since 1998, a total of four Building Management Resource Centres have been set up by the HAD to provide support for owners in respect of the management and maintenance of buildings.

Most of the problems pertaining to the safety and hygiene of buildings in Hong Kong stem from the lack of a proper building management system and owners' low awareness of building management and maintenance. The lack of sustained management and maintenance will not only speed up urban ageing, but also give rise to other social and economic problems. For example, some buildings are exposed to the nuisance of objectionable or obnoxious trades. We must admit that insofar as our efforts are concerned, it is often the case that we can achieve only half the result with twice the efforts.

On the implementation of the pilot Co-ordinated Maintenance of Buildings Scheme, the departments concerned have to put in massive manpower and time to provide technical support and assistance to owners. But over the past three years since the implementation of the Scheme, work has been carried out only at 550 target buildings which account for a minimal portion of the tens of hundreds of buildings in Hong Kong. To provide the same kind of support to the existing 20 000-odd buildings of 20 years of age in the territory, it will take more than 100 years. Therefore, insofar as time is concerned, Mr Frederick FUNG's proposal which urges the Government to strengthen the pilot scheme cannot resolve the problem now faced by us. Similarly, according to the statistics of the HAD, only some 14 000 of the 38 000-odd multi-storey buildings in Hong Kong have established OCs. Based on the current progress, it will take us more than 50 years to assist all the existing buildings to form OCs, and this has not even factored in new buildings.

Despite massive manpower and resource input by the Government, the effectiveness has not been obvious and the progress has lagged far behind the speed of the ageing of buildings. This shows that the existing measures are indeed utterly inadequate to address the problem of poorly-maintained private buildings.

Madam President, if we analyse the problem in detail, we will find that the proposed mandatory building inspection scheme, whether or not the Government is to be made responsible for the initial inspection, suffers from the same drawback as that in our past work in this area and that is, the inspection work will be one-off or cyclical. Furthermore, the endeavours are often remedial in nature, laying no emphasis on precautions. Nevertheless, continued precautions are essential to maintaining the quality of buildings. If owners only focus on the responsibility to conduct regular inspections to the neglect of constant and sustained maintenance and repairs, it would indeed be impossible to achieve the long-term objective of improving the conditions of buildings.

While the merits of regular inspection certainly should not be neglected, it should be considered as one of the many elements of building maintenance and repairs. In this connection, we must formulate a comprehensive long-term strategy to resolve the problem for good.

Indeed, as early as in the beginning of the year when I reported to the Legislative Council Panel on Planning, Lands and Works on the policy agenda within my purview, I already pointed out that it would be a key area of work in my term of office to facilitate building management and encourage owners to pay attention to the maintenance and safety of buildings. In this connection, we are studying different options to raise owners' awareness of the need to maintain the quality of their buildings and to cultivate a culture of good building management.

Our initial intention is to improve the quality of buildings and the living environment in the long term through the integration of building management and building maintenance in the light of owners' demands and the services that can be provided by the industry. This position is based on several cardinal principles. First, as I said earlier, owners have the unshirkable responsibility to properly maintain and repair their own properties; second, sound management of building is a prerequisite of proper maintenance; and third, the professional property management services and technical support should be provided by the industry.

With regard to the responsibilities of owners and the importance of sound management, a consensus in principle has been reached fairly widely across the community. But there have been comparatively less discussions on the services that can be and should be provided by the industry. Modern management and maintenance of buildings involve many professional aspects.

The property management industry should, therefore, develop and provide one-stop long-term services, including making arrangements for owners to set up OCs, carrying out daily property management work such as security and cleaning services, drawing up maintenance plans in accordance with the conditions of buildings, conducting regular inspections of the conditions of buildings, undertaking necessary repair works, ensuring compliance with the statutory requirements on buildings, and providing professional and legal advice to owners.

To meet the different needs of owners and facilitate the delivery of more suitable services, we consider that the industry can introduce more flexibility into their service arrangements. For instance, the industry can encourage owners of adjacent buildings to participate in the same scheme and jointly employ a property management company, thereby enhancing the economic benefits of its services and reducing the costs payable by the owners. Moreover, the industry can consider carrying out the requisite repair works for owners of old buildings first and then recover the costs in phases through the management contract, in order to ease the financial burden being imposed on owners in a short period of time.

As regards owners, we are studying ways to encourage owners to fulfil their responsibility to manage their buildings. The options under consideration include the introduction of mandatory building management, and requiring all buildings of multiple ownership without any residents' organizations and not managed by any management company to set up OCs or to employ qualified property management personnel to manage their buildings. The ultimate objective is to develop an effective management structure and incorporate regular maintenance and repairs into the daily management portfolio.

We will at the same time consider taking a series of matching measures. For instance, we are studying the need to enhance the existing legislation in order to assist OCs and management companies to more effectively recover outstanding payments from individual owners and to urge owners to set up a reserve fund to meet non-recurrent repairs and maintenance expenses. We will also study the setting up of a grading system for buildings by an independent body for voluntary participation to give credit to properly managed and maintained buildings, with a view to encouraging owners to upgrade the quality of the management and maintenance of their buildings through market forces. Certainly, we will make ongoing efforts to enforce the law effectively, in order to remove dangerous and illegal building structures.

Some Members suggested that the Government should provide assistance to owners with difficulties. As I stressed in the beginning of my reply, the maintenance of buildings is the responsibility of owners. We should not depart from this general principle. We do appreciate that some owners need transitional financial assistance for repair works to their buildings. The \$700 million Building Safety Loan Scheme managed by the BD was set up precisely for this purpose. The Scheme provides loans at a low interest rate to assist owners in carrying out necessary building improvement works. Regarding the interest rate and repayment period for people with financial difficulties, their cases will be handled flexibly. We will also consider the need to provide further relief measures to owners with financial difficulties. However, I must reiterate that the responsibility of owners to manage and maintain their buildings includes financial commitment. The Government cannot and should not be made to bear the necessary expenses incurred in this area for individual owners.

We understand that the effectiveness of the entire proposal will depend on the discharge of responsibilities by owners, the complementary role of the industry, as well as the support of the entire community. We are in the course of negotiation with the relevant professional bodies, and we will carefully consider the views expressed by Members today. As also proposed by Members earlier on, we plan to issue a more detailed consultation document by the end of the year to consult the various sectors of the community, in order to ascertain whether or not the various proposals are agreed by various sectors of the community before we consider how the details as referred to by me earlier can be implemented. After the consultation, some of the details may need to be revised, and I do not rule out this possibility. We must allow the general public to take part in the discussions on how the problems posed by poorly-maintained buildings to individuals and society can be addressed in the long term.

Madam President, the public has become aware of the importance of the management and maintenance of buildings after the atypical pneumonia incident. This can be considered as a positive effect of the epidemic. I hope we can seize this opportunity and address squarely this problem which has plagued Hong Kong for a long time. I am glad to learn that Members are supportive of our efforts to promote building management and maintenance, and I hope we can work in concert to create a healthier and safer living environment in Hong Kong. Thank you, Madam President.

PRESIDENT (in Cantonese): I now call upon Mr Frederick FUNG to move his amendment.

MR FREDERICK FUNG (in Cantonese): Madam President, I move that Mr LAU Ping-cheung's motion be amended, as set out on the Agenda.

Mr Frederick FUNG moved the following amendment: (Translation)

"To delete "expeditiously consult the public on the mandatory inspection of buildings, and introduce legislation thereafter to require owners of" after "That this Council urges the Government to" and substitute with "review and strengthen its current efforts to inspect"; to add "and, in line with the existing practice, provide owners of the inspected buildings with repair checklists; at the same time, this Council also urges the Government to review and improve the 'Building Safety Loan Scheme' in order that more owners who have financial difficulties can obtain loans under the Scheme" after "the Buildings Ordinance"; to delete "regularly inspect their buildings as well as" after "to engage competent persons to"; and to add "as required in the repair checklists" after "carry out the necessary repairs"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Frederick FUNG to Mr LAU Ping-cheung's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Frederick FUNG rose to claim a division.

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

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

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

Functional Constituencies:

Dr Raymond HO, Dr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr WONG Yung-kan and Mr IP Kwok-him voted against the amendment.

Mr LAU Ping-cheung abstained.

Geographical Constituencies and Election Committee:

Ms Cyd HO, Mr LEUNG Yiu-chung, Mr LAU Chin-shek, Ms Emily LAU, Mr Albert CHAN and Mr Frederick FUNG voted for the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr TAM Yiu-chung, Mr WONG Sing-chi, Ms Audrey EU and Mr NG Leung-sing voted for the amendment.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, nine were in favour of the amendment, four against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 19 were present, six were in favour of the amendment and 12 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

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

MRS SELINA CHOW (in Cantonese): Madam President, Madam President.....

PRESIDENT (in Cantonese): I am sorry, Mrs Selina CHOW.

MRS SELINA CHOW: Madam President, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of further divisions being claimed in relation to the motion or any amendments thereto, on "mandatory inspection and maintenance of buildings", the Council do proceed to each of such divisions after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed. Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Mr Albert CHAN raised his hand)

MR ALBERT CHAN (in Cantonese): I am sorry, Madam President. I was dreaming just now. *(Laughter)*

PRESIDENT (in Cantonese): Mr CHAN, you are not against the motion, are you?

MR ALBERT CHAN (in Cantonese): No.

PRESIDENT (in Cantonese): That means no one is against it.

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

I order that in the event of further divisions being claimed in respect of the motion on "mandatory inspection and maintenance of buildings" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

MR JAMES TO (in Cantonese): Madam President, I move that Mr LAU Ping-cheung's motion be amended, as set out on the Agenda.

Mr James TO moved the following amendment: (Translation)

"To add "carry out free initial building inspections" after "That this Council urges the Government to expeditiously consult the public on the mandatory inspection of buildings,"; and to add "; the Government should also offer assistance to owners who have difficulties in this respect" after "as well as carry out the necessary repairs"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr James TO to Mr LAU Ping-cheung's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

PRESIDENT (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute.

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:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Ms LI Fung-ying and Mr Michael MAK voted for the amendment.

Dr Raymond HO, Dr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Mr Andrew CHENG, Mr SZETO Wah, Mr WONG Sing-chi and Ms Audrey EU voted for the amendment.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr Albert CHAN and Mr NG Leung-sing voted against the amendment.

Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, four were in favour of the amendment and 10 against it ; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 17 were present, 11 were in favour of the amendment, four against it 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 amendment was negatived.

PRESIDENT (in Cantonese): Mr IP Kwok-him, you may move your amendment.

MR IP KWOK-HIM (in Cantonese): Madam President, I move that Mr LAU Ping-cheung's motion be amended, as set out on the Agenda.

Mr IP Kwok-him moved the following amendment: (Translation)

"To add "provide that the Government shall take the initiative to regularly conduct free preliminary surveys on those private buildings in the territory that are 20 years old and above, and to" after "and introduce legislation thereafter to"; and to delete "regularly" after "to engage competent persons to" and substitute with "thoroughly"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr IP Kwok-him to Mr LAU Ping-cheung's motion, be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for one minute.

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:

Mr WONG Yung-kan, Ms LI Fung-ying and Mr IP Kwok-him voted for the amendment.

Dr Raymond HO, Dr Eric LI, Miss Margaret NG, Mrs Selina CHOW, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr SIN Chung-kai, Mr Howard YOUNG, Ms Miriam LAU, Mr Michael MAK and Mr LAU Ping-cheung voted against the amendment.

Geographical Constituencies and Election Committee:

Mr CHAN Kam-lam, Mr TAM Yiu-chung and Mr NG Leung-sing voted for the amendment.

Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi voted against the amendment.

Mr Frederick FUNG and Ms Audrey EU abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 14 were present, three were in favour of the amendment and 11 against it ; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, three were in favour of the amendment, 12 against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr LAU Ping-cheung, you may now reply and you have two minutes 33 seconds.

MR LAU PING-CHEUNG (in Cantonese): Madam President, I wish to thank the 11 Members who have spoken. From the speeches made by Members, it appears that all political parties do not find any problem with the general principle, but their views on the details and such questions as who should meet the costs are different.

There are at present about 750 000 unauthorized building structures in Hong Kong. As pointed out by many Members, there are as many as 12 000 buildings without an owners' corporation (OC) in Hong Kong, and these are buildings with the biggest problem for their maintenance and management are relatively bad. What the Government should do is, firstly, to assist owners of these buildings with no OC in place to organize themselves, so that the maintenance and management of their buildings could be conducted in a more systematic manner. Mandatory inspection, after all, can only be a stopgap measure that does not quite get to the root of the problem. It is most important to address the problem at root and so, work should be carried out from day one to achieve timely management and maintenance. Secondly, the Government must surely provide support. Many Members have mentioned that the Government should provide support in terms of technology, accountancy and law. I must point out that we already set up the several Building Management Resource Centres for the Home Affairs Bureau in 1997. But we can see that the current utilization rate of these centres are not very high. This may be due to inadequate publicity and the fact that owners of buildings without an OC are comparatively lax in their organization. In view of this, the Government should launch more education efforts among them. As for the one-stop management and maintenance approach proposed by Secretary Michael SUEN, I think this initiative is welcomed.

I very much hope that Members can consider this: What we are asking for is only the early release of a consultation document to conduct a territory-wide consultation on matters relating to mandatory inspection of buildings, and we will then determine the mainstream view of the community. The direction we are heading is to improve the management and maintenance of buildings in Hong Kong, so as to make Hong Kong a better and more beautiful city. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr LAU Ping-cheung, as printed on the Agenda, be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr LAU Ping-cheung rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Ping-cheung has claimed a division. The division bell will ring for one minute.

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

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

Functional Constituencies:

Dr Raymond HO, Dr Eric LI, Mrs Selina CHOW, Mrs Sophie LEUNG, Mr Howard YOUNG, Ms Miriam LAU and Mr LAU Ping-cheung voted for the motion.

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr Michael MAK and Mr IP Kwok-him voted against the motion.

Ms LI Fung-ying abstained.

Geographical Constituencies and Election Committee:

Ms Audrey EU and Mr NG Leung-sing voted for the motion.

Ms Cyd HO, Mr Albert HO, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr LAU Chin-shek, Ms Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi voted against the motion.

Mr Frederick FUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 13 were present, seven were in favour of the motion, five against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 18 were present, two were in favour of the motion, 14 against it 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 motion was negatived.

DR YEUNG SUM (in Cantonese): Madam President, I wish to seek your permission for me to propose in accordance with Rule 16(4) of the Rules of Procedure that an adjournment motion debate be held.

PRESIDENT (in Cantonese): I must suspend the meeting now, because I have not yet been given a reply to one point. I will make a ruling when I have been given the reply.

4.13 pm

Meeting suspended.

4.47 pm

Council then resumed.

PRESIDENT (in Cantonese): Members, Dr YEUNG Sum requested to move, in accordance with Rule 16(4) of the Rules of Procedure, a motion for the Council to be adjourned now in order to debate an issue of public interest, and asked for a designated public officer to reply; and according to Rule 16(5) of the Rules of Procedure, this adjournment motion requires a written notice of not less than seven clear days to the Clerk to the Legislative Council before the date of this meeting.

In this connection, I would like to take this opportunity to explain to you the reason for a notice period. In fact, the purpose of stipulating the notice period is to allow Members sufficient time to consider the motion and propose the issue for debate, and at the same time allow the public officer sufficient time to prepare for his reply. Therefore, there is this provision in the Rules of Procedure so that all parties can be prepared. However, the Rules of Procedure also make it clear that the President of the Legislative Council has the discretion to waive the notice.

On the subject of waiving notices, the President of the Legislative Council also has some views. Members may recall that in the last meeting, I waived the notice that should be made by the Secretary for Financial Services and the Treasury. On that occasion, apart from explaining the background, I also reminded public officers and Members that I hoped that was only a special case and that such special cases should only be rare in the Council. Also, to maintain the integrity and reliability of the rules and procedures of the Council, as well as the dignity of the Council, I will continue to examine critically whether or not to approve requests for waiver made to me by officials or Members in the future. As our general practice, I would listen to suggestions made to me by the House Committee when Members make requests for waiver. If the House Committee recommends that I grant the request, I will consider accepting the suggestion.

However, with regard to this request by Dr YEUNG at this stage, it is very difficult to call a meeting of the House Committee. Therefore, as you may have seen, Mrs Selina CHOW has presided over the meeting for me for a

long time this afternoon. I have made use of that time to contact as many Members as possible to listen to their views on Dr YEUNG Sum's request.

Of course, expression of opinion is non-restrictive on the issue of the adjournment motion and it is not necessary to put it to the vote. Nevertheless, there must be a central point of debate for Members to discuss. The issue proposed by Dr YEUNG Sum is "How Hong Kong should deal with the strong demands made by over 500 000 people on 1 July, so as to avoid Hong Kong sinking into a political crisis".

I considered that this issue was related to sufficient public interest, thus, I tried my best to contact Members. If I could contact them by phone, I discussed with them; if I found them in the Legislative Council Building, I also listened to their views. As a result, out of all the Members contacted by me, over half of them hoped that this adjournment motion debate be held. Under such circumstances, I therefore enquired with the relevant department of the SAR Government to see if a public officer could be appointed to reply in the adjournment debate.

I suspended the meeting just now for a confirmation on this. The reply to me is that they are willing to participate in the debate. However, since they only came to learn about this request by Dr YEUNG Sum at 1 pm today, they needed time for consideration and thus hoped that they could make their reply in the afternoon tomorrow.

I also asked Dr YEUNG Sum to consult Members. After some discussions, Dr YEUNG Sum told me a while ago to hold this adjournment motion debate tomorrow.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): For the above reason, and under such circumstances, I decided to suspend the meeting now until 2.30 pm tomorrow for Dr YEUNG Sum to move his adjournment motion.

Suspended accordingly at seven minutes to Five o'clock.

Annex IV

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2003

COMMITTEE STAGE

Amendments to be moved by the Secretary for Constitutional Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In subclause (2) in the proposed definition of "選民" by deleting "投票的" and substituting "的投票".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(3) Section 3(2A)(a)(i) is amended by repealing "this Ordinance" and substituting "the provision which first specifies the body for the purpose of the composition of the relevant functional constituency".</p> <p style="padding-left: 40px;">(4) Section 3 is amended by adding -</p> <p style="padding-left: 80px;">"(2B) For the avoidance of doubt, it is stated that the power of the Secretary for Constitutional Affairs under subsection (2A) to approve an amendment to or substitution of the constitution of a body may be exercised only for the purpose of defining the composition of the relevant functional constituency."."</p>
3(1)	By deleting everything after "repealing" and substituting "'or any 2'".
11	By deleting the clause and substituting -

ClauseAmendment Proposed**"11. Composition of the tourism functional constituency**

(1) Section 20O is amended by adding -

"(aa) travel industry members of the body known immediately before 1 April 2001 as the Hong Kong Tourist Association, entitled immediately before that date, under the constitution of that body in force immediately before that date, to vote at general meetings of that body;"

(2) Section 20O(c) is repealed and the following substituted -

"(c) members of the Hong Kong Board of Airline Representatives;"

12 (a) By deleting subclause (1).

(b) By deleting subclause (3) and substituting -

"(3) Section 20V(2)(b) is repealed and the following substituted -

"(b) "relevant period" (有關期間), in relation to a statutory body or registered body, means -

(i) subject to subparagraph (ii), the period from 1 April 1994 to the date

ClauseAmendment Proposed

on which the statutory body or registered body applies for registration as an elector of the sports, performing arts, culture and publication functional constituency; or

- (ii) if the statutory body or registered body applies for such registration on or after 18 July 2003, the period of 6 years immediately preceding the date on which it so applies; and". "

13

- (a) By adding -

"(3A) Section 20W(e)(xviii) is amended by adding "The" before "Hong Kong". "

- (b) In subclause (4) by deleting the semicolon and substituting a full stop.
- (c) By deleting subclause (5).

14

- (a) By adding before subclause (1) -

"(1A) Section 20Z is amended by renumbering it as section 20Z(1). "

- (b) In subclause (1) by deleting "20Z(f)" and substituting "20Z(1)(f)".

ClauseAmendment Proposed

- (c) In subclause (2) by deleting "20Z(h)" and substituting "20Z(1)(h)".
- (d) In subclause (3) by deleting "20Z(i)" and substituting "20Z(1)(i)".
- (e) In subclause (4) by deleting "20Z" and substituting "20Z(1)".
- (f) By deleting subclause (5) and substituting -
- "(5) Section 20Z(1) is amended by adding -
- "(ja) the eligible persons of the following bodies -
- (i) Hong Kong & Mainland Software Industry Cooperation Association Limited;
- (ii) Information Systems Audit and Control Association (Hong Kong Chapter) Limited;
- (iii) Internet Professionals Association Limited;
- (iv) Professional Information Security Association; and ".".
- (g) In subclause (6) by deleting "20Z(k)(i)" and substituting "20Z(1)(k)(i)".

ClauseAmendment Proposed

(h) By deleting subclause (7) and substituting -

"(7) Section 20Z(1)(k)(iv) is repealed and the following substituted -

"(iv) Internet & Telecom
Association of Hong Kong
Limited;

(v) Hong Kong Wireless
Technology Industry
Association Limited;

(vi) The Society of Hong Kong
External Telecommunications
Services Providers Limited;
and".

(i) In subclause (8) by deleting "20Z(l)" and substituting "20Z(1)(l)".

(j) In subclause (9) by deleting "20Z(l)(vi)" and substituting "20Z(1)(l)(vi)".

(k) In subclause (10) by deleting "20Z(l)" and substituting "20Z(1)(l)".

(l) By adding -

"(11) Section 20Z(1)(m) is amended by adding "Part 1 of" after "in".

(12) Section 20Z is amended by adding -

"(2) In subsection (1)(ja),
"eligible persons" (合資格的人), in relation

ClauseAmendment Proposed

to a body, means the persons specified in Part 2 of Schedule 1D in respect of that body."."

16 By deleting the clause and substituting -

"16. Who is eligible to be registered as an elector: functional constituencies

(1) Section 25(4) is amended by repealing "20Z(l)" and substituting "20Z(1)(l)".

(2) Section 25(5) is amended by repealing "20Z(k)" and substituting "20Z(1)(ia), (ja)(i) or (k)".

(3) Section 25(6) is amended -

(a) by repealing "20I(b),";

(b) by repealing "20Z(a) to (j)" and substituting "20Z(1)(a) to (j) or (ja)(ii), (iii) or (iv)"."

38 By deleting the clause.

39 (a) In the proposed sections 60D(4) and 60E(4) by adding "equal or" before "exceed".

(b) In the proposed section 60H(1) by deleting "notice." and substituting -

"notice,

in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541)."

ClauseAmendment Proposed

- (c) In the proposed section 60I -
- (i) in subsection (1)(a) by deleting "specified" and substituting "or extended period provided for";
 - (ii) in subsection (6) by adding "or such other person as specified in regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541)" after "representative".

44(4)

By adding -

- "81. N.T. North District Fishermen's Association.
- 82. Tai Po Off Shore Fishermen's Association.
- 83. Aberdeen Fisherwomen Association."

45

(a) By adding -

"(7A) Item 43 of Schedule 1A is repealed and the following substituted -

- "43. Hong Kong Commercial Vehicle Driving Instructors Association."."

(b) In subclause (24) by adding -

- "195. New World Parking Management Limited.
- 196. The Nautical Institute — Hong Kong Branch.

ClauseAmendment Proposed

197. The Hong Kong Union of Light Van Employees.

198. Worldwide Flight Services, Inc."

47(10) By adding -

"94. Hong Kong Poultry Wholesalers Association.

95. Diamond Federation of Hong Kong, China Limited."

48 By deleting the clause and substituting -

"48. Schedule 1D substituted

Schedule 1D is repealed and the following substituted -

"SCHEDULE 1D [s. 20Z]

COMPOSITION OF THE INFORMATION
TECHNOLOGY FUNCTIONAL
CONSTITUENCY

PART 1

Item	Body
1.	APT Satellite Co. Ltd.
2.	Asia Satellite Telecommunications Company Limited.

ClauseAmendment Proposed

PART 2

Item	Body	Eligible persons
1.	Hong Kong & Mainland Software Industry Cooperation Association Limited	<p>Full Members -</p> <p>(a) the major business of which, as confirmed by the Association, has been in the research, development or application of information technology or computer software during the relevant period; and</p> <p>(b) which are entitled to vote at general meetings of the Association.</p>
2.	Information Systems Audit and Control Association (Hong Kong Chapter) Limited	<p>Ordinary Members who are -</p> <p>(a) confirmed by the Association to have been holders of the Certified Information Systems Auditor Certification</p>

ClauseAmendment Proposed

- (CISA) during the relevant period; and
- (b) entitled to vote at general meetings of the Association.
3. Internet Professionals Association Limited
- Members who are -
- (a) confirmed by the Association to have had experience in the information technology field, as specified in the constitution of the Association, during the relevant period; and
- (b) entitled to vote at general meetings of the Association.
4. Professional Information Security Association
- Full Members who are -
- (a) confirmed by the Association to have been holders of the Certified Information

ClauseAmendment Proposed

Systems Security
Professional
Certification
(CISSP) during
the relevant
period; and

- (b) entitled to vote at
general meetings
of the
Association.

PART 3

1. Definition

In Part 2, "relevant period" (有關期間), in relation to a person, means the period of 4 years immediately preceding the date on which that person applies for registration as an elector of the information technology functional constituency. ". "

53 In the proposed section 7(1)(hb)(v) by deleting everything from "or" to "payment" and substituting -

", the payment of financial assistance on such a claim, and the taking of any action for those purposes by a legal personal representative of a deceased person or by such other person as specified in the regulations".

57 (a) By adding before subclause (1) -

"(1A) Item 2 of Table 5 in section 2 of the Schedule to the Chief Executive Election Ordinance

ClauseAmendment Proposed

(Cap. 569) is amended by adding before paragraph (1) -

"(1A) Travel industry members of the body known immediately before 1 April 2001 as the Hong Kong Tourist Association, entitled immediately before that date, under the constitution of that body in force immediately before that date, to vote at general meetings of that body.".

(b) In subclause (1) by deleting "to the Chief Executive Election Ordinance (Cap. 569)".

(c) By adding -

"(11A) Section 12(6)(a) and (b) of the Schedule is amended by repealing "20O(b)" and substituting "20O(aa), (b)".

(d) By adding -

"(13) Section 12(16) of the Schedule is amended by repealing "20O(b)" and substituting "20O(aa), (b)".

Schedule,
section 7

(a) In subsection (2), in the proposed section 7(2)(a), by deleting "be subscribed by at least" and substituting ", subject to paragraph (aa), be subscribed by".

(b) By adding -

ClauseAmendment Proposed

"(2A) Section 7(2)(aa), added by section 3(b)(ii) of the Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 (L.N. 119 of 2003), is amended by repealing "(a)(ii)" and substituting "(a)".

(c) By adding -

"(5A) Section 7(2C), added by section 3(c) of the Legislative Council (Subscribers and Election Deposit for Nomination) (Amendment) Regulation 2003 (L.N. 119 of 2003), is amended by repealing "(2)(a)(ii)" and substituting "(2)(a)".